

IN THE COURT OF COMMON PLEAS,
ADAMS COUNTY, OHIO 2023 NOV 22 PM 12:17
GENERAL DIVISION

SHAWN D. COOLEY, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 2023-0069

Jerry Heller
CLERK

Judge Jerry McBride

JURY DEMAND ENDORSED HEREON

PLAINTIFFS' ANSWER TO DEFENDANTS' COUNTERCLAIM

Now come Plaintiffs Shawn D. Cooley, Justin Cooley, Michael D. Estep, Shawn S. Grooms, Brian Newland, Lisa Phillips, and Randolph L. Walters, Jr. ("Plaintiffs"), by and through counsel, and for their Answer to Defendants' Counterclaim (the "Counterclaim") herein state as follows:

1. Plaintiffs deny each and every allegation set forth in the Counterclaim which is not specifically admitted herein as true.

55. Plaintiffs restate their allegations set forth in their First Amended Complaint and further restate their answers to the Counterclaim as set forth herein.

56. Plaintiffs deny the allegations contained in paragraph 56 of the Counterclaim.

57. Plaintiffs admit the allegations contained in paragraph 57 of the Counterclaim.

58. Plaintiffs deny the allegations contained in paragraph 58 of the Counterclaim.

59. Paragraph 59 of the Counterclaim references Exhibit A, which speaks for itself. For that reason, Plaintiffs deny the allegations contained in paragraph 59 of the Counterclaim.

60. Plaintiffs deny the allegations contained in paragraph 60 of the Counterclaim.

61. Plaintiffs deny the allegations contained in paragraph 61 of the Counterclaim.

62. Paragraph 62 of the Counterclaim references Exhibit B, which appears to merely be a screenshot image from a police-worn body camera recording and speaks for itself. For that reason, Plaintiffs deny the allegations contained in paragraph 62 of the Counterclaim.

63. Paragraph 63 of the Counterclaim references Exhibit C, which appears to merely be a screenshot image from a police-worn body camera recording and speaks for itself. For that reason, Plaintiffs deny the allegations contained in paragraph 63 of the Counterclaim.

64. Paragraph 64 of the Counterclaim references material not attached to the Counterclaim; namely, a police-worn body camera recording. To the extent the allegations contained in paragraph 64 reference material not attached to the Counterclaim, such material speaks for itself. For that reason, Plaintiffs deny the allegations contained in paragraph 64 of the Counterclaim.

65. Plaintiffs deny the allegations contained in paragraph 65 of the Counterclaim.

66. For the allegations contained in paragraph 66 of the Counterclaim, Plaintiffs admit only that Defendant Foreman has not been criminally charged as a result of the August 21, 2022 lawful search of his residence. Plaintiffs deny the remaining allegations contained in paragraph 66 of the Counterclaim for want of knowledge.

67. Plaintiffs deny the allegations contained in paragraph 67 of the Counterclaim for want of knowledge. Further answering, the allegations contained in paragraph 67 reference material not attached to the Counterclaim, and for that reason, Plaintiffs deny the allegations contained in paragraph 67 of the Counterclaim.

68. Paragraph 68 of the Counterclaim contains legal conclusions to which no response is required. To the extent a response is required, Plaintiffs deny the allegations contained in paragraph 68 of the Counterclaim.

69. Paragraph 69 of the Counterclaim contains legal conclusions to which no response is required. To the extent a response is required, Plaintiffs deny the allegations contained in paragraph 69 of the Counterclaim.

