

COURT OF COMMON PLEAS
CIVIL DIVISION
ADAMS COUNTY, OHIO

FILED
ADAMS COUNTY
CLERK OF COURTS

2023 DEC 27 PM 1:29

SHAWN COOLEY et al

PLAINTIFFS,

VS.

JOSEPH E. FOREMAN et al

DEFENDANTS.

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CASE NO. CVH 20230069

Judge Jerry McBride

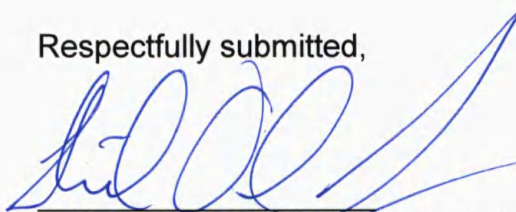
**DEFENDANT'S RESPONSE TO PLAINTIFFS' MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTION FOR LEAVE TO AMEND COUNTERCLAIMS, *INSTANTER***

Comes now Defendants, Joseph E. Foreman and Hungry Husler Records, by and through their Lead Attorney and requests leave of this honorable court to file an Amended Counterclaim. As the case has progressed the Defendant's have employed a new local attorney, David "D.J." Osborne, Jr. After discussions, Attorney Bruce Rivers and Tyler E. Cantrell have decided to withdraw from the case and filed a Motion to that effect on December 19, 2023. (Note that the process was started back in November with all parties getting a Notice of Appearance for a new Lead Attorney on the case.) This has created issues with service as Attorney David "D.J." Osborne, Jr. was not served copies of the Plaintiffs' Memorandum in Opposition to Defendants' Motion for Leave to Amend Counterclaims nor the Notice of Appearance for Attorney Helen K. Sudhoff. Attorney Osborne's Notice of Appearance indicated that he would be the Lead Attorney on this case and was served upon all attorneys of record at that time. Additionally, the Lead Attorney filed the Motion for Leave to Amend and thus should have been served a copy

of the Memorandum and Notice. Yet without notice given by the Plaintiff's, the Lead attorney, by searching the court records, found the filings and responded on the same day the same were found. While the Lead Attorney found these filings on December 27, 2023, the deadline to respond to the Plaintiff's Memorandum was on December 22, 2023. Thus, Defendant's Lead Attorney, while not served, has responded to the Plaintiff's Memorandum as soon as he learned of its filing.

The Defendants pray that leave will be granted to file their first amended Counterclaim. A memorandum in support is attached to this Motion and incorporated by reference.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "D.J. Osborne, Jr.", with a long, sweeping flourish extending to the right.

DAVID "D.J." OSBORNE, JR #0096879
Attorney for the Defendant's Joesph E.
Forman and Hungry Hustler Records

MEMORANDUM IN SUPPORT

The Ohio Rules of Civil Procedure govern the pleadings of the parties and the process by which a civil case proceeds. Under Rule 15(A) of the Ohio Rules of Civil Procedure a party may:

... amend its pleading once as a matter of course within twenty-eight days after serving it or, if the pleading is one to which a responsive pleading is required within twenty-eight days after service of a responsive pleading or twenty-eight days after service of a motion under Civ.R. 12(B), (E), or (F), whichever is earlier. *In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave.* The court shall freely give leave when justice so requires.... R. Civ. Proc. 15(A).

Thus a party may amend their Complaint and/or Answer once without leave of the court so long as it completed within 28 days of filing. R. Civ. Proc. 15(A). If 28 days has passed

then the party must seek leave of the court. Id. The court shall “freely give leave when justice so requires.” Id.

