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Larry Heller
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IN THE COURT OF COMMON PLEAS
CIVIL DIVISION
ADAMS COUNTY, OHIO

SHAWN D. COOLEY, et al.

PLAINTIFFS,

VS.

JOSEPH EDGAR FOREMAN, et al.

DEFENDANTS,

* CASE NO. CVH 2023-0069
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**DEFENDANT JOSEPH EDGAR FOREMAN'S PROPOSED JURY
INSTRUCTIONS**

Comes now the Defendant, Joseph Foreman, by and through his Counsel and notifies this honorable court that the following are his proposed jury instructions for the Defense at the upcoming jury trial, to wit:

INTRODUCTION

Members of the jury, you must now decide whether the Plaintiffs have proven their claims against the Defendant. The Plaintiffs have brought three claims: (1) defamation, (2) invasion of privacy based on false light publicity, and (3) invasion of privacy based on unreasonable publicity given to private lives. I will now instruct you on the law applicable to each of these claims.

DEFAMATION

GENERAL

The plaintiff [insert name of Plaintiff here]¹ claims that the defendant defamed him/her/it, causing [(injury) (damage)]. Defamation is a false written or oral statement that [(injures) (damages)] another's reputation. The defendant's alleged defamatory statement consisted of [(insert defendant's statement)].²

PROOF OF CLAIM

To establish defamation, the plaintiff [insert plaintiff name here] must show (1) that a false statement of fact was made [to wit: enter false statement]; (2) that the statement was defamatory; (3) that the statement was published; (4) that the plaintiff suffered injury as a proximate result of the publication; and (5) that the defendant acted with the requisite degree of fault in publishing the statement.³

TRUTH AS A DEFENSE

While a plaintiff must prove falsity as an element of a defamation claim, a publisher may also "completely defend" a defamation action "by showing that the gist, or imputation, of the

¹ The defense would suggest that each Plaintiff have his or her own set for each three counts. The statements made differ from plaintiff to plaintiff.

² 1 OJI CV 431.03

³ Olthaus v. Niesen, 2023-Ohio-4710, ¶ 12 (1st Dist.); citing Mann v. Cincinnati Enquirer, 2010-Ohio-3963, ¶ 12 (1st Dist.).

[defamatory] statement is substantially true, and hence, the statement is not false.".⁴

If you find that the Defendant has proven that the statements at issue are not false, you must find in favor of the Defendant on the defamation claim, regardless of any other factors.

PUBLISHED

“Published” means that the defendant’s statement was (read) (heard) and understood by a person other than the plaintiff. If only the plaintiff (read) (heard) it, the statement was not published.⁵

INVASION OF PRIVACY – FALSE LIGHT PUBLICITY

GENERAL

The Plaintiff [insert name of specific plaintiff] claims that the defendant violated [his/her] right to privacy by publicizing false information, [to wit: list false information publicized for this Plaintiff] that places the plaintiff in a false light before the public.⁶

PROOF OF CLAIM

Before you can find for the Plaintiff, the plaintiff must prove that (a) the false light in which

⁴ Swoope v. Osagie, 2016-Ohio-8046, ¶ 33, (8th Dist.); citing Sweitzer v. Outlet Communications, Inc., 133 Ohio App.3d 102, 110, (10th Dist. 1999).

⁵ 1 OJI CV 431.03 (6)

⁶ 1 OJI CV 433.05(1).

the plaintiff was placed would be highly offensive to a reasonable person, and (b) the defendant had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the plaintiff would be placed.⁷

FALSE LIGHT

“False light” means the defendant knows that the plaintiff, as a reasonable person, would be justified in the eyes of the community in feeling seriously offended and aggrieved by the publicity. The plaintiff’s privacy is not invaded when the unimportant false statement is made, even when it is made deliberately. It is only when there is such a major misrepresentation of the plaintiff’s character, history, activities, or beliefs that serious offense may reasonably be expected to be taken by a reasonable person in his/her position.⁸

You must determine whether statements made by the defendant would place a reasonable person in the Plaintiff’s position in a false light, not merely whether the Plaintiff personally believes it places him or her in a false light. If you find that statements made by the defendant would not place a reasonable person in the Plaintiff’s position in a false light, you must find in favor of the Defendant on this claim.