70. Plaintiffs deny the allegations contained in paragraph 70 of the Counterclaim.

71. Plaintiffs deny the allegations contained in paragraph 71 of the Counterclaim.

72. Plaintiffs deny the allegations contained in paragraph 72 of the Counterclaim.

73. Plaintiffs deny the allegations contained in paragraph 73 of the Counterclaim.

74. Plaintiffs deny the allegations contained in paragraph 74 of the Counterclaim.

75. Plaintiffs deny the allegations contained in paragraph 75 of the Counterclaim.

76. Plaintiffs restate their answers to paragraphs 1 through 75 of the Counterclaim.

77. Plaintiffs deny the allegations contained in paragraph 77 of the Counterclaim.

78. Plaintiffs deny the allegations contained in paragraph 78 of the Counterclaim.

79. Plaintiffs deny the allegations contained in paragraph 79 of the Counterclaim.

80. Plaintiffs deny the allegations contained in paragraph 80 of the Counterclaim.

81. Plaintiffs deny the allegations contained in paragraph 81 of the Counterclaim.

82. Plaintiffs deny the allegations contained in paragraph 82 of the Counterclaim.

83. Plaintiffs restate their answers to paragraphs 1 through 82 of the Counterclaim.

84. Plaintiffs deny the allegations contained in paragraph 84 of the Counterclaim.

85. Plaintiffs deny the allegations contained in paragraph 85 of the Counterclaim.

86. Plaintiffs deny the allegations contained in paragraph 86 of the Counterclaim.

87. Plaintiffs deny the allegations contained in paragraph 87 of the Counterclaim.
88. Plaintiffs deny the allegations contained in paragraph 88 of the Counterclaim.
89. Plaintiffs restate their answers to paragraphs 1 through 88 of the Counterclaim.
90. Plaintiffs deny the allegations contained in paragraph 90 of the Counterclaim.
91. Plaintiffs deny the allegations contained in paragraph 91 of the Counterclaim.
92. Plaintiffs deny the allegations contained in paragraph 92 of the Counterclaim for

want of knowledge.

93. Plaintiffs deny the allegations contained in paragraph 93 of the Counterclaim.
94. Plaintiffs deny the allegations contained in paragraph 94 of the Counterclaim.
95. Plaintiffs deny the allegations contained in paragraph 95 of the Counterclaim.
96. Plaintiffs restate their answers to paragraphs 1 through 95 of the Counterclaim.
97. Plaintiffs deny the allegations contained in paragraph 97 of the Counterclaim.
98. Plaintiffs deny the allegations contained in paragraph 98 of the Counterclaim.
99. Plaintiffs deny the allegations contained in paragraph 99 of the Counterclaim for

want of knowledge.

100. Plaintiffs deny the allegations contained in paragraph 100 of the Counterclaim.
101. Plaintiffs deny the allegations contained in paragraph 101 of the Counterclaim.
102. Plaintiffs deny the allegations contained in paragraph 102 of the Counterclaim.
103. Plaintiffs restate their answers to paragraphs 1 through 102 of the Counterclaim.
104. Plaintiffs deny the allegations contained in paragraph 104 of the Counterclaim.
105. Plaintiffs deny the allegations contained in paragraph 105 of the Counterclaim.
106. Plaintiffs deny the allegations contained in paragraph 106 of the Counterclaim.
107. Plaintiffs deny the allegations contained in paragraph 107 of the Counterclaim.

108. Plaintiffs deny the allegations contained in paragraph 108 of the Counterclaim.

109. Plaintiffs deny the allegations contained in paragraph 109 of the Counterclaim.

110. Paragraph 110 of the Counterclaim does not allege any facts requiring a response.

To the extent Paragraph 110 requires a response, Plaintiffs deny the allegations contained in paragraph 110 of the Counterclaim.

111. Plaintiffs restate their answers to paragraphs 1 through 110 of the Counterclaim.

112. Paragraph 112 of the Counterclaim contains legal conclusions to which no response is required. To the extent a response is required, Plaintiffs deny the allegations contained in paragraph 112 of the Counterclaim.

113. Plaintiffs deny the allegations contained in paragraph 113 of the Counterclaim.

114. Plaintiffs deny the allegations contained in paragraph 114 of the Counterclaim.

115. Plaintiffs deny the allegations contained in paragraph 115 of the Counterclaim.

116. Plaintiffs deny the allegations contained in paragraph 116 of the Counterclaim.

117. Paragraph 117 of the Counterclaim does not allege any facts requiring a response.

To the extent Paragraph 117 requires a response, Plaintiffs deny the allegations contained in paragraph 117 of the Counterclaim.

118. Plaintiffs restate their answers to paragraphs 1 through 117 of the Counterclaim.

119. Plaintiffs deny the allegations contained in paragraph 119 of the Counterclaim.

120. Plaintiffs deny the allegations contained in paragraph 120 of the Counterclaim.

121. Paragraph 121 of the Counterclaim contains legal conclusions to which no response is required. Furthermore, the Ohio Rules of Civil Procedure speak for themselves. To the extent a response is required, Plaintiffs deny the allegations contained in paragraph 121 of the Counterclaim.

122. Plaintiffs deny the allegations contained in paragraph 122 of the Counterclaim.

123. Plaintiffs deny the allegations contained in paragraph 123 of the Counterclaim.

124. Plaintiffs restate their answers to paragraphs 1 through 123 of the Counterclaim.

125. Paragraph 125 of the Counterclaim references a search warrant that speaks for itself. To the extent a response is required, Plaintiffs deny the allegations and characterizations contained in paragraph 125 of the Counterclaim.