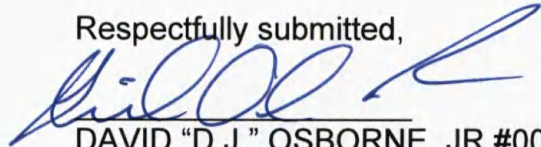
In the case at hand, the Plaintiff's filed their Complaint with the Adams County Court of Common Pleas on March 13, 2023. The Plaintiff filed their First Amended Complaint on May 10, 2023, almost two months later. (It should be noted that the Plaintiff filed their Amended Complaint without leave of the court and outside of time. A Motion to Strike the Amended Complaint on those grounds has been filed simultaneously with this Response.) After a series of Motions was ruled on the Defendants filed an Answer and Counterclaim on October 27, 2023. On November 17, 2023, Attorney David “D.J.” Osborne, Jr. filed his Notice of Appearance. After reviewing the case he determined that there should be an amendment to the Counterclaim of the Defendants. As 28 days had passed, the Defendants must seek leave of the court to Amend the Answer and Counterclaim. It should be noted that the Plaintiff did not follow this process when they filed their First Amended Complaint on May 10, 2023.

The Plaintiff requests that more information be supplied as to the claims that the Defendant's seek to add not taking the word of the attorney for the Defendants that it would be in the interest of justice to litigate all claims that could come out of the same incident. The Defendants seek to add claims against the Plaintiff's for dereliction of duty, invasion of privacy, theft, and conspiracy. These added claims all stem from the actions surrounding the search of the Defendant Joseph Foreman's home by the Plaintiffs. It should be noted that these claims are only an extension of the claims already plead. It is in the interest of justice that these claims be added now so that all claims around the search of Mr. Foreman's be litigated at one time. Afterall, it makes no sense to claim that these claims could not be added and yet a new case could be filed against the same

Plaintiff's to allow the litigation of these claims. By adding the claims here to this case all issues pending between the parties are litigated in a single case. No delay is sought, only economy to preserve the limited resources of the court.

The Lead Attorney, David "D.J." Osborne, Jr. has filed this Response Instantly as he has just learned of the Plaintiff's Filing. The Defendants request that the court grant their motion to Amend the Counterclaim so that all claims between the parties can be litigated and adjudicated. The Defendants pray that this court will grant their leave to file an Amend Counterclaim.

Respectfully submitted,



DAVID "D.J." OSBORNE, JR #0096879
Attorney for the Defendant's Joseph E.
Forman and Hungry Hustler Records

PROOF OF SERVICE

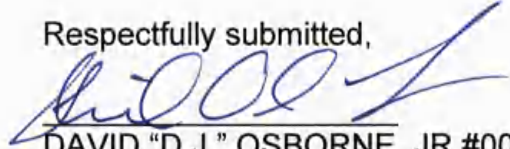
The undersigned hereby certifies that a true copy of the foregoing was served upon to following:

1. **Robert A. Klinger**, Robert A. Klinger Co., LPA, 895 Central Ave. Ste. 300, Cincinnati, Ohio 45202;
2. **Arthur West**, 120 State Ave. NE, #1497, Olympia, WA 98501;
3. **David J. Caray**, ACLU of Ohio Foundation, 4506 Chester Ave., Cleveland, Ohio 44102;
4. **Amy R. Gilbert**, ACLU of Ohio Foundation, 4506 Chester Ave., Cleveland, Ohio 44102;
5. **Freda J. Levenson**, ACLU of Ohio Foundation, 4506 Chester Ave., Cleveland, Ohio 44102;
6. **Vera Eidelman**, American Civil Liberties Union Foundation, 125 Broad Street, 18th Floor, New York, NY 10004;
7. **Bruce Rivers**, 701 Fourth Avenue South, Suite 300, Minneapolis, MN 55415;
8. **Tyler Cantrell**, Young and Caldwell, LLC, 225 North Cross Street, West Union, Ohio 45693;
9. **David Moser**, Fishel Downey Albrecht and Riepenhoff, LLP, 7775 Walton Parkway, Suite 200, New Albany, Ohio 43054.
10. **Helen K. Sudhoff**, Fishel Downey Albrecht and Riepenhoff, LLP, 7775 Walton

Parkway, Suite 200, New Albany, Ohio 43054.

by regular U.S. mail, hand delivery, email, fax, by dropping off in the Attorney box at Adams County Court, or email this _27_ day of _December_, 2023.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "D.J. Osborne, Jr.", is written over a horizontal line.

DAVID "D.J." OSBORNE, JR #0096879

Attorney for Defendants Joseph E.

Foreman and Hungry Hustler Records

Law Offices of Dr. David Osborne, Jr.

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West Union, Ohio 45693

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