PUBLICIZED

Before you can find in favor of the Plaintiff on this claim, you must first determine whether the information at issue was publicized. To succeed under a false light theory, the information

⁷ Murry v. Chagrin Valley Publ. Co., 2014-Ohio-5442, ¶ 38 (8th Dist.).

⁸ 1 OJI CV 433.05(3).

must be made public, meaning it must be communicated to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge.⁹

If you find that the Defendant did not publicize the information to the public at large or to so many persons that the matter must be substantially certain to become public knowledge, you must find in favor of the Defendant on this claim.

KNOWINGLY

“Knowingly” means that a person is aware of the existence of the facts and that his/her acts will probably cause a certain result. A person acts knowingly when he/she is aware that his/her conduct will probably cause a certain result. Since you cannot look into the mind of another, knowledge is determined from all the facts and circumstances in evidence.¹⁰

If you find that the Defendant did not act knowingly, you must find in favor of the Defendant on this claim.

HIGHLY OFFENSIVE

To be highly offensive, the plaintiff must be justified in the eyes of the community in feeling seriously offended and aggrieved by the publicity. The statement must be "such a major misrepresentation of his [or her] character, history, activities or beliefs that serious offense may reasonably be expected."¹¹

⁹ Fox v. Nationwide Mut. Ins. Co., 2018-Ohio-2830, ¶ 91 (10th Dist.).

¹⁰ 1 OJI CV 433.05(5).

¹¹ Dudee v. Philpot, 2019-Ohio-3939, ¶ 76 (1st Dist.).

You must determine whether a reasonable person in the Plaintiff's position would find the false light highly offensive, not merely whether the Plaintiff personally found it offensive. If you find that a reasonable person would not find the false light highly offensive, you must find in favor of the Defendant on this claim.

TRUTH AS A DEFENSE

A critical element of false light invasion of privacy is that the statement must be false. Courts have held that for a statement to be actionable in false light, the statement made must be untrue.¹²

Truth is a complete defense to a false light invasion of privacy claim. If you find that the Defendant has proven that the publicized matter is true, you must find in favor of the Defendant on this claim, regardless of any other factors.

If you find that the information to the public was true, you must find in favor of the Defendant on this claim.

INVASION OF PRIVACY – UNREASONABLE PUBLICITY GIVEN TO PRIVATE LIVES

GENERAL

The plaintiff [insert name of the specific plaintiff here] claims that the defendant violated

¹² Othaus v. Niesen, 2023-Ohio-4710, ¶ 24 (1st Dist.).

his/her right of privacy by wrongful publication of private facts; to wit: [insert the private fact published here].¹³

PROOF OF CLAIM

Before you can find for the plaintiff, on his or her claim for invasion of privacy by publication of private facts (lives), the plaintiff must prove : (1) the disclosure was public in nature; (2) the facts disclosed concerned an individual's private life, not his public life; (3) the matter publicized would be highly offensive and objectionable to a reasonable person of ordinary sensibilities; (4) the publication was made intentionally, not negligently and (5) the matter publicized was not of legitimate concern to the public.¹⁴

PUBLIC VS PRIVATE LIFE

The facts disclosed must be those concerning the private life of an individual, not his public life. There is no liability when the defendant merely gives further publicity to information about the plaintiff that is already public, such as matters of public record about his birth or marriage date, or matters that the plaintiff leaves open to the public eye, such as kissing his spouse in public.¹⁵

To the extent that any of the comments at issue concern the Plaintiffs' duties as police officers, those comments relate to the Plaintiffs' public lives, not their private lives. The United States Supreme Court has ruled that the Constitution protects statements made about public officials when those statements concern anything which might touch on an official's fitness for

¹³ 1 OJI CV 433.01(1) modified to correspond to *Peterman v. Stewart*(Estate of Shively).

