

IN THE COMMON PLEAS COURT, LUCAS COUNTY OHIO

MARCUS RUSHING

*Plaintiff,*

vs.

WOOD HEALT  
COMPANY, LLC, *et al.*,

*Defendants,*

CASE NO. G-4801-CI-0202402248-000

JUDGE: DEAN P. MANDROS

**PLAINTIFF'S MOTION TO**  
**STRIKE AND FOR PROTECTIVE**  
**ORDER, AND REQUEST FOR**  
**JUDICIAL NOTICE**

NOW COMES the Plaintiff, Marcus Rushing (hereinafter referred to as "Plaintiff"), represented Pro Se, pursuant to Ohio Civil Rule 12(F) and the Court's inherent authority to regulate the conduct of proceedings, for an Order striking and disregarding all portions of Defendant's Memorandum in Support of Motion for Judgment on the Pleadings that reference, rely upon, or otherwise cite a separate federal action involving Plaintiff – specifically, the matter styled *Rushing v. Wood Health Company, LLC and McGaw Medical Center of Northwestern University*, in the United States District Court for the Northern District of Ohio.

In further support of this Motion, Plaintiff requests this Court to take **Judicial Notice** under **Evid. R. 201** of the procedural posture and disposition of the cited federal case, which was **dismissed without prejudice** for procedural insufficiency, **not on the merits**, and involved **non-identical defendants and distinct causes of action**.

**I. INTRODUCTION**

Defendant's memorandum improperly invites this Court to consider and rely upon a federal case involving different defendants, different legal claims, and a different jurisdiction, to support its Motion for Judgment on the Pleadings in this state action.

Defendant's use of the prior federal order misrepresents the nature and effect of that proceeding by suggesting it constitutes a "final adjudication" adverse to Plaintiff, when in truth, the federal action was dismissed without prejudice for failure to state a claim – which is only a procedural defect. Such references is immaterial to the issues before this Court, prejudicial to the Plaintiff, and risks misleading the Court as to the facts, posture, and rights implicated in this separate proceeding.

## **II. GROUNDS FOR MOTION TO STRIKE**

Under Ohio Civ. R. 12(F), a court may strike from any pleading or motion "any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter."

The inclusion of references to a separate federal proceeding is **immaterial** and **impertinent** because:

1. The federal case involved different defendants.
2. The federal action alleged different causes of action under Federal Question jurisdiction (Title VII only), while the instant case proceeds under state law.
3. The federal case was **dismissed without prejudice** and therefore has **no preclusive or res judicata effect**;
4. Defendant's characterization of the federal dismissal as a "final judgement" is **factually inaccurate** and **legally misleading**; and
5. The references serve no legitimate evidentiary or legal purpose and operate only to **prejudice the Court** against Plaintiff by implying adverse findings that do not exist.

Accordingly, these references should be **stricken** and the Court should enter a **protective order** precluding further reference to the federal proceeding except for properly noticed, relevant procedural facts.

## **III. REQUEST FOR JUDICIAL NOTICE**

Pursuant to Evid. R. 201, Plaintiff respectfully requests that this Court take judicial notice of the following indisputable facts from the federal court's public docket:

1. That the matter of *Rushing v. Wood Health Company, LLC and McGaw Medical Center of Northwestern University*, Case No. 3:24-cv-00845, United States District Northern District of Ohio Western Division, was dismissed without prejudice on 3.31.2025, pursuant to Fed. R. Civ. P. 12(b)(6);
2. That the dismissal was not an adjudication on the merits;
3. That no final judgement was entered within the meaning of Fed. R. Civ. P. 54(b) or 58; and
4. That the federal action involved different parties and different legal claims than those presently before this Court.

#### **IV. Legal Authority**

It is well established that res judicata and collateral estoppel require identity of parties, identity of causes of action, and a final judgement on the merits. See *Grava v. Parkman Twp.*, 73 Ohio St.3d379, 382 (1995)

A dismissal without prejudice does not constitute a decision on the merits and does not bar a subsequent proceeding. *Thomas v. Freeman*, 79 Ohio St.3d 221, 225(1997); *Tower City Properties v. Cuyahoga Cty. Bd. of Revision*, 49 Ohio St. 3d 67, 69 (1990).

Accordingly, any reference to the prior federal action as dispositive or determinative of this proceeding is **legally unfounded** and **improper** under Ohio Law.

