

UNITED STATES DISTRICT COURT
For the
Middle District of North Carolina

Case No. 16 cv 1098

DERIC JAMES LOSTUTTER,

Plaintiff,

v.

THOMAS OLSEN, ALEXANDRIA
GODDARD, and MICHELLE MCKEE

Defendants,

**DEFENDANTS' MOTION TO
DISMISS AND MOTION FOR
GATEKEEPER ORDER**

MOTION TO DISMISS

Defendants move the Court to dismiss this matter pursuant to Rule 12(b)(1), (2), (5) and (6) of the Federal Rules of Civil Procedure. In support of this motion, Defendants show the Court:

1. Defendant Thomas Olsen is a citizen and resident of Escambia County, Florida.
2. Defendant Alexandria Goddard is a citizen and resident of Franklin County, Ohio.
3. Defendant Michelle McKee is a citizen and resident of Pierce County, Washington.
4. Defendants have never been residents of North Carolina.

5. Defendants have never owned or operated a business in North Carolina. No business owned or operated by Defendants has ever purposefully directed their activity in a substantial way to North Carolina.
6. Defendants have never posted online content purposefully directed in a substantial way to North Carolina.
7. Prior to Plaintiff's attempts to hail Defendants into court, Defendants have never participated in litigation in North Carolina.
8. Plaintiff's affidavit of service (docket entry # 6) alleges service "using the clerk at UPS...as third party process of service." Plaintiff's affidavit of service, however, fails to allege service in compliance with Rule 4(e).
9. Plaintiff has yet to serve Defendant Alexandria Goddard and has failed to serve Defendants Thomas Olsen and Michelle McKee in compliance with Rule 4(e).

MOTION FOR GATEKEEPER ORDER

Defendants move the Court, pursuant to 28 U.S.C. § 1651(a), for a gatekeeper order against Plaintiff. In support of this motion, Defendants show the Court:

1. Plaintiff has a history of harassing and duplicative lawsuits. Specifically, Plaintiff has filed eight (8) lawsuits in Forsyth County in 2016. Plaintiff has

filed multiple lawsuits within the same day. Plaintiff's lawsuits have the Forsyth County file numbers: 16 CVD 208, 16 CVD 209, 16 CVD 415, 16 CVD 416, 16 CVD 417, 16 CVD 914, 16 CVD 3080, and 16 CVS 3077.

2. Plaintiff has also attempted to file criminal charges in Forsyth County. No convictions have resulted from crimes alleged by plaintiff.
3. Plaintiff has filed lawsuits against defendants in North Carolina District Court and North Carolina Superior Court.
4. Plaintiff has never properly served defendants in any action.
5. Plaintiff's North Carolina District Court actions against defendants were dismissed.
6. Plaintiff voluntarily dismissed his North Carolina Superior Court action against defendants after defendants retained counsel and filed a Rule 12(b) motion to dismiss.
7. There is no evidence that plaintiff has an objective good faith expectation of prevailing on the merits in this litigation.
8. Plaintiff has improperly filed this action and eight other actions in North Carolina. Plaintiff has further improperly filed an untimely Rule 56 motion in this action. These actions unnecessarily burden defendants and the Court.

9. Plaintiff's repeated litigation against defendants has burdened them with the anxiety and expense of court proceedings. Defendants lack sufficient funds to continue to respond to plaintiff's frivolous litigation.

THEREFORE, defendants respectfully pray that the Court for the following relief:

1. That the Court enter an order dismissing this matter pursuant to Rule(12)(b);
2. That the Court issue an order requiring plaintiff to show cause why a gatekeeper order should not be entered against him;
3. That the Court enter a gatekeeper order against plaintiff pursuant 28 U.S.C. § 1651(a); and
4. Such other relief as the Court shall deem just and proper.

This 20th day of October, 2016.

Respectfully submitted,

/s/ R. Daniel Gibson

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Attorney for Defendants

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Defendants,

**DEFENDANT GODDARD'S
VERIFICATION**

Ohio


Franklin County

VERIFICATION

Alexandria Goddard, being first duly sworn, deposes and says: That (s)he is a Defendant in the foregoing action; that (s)he has read the foregoing motion to dismiss and motion for a gatekeeper order and knows the contents thereof; that the same is true of his/her own knowledge, except those matters and things therein stated upon information and belief, and as to those, (s)he believes them to be true.

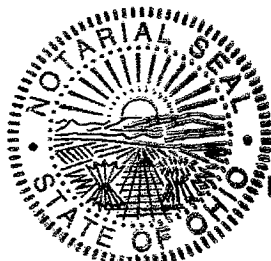


Sworn to and subscribed before me, this 12th day of October 2016, by Alexandria Goddard, a person known to me (or satisfactorily proven) to be the person described in the foregoing instrument, who after being sworn said and acknowledged the execution of the foregoing instrument for the purposes therein expressed.



Notary Public

My commission expires:



SOMMER L. SHEETS
NOTARY PUBLIC
FOR THE
STATE OF OHIO
My Commission Expires
May 21, 2017

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**DEFENDANT MCKEE'S
VERIFICATION**

THOMAS OLSEN, ALEXANDRIA
GODDARD, and MICHELLE MCKEE

Defendants,

Washington

Pierce County

VERIFICATION

Michelle McKee, being first duly sworn, deposes and says: That (s)he is a Defendant in the foregoing action; that (s)he has read the foregoing motion to dismiss and motion for a gatekeeper order and knows the contents thereof; that the same is true of his/her own knowledge, except those matters and things therein stated upon information and belief, and as to those, (s)he believes them to be true.

Michelle McKee

Sworn to and subscribed before me, this 24 day of October 2016, by Michelle McKee, a person known to me (or satisfactorily proven) to be the person described in the foregoing instrument, who after being sworn said and acknowledged the execution of the foregoing instrument for the purposes therein expressed.

Kelly Ann Fuller
Notary Public

My commission expires: July 8th 2018