¹⁴ *Peterman v. Stewart* (Estate of Shively), 2006-Ohio-4671, ¶ 54 (5th Dist.).

¹⁵ *Early v. Toledo Blade*, 130 Ohio App. 3d 302, 342 (6th Dist. 1998).

office.¹⁶

Each Plaintiff must prove that the facts, not opinions, disclosed concerned his or her private life, not his public life. If you find that the disclosed information relates to a Plaintiff's performance as a police officer, his conduct in carrying out his official duties, or anything that might touch on his fitness for office, then that information concerns his public life, not his private life, and you must find in favor of the Defendant on that Plaintiff's claim.

REASONABLE PERSON

You must determine whether a reasonable person of ordinary sensibilities would find the matter highly offensive and objectionable, not merely whether the individual Plaintiff personally found it offensive. The fact that a Plaintiff was upset, embarrassed, or offended by the disclosure is not sufficient to satisfy this element.

The protection afforded to the plaintiff's interest in his or her privacy must be relative to the customs of the time and place, to the occupation of the plaintiff and to the habits of his neighbors and fellow citizens. Complete privacy does not exist in this world except in a desert, and anyone who is not a hermit must expect and endure the ordinary incidents of the community life of which he or she is a part. Thus, he or she must expect the more or less casual observation of his neighbors as to what he or she does, and that his comings and goings and his ordinary daily activities, will be described in the press as a matter of casual interest to others. It is only when the publicity given to him is such that a reasonable person would feel justified in feeling seriously aggrieved by it, that the cause of action arises.¹⁷

¹⁶ *Soke v. The Plain Dealer*, 69 Ohio St. 3d 395, 397 (1994) and *Early v. Toledo Blade*, 130 Ohio App. 3d 302, 321 (6th Dist. 1998).

¹⁷ Restatement of The Law 2d, Torts, §652D, Comment on Clause (a), (c).

If you find that a reasonable person of ordinary sensibilities, in the same position/occupation as the Plaintiff would not find the matter highly offensive and objectionable, you must find in favor of the Defendant on this claim.

LEGITIMATE CONCERN TO THE PUBLIC

When the matter to which publicity is given is true, it is not enough that the publicity would be highly offensive to a reasonable person. The common law has long recognized that the public has a proper interest in learning about many matters. When the subject-matter of the publicity is of legitimate public concern, there is no invasion of privacy.¹⁸

One who voluntarily places himself in the public eye, by engaging in public activities, or by assuming a prominent role in institutions or activities having general economic, cultural, social or similar public interest, or by submitting himself or his work for public judgment, cannot complain when he is given publicity that he has sought, even though it may be unfavorable to him. So far as his public appearances and activities themselves are concerned, such an individual has, properly speaking, no right of privacy, since these are no longer his private affairs. ... However, the legitimate interest of the public in the individual may extend beyond those matters which are themselves made public, and to some reasonable extent may include information as to matters that would otherwise be private.¹⁹

Permissible publicity to information concerning either voluntary or involuntary public figures is not limited to the particular events that arouse the interest of the public. That interest, once aroused by the event, may legitimately extend, to some reasonable degree, to further

¹⁸ Restatement of The Law 2d, Torts, § 652D, Comment on Clause (b), (d) .

¹⁹ Restatement of The Law 2d, Torts, § 652D, Comment on Clause (b), (e).

information concerning the individual and to facts about him, which are not public and which, in the case of one who had not become a public figure, would be regarded as an invasion of his purely private life.²⁰

Legitimate public interest in one who has become a public figure, whether voluntarily or involuntarily, is not necessarily limited to the individual himself. It may, to some reasonable extent, include the members of his family or even others who have been closely associated with him, although there is nothing else about them to attract public attention.²¹

Included within the scope of legitimate public concern are matters of the kind customarily regarded as "news." To a considerable extent, in accordance with the mores of the community, the publishers and broadcasters have themselves defined the term, as a glance at any morning paper will confirm. Authorized publicity includes publications concerning homicide and other crimes, arrests, police raids, suicides, marriages and divorces, accidents, fires, catastrophes of nature, a death from the use of narcotics, a rare disease, the birth of a child to a twelve-year-old girl, the reappearance of one supposed to have been murdered years ago, a report to the police concerning the escape of a wild animal and many other similar matters of genuine, even if more or less deplorable, popular appeal.²²

