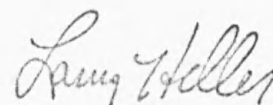


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ADAMS COUNTY
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IN THE COURT OF COMMON PLEAS,
ADAMS COUNTY, OHIO
GENERAL DIVISION
CLERKSHAWN D. COOLEY, et al.,
Plaintiffs,

v.

JOSEPH EDGAR FOREMAN
A/K/A AFROMAN, et al.

Defendants.

Case No. 2023-0069

Judge Jonathan P. Hein

**PLAINTIFFS' BRIEF IN RESPONSE TO COURT
ORDER AS TO DEFENDANT'S COUNTERCLAIMS**

Now come Plaintiffs, Shawn D. Cooley, Justin Cooley, Michael D. Estep, Shawn S. Grooms, Brian Newland, Lisa Phillips, and Randolph L. Walters, Jr, by and through counsel, and hereby submit this Brief in Response to this Court's February 2, 2026 Judgment Entry. In the following response, Plaintiffs clarify the appropriate dates relevant to the statute of limitations, as well as the nature of Defendant's Counterclaims as permissive, affirmative relief Counterclaims that do not arise out of the same transaction or occurrence. Ohio Civ.R. 13(B). Plaintiffs likewise specifically note that Defendant's January 16, 2026, Request in his Response in Opposition to Plaintiffs' Motion for Summary Judgment, in which he requested to convert his Frivolous Claim, Count VII, into a Motion for Sanctions, is statutorily barred as a matter of law. R.C. § 2323.51 *Casciani v. Critchell*, 2015-Ohio-977, ¶ 14 (1st Dist.). Plaintiffs likewise note that Counts V and VI lack the specific temporal allegations, are not discernible from the record, to determine the statute of limitations for the claim, and Plaintiffs request dismissal of Defendant's Counts V and VI for this fatal deficiency.

I. Defendant's Permissive Counterclaims and Statute of Limitations.

Defendant's Counterclaims are permissive counterclaims in that they do not arise out of the same transaction or occurrence as Plaintiffs' claims. Ohio Civ.R. 13(B). Under Ohio law, a counterclaim that seeks affirmative relief, that does not arise out of the same transaction or occurrence as the plaintiff's claim, is classified as a permissive counterclaim. *Id.* The statute of limitations of these claims is analyzed independently of Plaintiff's claims and must be filed within the applicable statutory period. If the statute of limitations has expired before the counterclaim is filed, the counterclaim is time-barred. Plaintiff's Complaint was filed on March 13, 2023. Plaintiffs filed their First Amended Complaint on May 10, 2023. A Court Decision and Entry was entered on October 10, 2023, dismissing some claims in part and allowing other remaining claims to proceed. Defendant's Answer and Counterclaims were filed on October 27, 2023. Plaintiffs answered Defendant's Counterclaims on November 22, 2023.

Ohio Civil Rules 13(B) governs permissive counterclaims that do not arise out of the same transaction or occurrence as Plaintiff's original claim. Ohio Civ.R. 13(B). Unlike compulsory counterclaims, permissive counterclaims are not afforded the benefit of tolling based on the filing of Plaintiff's Complaint. Defendant's counterclaims are not tolled by the filing of Plaintiffs' Complaint, as they are permissive claims that do not arise out of the same transaction or occurrence. Further, since Defendant's Counterclaims seek relief beyond reducing the Plaintiff's recovery, Defendant's Counterclaims are subject to the statute of limitations. In determining whether claims arise out of the same transaction or occurrence, courts utilize the "logical relation test." Ohio Civ.R. 13, citing, *Rettig Ents. v. Koehler*, 68 Ohio St.3d 274, 278 (1994); *Great Lakes Rubber Corp. v. Herbert Cooper Co.* (C.A.3, 1961), 286 F.2d 631, 634. ("Under this test, a compulsory counterclaim is one which 'is logically related to the opposing party's claim where

separate trials on each of their respective claims would involve a substantial duplication of effort and time by the parties and the courts.'")

