

COURT OF COMMON PLEAS
CIVIL DIVISION
ADAMS COUNTY, OHIO

FILED
ADAMS COUNTY
CLERK OF COURTS
2023 DEC 27 PM 1:30

Larry Heller
CLERK

SHAWN COOLEY et al

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CASE NO. CVH 20230069

Judge Jerry McBride

PLAINTIFFS,

VS.

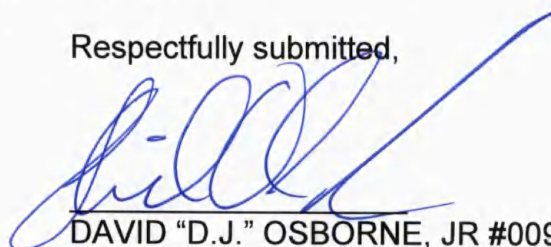
JOSEPH E. FOREMAN et al

DEFENDANTS.

**DEFENDANT'S JOESPH E. FOREMAN AND HUNGRY HUSTLER RECORDS
MOTION TO STRIKE PLAINTIFFS' FIRST AMENDED COMPLAINT**

Comes now Defendants, Joseph E. Foreman and Hungry Husler Records, by and through their Lead Attorney and requests that this honorable court strike the First Amended Complaint of the Plaintiff as it was filed out of time and without permission of the court. The Defendants pray that this Motion will be granted. A memorandum in support is attached to this Motion and incorporated by reference.

Respectfully submitted,



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). {emphasis added}

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.*

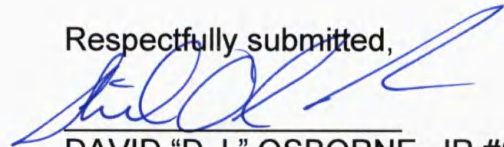
In the case at hand, the Plaintiff's filed their Complaint with the Adams County Court of Common Pleas on March 13, 2023. The Defendant's Joseph Foreman and Hungry Husler Records was served a copy of said complaint via Certified mail on March 20, 2023. The 28 day deadline to amend started on March 20, 2023, giving the Plaintiff till April 17 or 18, 2023, depending on if you count the day that the Defendant's were served.

The Plaintiff may argue that the date of the Defendant's Motion to Dismiss and Strike should be used. This Motion was filed by the Defendant's on April 11, 2023. If this date was used the Plaintiff would have had 28 days from April 11, 2023 to file an Amended Complaint, or till May 9 or 10, 2023. Thus the Plaintiff would argue that the Amended Complaint was filed in time on May 10, 2023. However, this would be an error as Rule 15(A) of the Ohio Rule of Civil Procedure plainly state that the time frame is based on the whichever deadline is “earlier.” R. Civ. Proc. 15(A).

The Plaintiff filed their First Amended Complaint on May 10, 2023, almost two months later after the service of the Complaint upon the Defendant's. The 28 day deadline

to amend the complaint without leave of the court passed, yet in response to the Motion to Dismiss and Strike of the Defendant's the Plaintiff filed their first amended complaint. No leave was requested of the court. Additionally, the first amended complaint changed the claims of the Plaintiff adding a new claim and cause of action. Thus, the Plaintiff now says that their amendment which was out of time is ok. However, when asking for leave the Defendant should be penalized and not permitted to file an Amendment to their counterclaim. If the Defendant is not permitted to amend his counterclaim, then the First Amended Complaint of the Plaintiff must be stricken from the record as no leave was requested and all the arguments of the Plaintiff against the Defendants would apply to them now. The Defendants pray that this court will grant their Motion to Strike.

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:

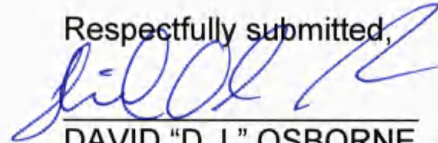
1. **Robert A. Klinger**, Robert A. Klinger Co., LPA, 895 Central Ave. Ste. 300, Cincinnati, Ohio 45202;
2. **Arthur West**, 120 State Ave. NE, #1497, Olympia, WA 98501;
3. **David J. Caray**, ACLU of Ohio Foundation, 4506 Chester Ave., Cleveland, Ohio 44102;
4. **Amy R. Gilbert**, ACLU of Ohio Foundation, 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,



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