The scope of a matter of legitimate concern to the public is not limited to "news," in the sense of reports of current events or activities. It extends also to the use of names, likenesses or facts in giving information to the public for purposes of education, amusement or enlightenment, when the public may reasonably be expected to have a legitimate interest in what is published.²³

If you find that the statements made by the defendant were of a legitimate concern to the

²⁰ Restatement of The Law 2d, Torts, § 652D, Comment on Clause (b), (h).

²¹ Restatement of The Law 2d, Torts, § 652D, Comment on Clause (b), (i).

²² Restatement of The Law 2d, Torts, § 625D, Comment on Clause (b), (g).

²³ Restatement of The Law 2d, Torts, § 625D, Comment on Clause (b), (j).

public, you must find in favor of the Defendant on this claim.

**PUBLIC RECORD DEFENSE AGAINST INVASION OF PRIVACY –
UNREASONABLE PUBLICITY TO PRIVATE LIVES**

The fact that the information was taken from a public record of a governmental agency is a defense to an invasion of privacy claim.²⁴

If you find that the statements made by the defendant were taken from the public or public records, you must find in favor of the Defendant on this claim.

PUBLICITY VS PUBLICATION

"Publicity" means communicating the matter to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge as opposed to "publication" as that term of art ... [which has the] meaning [of] any communication by the defendant to a third person.²⁵

If you find that the statements made by the defendant were not publicized, you must find in favor of the Defendant on this claim.

INTENTIONALLY

A person acts intentionally when he/she has the (purpose) to produce a specific result. A

²⁴ Scaccia v. Dayton Newspapers, Inc., 2001-Ohio-1834, ¶ 32 (2nd Dist.).

²⁵ Killilea v. Sears, Roebuck & Co., 27 Ohio App, 3d 163, 166-167 (10th Dist. 1985).

person intends an act when it is done purposely, not accidentally. The intent with which a person does an act is known only to himself/herself, unless he/she expresses it to others or indicates it by his/her conduct.²⁶

If you find that the defendant not act intentionally, you must find in favor of the Defendant on this claim.

FACTS VERSE OPINION – APPLICABLE TO ALL CLAIMS

Under Ohio law, the distinction between statements of fact and statements of opinion is critical in defamation and invasion of privacy cases, as only statements of fact can form the basis of such claims. The Ohio Constitution, provides an independent guarantee of protection for opinion speech ancillary to freedom of the press. This protection extends beyond the First Amendment to the United States Constitution.²⁷

To determine whether a statement constitutes fact or opinion, you must apply a "totality of the circumstances" test. This test involves consideration of four factors: (1) the specific language used; (2) whether the statement is verifiable; (3) the general context of the statement; and (4) the broader context in which the statement appeared.²⁸

You must examine the precise wording of the statement to determine whether it conveys a factual assertion or merely an opinion. For example, language that is hyperbolic, vague, or subjective is more likely to be considered opinion.²⁹ You must determine whether a reasonable reader would view the words used to be language that normally conveys information of factual

²⁶ 1 OJI CV 429.05 (3)

²⁷ Sikora v. Plain Dealer Publ. Co., 2003-Ohio-3218, ¶ 14, (8th Dist.).

²⁸ Scott v. News-Herald, 25 Ohio St. 3d 243, 250 (1986).

²⁹ Id.

nature or type and opinion; whether the language has a readily ascertainable meaning or is ambiguous.³⁰

To determine if a statement is verifiable. [I]f an author represents that he has private, first-hand knowledge which substantiates the opinions he expresses, the expression of opinion becomes as damaging as an assertion of fact." Thus, where the "statement lacks a plausible method of verification, a reasonable reader will not believe that the statement has specific factual content."³¹

When examining the general context of the statement you must look to the immediate context in which the statement was made is analyzed to assess how a reasonable reader or listener would interpret it.