126. Paragraph 126 of the Counterclaim references a search warrant that speaks for itself. To the extent a response is required, Plaintiffs deny the allegations and characterizations contained in paragraph 126 of the Counterclaim.

127. Plaintiffs deny the allegations contained in paragraph 127 of the Counterclaim.

128. Plaintiffs deny the allegations contained in paragraph 128 of the Counterclaim.

129. Plaintiffs deny the allegations contained in paragraph 129 of the Counterclaim.

130. Plaintiffs deny the allegations contained in paragraph 130 of the Counterclaim.

131. Plaintiffs deny the allegations contained in paragraph 131 of the Counterclaim.

132. Plaintiffs deny the allegations contained in paragraph 132 of the Counterclaim.

133. Plaintiffs deny the allegations contained in paragraph 133 of the Counterclaim.

134. Plaintiffs deny the allegations contained in paragraph 134 of the Counterclaim.

135. Plaintiffs deny the allegations contained in paragraph 135 of the Counterclaim.

136. Plaintiffs restate their answers to paragraphs 1 through 135 of the Counterclaim.

137. For the allegations contained in paragraph 137 of the Counterclaim, Plaintiffs admit only that they initiated this action following repeated, unauthorized production and use of Plaintiffs' names, images, and/or likeness by Defendants. Plaintiffs deny the remaining allegations contained in paragraph 137 of the Counterclaim.

138. Plaintiffs deny the allegations contained in paragraph 138 of the Counterclaim.

139. Plaintiffs deny the allegations contained in paragraph 139 of the Counterclaim.

140. Paragraph 140 of the Counterclaim expresses an opinion requiring no response. To the extent Paragraph 140 of the Counterclaim requires a response, Plaintiffs deny the allegations contained in paragraph 140 of the Counterclaim.

141. Plaintiffs deny the allegations contained in paragraph 141 of the Counterclaim.

142. Plaintiffs deny the allegations contained in paragraph 142 of the Counterclaim.

143. Plaintiffs deny the allegations contained in paragraph 143 of the Counterclaim.

144. Plaintiffs deny the allegations contained in paragraph 144 of the Counterclaim.

145. Plaintiffs deny the allegations contained in paragraph 145 of the Counterclaim.

146. Plaintiffs restate their answers to paragraphs 1 through 145 of the Counterclaim.

147. Plaintiffs deny the allegations contained in paragraph 147 of the Counterclaim.

148. Plaintiffs deny the allegations contained in paragraph 148 of the Counterclaim.

149. Plaintiffs deny the allegations contained in paragraph 149 of the Counterclaim.

150. Plaintiffs deny the allegations contained in paragraph 150 of the Counterclaim.

151. Plaintiffs deny the allegations contained in paragraph 151 of the Counterclaim.

152. Plaintiffs deny the allegations contained in paragraph 152 of the Counterclaim.

153. Plaintiffs restate their answers to paragraphs 1 through 152 of the Counterclaim.

154. For the allegations contained in paragraph 154 of the Counterclaim, Plaintiffs admit only that they initiated this action following repeated, unauthorized production and use of Plaintiffs' names, images, and/or likeness by Defendants. Plaintiffs deny the remaining allegations contained in paragraph 154 of the Counterclaim.

155. Plaintiffs deny the allegations contained in paragraph 155 of the Counterclaim for want of knowledge.

156. Plaintiffs deny the allegations contained in paragraph 156 of the Counterclaim for want of knowledge.

157. Plaintiffs deny the allegations contained in paragraph 157 of the Counterclaim.

158. Plaintiffs deny the allegations contained in paragraph 158 of the Counterclaim.

159. Plaintiffs deny the allegations contained in paragraph 159 of the Counterclaim for want of knowledge.

160. Plaintiffs deny the allegations contained in paragraph 160 of the Counterclaim.

161. Plaintiffs deny the allegations contained in paragraph 161 of the Counterclaim.

162. Plaintiffs deny the allegations contained in paragraph 162 of the Counterclaim.

163. Plaintiffs deny the allegations contained in paragraph 163 of the Counterclaim.

164. Plaintiffs deny any and all allegations raised in the prayer for relief included in the Counterclaim.

165. Plaintiffs deny each and every allegation not specifically admitted herein as true.

166. Plaintiffs explicitly deny any wrongdoing or unlawful act.

FIRST DEFENSE

167. Defendants' Counterclaim fails to state a claim upon which relief can be granted.

SECOND DEFENSE

168. Defendants have or may have failed to exhaust their administrative, contractual, and/or statutory remedies.

THIRD DEFENSE

169. Defendants' claims for damages may be barred, in whole or in part, by prior subsequent intervening or superseding acts, omissions, or causes, and/or by the acts or omissions of individuals or entities over whom Plaintiffs have no control or right of control.

