

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO: 1:25-CV-00191**

LAILA DAMES, EMILY ROGERS,
KATHRYN NEWMAN, MATHANGI
MOHANARAJAH, and ANSHU
SHAH,

Plaintiffs,

v.

LEE ROBERTS, AMY JOHNSON,
DESIREE RIECKENBERG, BRIAN
JAMES, RASHEEM HOLLAND,
LAWRENCE TWIDDY, JENNIFER
SPANGENBERG, J. KALA BULLETT,
and AVERY COOK,

in their individual and official
capacities;

NICK LYNCH, N.G. BROWN, FNU
LEE, and DESTINY WYLIE,

in their individual capacities,

Defendants.

**MEMORANDUM OF LAW IN
SUPPORT OF DEFENDANTS'
MOTION TO DISMISS**

PURSUANT TO Fed. R. Civ. P. 7 and L.R. 7.2, Defendants hereby submit this Memorandum of Law in support of their Motion to Dismiss (D.E. 17). Plaintiffs participated in an encampment established on UNC-CH's academic campus in April 2024, in violation of multiple, publicly available policies. Four of the five plaintiffs were detained and/or arrested when law enforcement

cleared the encampment after providing notice. Plaintiffs claim these actions, in addition to trespass notices and disciplinary action initiated against several of them, constituted a violation of their First and Fourteenth Amendment rights, as well as their rights under the North Carolina Constitution. They also claim the actions of law enforcement officers violated the Fourth Amendment and North Carolina tort law.

Plaintiffs' claims fail. As discussed below, well-established immunities bar both Plaintiffs' official- and individual-capacity claims. But even if Plaintiffs could overcome these immunities, they have failed to allege facts sufficient to support any of their claims. Plaintiffs' Amended Complaint should therefore be dismissed in full.

STATEMENT OF THE CASE

Plaintiffs filed this lawsuit in March 2025, asserting eleven claims against thirteen individual defendants affiliated with the University of North Carolina at Chapel Hill (“UNC-CH”).¹ D.E. 1; D.E. 1-1 through 1-8.

¹ Plaintiffs name as Defendants UNC-CH administrators Chancellor Lee Roberts, Vice Chancellor Amy Johnson, Dean of Student Desirée Rieckenberg, and UNC-CH Chief of Police Brian James, referring to them as “University Defendants.” D.E. 10 ¶¶17-21. Plaintiffs also name various members of UNC-CH’s Emergency Evaluation and Action Committee (“EEAC”)—Captain Rasheem Holland, Captain Lawrence Twiddy, Jennifer Spangenberg, Kala Bullett, and Avery Cook—whom they refer to variously as “EEAC Defendants” and “University Defendants.” D.E. 10 ¶¶22-26; *id.* ¶4. Finally, Plaintiffs name four law enforcement officers—Nick Lynch, “First Name Unknown” Lee, N.G.

Specifically, Plaintiffs' claims arose from actions taken by UNC-CH administrators, law enforcement officers, and others related to the clearing of a tent camp established and occupied by protesters in April 2024. *Id.* They included claims under the First, Fourth, and Fourteenth Amendment, as well as state-law constitutional and tort claims. *Id.*

Plaintiffs subsequently filed an Amended Complaint, removing two claims and adding allegations. D.E. 10; D.E. 10-1 through 10-9. On April 24, 2025, Plaintiffs filed a Motion for Preliminary Injunction. D.E. 11. Defendants moved for an extension of time in which to respond to both Plaintiffs' Amended Complaint and Motion for Preliminary Injunction, up to and including June 10, 2025 (D.E. 13), which this Court granted by text order on May 5, 2025.

STATEMENT OF THE FACTS

A. Plaintiffs and others participate in a tent encampment on the campus of UNC-CH, in violation of university policies.

On Friday, April 26, 2024, Plaintiffs, along with other individuals, participated in a tent encampment on Polk Place, a large outdoor academic quad on the campus of UNC-CH. D.E. 10 ¶2.² The encampment was for the

Brown, and Destiny Wylie—whom they refer to as “Officer Defendants.” D.E. 10 ¶¶27-31. For ease of reference, Defendants will use these same designations.

² The facts recited here are drawn from Plaintiffs' Amended Complaint and documents filed with and relied on in the Amended Complaint. D.E. 10.

purpose of “express[ing] solidarity with the nationwide movement across university campuses for Palestinian lives and liberation.” ¶1.

Many encampment occupants, including Plaintiffs Dames, Rogers, Newman, and Shah, were affiliated with a nationwide advocacy organization called Students for Justice in Palestine (“SJP”), which helped organize similar encampments at universities across the country. ¶¶12-14, 16, 52-54, 57, 63. Dames, Rogers, and Newman were all unaffiliated with UNC-CH—Dames and Newman were students at other universities, and Rogers was a professor at Duke University. ¶¶12-14. Mohanarajah was on a “leave of absence” from her studies at UNC-CH and was not enrolled as a student at the time. ¶15. Of the named Plaintiffs, only Shah was an enrolled student at the time of the encampment. ¶16. But all Plaintiffs occupied the encampment for some or all of its duration and slept at the encampment on multiple nights. ¶¶99, 128, 150, 174, 203.

After the encampment was established, UNC-CH communicated with participants “regarding sign placement, adherence to University policies, and any other concerns raised by administrators, such as making sure not to leave

Because Plaintiff attached these documents to their Amended Complaint and they were “integral to and explicitly relied on” in the Amended Complaint, this Court may properly consider them at the Rule 12(b)(6) stage. *Am. Chiropractic Ass’n v. Trigon Healthcare, Inc.*, 367 F.3d 212, 234 (4th Cir. 2004). Hereafter, all paragraph citations will refer to the Amended Complaint.

building doors propped open.” ¶73. In particular, the erection of the tents violated Section II.D.2 of UNC-CH’s Facilities Use Standard (D.E. 17-1), and UNC-CH told participants that if they violated the tent policy, the tents would need to be removed. ¶89. The fact that tents violated UNC-CH’s policy was shared among participants at the encampment. ¶88.

B. Participants refuse to remove the encampment and leave the area, despite requests by UNC-CH administrators and law enforcement.

