COURT OF COMMON PLEAS
ADAMS COUNTY, OHIO

SHAWN D. COOLEY, Et. Al,	:	**Case No.: CVH 20230069**
Plaintiffs,	:	Judge Jerry McBride
v.	:	**DEFENDANTS' AMENDED JOINT MOTION TO DISMISS AND MOTION TO STRIKE PLAINTIFFS' AMENDED AND SUPPLEMENTAL COMPLAINT**
JOSEPH EDGAR FOREMAN, A/K/A AFROMAN, Et. al,	:	
Defendants.	:	

Now comes Defendants, Joseph Edgar Foreman and Hungry Hustler Records, by and through their counsel, respectfully move this Court to dismiss all claims in the Plaintiffs' Complaint for failure to state a claim under Ohio Civ.R. 12(B)(6). Furthermore, the Defendants respectfully move to strike the claims in Plaintiffs' Complaint because they are insufficient and redundant under Ohio Civ.R. 12(F). A memorandum in support of Defendant's motion is attached.

Respectfully submitted,

RIVERS LAW FIRM, P.A.

Date: May 24, 2023

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MEMORANDUM IN SUPPORT

INTRODUCTION

This is a case about a performer and artist acting under their First Amendment freedom of expression. The Plaintiffs in this case are officers and employees of the Adams County Sheriff's Office that executed a raid on Defendant Joseph Foreman's house. Mr. Foreman has not been charged as a result of that raid. The Plaintiffs in this case seek to tamp down and stifle the Defendants' First Amendment rights and are using the judicial system to quell protected speech that they do not agree with. This case should be dismissed for failure to state a claim upon which relief should be granted, and, in the alternative, all claims in the Plaintiffs' complaint should be stricken for insufficiency and redundancy.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiffs in this case are seven employees of the Adams County Sheriff's Office that executed a raid on Defendant Joseph Edgar Foreman's house in August 2022. (Complaint at 3). A copy of the search warrant and inventory list was requested from the County Attorney on April 6, 2023. The County Attorney has not yet provided this information. It should be noted that at least one person contacted in pursuit of this information has mentioned that the County Attorney has routed all questions or requests about this case to their own office.

On May 13, 2023, the Plaintiffs filed a Complaint alleging five civil claims: (1) Violations of Ohio Rev. Code Chapt. 2741—Unauthorized Use of Individual's Persona; (2) (Invasion of Privacy by Misappropriation—Restatement (Second) of Tors, § 652C (1977)); (3) (Invasion of Privacy—False Light Publicity—Restatement (Torts), Second § 652E (1977)); (4) (Invasion of Privacy—Unreasonable Publicity Given to Private Lives—Restatement (Second)

Torts, § 652D (1977)); and (5) (Injuctive Relief). This complaint was served with a summons on March 14, 2023.

The complaint alleged that Joseph Edgar Foreman "created, performed, posted, and publicized" depictions of the Plaintiffs' "personas" for commercial purposes. (Complaint at 11). Plaintiffs claim that their damages include all profits derived from and attributable to Defendants' use of their "personas". *Id.*

On April 11, 2023, Defendants Joseph Edgar Foreman and Hungry Hustler Records filed a Joint Motion to Dismiss and Motion to Strike Plaintiff's Complaint. On May 10, 2023, the Plaintiff's filed an Amended Complaint. This complaint added one claim of defamation to the previous five civil claims. The Defendant now offers this amended motion in response.

LEGAL STANDARD

I. Motion to Dismiss Under Ohio Civ.R. 12(B)(6).

Dismissal under Civ.R. 12(B)(6) is warranted if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 245 (1975). The Court accepts factual allegations of the complaint as true and make all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988). "Unsupported conclusions," however, do not suffice. *Id.* at 193. The Plaintiffs' Complaint fails to state any cause of action upon which relief may be granted because their Complaint does not state every required element of the cause of action at issue.