FOURTH DEFENSE

170. Defendants' claims are barred due to a failure to join necessary and indispensable parties.

FIFTH DEFENSE

171. Plaintiffs acted in good faith and in accordance with the law.

SIXTH DEFENSE

172. Plaintiffs affirmatively deny that Plaintiffs have breached any duty they owed to Defendants.

SEVENTH DEFENSE

173. Plaintiffs' actions herein met the test of reasonableness in all fashions and, as a result thereof, no actions for violations of any duty to Defendants are maintainable.

EIGHTH DEFENSE

174. Defendants' conduct, in whole or in part, bars Defendants' claims for relief.

NINTH DEFENSE

175. Defendants' claims may be barred, in whole or in part, by a failure to mitigate damages.

TENTH DEFENSE

176. Defendants' claims may be barred, in whole or in part, by the doctrine of consent.



ELEVENTH DEFENSE

177. Defendants' claims may be barred by the applicable statutes of limitations.

TWELFTH DEFENSE

178. Defendants' claims are barred by the doctrines of laches, waiver, and/or estoppel.

THIRTEENTH DEFENSE

179. Defendants' claims may be barred in whole or in part by a lack of capacity and/or standing to seek the relief for which they pray, or because this matter is non-justiciable.

FOURTEENTH DEFENSE

180. Defendants' Counterclaim fails to state facts sufficient to entitle Defendants to any award of damages or injunctive relief against Plaintiffs.

FIFTEENTH DEFENSE

181. To the extent Defendants seek punitive damages against Plaintiffs, Defendants' claims for punitive damages cannot be sustained because the conduct of Plaintiffs did not show malicious intent and/or complete indifference to or conscious disregard for the safety of others.

SIXTEENTH DEFENSE

182. To the extent Defendants seek punitive damages or exemplary damages against Plaintiffs, an award of those types is contrary to the United States and Ohio Constitutions, as well as federal and state statutes, and is therefore not available to Defendants.

SEVENTEENTH DEFENSE

183. Defendants assumed the risk of the injuries and damages about which Defendants complain.

EIGHTEENTH DEFENSE

184. Plaintiffs assert the defense of contributory and/or comparative negligence.

NINETEENTH DEFENSE

185. Plaintiffs are entitled to immunity, including statutory, absolute, and qualified immunity, and also immunity from punitive and other damages.

TWENTIETH DEFENSE

186. Defendants' claims against Plaintiffs are expressly subject to, barred or limited by the provisions of Ohio's Political Subdivision Tort Immunity Statute, Ohio Revised Code § 2744.

TWENTY-FIRST DEFENSE

187. Plaintiffs are entitled to a setoff of damages and/or limitation of damages pursuant to statute.

TWENTY-SECOND DEFENSE

188. Defendants' claims against Plaintiffs are expressly subject to and barred by the doctrine of qualified immunity.

TWENTY-THIRD DEFENSE

189. Plaintiffs are entitled to indemnification, contractual indemnity, and contribution pursuant to statute.

TWENTY-FOURTH DEFENSE

190. This Court lacks jurisdiction to hear Defendants' Counterclaim against Plaintiffs.

TWENTY-FIFTH DEFENSE

191. Defendants' Counterclaim is founded on purported violations of constitutional rights pursuant to 42 U.S.C. § 1983 over which this Court lacks jurisdiction.

TWENTY-SIXTH DEFENSE

192. Plaintiffs hereby give notice that they intend to rely upon and utilize any other affirmative defenses that might become available or apparent during the course of discovery and hereby reserve the right to amend this Answer to assert such defense or defenses.

WHEREFORE, Plaintiffs demand Defendants' Counterclaim against them be dismissed in its entirety and with prejudice.

Respectfully submitted,

/s/ David Moser

David C. Moser (0090834)

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Counsel for Plaintiffs

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues herein triable.

/s/ David Moser

David C. Moser (0090834)

FISHEL DOWNEY ALBRECHT & RIEPENHOFF LLP

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

This certifies that a true and accurate copy of the foregoing **Answer to Counterclaim** was served by email, this 22nd day of November, 2023, upon the following:

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