The broader social or cultural context in which the statement appeared is also relevant. This includes the medium of publication and the audience's expectations of the publication.³²

You must distinguish between statements of fact and statements of opinion. Because statements of opinion are inherently not capable of being untrue, and because a defendant therefore cannot have had knowledge or acted in reckless disregard as to the falsity of such statements, opinions cannot support false light invasion of privacy.³³

If you find that the information to the public was an opinion not a fact, you must find in favor of the Defendant on this claim.

POLICE OFFICERS ARE PUBLIC OFFICIALS AND HAVE ONLY LIMITED PROTECTION – APPLICATION TO ALL CLAIMS

³⁰ Vail v. Plain Dealer Publishing Co., 72 Ohio St. 3d 279, 282 (1995).

³¹ Scott v. News-Herald, 25 Ohio St. 3d 243, 251-252 (1986).

³² Vail v. Plain Dealer Publishing Co., 72 Ohio St. 3d 279, 281 (1995).

³³ Id.

Police officers acting within the scope of their official capacity are public officials under Ohio's libel law. Therefore, they enjoy only limited protection from public discussion and criticism of their performance as public officials.³⁴ The Plaintiffs in this case, as police officers, are public officials.

In order for a police officer to prove defamation or an invasion of privacy claim, he or she must prove by clear and convincing evidence that the statement(s) was made with actual malice.³⁵

"Actual malice" in this context is a legal term of art different from traditional, common-law malice, which generally "connotes ill will, hatred, [or] a spirit of revenge." "Evidence of hatred, spite, vengefulness, or deliberate intention to harm can never, standing alone, warrant a verdict for the plaintiff" in public official defamation or an invasion of privacy case³⁶ Actual malice is acting with knowledge that the statement is false or with reckless disregard to the falsity of the statement.³⁷

However, "it is not enough to prove the falsity of the statement, but a plaintiff 'must prove ... that defendant was aware of the high probability of falsity.'" Thus, "[t]o establish that the statements were made with 'reckless disregard,' sufficient evidence must be presented by the plaintiff to lead a ... [jury] to find that the defendant had 'serious doubts' as to the truth of the publication."³⁸

The Plaintiffs must prove actual malice by clear and convincing evidence. Should the Plaintiff fail to prove actual malice by clear and convincing evidence, then you must find favor of the Defendant on the Plaintiffs claims, regardless of any other factors.

³⁴ Barnes v. Vill. Of Cadiz, 2002-Ohio-1534, ¶ 23, (7th Dist.); citing Mueller v. Storer Communications, Inc., 46 Ohio App. 3d 57, 59 (8th Dist. 1988).

³⁵ Barnes v. Vill. Of Cadiz, 2002-Ohio-1534, ¶ 23, (7th Dist.); citing New York Times v. Sullivan, 376 U.S. 254, 279-280 (1964).

³⁶ Olthaus v. Niesen, 2023-Ohio-4710, ¶ 13 (1st Dist.); citing Varanese v. Gall, 35 Ohio St.3d 78, 79 (1988).

³⁷ Barnes v. Vill. Of Cadiz, 2002-Ohio-1534, ¶ 23, (7th Dist.); citing New York Times v. Sullivan, 376 U.S. 254, 279-280 (1964).

³⁸ Tharp v. Hillcrest Baptist Church, 2022-Ohio-4695, ¶ 57, (10th Dist.).

BURDEN OF PROOF

“Clear and convincing” means that the evidence must produce in your minds a firm belief or conviction about the (truth of the matter). It must be more than evidence that simply outweighs or overbalances the evidence opposed to it.³⁹

CAUSATION.

A party who seeks to recover for (damages) must prove not only that the other party was negligent, but also that such negligence was a (proximate) cause of the (damages) suffered by the Plaintiff.⁴⁰

PROXIMATE CAUSE

“(Proximate) cause” is an act or failure to act that in the natural and continuous sequence directly produced the (damages) and without which the (damages) would not have occurred.⁴¹

INDEPENDENT SUPERSEDING CAUSE.