The encampment remained in place until Tuesday, April 30, 2024. ¶¶75-76. Early Tuesday morning, UNC-CH notified participants in the encampment that they must “remove all tents, tables, and other items” and depart from Polk Place by 6 a.m. ¶81; D.E. 10-2. UNC-CH reiterated that although “students and community members can assemble and make their voices heard,” state law and policy “prohibit disruption of University operations.” *Id.* UNC-CH explained that its direction to disperse resulted from participants’ decision to “backtrack[] on their commitment to comply with [UNC-CH’s] policies” and participants’ decision to “end . . . attempts at constructive dialogue.” D.E. 10-2. Administrators told participants that failure to disperse at 6 a.m. would “result in consequences, including possible arrest, suspension from campus and, ultimately, expulsion from the university.” *Id.*

All Plaintiffs were present at the encampment that morning. ¶¶109, 138, 160, 174, 203. Plaintiffs Rogers, Dames, and Newman all received

information that encampment participants must leave or face the possibility of arrest, and Shah, the only Plaintiff formally affiliated with UNC-CH, “saw a UNC Chapel Hill administrator handing a letter to a participant.” ¶¶109, 138, 160, 211.

Nevertheless, many participants, including Plaintiffs, were still present at the encampment at 6 a.m. ¶90.

C. Law enforcement clears the area and arrests participants who refuse to leave.

At 6 a.m., law enforcement officers—including officers from the police departments of UNC-CH, NC State University, NC Central University, UNC-Wilmington, and Appalachian State University arrived at the encampment and began arresting participants who had not dispersed. ¶¶77, 90. Arrested participants were escorted to a nearby building, where they were criminally charged with second degree trespass. ¶92.

Although Plaintiff Rogers saw law enforcement officers arresting participants, she did not leave. ¶¶110-11. Rogers alleges that Defendant Officer Lee took away her cane, “threw her to the ground,” and “ordered” Defendant Officer Lynch to “zip-tie” her hands.” ¶113. She further alleges that as a result of these actions, she sustained injuries to her shoulder, which necessitated physical therapy and a sling and prevented her from driving “for several days.” ¶¶114-15.

Although Plaintiff Dames saw law enforcement officers arresting participants, she did not leave. ¶139. She alleges that “during her arrest,” she “suffered bruising and lacerations on her wrists.” ¶141.

Although Plaintiff Newman saw law enforcement officers arresting participants, she did not leave. ¶161. She alleges that during her arrest, she “fell to the ground and hit her head, causing her a concussion.” ¶163.

Mohanarajah also did not leave the encampment prior to 6 a.m. ¶¶184-85. She was “detained with Plaintiffs Dames, Rogers, and Newman and other arrested participants” but was “released without criminal citation.” *Id.*

Plaintiff Shah “moved a short distance away from the encampment” when law enforcement officers began arresting participants. ¶¶212-13. Shah was not arrested, detained, cited for trespassing, or issued a trespass notice from UNC-CH. *See id.*

Plaintiffs Rogers, Dames, and Newman were all arrested and cited for criminal trespass. ¶¶116, 140, 162. Plaintiffs Rogers, Dames, Newman, and Mohanarajah also received “trespass notices” issued by various law enforcement officers. ¶¶118, 143, 165, 186; D.E. 10-7, 10-8.

In addition, Plaintiff Mohanarajah received “a suspension from UNC-CH through its EEAC.” ¶186. Mohanarajah was not an enrolled student at the time she was suspended, but she nonetheless alleges that she was “unable to

re-enroll in classes while she was suspended, and her graduation date was further delayed.” ¶195.

D. Plaintiffs appeal the trespass notices and suspensions.

Plaintiffs Rogers, Newman, Dames, and Mohanarajah allege they appealed the trespass notices they received, consistent with the appeal process outlined in the notice. ¶¶218-19. Defendant James—Chief of UNC-CH’s campus police—met with Plaintiffs’ counsel to hear the appeals she had submitted. ¶224. Chief James issued letters upholding the trespass notices against Plaintiffs, with an exception for emergency medical care from UNC Hospital’s Emergency Department. ¶230. Plaintiffs were informed they could seek to have the trespass notices lifted in two years. ¶230. In addition, Chief James told Mohanarajah that he would reconsider his decision should she re-enroll as a student at UNC-CH. D.E. 10-8 at 3.

Mohanarajah also appealed the interim suspension she had received from the EEAC. ¶237; D.E. 10-9. Mohanarajah was informed her suspension was lifted on or about November 5, 2024. ¶239; D.E.10-9.

ISSUES

1. Does sovereign immunity bar Plaintiffs’ claims against the University Defendants in their official capacities?
2. Should Plaintiffs’ individual capacity claims against the University Defendants be dismissed?

3. Should Plaintiffs' individual capacity claims against the Officer Defendants be dismissed?

STANDARD OF REVIEW

The question of sovereign immunity poses a “jurisdictional issue” that is appropriately resolved under either Rule 12(b)(1) or 12(b)(2). *Simmons v. Corizon Health, Inc.*, 122 F. Supp. 3d 255, 268 & n.5 (M.D.N.C. 2015) (noting that the North Carolina Supreme Court “has yet to decide whether dismissal based on State sovereign or governmental immunity is a matter of personal or subject-matter jurisdiction”). Under either rule, the plaintiff has the burden of showing that the court has jurisdiction. *Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir. 1999) (subject-matter jurisdiction); *Mylan Lab's, Inc. v. Akzo*, 2 F.3d 56, 60 (4th Cir. 1993) (personal jurisdiction).

Under Rule 12(b)(6), a complaint's “[f]actual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 545, 555 (2007). A claim is plausible only “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “Threadbare recitals of the elements . . . supported by mere conclusory statements, do not suffice.” *Id.* For a claim to survive, there must be something to nudge the claim “across the line from conceivable to plausible.” *Id.* at 680 (quoting *Twombly*, 550 U.S. at 570).

In considering a Rule 12(b)(6) motion, a court may “consider documents attached to the complaint, as well as those attached to the motion to dismiss as long as they are integral to the complaint and authentic.” *Philips v. Pitt Cnty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (citing Fed. R. Civ. P. 10(c)). “In the event of a conflict between the allegations in the complaint and an incorporated external document, the external document controls.” *Bros. v. STVT-AAI Educ., Inc.*, No. 7:19-CV-19-BO, 2019 WL 3987752, at *2 (E.D.N.C. Aug. 22, 2019).

ARGUMENT

I. Any Official Capacity Claims Against Defendants Should Be Dismissed.

Plaintiffs assert six claims against various employees of UNC-CH in their official capacities.³ These claims should be dismissed because they are barred by sovereign immunity.