II. Motion to Strike Under Ohio Civ.R. 12(F).

Upon a motion made by a party or upon the Court's own initiative, the Court may order stricken from any pleading any insufficient claim or any redundant matter. Civ.R. 12(F).

ARGUMENT

I. The Defendants' First Amendment rights to freedom of expression trump any claim that the Plaintiffs seek as a result of the Defendants' artistic products.

The First Amendment to the United States Constitution enshrines an individual's fundamental right to freedom of speech. *See* U.S. CONST., Am. 1. The Fourteenth Amendment makes this freedom applicable to the states. See *Virginia v. Black*, 538 U.S. 343, 358 (2003). The Ohio Constitution contains a similar guarantee of an individual's freedom of expression:

> Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press.

OHIO CONST., Art. 1, § 11. This case is troubling because it involves a lawsuit brought by Adams County Sheriff's Office employees using the judiciary to quell and silence speech that they do not agree with. It is emblematic of Strategic Lawsuits Against Public Participation ("SLAPP") lawsuits across the country that are initiated to stop a defendant from expressing otherwise legal speech.

A. Plaintiffs claim under Ohio Rev. Code Chapt. 2741—Unauthorized Use of Individual's Persona, is invalid as Defendants' claims are opinions, art, and a commentary of the Defendant about a police raid on his house.

The Defendants' statements regarding the Plaintiffs were made in connecting with the Defendants' music and are therefore opinions and art. Furthermore, Ohio Rev. Code § 2741(D)(1) states that any aspect of an individual's persona in connection with an account does not constitute a use for which consent is required. Any comparisons of the Plaintiffs with fictional characters constitutes and opinion of the Defendants. The recorded video of the raid on the Defendants' house is a verbatim account of what actually occurred when a search warrant was executed. The statements allegedly made by defendants are therefore personal opinions and therefore accountings of events that occurred. Furthermore, the use of the Plaintiffs' likeness is

incidental to the commentary about the Plaintiffs' actions as police officers conducting a fruitless raid, and thus, this speech is protected by the First Amendment. Actions by police officers that a citizen believes to be unlawful are certainly public matters of concern. "Criticism of the government is at the very center of the constitutionally protected area of free discussion." *Rosenblatt v. Baer,* 383 U.S. 75, 85 (1966). The Defendant cannot be held liable for speech protected by the First Amendment, and therefore, the Plaintiffs' claim should be stricken or dismissed.

B. Plaintiffs' claim of "Invasion of Privacy by Misappropriation", pursuant to the Restatement (Second) of Torts, § 652C (1977), fails because any statements made by the Defendants in this case are opinions and commentary protected by the First Amendment and the Plaintiffs gave their implied consent to be recorded by entering Mr. Foreman's home.

Plaintiffs cannot prevail on their claim of Misappropriation of Likeness because the Defendants' statements were merely opinions and art that are protected by the First Amendment of the United States Constitution and Article I, Section 11 of the Ohio State Constitution. "The right of publicity as recognized by statute and common law is fundamentally constrained by the public and constitutional interest in freedom of expression . . . [T]he use of a person's identity primarily for the purpose of communicating information or expressing ideas is not generally actionable as a violation of the person's right of publicity." *ETW Corp. v. Jireh Publ'g, Inc.*, 332 F.3d 915, 930 (6th Cir. 2003) (citing Restatement (Third) of Unfair Competition, Chapter 4, § 47, Comment c). The statements alleged to be tortious are merely jokes, commentary, opinions, or artistic expression by an artist. The Plaintiff simply cannot try to classify protected speech as tortious behavior to make a First Amendment "cutout" for themselves. The use of the Plaintiffs' likeness is incidental to the commentary about the Plaintiffs' actions as police officers conducting a fruitless raid, and thus, this speech is protected by the First Amendment. Again,

"[c]riticism of the government is at the very center of the constitutionally protected area of free discussion." *Rosenblatt,* 383 U.S. at 85. Holding the Defendants liable for criticism of police officers would set a dangerous precedent for the First Amendment in the State of Ohio.