Plaintiffs' claims against Defendant include actions by Defendant that occurred following the search and seizure of his home, and involve Defendant's actions in his songs, videos, and social media. The only claim that relates to Plaintiffs' claims against Defendant is Count VII for the Frivolous Conduct, and the recent request to convert it to a Motion for Sanctions on January 16, 2026. However, this singular claim is statutorily barred as a matter of law, as explained below. Comparatively, Defendant's claims against Plaintiffs deal directly with the incidents involving the search and seizure of his home, and the alleged claims that resulted from the search and seizure. Defendant's claims do not arise out of the same transaction or occurrence; they are not recoupment or defensive counterclaims. As Count VII is statutorily barred, Defendant's remaining claims are permissive Counterclaims that do not arise out of the same transaction or occurrence as Plaintiffs' claims.

In the Defendant's Answer and Counterclaims, there are several inconsistent dates and inaccuracies. The relevant date for Defendant's Trespass to Chattel/Conversion claims Counts I-IV, and Defendant's claim for Illegal Search and Seizure (Count VIII), is August 21, 2022.¹ Def.'s Br. in Opp'n to Pl.'s Partial Mot. for Summ. J., Exhibit "A," Deposition Exhibit 8, Deposition of Joseph Foreman, pg. 2 (August 6, 2025). This is the date the search was executed on Defendant's property. The date that Defendant's currency from the search and seizure is unclear, as Defendant has failed to include the temporal allegations in his Answer and Counterclaims, nor has Defendant testified as to when he discovered \$400.00 was allegedly missing. No Plaintiff was present when

¹ Defendant's Answer and Counterclaims references August 21, 2021 and August 21, 2023. However, the correct date, based on the search warrant, Exhibit 8, that is before the Court, is August 21, 2022.

Defendant's money was returned to him following the search. The only factual allegation is that Defendant was informed by the "lady at the Sheriff's Office" that the amount returned was short \$400.00. *Id.*; Pl.'s Partial Mot. for Summ. J., pg. 10, citing, Deposition of Joseph Foreman, ¶¶ 8-9. There are no temporal allegations supporting Defendant's claim to determine the statute of limitations. Defendant's claim for frivolous conduct is based on the October 10, 2023, Order as stated in Defendant's Response in Opposition. Def.'s Memo. in Opp. to Pl.'s Partial Motion for Summ. J., p. 30 (filed Jan. 16, 2026).

A. Counts I-IV – Defendant's Permissive Counterclaims for Trespass to Chattel and/or Conversion.

As stated above, August 21, 2022, is the appropriate date for Defendant's Trespass to Chattel and Conversion claims for Counts I-IV. The statute of limitations for Defendant's Trespass to Chattel and Conversion claims is analyzed through § 2305.09. Section 2305.09 of the Ohio Revised Code states:

Except as provided for in division (C) of this section, an action for any of the following causes shall be brought within four years after the cause thereof accrued:

- (A) For trespassing upon real property;
- (B) For the recovery of personal property, or for taking or detaining it;
- (C) For relief on the ground of fraud, except when the cause of action is a violation of section 2913.49 of the Revised Code, in which case the action shall be brought within five years after the cause thereof accrued;
- (D) For an injury to the rights of the plaintiff not arising on contract nor enumerated in sections 1304.35, 2305.10 to 2305.12, and 2305.14 of the Revised Code;
- (E) For relief on the grounds of a physical or regulatory taking of real property.

Since the date that Defendant's permissive Counterclaims I-IV is August 21, 2022, the relevant statute of limitations is August 21, 2026. Defendant's permissive Counterclaims Counts I-IV are timely.

B. Counts V and VI – Defendant's Permissive Counterclaim for Trespass to Chattel and/or Conversion as to the \$400.00 in Currency Must be Dismissed Pursuant to Ohio Civil Rule 8(A) and 9(F) as Temporal Allegations Indicating When Defendant "Discovered" his Currency was Missing and the Statute of Limitations is Indeterminable.²

Defendants Count V and VI occurred at the moment that Defendant discovered the trespass to chattel and/or conversion occurred. Despite several depositions, the date as to when Defendant became aware of, or "discovered," or should have discovered when the injury occurred, is not currently present in the record. As previously stated, the statute of limitations for trespass to chattel and conversion claims is four years. Defendant's Count V and VI are brought as a trespass to chattel and/or conversion claim.