A. The Eleventh Amendment bars claims against UNC-CH, as an agent of the State of North Carolina.

The Eleventh Amendment limits the authority of the federal courts to hear claims against the states. *See Lardes v. Bd. of Regents*, 525 U.S. 613, 616 (2002). Thus, “[i]n our constitutional scheme, a federal court generally

³ Count I (First Amendment – Prior Restraint); Count II (First Amendment – Viewpoint Discrimination); Count III (First Amendment – Retaliation); Count IV (Due Process); and Count VIII (N.C. Constitution – Free Speech).

may not hear a suit brought by any person against a nonconsenting State.” *Allen v. Cooper*, 589 U.S. 248, 254 (2020). This sovereign immunity “encompasses not only actions in which a State is actually named as the defendant, but also certain actions against state agents and state instrumentalities.” *Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 429 (1997). And state agents and instrumentalities include state universities. *See, e.g., Huang v. Bd. of Governors of the Univ. of N.C.*, 902 F.2d 1134, 1138 (4th Cir. 1990).

B. North Carolina has not waived its immunity with respect to either the federal or state claims asserted here.

Although a State may waive its Eleventh Amendment immunity and “allow itself to face suit,” the principles governing that waiver are matters of federal law. *Glob. Innovative Concepts, LLC v. State*, 105 F.4th 139, 143 (4th Cir. 2024). And the test for whether a State has waived its sovereign immunity in federal court “is a stringent one” that requires “the most express language or . . . overwhelming implication.” *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 239-41 (1985). A State’s “general waiver” of sovereign immunity will not “suffice.” *Glob. Innovative Concepts*, 105 F.4th at 143.

The Fourth Circuit has repeatedly recognized that North Carolina has not articulated a specific waiver of immunity for claims against it in federal court. *See Doe v. Univ. of N. Carolina Sys.*, 133 F.4th 305, 313-15 (4th Cir.

2025); *Huang*, 902 F.2d at 1139. Moreover, even where North Carolina has chosen to waive its sovereign immunity in its *own* courts for certain claims, those general waivers are insufficient to waive the State’s Eleventh Amendment immunity from suit in federal court. *See, e.g., Huang*, 902 F.2d at 1139 n.5 (rejecting argument that waiver of state-law sovereign immunity on contract claims sufficed to waive Eleventh Amendment immunity); *see also Doe*, 133 F.4th at 315 (recognizing UNC-CH was entitled to Eleventh Amendment immunity on federal due process claims as well as state-law constitutional claims).

Plaintiffs have alleged no specific or express waiver of sovereign immunity for the claims here.

C. Defendants are likewise entitled to sovereign immunity to the extent they are named in their official capacities.

“[A] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official’s office.” *Fauconier v. Clarke*, 966 F.3d 265, 279 (4th Cir. 2020). In other words, an official-capacity suit is “no different from a suit against the State itself.” *Id.* Thus, “State officials sued in their official capacity for damages are also protected by Eleventh Amendment immunity.” *Al-Deen v. Trs. of Univ. of N. Carolina, Wilmington*, 102 F. Supp. 3d 758, 764 (E.D.N.C. 2015).

Plaintiffs may attempt to assert an exception to this sovereign immunity that arises under *Ex parte Young*, 209 U.S. 123 (1908). However, this narrow exception only permits prospective injunctive relief from an “ongoing violation of federal law.” *Cooper*, 895 F.3d at 354. Here, the only alleged violations that could possibly be considered “ongoing” involve the trespass notices issued to Plaintiffs Dames, Newman, Rogers, and Mohanarajah.⁴ But, as discussed below, Plaintiffs have entirely failed to adequately allege any constitutional violation with respect to those notices. For these reasons, *Ex parte Young* does not provide an exception to sovereign immunity for Defendants here.

In sum, because Defendants are entitled to the State’s sovereign immunity, any official capacity claims against Defendants should be dismissed.⁵

II. The Individual-Capacity Claims Against University Defendants Should Be Dismissed.

⁴ Plaintiff Shah has only brought claims involving the alleged deprivation of his free-speech rights under the First Amendment and North Carolina’s Constitution—alleged deprivations which occurred in the past. D.E. 10 ¶¶337-44; 345-52; 390-96.

⁵ Even if Defendants are not entitled to sovereign immunity on the official-capacity claims, those claims should nevertheless be dismissed because Plaintiffs have failed to state a claim for relief, as discussed in more detail below.

Plaintiffs have asserted four claims against University Defendants in their individual capacities: three First Amendment claims and a procedural due process claim. ¶¶318-71. These claims fail as a matter of law.

A. Plaintiffs’ allegations are insufficient to state claims under the First Amendment.

1. Plaintiffs have not plausibly alleged they were subjected to a prior restraint on speech (Count I).

A “prior restraint” on speech “describe[s] administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur.” *Alexander v. United States*, 509 U.S. 544, 550 (1993) (cleaned up). Thus, “classic examples” of prior restraints on speech include permitting and licensing ordinances, as well as court-ordered injunctions forbidding speech. *Barrett v. Walker Cnty. Sch. Dist.*, 872 F.3d 1209, 1223 (11th Cir. 2017); *see also In re Murphy-Brown, LLC*, 907 F.3d 788, 797 (4th Cir. 2018) (“Like all court orders that actually forbid speech activities, gag orders are prior restraints.” (cleaned up)); *Cox v. City of Charleston*, 416 F.3d 281, 284 (4th Cir. 2005) (“An ordinance that requires individuals or groups to obtain a permit before engaging in protected speech is a prior restraint on speech.”).

The U.S. Supreme Court has thus “steadfastly preserved the distinction between prior restraints and subsequent punishments.” *Alexander*, 509 U.S. at 553-54. Federal courts, including the Supreme Court, continue to recognize

this distinction, particularly in cases where trespass orders or bans are challenged as “prior restraints.” For instance, in *Madsen v. Women’s Health Center, Inc.*, the Court expressly declined to “adopt the prior restraint analysis urged” by the plaintiffs, noting that “[n]ot all injunctions that may incidentally affect expression, however, are ‘prior restraints.’” 512 U.S. 753, 764 n.2 (1994). In that case, the challenged injunction did not prevent the plaintiffs from “expressing their message in any one of several different ways” but only from doing so within a specific physical space. *Id.* In addition, the injunction “was issued not because of the content of petitioners’ expression . . . but because of their prior unlawful conduct.” *Id.*

Other recent federal cases involving trespass bans from government property have reached similar conclusions. *See, e.g., Wright v. City of St. Petersburg, Fla.*, 833 F.3d 1291, 1296 & n.5 (11th Cir. 2016) (trespass warning from city park was not a prior restraint “simply because it incidentally burdened” speech); *Johnson v. Bayens*, No. 420CV00306RGECFB, 2020 WL 12618873, at *6 (S.D. Iowa Dec. 10, 2020) (bans from state capitol complex based on disruptive conduct were not prior restraints because they were “implemented . . . in response to alleged unlawful conduct, not based upon Plaintiffs’ anticipated future speech”).

