

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN DOE and JANE DOE, :
individually and as the Natural Parents :
and Next Friends of Their Minor Child, : CASE NO. 08-CV-575
JAMES DOE, : JUDGE FROST
:
Plaintiffs, : MAGISTRATE JUDGE KING
:
v. :
:
MOUNT VERNON CITY SCHOOL :
DISTRICT BOARD OF :
EDUCATION, ET AL. :
:
:
Defendants. :

DEFENDANT/COUNTERCLAIMANT JOHN FRESHWATER'S RESPONSE TO
PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Defendant/Counterclaimant John Freshwater, in his personal capacity, by and through counsel, states his responses and objections to Plaintiff's Request for Production of Documents. .

GENERAL OBJECTIONS

I. Defendant/Counterclaimant John Freshwater, in his personal capacity, objects to the Request for Production of Documents to the extent the request requires information reflecting conduct or circumstances prior to the 2007-2008 school year of the Mount Vernon City School District. Plaintiff has alleged the first cause of action accrued on December 6, 2007, and that Freshwater's conduct was violative through the remainder of the school year. Therefore, any



production of documents requesting information regarding conduct or circumstances prior to December 6, 2007, or after June 1, 2008, seek information that is irrelevant and such requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in determining whether or not Freshwater's conduct was violative.

2. Defendant/Counterclaimant John Freshwater, in his personal capacity, objects to the Request for Production of Documents, and any implied or express instruction or direction in the request, that impose or seeks to impose burdens greater than those imposed by the Federal Rules of Civil Procedure.

3. Defendant/Counterclaimant John Freshwater, in his personal capacity, objects to the Request for Production of Documents to the extent they seek disclosure of information protected under the attorney-client privilege, the work-product doctrine, or any other applicable privilege or immunity.

4. Defendant/Counterclaimant John Freshwater, in his personal capacity, objects to the Request for Production of Documents to the extent they are overly broad, unduly burdensome, or not reasonably calculated to lead to the discovery of admissible evidence.

5. Defendant/Counterclaimant John Freshwater, in his personal capacity, reserves all objections as to the competence, relevance, materiality, admissibility, or privileged status of any information provided in response to these Request for Production of Documents, unless specifically stated otherwise.

6. The following responses and objections are based upon information now known by Defendant/Counterclaimant John Freshwater, in his personal capacity, who has not yet completed discovery or preparation for trial in this action and therefore will supplement these responses and objections to the extent required by these Rules of Civil Procedure.

RESPONSES AND OBJECTIONS

1. All statements, whether in writing or tape-recorded, taken of any employee or agent of Plaintiffs.

RESPONSE: Objection. The requested materials are protected by the attorney-work-product privilege.

Without waiving this objection, Defendant/Counterclaimant responds that he does have knowledge of his legal counsel having obtained information that is recorded in various forms. Also, I did record the interview with the investigator and gave a copy to Bill White. I cannot find my copy.


R. Kelly Hamilton

2. All statements, whether in writing or tape-recorded, taken of any witness.

RESPONSE: Objection. The requested materials are protected by the attorney-work-product privilege.


Without waiving this objection, Defendant/Counterclaimant responds that he does have knowledge of his legal counsel having obtained information that is recorded in various forms. Also, I did record the interview with the investigator and gave a copy to Bill White. I cannot find my copy.


R. Kelly Hamilton

3. Copies of your federal and state income tax returns filed for years 2001-2005, inclusive, plus any wage information detailing any income received for 2006.

RESPONSE: Objection. The request is so overly broad as to imply Defendant/Counterclaimant Freshwater did or should have maintained documentation to support any answer he may provide.


Without waiving this objection, Defendant/Counterclaimant responds he will locate or order from the governing authority his last three (3) years of tax information and provide.


R. Kelly Hamilton

4. All documents and any other item that you expect or intend to produce or offer as either an exhibit or as evidence at trial.

RESPONSE: Objection. The requested materials are protected by the attorney-work-product privilege.

Without waiving this objection, Defendant/Counterclaimant responds that he and his counsel are developing/discovering information which will lead to the determination of any proposed, intended exhibit or evidence. Further, all items introduced at the state administrative hearing are subject to consideration for introduction in this matter.


R. Kelly Hamilton

5. The recording you made of your statement provided to HR On Call pursuant to the investigation conducted by the Mount Vernon City School District.

RESPONSE: See response to request #1.

6. All recordings, statements, e-mail, publications, or any other document or recording which you claim is evidence of the defamation claims you have brought against Plaintiffs.

RESPONSE: See answer to Interrogatory #4

7. Every document, thing, or e-mail you removed from your eighth grade science classroom from April 1, 2008 to the present.

RESPONSE: See answer to Interrogatory #6

8. All notes kept by you regarding the teachings you provided to your eighth grade science classes for the past ten years, whether those notes were kept on paper, e-mail, or other source.

RESPONSE: Objection. The request is both unduly burdensome and is so overly broad as to imply Defendant/Counterclaimant Freshwater did or should have maintained documentation to support any answer he may provide.

Without waiving this objection, Defendant/Counterclaimant responds he provided copies of lesson plans as required and the same are public records available as maintained by the public entity. I was not able to go back to my classroom to retrieve documents so I do not have access to these materials.