Even if the Court believes that the Plaintiffs have made a valid claim to misappropriation of name or likeness, the Plaintiffs cannot prevail on that claim because they gave implied consent to use their likeness when they entered the home of the Defendants. Consent is a complete defense to the tort of misappropriation of name or likeness. *See Parma Int'L, Inc. v. Bartos, 9th Dist. Lorain,* No. 89CAOOQ4S73, 1990 WL 11716 at *4-5 (Feb. 7, 1990) (regarding misappropriation of name or likeness, "[i]f there is consent to particular conduct, the consent will prevent that conduct from constituting an actionable invasion [of privacy].") (internal quotation omitted). Ohio is a one-party consent state, and therefore, the Plaintiffs in this case were on notice that they could have been recorded. By entering the home of the Defendants as employees of the Adams County Sheriff's Office, they knew of the risk that they could be recorded by home video cameras or other recording devices. Furthermore, this claim is both insufficient and redundant to the other claims in the complaint and should therefore be stricken under Ohio Civ.R. 12(F).

C. Plaintiffs' claim of false light publicity, pursuant to the Restatement (Torts), Second § 652E (1977), fails because the statements made are opinions or commentary and are not untrue statements.

Plaintiffs cannot prevail on their claim of false light publicity because the Defendants' statements were merely opinions that are protected by the First Amendment and cannot be held to be untrue statements. In 2007, the Supreme Court of Ohio recognized the tort of "false light". *Welling v. Weinfeld,* 113 Ohio St.3d 464, syllabus (2007) (adopting Restatement of the Law 2d, Torts, Section 652E (1977)). The court stated that the tort of false light has three elements: (1)

the statement must be untrue; (2) the statement must be publicized; and (3) the misrepresentation made must be serious enough to be highly offensive to a reasonable person. *Id.* at 471-72. The Court goes on to make the distinction between actual false light claims and those made by persons with merely hurt feelings clogging the judicial system. *Id.* at 471. The Court adopts a standard that the Defendant must have knowledge of or acted with reckless disregard as to the falsity of the publicized matter. *Id.* at 472.

Even if the Plaintiffs were to make a showing the last two elements of this claim, they could not show that the statements were false. Comparing someone to Peter Griffin, the protagonist in the animated comedy show "Family Guy", does not amount to a false statement. Neither do any of the other claims of comparisons to fictional characters or other works of art. Neither is using video of a raid conducted within your own home. In fact, in their Complaint, the Plaintiffs do not establish what statements are purported to be false for this false light publicity claim. These are all either statements of opinion or actual footage that do not amount to the level of false statements. Plaintiffs' claim is vague, incoherent, and a method of throwing spaghetti at the wall to see what sticks. Plaintiffs, therefore, do not state a claim of false light publicity that they can prevail on, and therefore, this claim should be dismissed or stricken.

D. Plaintiffs' claim of "Publicity Given to Private Life" is insufficient and fails to state a claim upon which relief can be granted.

Again, any statements of the Defendant were opinions, commentary, or art that is protected under the First Amendment to the United States Constitution or Article I, Section 11 of the Ohio State Constitution. Plaintiffs have not alleged facts that would show these statements were not "of concern to the public." *See* Restatement (Second) Torts, § 652D(b) (1977). The Defendants allegedly made the statements because of a perceived violation of their constitutional right to be secure in their own home. Any statements made would be a valid criticism of Adams

County Sheriff's Office or deputies acting under the authority of the Sheriff's Office that would have a legitimate concern to the public. A claim for invasion of privacy through publicity requires both that "[t]he facts disclosed [are] those concerning [his] private life . . . not his public life[,]" and that "[t]he matter publicized [is not] a legitimate concern to the public." *Killilea v. Sears, Roebuck & Co.*, 27 Ohio App. 3d 163, 166-67, 499 N.E.2d 1291 (10th Dist. 1985). The Defendants' statements regarded how the Plaintiffs conducted themselves while on duty as law enforcement officials, and while in Mr. Foreman's home. Any person under the Adams County Sheriff's Office jurisdiction would have a right to information about a possible unlawful search, and therefore, any statements communicated by the Defendants would be of legitimate concern to the public. And, even if any of the statements were not of legitimate public concern, these statements are merely opinions, jokes, or commentary that is covered by the First Amendment.