The same is true here. Plaintiffs Rogers, Newman, Dames, and Mohanarajah were issued trespass warnings as a result of their failure to

comply with reasonable directives to disperse issued by UNC-CH and Chief James. ¶¶118, 143, 165, 186; D.E. 10-7, 10-8. These directives were issued after UNC-CH’s attempts to engage in dialogue with encampment occupants and to seek compliance with university policies and standards on facilities use and expressive activities on campus. ¶¶73, 81, 88-89; D.E. 10-2 (explaining that participants had “made it clear they will no longer even consider [UNC-CH’s] requests to abide by University policy and ha[d] ended [UNC-CH’s] attempts at constructive dialogue”). The directives were also issued after UNC-CH became concerned about the increasing disruption caused by the encampment, including occupants’ trespass into classroom buildings overnight. D.E. 10-2. And Plaintiffs’ failure to comply with these directives constituted violations of university policies and criminal law. D.E. 10-7, 10-8; *see also* D.E. 17-1. Plaintiff Mohanarajah’s summary suspension was issued as a result of these same actions. ¶325; D.E. 10-9.

Thus, just as in *Alexander*, neither the trespass notices nor the summary suspension forbade Plaintiffs from engaging in future expressive conduct; instead, they involved “punishment for past conduct.” 509 U.S. at 550, 553. For this reason, they cannot be considered “prior restraints,” and Count I fails.⁶

⁶ Even if the trespass notices are somehow implicated by the First Amendment, they nevertheless are not unconstitutional, as discussed in more detail below.

2. Plaintiffs have not plausibly alleged that their removal from the campus was unconstitutional (Count II).

Plaintiffs also have failed to allege that UNC-CH engaged in viewpoint discrimination when it removed them from campus. A First Amendment analysis involves three steps: (1) a determination of whether the plaintiff “engaged in protected speech”; (2) an identification of “the nature of the forum”; and (3) a determination of “whether the justifications for the exclusion satisfy the requisite standard for that forum.” *Am. C.L. Union v. Mote*, 423 F.3d 438, 442–43 (4th Cir. 2005). Under this standard, both Plaintiffs’ removal from the campus of UNC-CH on April 30, 2024, and the subsequent trespass notices they received pass constitutional muster.⁷

⁷ Plaintiff Shah purports to join Dames, Newman, Rogers, and Mohanarajah in asserting claims under Count II. D.E. 10 at 67. However, Plaintiffs’ allegations are insufficient to establish a viewpoint discrimination claim by Shah. Shah does not allege that he was arrested, suspended, expelled from campus, or issued any trespass notice with respect to the actions on April 30, 2024. Shah alleges that he was present at the encampment on the morning of April 30, and that he “moved a short distance away” during the clearing of the encampment. ¶¶203, 213. These allegations—which do not show that Shah’s speech was restricted in any way—are entirely insufficient to state a claim for viewpoint discrimination under the First Amendment. Shah’s speculative allegations that he has been “hesitant” to exercise his First Amendment rights “out of fear of retaliation,” ¶¶ 215-17, are likewise insufficient to establish such a claim. *See Cooksey v. Futrell*, 721 F.3d 226, 236 (4th Cir. 2013) (“[A]llegations of a subjective ‘chill’ are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm.” (cleaned up)).

As the Fourth Circuit has long recognized, a public university “campus is a limited public forum.” *Mote*, 423 F.3d 438 at 444. In particular, a “campus is not akin to a public street, park, or theater, but instead is an institute of higher learning that is devoted to its mission of public education.” *Id.* “Once a limited forum has been created, entities of a ‘similar character’ to those allowed access may not be excluded.” *Warren v. Fairfax County*, 196 F.3d 186, 194 (4th Cir.1999) (*en banc*). However, “if the person excluded is not a member of the group that the forum was made generally available to,” an “external standard” applies—that is, the restriction need only be “viewpoint neutral and reasonable in light of the purpose of the forum.” *Mote*, 423 F.3d at 444; *see also Davison v. Plowman*, 247 F. Supp. 3d 767, 776 (E.D. Va. 2017), *aff’d*, 715 F. App’x 298 (4th Cir. 2018).

The external standard applies here. Through its policies, the University of North Carolina has opened its campuses as limited public fora for expressive activities, but those expressive activities are subject to reasonable regulations. D.E. 17-2. For instance, some portions of UNC-CH’s campus are available for gathering without a permit, while many portions are available only by permission. D.E. 17-1. Moreover, such gatherings are permitted only if attendees comply with reasonable limitations on structures and the gathering does not cause a substantial disruption to the primary purpose of UNC-CH: providing students with an education. *Id.* Substantial disruptions include, but

are not limited to, refusals to comply with directions to disperse and remaining on campus in violation of criminal trespass laws. *Id.*

Plaintiffs are not among the class of persons for whom UNC-CH opened its campus as a limited public forum—that is, individuals who participate in expressive activities in compliance with the reasonable parameters set by UNC-CH. On the contrary, Plaintiffs themselves concede that they failed to comply with UNC-CH’s policies: they acknowledge that UNC-CH provided directives that participants in the encampment must disperse, and they do not deny that they remained at the encampment despite this directive. *Supra* 5-8. Because of this, Plaintiffs were charged with second-degree criminal trespass and received the trespass notices they’ve challenged in this lawsuit. *Supra* 6-7.

This was precisely the case in *Wood v. Arnold*, 321 F. Supp. 3d 565 (D. Md. 2018), *aff’d* 915 F.3d 308 (4th Cir. 2019). There, the father of a high school student sued the school district after he received a “No Trespass Order” issued by the school principal as a result of his conduct and interactions with school staff. *Id.* at 572-73. The court rejected the father’s argument that he was “undoubtedly within the class to whom [school events] are made generally available.” *Id.* at 583. Instead, the court noted that this characterization “ignore[d] the simple fact that . . . [the father], unlike all other parents for which the forum is open, caused school officials to be concerned about safety at

the school.” *Id.* The court therefore applied the external standard to its analysis of the order.

As in *Wood*, the external standard is appropriate here. Again, like other public universities, the primary function of UNC-CH is to provide a “venue for the students, faculty[,] and staff . . . to obtain an education, not to provide an open meeting place for the unstructured expression of public points of view.” *ACLU Student Chapter-Univ. of Maryland Coll. Park v. Mote*, 321 F. Supp. 2d 670, 680 (D. Md. 2004), *aff’d Mote*, 423 F.3d 438. Thus, while the campus of UNC-CH is “open” in some respects, UNC-CH nevertheless has the “right to take steps to safeguard the traditional academic atmosphere.” *Glover v. Cole*, 762 F.2d 1197, 1202 (4th Cir. 1985).