The Ohio Supreme Court considered when the limitations period provided for in R.C. § 2305.09 commenced to run in *Investors Reit One v. Jacobs*, and the discovery rule for certain torts. *Investors Reit One v. Jacobs*, 46 Ohio St.3d 176, 546 N.E.2d 206 (1989). There, the court recognized that the General Assembly had purposely included a discovery rule for certain actions arising under R.C. § 2305.09, namely for actions involving trespassing, the wrongful taking of personal property, and fraud. *Id.* at ¶ 181. The court noted that "the legislature's express inclusion of a discovery rule for certain torts arising under R.C. § 2305.09, including fraud and conversion, implies the exclusion of other torts arising under the statute, including negligence." *Id.* The

² Defendant's Motion to Amend his Answer and Counterclaim, December 29, 2023, was denied, and extensive discovery and depositions have failed to reveal or determine the date Defendant discovered, or should have discovered, when his money was allegedly missing for Counts V and VI. The lack of discovery or deposition evidence regarding when Defendant's allegedly missing money, combined with the inability to amend the pleadings, demonstrates insufficient pleading warranting dismissal of Counts V and VI.

"discovery rule" applies to claims brought under R.C. 2305.09. *Id.* The date of discovery "may toll the running of the governing statute of limitations until the plaintiff discovers or, in the exercise of reasonable care, should have discovered the complained-of injury." *Investors Reit One v. Jacobs*, 46 Ohio St.3d 176, 180 (1989). However, the discovery rule only tolls the statute of limitations until the Defendant discovers or should have discovered the injury.

Defendant's failure to plead, allege, or discern the temporal allegations to determine whether the "discovery rule" would toll the statute of limitations lends further support for dismissal of these Counts. Dismissal of a claim is appropriate unless the pleader asserts facts to establish an exception, such as the discovery rule. *Gadway v. Univ. of Toledo*, 2025-Ohio-1983, ¶ 36 (10th Dist.), citing, *Gore v. Mohamod*, 2022-Ohio-2227, at ¶ 16. (There, the plaintiff failed to meet her burden of pleading facts establishing the discovery rule as an exception to the university's statute-of-limitations defense and dismissed her case). *See also, Schmitz v. NCAA*, 155 Ohio St. 3d 389. (Dismissal is appropriate if the plaintiff fails to plead facts indicating when the injury was discovered or should have been discovered through reasonable diligence.). Generally, a cause of action accrues, and the statute of limitations begins to run at the time the wrongful act was committed. *Norgard v. Brush Wellman*, 2002-Ohio-2007, 95 Ohio St. 3d 165, 766 N.E.2d 977. Defendant's counterclaims are fatally deficient because they fail to allege when the alleged missing money was discovered or when Defendant knew or should have known of the alleged wrongful taking. Under Ohio's notice pleading standard, while technical forms of pleading are not required, each averment of a pleading shall be simple, concise, and direct. Ohio Civ.R. 8. However, without the factual allegations supporting when the injury was discovered, the Court cannot determine whether the discovery rule would toll the statute of limitations, and the statute begins to run when the wrongful act was committed.

While pleadings are construed liberally to serve the substantial merits of the actions, the pleadings must provide the defending party with fair notice of the nature of the action. *Capital One Bank v. Nolan*, 2008-Ohio-1850 (Ct. App.). Further, liberal construction cannot cure the complete absence of essential temporal allegations. As such, the discovery rule is an affirmative exception to the statute of limitations that must be supported by factual allegations. Defendant cannot rely on liberal construction to excuse the failure to plead when the alleged injury was discovered, especially when temporal allegations are specifically deemed material under Ohio Civil Rule 9(F). Ohio Civ.R. 9(F). Defendant's permissive counterclaims, Counts V and VI for trespass to chattel and conversion, should be dismissed. The counterclaims fail to allege essential facts regarding when the alleged injury was discovered, rendering the discovery rule inapplicable and leaving the claims subject to dismissal for their deficiencies. As permissive counterclaims arising from separate transactions, they receive no relation-back protection and must be evaluated independently for timeliness.