E. Plaintiffs claim of defamation is insufficient and fails to state a claim upon which relief can be granted.

Any statements of the Defendant were opinions, commentary, or art that is protected under the First Amendment to the United States Constitution or Article I, Section 11 of the Ohio State Constitution. This defamation claim is simply a legal tool used by the Plaintiffs to quell criticism of them that they do not agree with. In *Whitney v. California,* Justice Brandeis recognized that the founders "eschewed silence coerced by law," what he called "the argument of force in its worst form." 274 U.S. 357, 375-76 (1927) (Brandeis, J., concurring). He understood, as did the authors of the Constitution, "that it is hazardous to discourage thought, hope and imagination" and "that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies[.]" *Id.* at 376. The Plaintiffs seek to coerce the Defendants into silence through the use of the justice system without the requisite proof needed to sustain a

defamation claim. Plaintiffs have failed to state a claim for defamation upon which relief can be granted, which is further outlined in Section II of this memorandum.

F. Injunctive relief is not a civil claim, is an inappropriate remedy, and cannot bar the Defendants' First Amendment right to freedom of expression.

For all of the reasons contained herein above and elsewhere, Plaintiff is not entitled to injunctive relief as the Defendants' speech is protected by the First Amendment to the United States Constitution and Article I, Section 11 of the Ohio State Constitution. This claim is both insufficient and redundant and should therefore be stricken under Civ.R. 12(F). Furthermore, injunctive relief is a remedy and not a civil claim that the Plaintiffs can prevail on.

II. Plaintiffs cannot prevail on their defamation claim because they cannot show that the statements are false, they cannot show that the statements were made with malice, or they cannot meet their burden of proof.

Plaintiffs' defamation claim must be dismissed because they cannot meet the required elements of a defamation claim. To assert a defamation claim, Plaintiff's must prove "(1) a false and defamatory statement; (2) about plaintiff; (3) published without privilege to a third party; (4) with fault of at least negligence on the part of the defendant; ...(5) that was either defamatory per se or caused special harm to the plaintiff." *Gosden v. Louis*, 116 Ohio App. 3d 195, 206, 687 N.E.2d 481 (9th Dist. 1996). There are two kinds of defamation: defamation per se and defamation per quod. Id. at 207. Defamation per se occurs when "material is defamatory on its face." Id. Defamation per quod occurs when "material is defamatory through interpretation or innuendo." Id. The Plaintiffs do not establish which type of defamation they are seeking relief for, but the context of their claim suggests that they are seeking damages for alleged defamation per quod.

First, the vague, contextless smatterings of social media posts that the Plaintiffs have provided do not establish that the Defendants made any false statements. "A complaint alleging a cause of action in defamation must allege the substance of the allegedly defamatory statements." See 34 Ohio Jurisprudence 2d (1958), Libel and Slander, Sections 134 and 135; *McWreath v. Cortland Bank*, 11th Dist. No. 2010-T-0023, 2012-Ohio-3013, P 49 (affirming trial court's granting of motion to dismiss claim for defamation per quod where appellant did not provide any explanation for conclusory assertion of defamation elements). The statements, within their context, are affirmatively pure opinions of an artist and are not false statements of fact.