The clearing of the encampment and the issuance of the trespass notices were both viewpoint neutral and reasonable in light of these purposes. To start, neither the clearing nor the trespass notices expressly curtailed the content of Plaintiffs’ speech, nor did they seek to curtail specific viewpoints. D.E. 10-2, 10-7. Rather, both actions simply placed a reasonable limitation on *where* Plaintiffs may exercise their speech. Moreover, the decision to clear the encampment was reasonable in light of the policy violations that occurred as a result of the establishment of the camp (specifically, the erection of tents), as well as the increasing disruptions and security concerns caused by the encampment. D.E. 10-2; D.E. 17-1.

The trespass notices, too, were reasonable in light of UNC-CH's and law enforcement's understanding of Plaintiffs' activity on campus that led to their arrests—specifically, their participation in activities that caused a substantial disruption to the campus community and their refusal to disperse when directed. D.E. 10-8; D.E. 17-1.⁸

The notices also do not significantly burden Plaintiffs. On the contrary, neither Newman nor Rogers have a strong or compelling need to be on the campus of UNC-CH, outside of their stated desire to engage in additional expressive activities on campus. D.E. 10-8. And although Mohanarajah alleges that she has been unable to re-enroll in class because of the trespass notice, that's simply not correct. Instead, Chief James indicated that he would revisit the trespass notice if and when Mohanarajah re-enrolled. *Id.* Further, Dames has not alleged *any* compelling reason why she needs to be present on UNC-CH's campus.

For these reasons, Plaintiffs have failed to plausibly allege that their removal from UNC-CH's campus constituted viewpoint discrimination under the First Amendment.

⁸ Indeed, Shah and other occupants of the encampments chose to comply with directives to disperse and consequently did not receive a trespass notice.

3. Plaintiffs have not plausibly alleged that they were subjected to unconstitutional retaliation based on their speech.

Plaintiffs have likewise failed to allege facts sufficient to state a claim for retaliation under the First Amendment. Specifically, Plaintiffs contend that, as a result of their participation in the Polk Place encampment, University Defendants unconstitutionally levied trespass notices against them and issued Mohanarajah a summary suspension through the EEAC. ¶¶345-52. Plaintiffs contend that these actions have caused them to be “chilled out of fear of retaliation from future exercise” of their rights under the First Amendment. ¶351.

“However, not every reaction made in response to an individual’s exercise of his First Amendment right to free speech is actionable retaliation.” *Suarez Corp. Indus. v. McGraw*, 202 F.3d 676, 685 (4th Cir. 2000). Rather, plaintiffs claiming First Amendment retaliation must demonstrate that: “(1) [they] engaged in protected First Amendment activity, (2) the defendants took some action that adversely affected [their] First Amendment rights, and (3) there was a causal relationship between [their] protected activity and the defendants’ conduct.” *Davison v. Rose*, 19 F.4th 626, 636 (4th Cir. 2021) (cleaned up). “[A] plaintiff suffers adverse action if the defendant’s allegedly retaliatory conduct would likely deter a person of ordinary firmness from the exercise of First Amendment rights.” *Constantine v. Rectors & Visitors of*

George Mason Univ., 411 F.3d 474, 500 (4th Cir. 2005) (cleaned up). In other words, Plaintiffs must allege that UNC-CH responded to their activity “with conduct or speech that would chill or adversely affect [their] protected activity.” *The Baltimore Sun Co. v. Ehrlich*, 437 F.3d 410, 416 (4th Cir. 2006).

Plaintiffs’ allegations do not meet this standard. To start, although Plaintiff Shah purports to join the other Plaintiffs in asserting claims under Count III, nowhere does the Amended Complaint specify any alleged retaliatory actions taken against Shah. D.E. 10 ¶¶345-52. In any event, Shah’s speculative allegations elsewhere in the Amended Complaint that his First Amendment rights had been “chilled” are insufficient to establish any claim by Shah under the First Amendment. See *Cooksey*, 721 F.3d at 236 (“A chilling effect cannot arise merely from the individual’s knowledge that a governmental agency was engaged in certain activities or from the individual’s concomitant fear that, armed with the fruit of those activities, the agency might in the future take some other and additional action detrimental to that individual.”); *supra* n.7. For this reason alone, Plaintiff Shah’s claim under Count III should be dismissed.

The allegations in the Amended Complaint are equally deficient with respect to Plaintiffs Rogers, Newman, Dames, and Mohanarajah. None of these Plaintiffs have plausibly alleged that they suffered an adverse action. As discussed above, neither the trespass notices nor the summary suspension in

any way restricted these Plaintiffs' speech. At most, those actions simply resulted in Plaintiffs being unable to exercise their speech while on UNC-CH's campus. And even to the extent they suggest the trespass notices have "chilled" the exercise of their First Amendment rights, such allegations are contradicted by the Amended Complaint itself, which alleges that Plaintiffs have every intention of continuing to attend protests and demonstrations, even if not on the campus of UNC-CH. See ¶¶125, 147, 170, 200, 248. Thus, they cannot plausibly contend that the alleged retaliatory actions chilled them (or any other person "of ordinary firmness") from the exercise of their First Amendment rights.

But even so, Plaintiffs Rogers, Newman, Dames, and Mohanarajah have failed to allege a more fundamental element of their claim: that their First Amendment activity was the "but for" cause of the alleged retaliation. "[I]t is not enough that the protected expression played a role or was a motivating factor in the retaliation"; Plaintiffs must allege "that 'but for' the protected expression the [defendants] would not have taken the alleged retaliatory action." *Porter v. Bd. of Trs. of N. Carolina State Univ.*, 72 F.4th 573, 583 (4th Cir. 2023), *cert. denied*, 144 S. Ct. 693 (2024). Here, Plaintiffs have not alleged that their protected speech was the "but for" cause of the trespass notices or disciplinary action against them. Moreover, the Amended Complaint alleges other reasons why these actions were taken against them, including their

refusal to leave the campus of UNC-CH after being directed to do so by UNC-CH administration, resulting in a violation of North Carolina's criminal law. *Supra* 5-8.

In *Davison*, the Fourth Circuit rejected a similar retaliation claim, where a parent contended that he received a no-trespass letter from a school board in response to his protected speech. 19 F.4th at 636. In that case, the court concluded that the plaintiff had failed to make a showing that the trespass letter “was issued because of his protected speech, as opposed to his threats and antagonistic behavior.” *Id.* at 637.

The same is true here. Plaintiffs' First Amendment retaliation claim should be dismissed.

