

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SEAN SWAIN, : **Case No. 4:14-cv-2074**
Plaintiff, : **Judge Benita Y. Pearson**
v. :
GARY C. MOHR, et al., :
Defendants. :

ANSWER OF DEFENDANTS, WITH JURY DEMAND

As an initial matter, Plaintiff’s Complaint consists of twelve (12) marked pages, containing thirty (30) separately marked paragraphs. In addition, Plaintiff’s Complaint contains four (4) separately marked types of relief.

However, Plaintiff’s Complaint also has attached thereto two (2) Exhibits, marked “Exhibit A” and “Exhibit B.” Both Exhibits are affidavits of Plaintiff. Exhibit A is thirty (36) pages in length, containing one hundred and sixty (160) separately marked paragraphs. Exhibit B is a single page consisting of five (5) separately marked paragraphs. To the extent that there are factual allegations contained in Plaintiff’s Exhibit A and/or Exhibit B that are not replicated in Plaintiff’s Complaint, any such allegations are generally denied.

Finally, Plaintiff’s Complaint also contains an additional thirty-five (35) unauthenticated copies of records, marked as Exhibits C through Exhibits MM. As unauthenticated Exhibits, and to the extent that there are factual allegations contained therein that are not replicated in Plaintiff’s Complaint, any such allegations are generally denied.

For their Answer to Plaintiff’s Complaint, Defendants state the following:

First Defense

1. Plaintiff's marked paragraph 1, Defendants admit that Plaintiff is a prison inmate incarcerated under the custody and control of the Ohio Department of Rehabilitation and Correction (ODRC). Defendants are without sufficient information or knowledge at the present time to form a belief as to the truth of the remaining allegations and therefore deny them.

2. Plaintiff's marked paragraph 1, Defendants admit that they are employees of the ODRC. Defendants deny that their individual respective conduct, and their collective conduct has denied Plaintiff his rights under the United States Constitution.

3. Plaintiff's marked paragraph 3 contains no allegations against any named and served Defendant herein, thus a response is neither required nor appropriate. In addition, the factual allegations contained in Plaintiff's marked paragraph 3 are beyond the statute of limitations, and thus cannot serve as a basis for liability against any named and served Defendant herein.

4. Plaintiff's marked paragraph 4 contains no allegations against any named and served Defendant herein, thus a response is neither required nor appropriate. In addition, the factual allegations contained in Plaintiff's marked paragraph 4 are beyond the statute of limitations, and thus cannot serve as a basis for liability against any named and served Defendant herein.

5. Plaintiff's marked paragraph 5 contains no allegations against any named and served Defendant herein, thus a response is neither required nor appropriate. In addition, although not dated, the factual allegations contained in Plaintiff's marked paragraph 5 are beyond the statute of limitations, and thus cannot serve as a basis for liability against any named and served Defendant herein.

6. Plaintiff's marked paragraph 6, Defendants are without sufficient information or knowledge at the present time to form a belief as to the truth of the allegations that Plaintiff

wrote to Director Mohr and did not receive a response, and therefore deny them. In any event, the factual allegations contained in Plaintiff's marked paragraph 5 fail to establish any constitutional liability against Defendant Director Mohr, and are beyond the statute of limitations, and thus cannot serve as a basis for liability against any named and served Defendant herein.

7. Plaintiff's marked paragraph 7 contains no allegations against any named and served Defendant herein, thus a response is neither required nor appropriate. In addition, the factual allegations contained in Plaintiff's marked paragraph 7 are beyond the statute of limitations, and thus cannot serve as a basis for liability against any named and served Defendant herein.

8. Plaintiff's marked paragraph 8 contains no allegations against any named and served Defendant herein, thus a response is neither required nor appropriate. In addition, the factual allegations contained in Plaintiff's marked paragraph 8 are beyond the statute of limitations, and thus cannot serve as a basis for liability against any named and served Defendant herein.

9. Plaintiff's marked paragraph 9 contains no allegations against any named and served Defendant herein, thus a response is neither required nor appropriate.

10. Plaintiff's marked paragraph 10 contains no allegations against any named and served Defendant herein, thus a response is neither required nor appropriate.