One of the tests for determining whether something is opinion (and protected speech) is provided by *Wampler v Higgins*, 93 Ohio St.3d 111 (2001). *Wampler* established that the determination of whether something is an opinion is a question of law for the Court. *Id.* at 126-27. Courts examine the totality of the circumstances in order to determine whether a published statement constitutes an opinion protected by the Ohio Constitution. *Id.* Ohio courts look at a four-factor test to determine if something is opinion or fact. *Id.* Courts weigh (1) the specific wording of the statement; (2) the verifiability of the statement; (3) the general context of the statement; and (4) the broader context in which the statement appeared. *Id.* at 126. The weight given to any one factor under this inquiry will vary depending on the circumstances of each case. *Vail v. Plain Dealer Publ'g Co.*, 1995-Ohio-187, 72 Ohio St. 3d 279, 282, 649 N.E.2d 182, 185 First, the general context of each of each statement that the Plaintiffs have put in their complaint. The Plaintiffs were part of a raid on Joseph Foreman's home, which ended up being fruitless. Mr. Foreman is a black man in a largely white area of Ohio that had his house raided by all-white officers. It appears that Mr. Foreman's cameras were disconnected during the raid, and after the raid, Mr. Foreman was missing an approximate total of $400 in cash. Each statement that the

Plaintiffs put forth sits within the murky waters of these circumstances. Furthermore, Mr. Foreman is an artist and posted all of these accounts to the Instagram page that he uses as an artist. The general context of these statements show that Mr. Foreman was making statements of opinion about the raid on his home—not defamatory statements of fact. A reasonable person would understand these statements as opinions, and this factor weighs in favor of granting the motion to dismiss.

The broader context in which these statements appear also shows that the statements are simply pure opinion. Again, Mr. Foreman is an artist and these statements appeared on his Instagram page that he posts to as an artist. In fact, Mr. Foreman's Instagram username is "O.G. Afroman", which reflects his stage name and not his government name. Mr. Foreman release songs that criticized the police's raid on his home, which is a valid gripe considering the fruitless nature of the raid. Furthermore, as police violence and police overreach continue to be major issues in American politics, it is important that the Courts protect individuals' rights to speak out about perceived injustices. As Justice Brandeis wrote:

> Those who won our independence believed that the final end of the State was to make men free to develop their faculties. . . . They believed that freedom to think as you will and to speak as you think are means indispensible to the discovery and spread of political truth; that without free speech and assembly discussion would be futile...that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government.

Whitney, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring). These statements are merely opinions of an artist that were posted to an artists Instagram page. This factor weighs in favor of granting the motion to dismiss.

Even if the Court does not agree that the context of the statements weighs in favor of dismissal, these statements either are not verifiable, or the wording of the statements shows that they are opinions. Statements such as "criminal camouflaged by law enforcement" or "the white

supremacists operating inside of the Adams county sheriff department" are statements of opinion and are not verifiable. What a "criminal" or a "white supremacist" is to one person may not be the same to another. Moreover, the wording of each statement alleged in the Plaintiffs' complaint are either hyperbole, subjective, or is just plainly taken out of context in each video. None of these statements could seriously be taken as fact by a reasonable person. The Plaintiffs' defamation claim based upon these statements is simply just an attempt to silence an artist from making statements that the Plaintiffs' do not agree with. Under the totality of all of the circumstances, the Plaintiffs cannot establish a claim for defamation upon which they can prevail.

Furthermore, the Complaint does not establish whether the Plaintiffs are stating a claim for defamation of a private figure or defamation of a public figure. There are therefore two potential theories which the Plaintiff might try to seek relief. While the Defendants believe that the Plaintiffs' claim for defamation could be dismissed or stricken for vagueness, the Plaintiffs' claim fails both theories of defamation because the Plaintiffs cannot meet the standard or burden of proof for either.

A. Theory 1: The Officers are Private Figures

In defamation suits brought by private figure plaintiffs, Ohio courts require a plaintiff to prove by clear and convincing evidence that the defendant "failed to act reasonably in attempting to discover the truth or falsity or defamatory character of the publication." *Landsdowne v. Beacon Journal Publ'g*, 512 N.E.2d 979, 984 (Ohio 1987). Plaintiff has not and cannot establish its defamation claim by clear and convincing evidence. Each of the statements provided to this Court through the Plaintiffs' complaint is clearly pure opinion and thus does not meet the standard of defamation. The Plaintiffs simply cannot meet their burden of proof.