Causal connection is broken when another’s (negligent) (intentional) act, which could not have been reasonably foreseen and is fully independent of the defendant’s negligence, intervenes

³⁹ 1 OJI CV 303.07 (1)

⁴⁰ 1 OJI CV 405.01 (1)

⁴¹ 1 OJI CV 405.01 (2)

and completely removes the effect of the defendant's negligence and becomes itself the (proximate) cause of the (damages).⁴²

**DAMAGES IN RELATION TO CLAIMS FOR INVASION OF PRIVACY – FALSE
LIGHT PUBLICITY AND INVASION OF PRIVACY – UNREASONABLE PUBLICLY
TO PRIVATE LIVES**

GENERAL

If you find for the plaintiff, you will decide by the greater weight of the evidence an amount of money that will reasonably compensate the plaintiff for the actual (injury) (loss) that was (proximately) caused by the (describe applicable tortious conduct) of the defendant.⁴³

COMPENSATION

In deciding this amount, you will consider the plaintiff's "economic loss" and "noneconomic loss," if any, (proximately) (directly) caused by the plaintiff's actual (injury) (loss).

ECONOMIC LOSS

"Economic loss" means any of the following types of financial harm:

⁴² 1 OJI CV 405.05 (4)

⁴³ 1 OJI CV 315.01(1).

- (A) all wages, salaries, or other compensation lost as a result of the plaintiff's (injury) (loss);
- (B) all expenditures for medical care or treatment, rehabilitation services, or other care, treatment, services, products, or accommodations incurred as a result of the plaintiff's (injury) (loss);
- (C) all expenditures incurred by the plaintiff ...to repair or replace the plaintiff's property that was injured or destroyed; and
- (D) any other expenditure incurred as a result of the plaintiff's (injury) (loss) other than attorney's fees incurred by the plaintiff.⁴⁴

REASONABLE VALUE

In deciding the reasonable value of medical, hospital, or other related care, treatment, services, products, or accommodations, you shall consider all of the evidence submitted. Both the original bill and the amount accepted as full payment may be considered along with all other evidence to decide the reasonable value.⁴⁵

NONECONOMIC LOSS

"Noneconomic loss" means harm other than economic loss that results from the plaintiff's (injury) (loss), including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; disfigurement; mental anguish; and any other intangible loss.⁴⁶

⁴⁴ 1 OJI CV 315.01(3)

⁴⁵ 1 OJI CV 315.01(4)

⁴⁶

CONSIDERATIONS IN DECIDING “NONECONOMIC LOSS.”

In deciding an award for “noneconomic loss,” you shall not consider any of the following:

- (A) evidence of the defendant’s alleged wrongdoing, misconduct, or guilt; and
- (B) evidence of the defendant’s wealth or financial resources; and
- (C) all other evidence that is offered for the purpose of punishing the defendant, rather than offered for a compensatory purpose.⁴⁷

NOMINAL DAMAGES

If you find for the plaintiff but the plaintiff failed to prove by the greater weight of the evidence any amount of damages, you may award the plaintiff nominal damages. “Nominal” means trifling or small.⁴⁸

DAMAGES IN RELATION TO DEFAMATION

PRESUMED DAMAGES (PER SE CASES ONLY)—PUBLIC OFFICIAL, PUBLIC FIGURE, LIMITED PURPOSE PUBLIC FIGURE.

If you find for the plaintiff, it is assumed that the plaintiff’s reputation was (injured) (damaged) and you should award the plaintiff an amount of money that is reasonable and fair for the plaintiff’s (injuries) (damages) that were (proximately) caused by the defendant’s defamatory

⁴⁷ 1 OJI CV 315.01(11)

⁴⁸ 1 OJI CV 315.53(1)

statement.⁴⁹

TYPES OF INJURIES

You must put aside all passion, prejudice, personal dislikes, hatred, and anger. You may take into consideration all facts and circumstances in evidence to decide the amount of compensation for the plaintiff's (injuries) (damages). The following are the types of (injuries) (damages) for which you may award compensation:

- (1) the (injury) (damage) to the plaintiff's reputation, including (exposure to [public hatred] [contempt] [ridicule] [shame] [disgrace]); (or)
- (2) loss of (trade) (business) (professional) income; (or)
- (3) the plaintiff's (mental anguish) (pain) (suffering); (or)
- (4) loss of society, companionship, and friendship.⁵⁰

SPECIAL HARM (PER QUOD CASES ONLY)

If you find in favor of the plaintiff, you may award the plaintiff an amount of money that you decide by the greater weight of the evidence will fairly and adequately compensate the plaintiff for the special harm; that is, for the (injuries) (damages) to the plaintiff's reputation (proximately) caused by the conduct of persons, other than the plaintiff or the defendant, acting as a result of the defendant's defamatory statement.⁵¹

If you have found that the plaintiff has suffered special harm to the plaintiff's reputation,

⁴⁹ 1 OJI CV 431.09(1)(A)

⁵⁰ 1 OJI CV 431.09(1)(B)

⁵¹ 1 OJI CV 431.09(4)(A)

you may award an amount of money for any other (injury) (damage) caused by the defendant's defamatory statement.⁵²

NOMINAL DAMAGES

If you find for the plaintiff but the plaintiff failed to prove by the greater weight of the evidence any amount of damages, you may award the plaintiff nominal damages. "Nominal" means trifling or small.⁵³

PUNITIVE DAMAGES

GENERAL

You will also decide whether the defendant shall be liable for punitive damages in addition to any other damages you award the plaintiff. The purpose of punitive damages is to punish the offending party to discourage others from similar conduct. The malice needed to award punitive damages requires proof of the defendant's (conscious state of mind) (attitude towards the plaintiff) (motives). You may decide that the defendant is liable for punitive damages if you find by clear and convincing evidence that:

- (1) the defendant's conduct demonstrated malice, aggravated or egregious fraud, oppression, or insult; and⁵⁴
- (2) the plaintiff has presented proof of actual damages that resulted from the conduct of (the

⁵² 1 OJI CV 431.09(4)(B)

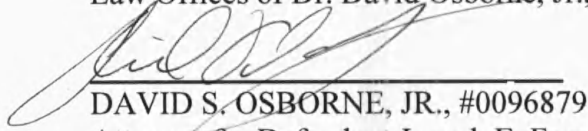
⁵³ 1 OJI CV 315.53(1)

⁵⁴ 1 OJI CV 431.09(A)

defendant).⁵⁵

Respectfully submitted,

Law Offices of Dr. David Osborne, Jr., LLC



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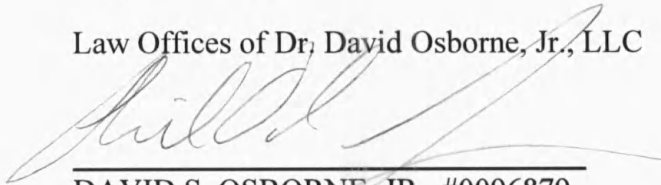
TO THE COURT

The undersigned hereby certifies that he used the Artificial Intelligence program by Lexis Nexis.

Legal research was completed using the AI program.

Respectfully submitted,

Law Offices of Dr. David Osborne, Jr., LLC



DAVID S. OSBORNE, JR., #0096879
Attorney for Joseph Edgar Foreman

⁵⁵ 1 OJI CV 431.09(B)

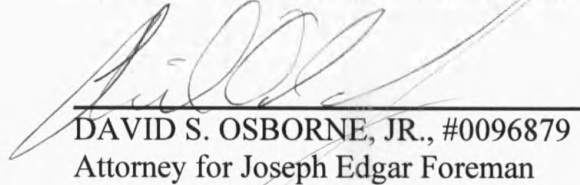
PROOF OF SERVICE

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. **Daniel Downey and Sara Lindsey McElroy**, 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 6 day of March, 2026.

Law Offices of Dr. David Osborne, Jr., LLC



DAVID S. OSBORNE, JR., #0096879
Attorney for Joseph Edgar Foreman