#### **V. Request for Protective Order**

Plaintiff further requests a limited **protective order** directing that:

1. All references to the prior federal proceeding be **stricken from the record** in this matter;

2. Defendant and counsel be **precluded** from further reference to the federal matter in subsequent filings or hearings, absent prior leave of Court; and
3. The Court take **judicial notice** of the procedural status of the federal matter to prevent future misrepresentation or confusion.

## **VI. CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that this Honorable Court:

1. **Strike** all references to the federal proceeding from Defendant's Motion for Judgement on the Pleadings and any related memoranda;
2. Enter a **protective order** precluding further reference to the unrelated federal case;
3. **Take judicial notice** of the true procedural posture of the federal case as dismissed without prejudice and without adjudication on the merits; and
4. Grant such other and further relief as the Court deems just and proper.

## **VII. NOTICE OF RELATED PROCEEDINGS**

Plaintiff further provides notice to this Honorable Court that certain related matters are presently pending before higher and federal tribunals, which bear directly upon the propriety of Defendant's references to other judicial proceedings.

1. A Writ of Prohibition is pending before the 6<sup>th</sup> Appellate District Court of Appeals, seeking to prevent improper exercise of jurisdiction in connection with overlapping or conflicting rulings between state and federal tribunals.
2. A Petition for Injunctive Relief and Notice of Interference with a Federal Tribunal is pending before the United States District Court for the District of Minnesota, that involves to a limited extent the same federal matter cited by Defendant in its memorandum.

These related proceedings concern the limits of jurisdictional overlap and the preservation of the Plaintiff's right to fair and unbiased adjudication in both state and federal forums.

Accordingly, Plaintiff respectfully urges this Court to refrain from relying upon or referencing the cited federal opinion or any related proceeding that is currently under review or subject to federal injunctive relief, until such higher courts have rendered final determinations.

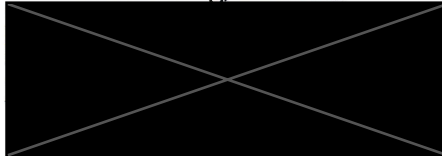
**WHEREFORE**, for the reasons stated above and in light of the related appellate and federal proceedings presently pending, Plaintiff respectfully requests that this Honorable Court strike the improper references, take judicial notice as requested, and enter the accompanying proposed protective order.

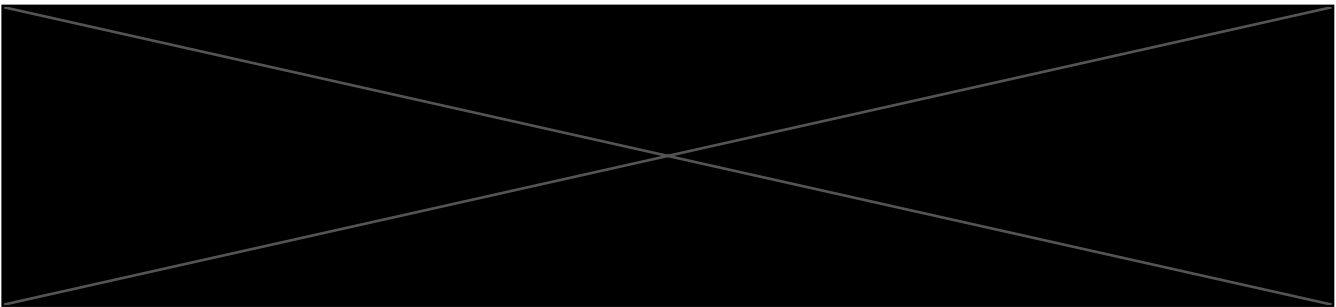
Respectfully Submitted,

10.14.25

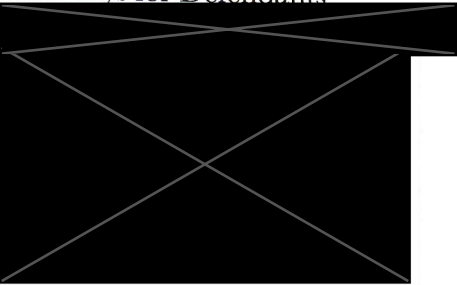
/s/ Marcus Rushing  
Plaintiff

Marcus Rushing, Plaintiff





Attorneys for Defendants



10.14.25

/s/ Marcus Rushing  
Plaintiff

Marcus Rushing, Plaintiff