11. Plaintiff's marked paragraph 11 contains no allegations against any named and served Defendant herein, save Defendant Deputy Warden of Administration (DWA) Hunsinger at Mansfield Correctional Institution (ManCI), thus a response is neither required nor appropriate. With respect to the specific allegation against Defendant Hunsinger, Defendants are without sufficient information or knowledge at the present time to form a belief as to the truth of the allegation, and therefore deny it.

12. Plaintiff's marked paragraph 12 contains no allegations against any named and served Defendant herein, thus a response is neither required nor appropriate.

13. Plaintiff's marked paragraph 13 contains no allegations against any named and served Defendant herein, thus a response is neither required nor appropriate.

14. Plaintiff's marked paragraph 14 contains no allegations against any named and served Defendant herein, thus a response is neither required nor appropriate.

15. Plaintiff's marked paragraph 15 contains no allegations against any named and served Defendant herein, thus a response is neither required nor appropriate.

16. Plaintiff's marked paragraph 16 contains no allegations against any named and served Defendant herein, save Defendant Deputy Warden of Administration (DWA) Hunsinger at Mansfield Correctional Institution (ManCI), thus a response is neither required nor appropriate. With respect to the specific allegations against Defendant Hunsinger, Defendants are without sufficient information or knowledge at the present time to form a belief as to the truth of the allegation, and therefore deny them.

17. Plaintiff's marked paragraph 17, Defendants are without sufficient information or knowledge at the present time to form a belief as to the truth of the allegation, and therefore deny them.

18. Plaintiff's marked paragraph 18, Defendants are without sufficient information or knowledge at the present time to form a belief as to the truth of the allegation, and therefore deny them.

19. Plaintiff's marked paragraph 19, Defendants are without sufficient information or knowledge at the present time to form a belief as to the truth of the allegation, and therefore deny them.

20. Plaintiff's marked paragraph 20 contains no allegations against any named and served Defendant herein, thus a response is neither required nor appropriate.

21. Plaintiff's marked paragraph 21 contains no allegations against any named and served Defendant herein, save Defendant Deputy Warden of Administration (DWA) Hunsinger at Mansfield Correctional Institution (ManCI), and ODRC Legal Services Division Attorney Trevor Clerk, thus a response is neither required nor appropriate. With respect to the specific allegations against Defendant Hunsinger, and Defendant Clark, Defendants are without sufficient information or knowledge at the present time to form a belief as to the truth of the allegation, and therefore deny them.

22. Plaintiff's marked paragraph 22, Defendants are without sufficient information or knowledge at the present time to form a belief as to the truth of the allegation, and therefore deny them.

23. Plaintiff's marked paragraph 23, Defendants are without sufficient information or knowledge at the present time to form a belief as to the truth of the allegation, and therefore deny them.

24. Plaintiff's marked paragraph 24, Defendants are without sufficient information or knowledge at the present time to form a belief as to the truth of the allegation, and therefore deny them.

25. Plaintiff's marked paragraph 25 contains no allegations against any named and served Defendant herein, thus a response is neither required nor appropriate.

26. Plaintiff's marked paragraph 26 contains no allegations against any named and served Defendant herein, thus a response is neither required nor appropriate.

27. Plaintiff's marked paragraph 27, Defendants incorporate as if fully rewritten herein, all responses contained in paragraphs 1 through 26 herein.

28. Plaintiff's marked paragraph 28, Defendants deny that any of the specific conduct alleged by Plaintiff to have been committed by any identified, named, and served Defendant was taken "in an attempt to punish plaintiff for expressing his...views on prison policy in an effort...to change the policies." The remaining allegations in Plaintiff's marked paragraph 28 contain legal conclusions therefore a response is neither required nor appropriate.

29. Plaintiff's marked paragraph 29, Defendants incorporate as if fully rewritten herein, all responses contained in paragraphs 1 through 28 herein.