B. Plaintiffs' allegations are insufficient to state a claim for due process violations.

1. Plaintiffs have not plausibly alleged they were deprived of any liberty or property right.

To state a procedural due process claim, Plaintiffs must allege that they were deprived of a constitutionally-protected property or liberty interest without due process. *Sheppard v. Visitors of Virginia State Univ.*, 993 F.3d 230, 238 (4th Cir. 2021). “[T]o obtain a protectible right, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.” *Greenholtz v. Inmates of Nebraska Penal & Corr. Complex*,

442 U.S. 1, 7 (1979) (quoting *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972)) (cleaned up). Here, Plaintiffs Newman, Rogers, Dames, and Mohanarajah allege that they have a liberty interest in accessing UNC-CH's campus and that Mohanarajah has a property interest in "obtaining a public education." ¶¶356, 357. These allegations fail both on the facts and on the law.

First, Plaintiffs do not have a "fundamental liberty interest" (as they suggest) in accessing the campus of UNC-CH. Although Plaintiffs cite a plurality opinion of the Supreme Court suggesting that citizens in general have a liberty interest in accessing parks and other spaces open to the public, ¶356 (citing *City of Chicago v. Morales*, 527 U.S. 41, 54 (1999)), the existence of that interest is far from established. *See, e.g., Willis v. Town Of Marshall, N.C.*, 426 F.3d 251, 265 (4th Cir. 2005) (noting the lack of clarity from the Supreme Court and federal appellate courts on this issue); *see also Salmon v. Blesser*, 802 F.3d 249, 256 (2d Cir. 2015) (same).

But even if such a liberty interest does exist, that interest does not extend to an individual's right to access a university campus, particularly when that individual is not an enrolled student or other member of the campus community. On the contrary, "a university differs in significant respects from public forums such as streets or parks or even municipal theaters." *Widmar v. Vincent*, 454 U.S. 263, 267 n.5 (1981). Accordingly, at least one federal appellate court has specifically rejected the argument that a member of the

public has a constitutionally-protected interest in being on a university campus, even where that campus is generally open to the public. *Souders v. Lucero*, 196 F.3d 1040, 1045 (9th Cir. 1999); *see also Vincent*, 454 U.S. at 278 (“[College and university] facilities are not open to the public in the same way that streets and parks are. University facilities—private and public—are maintained primarily for the benefit of the student body and the faculty.”) (Stevens, J., concurring); *cf. Greer v. Spock*, 424 U.S. 828, 836 (1976) (rejecting the suggestion that “whenever members of the public are permitted freely to visit a place owned or operated by the Government, then that place becomes a ‘public forum’ for purposes of the First Amendment”).

For these reasons, Plaintiffs cannot show that Plaintiffs Dames, Rogers, Newman, or Mohanarajah—none of whom were enrolled as students at UNC-CH at the time of the encampment, or since the encampment—had a constitutionally-protected liberty interest in being physically present on UNC-CH’s campus.

Second, even assuming that enrolled students at UNC-CH have “a property interest in obtaining a public education,” Plaintiff’s argument as to Mohanarajah fails on the facts alleged. Plaintiffs concede that Mohanarajah was not enrolled as a student when the camp was cleared, when she was issued a trespass notice, or when she appealed the trespass notice. ¶15; D.E. 10-8. Nor has Mohanarajah been enrolled as a student at any point since that time.

D.E. 10-8. Mohanarajah thus cannot base her due process claim on any such property interest.

2. Plaintiffs have not plausibly alleged they were deprived of due process.

Even if Plaintiffs had plausibly alleged that their physical exclusion from UNC-CH's campus deprived them of a constitutionally-protected liberty or property interest (they have not), Plaintiffs' allegations do not show that they deprived of these interests without due process. On the contrary, the Amended Complaint demonstrates that Plaintiffs received ample process in conjunction with both the trespass notices and the EEAC suspension.

Due process "is not a technical conception with a fixed content unrelated to time, place and circumstances." *Gilbert v. Homar*, 520 U.S. 924, 930 (1997). Rather, "due process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). In the context of due process, notice "must be 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Johnson v. Jessup*, 381 F. Supp. 3d 619, 645 (M.D.N.C. 2019) (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)). And as Plaintiffs themselves concede, a hearing must, at minimum, provide them "an

opportunity to present [their] side of the story.” D.E. 12 at 26 (quoting *Goss v. Lopez*, 419 U.S. 565, 581 (1975)).

Far from alleging that Plaintiffs have been deprived of due process, Plaintiffs have instead alleged facts showing that they received notice of the trespass decisions and an opportunity to be heard on those decisions. Rogers, Dames, Newman, and Mohanarajah all received trespass notices in writing, either the day of their arrest or shortly thereafter. ¶¶118, 143, 165, 186. Those documents provided Plaintiffs with notice of the charges against them—specifically, they were ordered to “leave immediately” and were subsequently “prohibited from entering upon” UNC-CH property. D.E. 10-7, 10-8. They also provided Plaintiffs with notice of any witnesses: the arresting officer who issued the documents. D.E. 10-7.

The notices also provided Plaintiffs with details about their ability to appeal, in writing, to Chief James within 10 days of being provided with the notice. *Id.* Plaintiffs allege that they submitted appeals to Chief James, through their attorney, and concede that Chief James convened an in-person hearing on these appeals, where counsel appeared for Plaintiffs and was heard. ¶¶219, 222. And Plaintiffs further acknowledge that Chief James issued written letters explaining his decision denying their appeals. ¶232; D.E. 10-8. Finally, Plaintiffs concede that they have the ability to seek to lift the trespass notices after twenty-four months have expired. ¶230; D.E. 10-8.

With respect to the EEAC suspension, Plaintiff Mohanarajah received notice of her summary suspension, based on her failure to disperse from Polk Place after UNC-CH's clear directive. ¶190. She was provided with the opportunity to request review of that suspension, and she did so. D.E. 10-9. Accordingly, after reviewing Mohanarajah's request to have her EEAC action resolved, the EEAC decided to "lift the summary action," based in part on the fact that "there were no pending legal or conduct matters." *Id.*

In both instances, Plaintiffs received both notice of the actions against them and an opportunity to be heard on those actions. They have thus failed to allege they were deprived of due process.

In sum, Plaintiffs have failed to plausibly allege that they were deprived of any rights under the First or Fourteenth Amendment. For these reasons alone, the individual-capacity claims against Defendants on Counts I through IV should be dismissed.

C. University Defendants are entitled to qualified immunity.

Even assuming Plaintiffs have adequately alleged constitutional violations under the First or Fourteenth Amendments (they cannot), Defendants are entitled to qualified immunity on these claims. Qualified immunity prevents government officials from being sued individually over conduct that did not violate clearly established federal rights and is meant to

be applied in areas where the law is “unsettled or murky.” *Smith v. Gilchrist*, 749 F.3d 302, 307 (4th Cir. 2014). In other words, a public official will be subject to liability only if, at the time of the challenged conduct, “the contours of a right are sufficiently clear that every reasonable official would have understood that what he is doing violates that right.” *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (cleaned up).