B. Theory 2: The Officers are Public Figures or Public Officials

A public official is a government employee or official whose position has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds it, beyond the general public interest in the qualifications and performance of all government employees. *See Scott v. News-Herald*, 496 N.E.2d 699, 702 (Ohio 1986). In practice, the public official category has been extended broadly. *See Arnheiter v. Random House, Inc.*, 578 F.2d 804 (C.A.9, 1978) (naval officer); *Gray v. Udevitz*, 656 F.2d 588 (C.A.10, 1981) (policeman); *Grzelak v. Calumet Pub. Co., Inc.*, 543 F.2d 579 (C.A.7, 1975) (mid-level municipal employee). "The First Amendment protects a significant amount of verbal criticism and challenge directed at police officers." *City of Houston, Tex. V. Hill.*, 482 U.S. 451, 461 (1987).

Unlike traditional common-law defamation actions, a much higher standard of proof is required when the alleged defamation is against a person who is considered to be a "public figure." The United States Supreme Court in *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), created the test that must be applied in any case when a public figure wishes to sue for defamation. Even "[e]vidence of hatred, spite, vengefulness, or deliberate intention to harm can never, standing alone, warrant a verdict for the plaintiff in such cases ***." *Varanese v. Gall*, 35 Ohio St.3d 78, 79-80, 518 N.E.2d 1177, 1180 (1988). The focus in these cases is the defendant's attitude toward the degree of truth or falsity in the publication. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342, 94 S.Ct. 2997, 3008,41 L.Ed.2d 789, 806-807 (1974). In order to prove actionable defamation of a public figure, the plaintiff must show by clear and convincing evidence that the defendants harbored actual malice while making the statements. *New York Times* at 285-286, 84 S.Ct. at 728-729, 11 L.Ed.2d at 709-710.

As the Supreme Court of Ohio stated in *Dupler v. Mansfield Journal Co., Inc.*,:

> Since reckless disregard is not measured by lack of reasonable belief or of ordinary care, even evidence of negligence in failing to investigate the facts is insufficient to establish actual malice. Rather, since 'erroneous statement is inevitable in free debate, and . . . must be protected if the freedoms of expression are to have the "breathing space" that they "need . . . to survive," . . . ' (*New York Times*, supra, at pages 271-72 [84 S.Ct. at 721, 11 L.Ed.2d at 701]), '[t]here must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.' *St. Amant v. Thompson*, 390 U.S. 727, 731 [88 S.Ct. 1323, 1325, 20 L.Ed.2d 262, 267] (1968).

64 Ohio St.2d 116, 119, 413 N.E.2d 1187, 1191 (1980). Accordingly, the Supreme Court of Ohio held specifically in *Varanese*, that a public figure defamation plaintiff "must demonstrate, with convincing clarity, that the defendant published the defamatory statement either with actual knowledge that the statement was false, or with a high degree of awareness of its probable falsity." 35 Ohio St.3d at 80, 518 N.E.2d at 1180-1181.

Here, even given the statements that the Plaintiffs have alleged in their complaint, the Plaintiffs cannot demonstrate that the Defendants made false statements with actual knowledge that it was false or with a high awareness of its probable falsity. Mr. Foreman was missing $400 after the raid. His video cameras were disconnected during the raid. Many of the statements are not verifiable. And simply, all of the statements were either opinions, jokes, or commentary made by an artist toward officers that the artist perceived he had been slighted by. The Defendants statements are jokes, commentary, or opinions that a reasonable person could not take as statements of fact. For all of these reasons, the Plaintiffs cannot show actual malice by any standard, let alone a clear and convincing standard.