30. Plaintiff's marked paragraph 28, Defendants deny that any of the specific conduct alleged by Plaintiff to have been committed by any identified, named, and served Defendant was "carried out pursuant to a civil and criminal conspiracy intended to punish plaintiff for his religious beliefs and his expression of his protected views of policies enacted by the prison." The remaining allegations in Plaintiff's marked paragraph 30 contain legal conclusions therefore a response is neither required nor appropriate.

Second Defense – Affirmative Defenses

31. Inmate Swain's Complaint fails to establish proper subject-matter jurisdiction in this Court pursuant to Fed. R. Civ. P. 12(b)(1) as to Inmate Swain's claims against Defendants in their respective official capacities seeking retroactive injunctive and/or equitable relief.

32. Inmate Swain's Complaint fails to state a claim upon which relief can be granted, pursuant to Fed. R. Civ. P. 12(b)(6).

33. Inmate Swain's Complaint fails to join a necessary and proper party under Fed. R. Civ. P. 19, and pursuant to Fed. R. Civ. P. 12(b)(7).

34. Inmate Swain is barred from any equitable relief due to application of the clean hands doctrine.

35. Inmate Swain's Complaint is barred, in whole or in part, by superseding, intervening acts or omissions not under the control of any Defendant, to include, but not limited to, Inmate Swain's own actions or failures to act, in either whole or in part.

36. Inmate Swain's Amended Complaint fails to satisfy the pleading requirements of Fed. R. Civ. P. 8(a).

37. Inmate Swain's Complaint fails to satisfy the form of pleading requirements of Fed. R. Civ. P. 10(b).

38. Inmate Swain's Complaint is barred by the doctrine of *res judicata*.

Third Defense

39. Inmate Swain's Complaint fails to state the deprivation of a constitutional right.

40. Inmate Swain's Complaint must be dismissed due to the allegations being frivolous, malicious, failing to state a claim upon which relief can be granted, and/or as seeking money damages from defendants who are immune from such relief pursuant to 42 U.S.C. § 1997e(c).

Fourth Defense

41. The Eleventh Amendment of the U.S. Constitution demands dismissal of Inmate Swain's claims for monetary damages in the Defendants' respective official capacities.

42. Defendants are protected by qualified and other immunities.

Fifth Defense

43. 42 U.S.C. § 1997e(a) demands dismissal of Inmate Swain's Complaint because Inmate Swain has failed to exhaust administrative remedies in regard to all claims raised in his Complaint and/or as against Defendants named herein.

Sixth Defense

44. Inmate Swain's Complaint must fail due to Inmate Swain's lack of standing.

Seventh Defense

45. Inmate Swain's Complaint for mental anguish, pain, or suffering, or any other emotional or mental injury must be dismissed due to failure to demonstrate a prior showing of physical injury pursuant to 42 U.S.C. § 1997e(e).

46. Inmate Swain's Complaint must fail due to the doctrine of waiver, in particular, *Leaman* waiver.

47. Inmate Swain's claims are barred by the doctrine announced in *Heck v. Humphrey*.

48. Defendants reserve the right to assert such additional affirmative defenses as may become appropriate upon prior notice to Inmate Swain.

Jury Demand

Defendants demand a trial by jury.

WHEREFORE, Defendants respectfully request that this Honorable Court issue an Order that dismisses Inmate Swain's 42 U.S.C. § 1983 action with prejudice as frivolous; assess costs to Inmate Swain; certifies, pursuant to 28 U.S.C. § 1915(a)(3) that an appeal from any such Decision journalized by the Court cannot be taken in good faith; and award any other relief deemed necessary, appropriate, and just by the Court.

Jury Trial Asserted

To the extent Inmate Swain asserts any claims for which a jury trial is available Defendants assert their respective right to a trial by jury.

Wherefore, Defendants ask the Court to dismiss this Complaint with prejudice, and tax all costs to Inmate Swain.

Respectfully submitted,

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s/Thomas C. Miller

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing, ANSWER OF DEFENDANTS, WITH JURY DEMAND, has been filed electronically with the Court's ECF System this 9th day of December, 2014. Parties will receive notice by email notification through the Court's ECF Notification System.

s/Thomas C. Miller

THOMAS C. MILLER (0075960)
Assistant Attorney General