Defendant's Counterclaim for trespass to chattel or conversion must comply with the pleading requirements, including "averments of time and place," which are material and must be considered like all other averments of material matter. Ohio Civ.R. 9(F). Temporal allegations, such as when the alleged injury was discovered, are material to the sufficiency of the pleading.

In the present matter, none of the Plaintiffs were present when Defendant's money was returned to him. As such, none of the Plaintiffs have personal knowledge as to when Defendant's money was returned. Defendant likewise has failed to allege or testify in the record either the date that the money was returned, or the date as to when Defendant discovered the money was allegedly missing or short. While Ohio Civil Rule 8(A) requires only a short and plain statement of the claim showing the pleader is entitled to relief, this standard does not excuse the omission of material

facts necessary to establish the claim's validity, such as the timing of discovery in cases where the discovery rule applies. Ohio Civ. R. 8, citing, *Peters v. Child Study Inst.*, 1980 Ohio App. LEXIS 9854; *Berick v. Engwiller Props., Inc.*, 2025-Ohio-1989; *State ex rel. Hanson v. Guernsey County Bd. of Comm'rs*, 65 Ohio St. 3d 545. Defendant's lack of specificity presents a challenge for the Court in determining the temporal allegations of Defendant's Count V and Count VI. The absence of temporal allegations prevents the Court from conclusively determining the applicability of the statute of limitations in Defendant's Counts V and VI. As such, Defendant's Counts V and VI should be dismissed for lack of specificity on material temporal allegations pursuant to Ohio Civil Rule 8(A) and Rule 9(F).³

C. Count VII – Defendant's Frivolous Conduct under R.C. § 2323.51, and Defendant's Subsequent Conversion to a Motion for Sanctions on January 16, 2026, is Statutorily Barred by the Statute of Limitations.

Defendant contends that the appropriate date for Defendant's Count VII for a frivolous lawsuit occurred on October 10, 2023, with this Court's partial dismissal of Plaintiffs' claims. Def.'s Memo. in Opp. to Pl.'s Partial Mot. for Summ. J., pg. 30 (filed Jan. 16, 2026). While Plaintiffs aver that the October 10, 2023 Order does not constitute a final, appealable Order, Defendant's references to this Order indicate that this is the date to which Defendant bases his frivolous lawsuit claim. *Id.* On January 16, 2026, Defendant specifically requested this Court to convert the frivolous conduct claim into a Motion for Sanctions. *Id.* However, this request must have been made on or before November 10, 2023; the Motion for Sanctions is thus untimely, and Defendant's claim must be barred as a matter of law.

³ In their Answer, Plaintiff has already asserted the following defenses: Failure to state a claim (First Defense); Failure to state facts sufficient to entitle Defendants to any award of damages against Plaintiffs (Fourteenth Defense); other affirmative defenses that might become available or apparent during the course of discovery (Twenty-Sixth Defense). Pl.'s Answer to Def.'s Counterclaims, pgs. 8-12. (Filed November 22, 2023).

Under R.C. § 2323.51, a motion for sanctions based on frivolous conduct must be filed “at any time not more than thirty days after the entry of final judgment in a civil action or appeal.” *Casciani v. Critchell*, 2015-Ohio-977, ¶ 14 (1st Dist.). The 30-day limitation applies regardless of whether the frivolous conduct occurred earlier in the litigation, as the statute ties the filing deadline to the final judgment in the case. R.C. § 2323.51, citing, *Rojas v. Rucker*, 2025-Ohio-2777; *Classic Comfort Heating & Supply, LLC v. Miller*, 2022-Ohio-855. Defendant has recently requested the Court to convert their frivolous lawsuit claim into a Motion for Sanctions against Plaintiff. Def.’s Memo. in Opp. to Pl.’s Partial Motion for Summ. J, pg. 30 (filed Jan. 16, 2026). However, Defendant would need to have filed this Motion on or before November 10, 2023. Defendant has failed to do so, thus Defendant’s Request to Convert his Frivolous Conduct claim into a Motion for Sanctions on January 16, 2026, is untimely as a matter of law.

