

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED
OCT 07 2024
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
TOLEDO

MARCUS RUSHING,

Plaintiff,

:

Case No.: 3:24-cv-00845-JJH

-vs-

:

District Judge Jeffrey J. Helmick
Magistrate Judge Darrell A. Clay

WOOD HEALTH COMPANY, LLC and
McGAW MEDICAL CENTER OF
NORTHWESTERN UNIVERSITY,

Defendant.

PLAINTIFF'S MOTION TO STRIKE DEFENDANT MCGAW'S REPLY BRIEF

Pursuant to Local Rule 7.1 (e) Reply Memorandum, as well as pursuant to an Order from the Honorable Court on Aug 12, 2024, the Plaintiff, Marcus Rushing (hereinafter referred to as "Plaintiff"), represented Pro Se, respectfully moves this Honorable Court for an Order striking Defendant McGAW's reply brief, states as follows:

1. On or around Oct 4, 2024, Defendant McGAW filed a "Reply in support of Motion to Dismiss for failure to state a claim with brief in support." See Exhibit.
2. Local Rule 7.1(e) indicates that a reply memorandum is subject first to the prior approval of the Judicial Officer.
3. A Judicial Officer provided instructions via an Order regarding this matter.
4. An Order from the Honorable Court with a file date of Aug 12, 2024 states, "Plaintiff's motion for an extension of time until September 20, 2024 to file any brief in opposition to Defendant Wood Health Company, LLC's Motion to dismiss is granted...After Plaintiff has filed any brief in opposition, Defendant Wood Health Company, LLC [not

McGAW] shall file any reply brief no later than October 11, 2024. Defendant Wood Health Company, LLC's reply brief will conclude briefing on this matter. Without leave of court, no sur-reply brief may be filed." See Exhibit.

5. Case law supports that parties should obtain leave before violating Local Rules and not "assum[e] the Court will rubber stamp...motions without allowing opposing counsel the opportunity to respond." See *Mri Software, LLC v. Lynx Sys.* No. 1:12CV1082. 2012 Lexis 13845699, (N.D. Ohio. May 31, 2012).
6. Further, "this Court's Rules...do not provide for the filing of a surreply brief except upon leave of court for good cause shown". See *Bartell v. LTF Club Operations Co.* No. 2:14-cv-00401. 2015 Lexis 49084, (S.D. Ohio, April 14, 2015). In that case, the Honorable Court granted a Motion to Strike because a brief filed without leave of court is a violation of Federal Rules of Civil Procedure and this Court's Rules. *Id.*
7. The Plaintiff presumes that the Honorable Court did not abuse its discretion in issuing the aforementioned Briefing Schedule. Further, the Plaintiff maintains that if a Defendant has additional facts or wishes to cite law in addition to their original brief, then perhaps they are conceding that an evidentiary hearing or trial is warranted.
8. Uniform adherence to the rules of the court ensures that no one party has an unequitable advantage in a court of law. All parties, whether a billion-dollar institution, represented by a multi-million-dollar law firm, or an ordinary American citizen, represented pro se, should have equal access to justice in a court of law.

WHEREFORE, the Plaintiff, Marcus Rushing, represented pro se, respectfully requests the following relief:

1. An Order striking Defendant McGAW's Reply Brief.

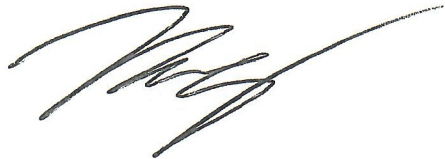
Respectfully submitted,
/s/Marcus Rushing
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Pro Se Litigant

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CERTIFICATION OF SERVICE

I hereby certify that, on Oct 7, 2024, a true copy of the above document was submitted to the Clerk for the Northern District of Ohio for filing and serving all counsel of record.

/s/Marcus Rushing
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Pro Se Plaintiff

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