As discussed above, Plaintiffs cannot establish that a constitutional violation occurred. But even if so, it would not have been clear to Defendants that removing Plaintiffs from UNC-CH’s campus, issuing trespass notices to Plaintiffs, and providing Plaintiffs with notice and a hearing on the trespass notices violated either Plaintiffs’ First Amendment or due process rights. *See Somers v. Devine*, 732 F. Supp. 3d 445, 468 (D. Md. 2024), *aff’d*, 132 F.4th 689 (4th Cir. 2025). The same is true with respect to the EEAC suspension.

For these reasons, Defendants are entitled to qualified immunity on Plaintiffs’ First Amendment and due process claims.

III. The Claims Against the Officer Defendants Should Be Dismissed.

Plaintiffs Newman, Dames, and Rogers have also alleged four claims against various law enforcement officers whom they claim participated in their arrests: two claims of unlawful arrest and excessive force under the Fourth

Amendment (Counts V and VI), and two state-law tort claims for battery and unlawful arrest (Counts IX and X⁹). All these claims should be dismissed.

A. Fourth Amendment claims.

1. Plaintiffs have failed to plausibly allege any constitutional violation.

Plaintiffs' Fourth Amendment claims for unlawful arrest and excessive force both fail because Plaintiffs have not plausibly alleged that any constitutional violations occurred.

The Fourth Amendment guarantees the right of individuals against seizure without probable cause. U.S. Const. amend. IV. Probable cause is an analysis of whether the arresting officer at the time of arrest had “facts and circumstances within their knowledge and of which they had reasonably trustworthy information . . . sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense.” *Beck v. Ohio*, 379 U.S. 89, 91 (1964). The Supreme Court has held that “[i]f an officer has probable cause to believe that an individual has committed *even a very minor criminal offense* in his presence, he may, without violating the Fourth Amendment, arrest the offender.” *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001) (emphasis added).

⁹ These two counts appear to be misnumbered in the Amended Complaint.

Here, Plaintiffs' own allegations establish that Officers Wylie, Brown, Lee, and Lynch had probable cause to arrest Plaintiffs Dames, Newman, and Rogers for second-degree trespass. The North Carolina General Statutes provide that an individual commits second-degree trespass if she, without authorization, enters or remains "[o]n the premises of another person after the person has been notified not to enter or remain there by the owner, by a person in charge of the premises, by a lawful occupant, or by another authorized person." N.C. Gen. Stat. § 14-159.13(a)(1). Plaintiffs concede that they all were made aware of UNC-CH's direction to pack up their belongings and leave the encampment by 6:00 a.m. ¶¶109, 138, 160. Yet, despite this direction, they did not leave. The Officer Defendants thus had probable cause to believe that these Plaintiffs had committed a criminal offense.

The Amended Complaint also does not support Plaintiffs Dames' and Rogers' claim of excessive force against Officers Wylie and Lee. ¶¶377-89. Determining whether the force used during an arrest was unconstitutional requires a balancing of "the nature and quality of the intrusion on the individuals' Fourth Amendment interests against the countervailing governmental interests at stake." *Graham v. Connor*, 490 U.S. 386, 396 (1989) (cleaned up). It has long been recognized that the right to make an arrest implicitly carries the right to use "some degree of physical coercion" to effectuate the arrest. *Id.* Further, the calculation of reasonableness contains

allowances for “the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Id.* at 396-97.

Plaintiffs’ allegations do not demonstrate that Officer Wylie exercised excessive force in connection with Dames’ arrest. First, although Plaintiffs allege that Dames “suffered bruising and lacerations on her wrists,” the allegations are ambiguous about whether those injuries were caused by Officer Wylie. ¶141. Because the Amended Complaint is unclear about whether Wylie personally caused Dames’ alleged injuries, Dames’ claim against Wylie should be dismissed. *See Wright v. Collins*, 766 F.2d 841, 850 (4th Cir. 1985) (“In order for an individual to be liable under § 1983, it must be affirmatively shown that the official charged acted personally in the deprivation of the plaintiff’s rights.” (cleaned up)).

But even if Wylie *did* personally participate in Dames’ physical arrest, Plaintiffs’ allegations do not establish that the force used was excessive. As the Fourth Circuit has previously recognized, the act of being tightly handcuffed as a basis for an excessive force claim was “so insubstantial that it cannot as a matter of law support [a plaintiff’s] claim under . . . the Fourth Amendment.” *Carter v. Morris*, 164 F.3d 215, 219 n.3 (4th Cir. 1999). The same is true here.

Plaintiff Rogers’ allegations against Officer Lee fare no better. Specifically, Rogers alleges that Lee “threw [her] to the ground unnecessarily, took her cane away, and dragged her across the ground.” ¶385. But Lee’s actions were within the degree of physical coercion allowed during an arrest. As the Amended Complaint makes clear, participants at the encampment had been previously notified of UNC-CH’s direction to leave the encampment, yet many individuals (including Rogers) refused to leave. ¶¶81, 109. Confronted with many individuals who were occupying UNC-CH’s campus unlawfully, Lee and other officers were required to make split-second decisions about the amount of physical force needed to arrest participants, including Rogers. The split-second decision-making officers must use to ensure the safety of everyone involved in an arrest situation—including the presence of potential weapons—must be taken into account when calculating whether the amount of force used was reasonable. *Cf. Kelly v. Solomon*, No. 3:17-cv-311-FDW, 2020 WL 247529, at *13 (W.D.N.C. Jan. 15, 2020) (plaintiff could not succeed on excessive force claim under the Eighth Amendment where plaintiff sustained injuries after being deprived of a walking cane).

For these reasons, Plaintiffs have failed to allege any constitutional violations under the Fourth Amendment.

2. Officer Defendants are entitled to qualified immunity.

Even if this Court concludes that Plaintiffs have stated claims for Fourth Amendment violations against the Officer Defendants, those Defendants are nevertheless entitled to qualified immunity on these claims. *Supra* 31-32.

As discussed, the Officer Defendants reasonably believed they had probable cause to arrest Plaintiffs Dames, Newman, and Rogers. Having witnessed a violation of criminal law, when Plaintiffs refused to leave UNC-CH's campus after being directed to do so, the Officer Defendants would not have known that arresting Plaintiffs for that criminal violation would have violated Plaintiffs' constitutional rights.