The term “final judgment” is interpreted as synonymous with “final order” as defined by Ohio Revised Code § 2505.02, meaning a final, appealable order. *In re C.W.*, 2018-Ohio-5265; *State ex rel. DiFranco v. City of S. Euclid*, 144 Ohio St. 3d 571. This statutory deadline is strictly enforced to ensure a clear cutoff for filing such motions. *State ex rel. DiFranco v. City of S. Euclid*, 144 Ohio St. 3d 571. On October 10, 2023, this Court dismissed Plaintiffs’ Counts 1, 2, 3, 4, and 5. Decision & Entry Granting in Part and Denying in Part Def.’s Mot. for Summ. J., pgs. 34-35 (Filed October 9, 2023). Defendant filed his Answer and Counterclaims on October 27, 2023. Def.’s Memo. in Opp. to Pl.’s Partial Motion for Summ. J., pg. 28.

The statute of limitations applies to the date of a final order. But the October 10, 2023 Order is not a “final order” that is appealable. Instead, the Order reflects a standard judicial analysis of the pleadings and does not contain findings or language that would support a motion for

sanctions based on frivolous conduct.⁴ Even if the Order is construed as a final, appealable order, thirty days from October 10, 2023, would be November 10, 2023.

While the October 10, 2023 Order did not constitute a final, appealable Order, even assuming that the Order is final and appealable, Defendant was required to file a Motion for Sanctions, at the latest, on November 10, 2023. However, Defendant makes this request through his Response in Opposition to Plaintiffs' Partial Motion for Summary Judgment on January 16, 2026. Def.'s Memo. in Opp. to Pl.'s Partial Motion for Summ. J., pg. 30. Defendant's request is untimely as the expiration for a Motion for Sanctions occurred over two years and two months ago. Defendant's Count VII for Frivolous Conduct, as well as the Motion for Sanctions request on January 16, 2026, should be dismissed as being statutorily barred. Further, the dismissal of this claim renders all of Defendant's remaining claims as "permissive" counterclaims.

D. Count VIII – Defendant's Permissive Counterclaim for Illegal Search and Seizure

Defendant's Counterclaim for illegal search and seizure, which is typically brought under 42 U.S.C. § 1983. Ohio applies a two-year statute of limitations for § 1983 claims, as it is governed by the state's general statute of limitations for personal injury actions under R.C. § 2305.10(A). ORC Ann. 2305.10, *Darby v. Twinsburg Twp.*, 2020-Ohio-2702, *Sanders v. Akron Police Dep't*, 2015 Ohio Misc. LEXIS 38665. The statute of limitations begins to run when the cause of action accrues, which is generally the date of the alleged wrongful act or injury. *Sanders v. Akron Police Dep't*, 2015 Ohio Misc. LEXIS 38665, *Dublin v. Bansek*, 2010-Ohio-2372.

In the present matter, the incident occurred on August 21, 2022. Therefore, the statute of limitations for filing a § 1983 claim would expire on August 21, 2024. Defendant filed his

⁴ In that Order, the court acknowledged that certain claims were insufficient as a matter of law, while others presented triable issues. The decision also included guidance for counsel to be more specific in future filings but did not indicate any improper or sanctionable behavior.

permissive Counterclaim for illegal search and seizure on October 27, 2023. Defendant's Count VIII for Illegal Search and Seizure is timely.

II. Conclusion

Plaintiffs submit this response pursuant to this Court's Request in order to both clarify the nature of Defendant's Counterclaims, as well as the statute of limitations as to each of Defendant's permissive, affirmative relief counterclaims. As stated above, Defendant's Count VII for Frivolous Conduct, as well as Defendant's Request for a Motion for Sanctions, is statutorily barred as a matter of law. Defendant's Count V and VI lack the temporal allegations to meet the sufficiency of Ohio Civil Rule 8(A) and 9(F) and likewise fail to provide the Court the facts necessary to determine the accrual date of the statute of limitations. Plaintiffs respectfully request this Court likewise dismiss Counts V and VI for their deficiencies.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Respondents' Brief in Response Pursuant to Court Order was submitted for filing via the Court's CM/ECF system this 9th day of February 2026 and that service of the foregoing Brief in Response Pursuant to Court Order was made via electronic mail upon the following:

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