III. Plaintiffs cannot state that their "personas" have commercial value as is required by Ohio Rev. Code § 2741.02.

Under Ohio law, an individual can state a claim for the use of an individual's persona for commercial purpose without authorization. Ohio Rev. Code § 2741.02. Under the plain language

of the statue, the plaintiff must allege that his "name, voice, signature, photograph, image, likeness, or distinctive appearance" have "commercial value." Ohio Rev. Code § 2741.02(A); see also *Stewart v. M & M Headgear, Inc.*, No. 5:15 CV 857, 2015 U.S. Dist. LEXIS 39720, at *15 (N.D. Ohio Mar. 27, 2015) (a plaintiff must allege facts sufficient to support the conclusion that her likeness had commercial value in order to survive a motion to dismiss); *James v. Bob Ross Buick, Inc.*, 167 Ohio App.3d 338, 2006-Ohio-2638, 855 N.E.2d 119, 13 (2d Dist.), fn. 2 (noting that the right to publicity in an individual's persona only stands if the name, likeness, or distinctive appearance has commercial value).

The standard for establishing the commercial value of one's likeness is high under Ohio law. *Harvey v. Sys. Effect, LLC*, 2020-Ohio-1642, 60, 65 (2d Dist.). Specifically, "a plaintiff must show 'significant commercial value'" to state a claim. Id. at 60, 65. For example in *Harvey*, an attorney brought a claim under Ohio Rev. Code § 2741.02 against defendants for use of the attorney's name in a continuing education course for realtors. Id. at 65. In upholding the trial court's decision of granting summary judgment in the defendant's favor, the court held that the plaintiff could not successfully recover on a claim for the unauthorized use of her persona for commercial purpose because she "was not a public figure or even a limited public figure" and could not demonstrate "that her name had significant value or indeed, any commercial value." Id. at 60, 65. "While plaintiffs need not be national celebrities to assert a right of publicity claim, they must at least 'demonstrate that there is value in associating an item of commerce with [their] identity.'" *Roe v. Amazon.com*, 714 F. App'x 565, 568 (6th Cir. 2017) (quoting *Landham v. Lewis Galoob Toys, Inc.*, 227 F.3d 619, 624 (6th Cir. 2000)) (affirming the district court's grant of summary judgment in the defendant's favor because the plaintiff failed to show a commercial value in associating their likeness with the defendants).

Here, the Plaintiffs' Complaint does not show that their personas have commercial value. The Plaintiffs only state that they are employees of the Adams County Sheriff's Office and that their personas have commercial value because "the reputation, prestige, social standing, public interest, and other values" add value to any product or service with which the Plaintiff's personas are associated. This does not equate to a "significant commercial value" to satisfy the standard for establishing a claim under Ohio Rev. Code § 2741.02. It is simply an impermissibly conclusory statement unsupported by fact. There is no previous monetary value to the Plaintiffs' personas that is now being exploited. The Plaintiffs' claim under Ohio Rev. Code § 2741.02 therefore cannot survive a motion to dismiss. *Jackson v. Playboy Enters., Inc.*, 574 F. Supp. 10, 13 (S.D. Ohio 1983) (granting motion to dismiss because plaintiff failed to allege that likeness had value which defendant could have used to its benefit). This Court should therefore dismiss or strike the Plaintiffs' claim under Ohio Rev. Code § 2741.02.

CONCLUSION

Plaintiffs' amended complaint containing six counts of alleged tortious action fails to state any claims upon which relief may be granted. Furthermore, these six claims are insufficient and redundant. For these reasons, the Court should dismiss this case under Ohio Civ.R. 12(b)(6). In the alternative, the Court should strike any and all pleadings that are insufficient or redundant under Ohio Civ.R. 12(F).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendants' Amended Joint Motion to Dismiss and Motion to Strike Plaintiffs' Amended and Supplemental Complaint was served on May 24, 2023, by electronic mail upon the following:

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