The same is true for Plaintiffs' excessive force claims. Again: the Fourth Circuit has held that handcuffing an individual as part of an arrest does not rise to the level of a constitutional violation. *Carter*, 164 F.3d at 219 n.3. Even assuming Wylie personally handcuffed Plaintiff Dames (she did not), Wylie would not have known that doing so would have violated Dames' constitutional rights. Similarly, Lee would not have been aware that taking away Rogers' cane and using reasonable force to ensure her detention would have violated Rogers' constitutional rights.

Whether because Plaintiffs failed to allege a constitutional violation, or because the Officer Defendants are entitled to qualified immunity, Plaintiffs' Fourth Amendment claims should be dismissed.

B. State-law claims.

Plaintiffs Newman, Dames, and Rogers have also alleged state-law tort claims against the Officer Defendants, based on their arrests. For reasons similar to those discussed above, Plaintiffs' tort claims should likewise be dismissed.

1. Officer Defendants are entitled to public official immunity.

Public official immunity in North Carolina is a judicially created doctrine which “shields public officials from personal liability for claims arising from discretionary acts . . . by virtue of their office, and within the scope of their governmental duties.” *Bartley v. City of High Point*, 873 S.E.2d 525, 533 (N.C. 2022). Generally, “public officials are immune from personal liability in tort when engaged in the performance of governmental duties involving the exercise of judgment and discretion.” *Hwang v. Cairns*, No. 58PA23, 2025 WL 1479020, at *4 (N.C. May 23, 2025) (citation omitted). Accordingly, North Carolina courts have routinely held that police officers are “public officials who enjoy[] absolute immunity from personal liability for discretionary acts done

without corruption or malice.” *Campbell v. Anderson*, 576 S.E.2d 726, 730 (N.C. 2003).

As long as a police officer is “engaged in performing [his or her] duties,” he or she is a public official entitled to public immunity. *Loop v. Anderson*, 795 S.E.2d 770, 776 (N.C. App. 2016). However, “[a]ctions that are malicious, corrupt, or outside of the scope of official duties will pierce the cloak of official immunity.” *Moore v. Evans*, 476 S.E.2d 415, 421 (N.C. App. 1996). “North Carolina law presumes that public officials will discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law, so evidence of malice must be sufficient by virtue of its reasonableness, not by mere supposition.” *R.A. v. Johnson*, 36 F.4th 537, 545 (4th Cir. 2022) (cleaned up).

A malicious act is (1) done wantonly, (2) contrary to the actor’s duty, and (3) intended to be injurious to another. *Wilcox v. City of Asheville*, 222 N.C. App. 285, 289, 730 S.E.2d 226, 230 (2012). While Plaintiffs allege the Defendants acted with malice, ¶¶402, 404, they have not alleged any specific facts to support their legal conclusions for either claim. There are no specific facts pled that demonstrate the Officer Defendants acted (1) wantonly during the Plaintiffs’ arrests, (2) outside the scope of their official duties by arresting individuals who they believe to be committing a crime, or (3) purposely to injure the Plaintiffs. And even if this Court were to construe Plaintiffs’

allegations as demonstrating the first and second elements of malice, the Amended Complaint is bereft of any allegation from which this Court could infer intent. “The mere allegation” that certain injuries occurred simply “does not show that [the Officer Defendants] *intended* them to happen.” *Johnson*, 36 F.4th at 545 (emphasis retained).

The Officer Defendants are entitled to public official immunity here.

2. Plaintiffs have failed to plausibly allege facts supporting their state-law tort claims.

Even if Officer Defendants were not entitled to public official immunity (they are), Plaintiffs have still failed to plausibly allege their claims for battery or unlawful arrest.

In North Carolina, the “interest protected by the action for battery is freedom from intentional and unpermitted *contact* with one’s person.” *Dickens v. Puryear*, 276 S.E.2d 325, 330 (N.C. 1981) (emphasis added). But the Amended Complaint contains no allegations that Officers Lynch or Wylie made physical contact with Plaintiffs Rogers or Dames, respectively.¹⁰ Defendant Lynch communicated to Rogers that she could keep her cane and was “instructed” by Defendant Lee to zip-tie Rogers. ¶112-13. Neither

¹⁰ For instance, although Plaintiffs allege that Officer Defendants “utilized pepper spray and forced participants across the quadrangle, pulling some by their hair,” ¶91, nowhere do Plaintiffs allege that *they* were subjected to any such actions.

communicating with Plaintiff Rogers nor being instructed by another officer to zip-tie her constitutes physical contact with Plaintiff Rogers. Similarly, as discussed above, the Amended Complaint also does not specifically allege that Defendant Wylie made any physical contact with Plaintiff Dames during the arrest. *Supra* 34-35. For these reasons, Plaintiffs' battery claim against Wylie and Lynch should be dismissed.

Under North Carolina law, an unlawful arrest is one that happens “without legal authority and is one means of committing a false imprisonment.” *Marlowe v. Piner*, 458 S.E.2d 220, 223 (N.C. App. 1995) (citations omitted). A police officer has statutory authority to arrest an individual without an arrest warrant if they have probable cause to believe the individual committed a criminal offense. N.C. Gen. Stat. § 15A-401(b)(1). North Carolina courts have defined probable cause as “a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man in believ[ing] the accused to be guilty of an unlawful act.” *State v. Parker*, 860 S.E.2d 21, 28 (N.C. App. 2021) (cleaned up).

As discussed above, Plaintiffs' allegations confirm that Officer Defendants had probable cause to arrest the Plaintiffs for second degree trespass. *Supra* 32-33. As a result, Plaintiffs' unlawful arrest claim cannot succeed.

For the reasons discussed above, Plaintiffs' constitutional and state-law tort claims against the Officer Defendants should be dismissed.

This the 10th day of June 2025.

JEFF JACKSON
Attorney General

/s/Lindsay Vance Smith
Lindsay Vance Smith
Special Deputy Attorney General
N.C. Bar No. 48085
lsmith@ncdoj.gov
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629
Telephone: (919) 716-6065
Fax: (919) 716-6764

Attorney for Defendants

CERTIFICATE OF WORD COUNT

I certify that, in compliance with Local Rule 7.3(d) and order of this Court (D.E. 16), this memorandum of law is no more than 9,000 words according to the word processing software used to prepare this document.

This the 10th day of June, 2025.

/s/ Lindsay Vance Smith
Lindsay Vance Smith
Special Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all registered CM/ECF users, including Plaintiff's counsel, at the following address:

Daniel K. Siegel
dsiegel@acluofnc.org

Jaelyn D. Miller
jaelyn@emancipatenc.org

Reem Subei
reemsubei@gmail.com

Ivy A. Johnson
ijohnson@acluofnc.org

This the 10th day of June 2025.

/s/Lindsay Vance Smith
Special Deputy Attorney General