R. Kelly Hamilton


9. If you have destroyed any notes with regard to the above interrogatory, a description of what was destroyed.

RESPONSE: Defendant/Counterclaimant Freshwater states he does not know nor kept a record of anything that was destroyed or that he may have destroyed.

10. Every handout that you provided to students in your eighth grade science class for the past ten years which was not created by the authors of the approved textbook.

RESPONSE: Objection. The request is so overly broad as to imply Defendant/Counterclaimant Freshwater did or should have maintained documentation to support any answer he may provide.

Without waiving this objection, Defendant/Counterclaimant responds he will continue to attempt to locate any form of the described documents.


R. Kelly Hamilton

11. Copies of all religious materials you had posted in your eighth grade science classroom at Mount Vernon Middle School at any time over the past ten years.

RESPONSE: Objection. The request is so overly broad as to imply Defendant/Counterclaimant Freshwater did or should have maintained documentation to support any answer he may provide. Further, the characterization of "religious" is not specifically defined.

Without waiving this objection, Defendant/Counterclaimant responds the only item described to him as "religious" which was removed were the bookcovers used to cover the glass window in the classroom door. The bookcovers were removed and discarded with no copy being kept.


R. Kelly Hamilton

12. All instructions, directions, or warnings regarding the use of the Tesla coil type device which you used in your eighth grade science classroom.

RESPONSE: Defendant/Counterclaimant Freshwater asserts he never has received any such document.

13. All instructions, directions or warnings regarding the curriculum you used to teach your eighth grade science classes using the Tesla coil.

RESPONSE: Defendant/Counterclaimant Freshwater asserts he never has received any such document.


14. One of the Bibles which you kept in a box in your classroom.

RESPONSE: Objection. The form of the requests implies Defendant/Counterclaimant Freshwater maintained the Bibles in his classroom.

Without waiving this objection, Defendant/Counterclaimant responds he does not have such a document.


R. Kelly Hamilton

Respectfully submitted,



s/ R. Kelly Hamilton

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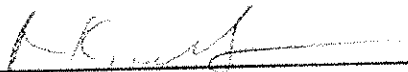
CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2008 a copy of the foregoing was served to the following counsel via electronic mail and ordinary U.S. mail.

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MOUNT VERNON CITY SCHOOL :
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Defendants. :

DEFENDANT/COUNTERCLAIMANT JOHN FRESHWATER'S RESPONSE TO
PLAINTIFFS' FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Defendant/Counterclaimant John Freshwater, in his personal capacity, by and through counsel, states his responses and objections to Plaintiff's First Set of Interrogatories.

GENERAL OBJECTIONS

1. Defendant/Counterclaimant John Freshwater, in his personal capacity, objects to the Interrogatories to the extent the Interrogatories require information reflecting conduct or circumstances prior to the 2007-2008 school year of the Mount Vernon City School District. Plaintiff has alleged the first cause of action accrued on December 6, 2007, and that Freshwater's conduct was violative through the remainder of the school year. Therefore, Interrogatories

requesting information regarding conduct or circumstances prior to December 6, 2007, or after June 1, 2008, seek information that is irrelevant and such Interrogatories are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in determining whether or not Freshwater's conduct was violative.

2. Defendant/Counterclaimant John Freshwater, in his personal capacity, objects to the Interrogatories, and any implied or express instruction or direction in the Interrogatories that impose or seeks to impose burdens greater than those imposed by the Federal Rules of Civil Procedure.

3. Defendant/Counterclaimant John Freshwater, in his personal capacity, objects to the Interrogatories to the extent they seek disclosure of information protected under the attorney-client privilege, the work-product doctrine, or any other applicable privilege or immunity.

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5. Defendant/Counterclaimant John Freshwater, in his personal capacity, reserves all objections as to the competence, relevance, materiality, admissibility, or privileged status of any information provided in response to these Interrogatories, unless specifically stated otherwise.

6. The following responses and objections are based upon information now known by Defendant/Counterclaimant John Freshwater, in his personal capacity, who has not yet completed discovery or preparation for trial in this action and therefore will supplement these responses and objections to the extent required by these Rules of Civil Procedure.

RESPONSES AND OBJECTIONS

1. State your full name, your present residence and business address, your date and place of birth, and social security number.

ANSWER: John David Freshwater, 7760 New Delaware Road, Mount Vernon, Ohio 43050;
June 22, 1956; Dover, Ohio; 298522052

2. State the full name, last known address, telephone number, and occupation of each person whom you intend to call as a witness, both lay and expert, at the trial of this lawsuit, and state the general nature and subject matter of each such person's testimony. For each expert witness identified, describe his or her qualifications, opinions, conclusions and basis therefore. (This is a continuing interrogatory requiring supplementation of response under Civil Rule 26.)

ANSWER: See attached document #1 comprising the subpoena list submitted by Defendant/Counterclaimant John Freshwater, in his personal capacity, in the state hearing. There are additional as of yet unidentified students expected to be named in addition to the identification of various expert witnesses.

3. State the full name, last known address, and telephone number of each person whom has any knowledge or information regarding any of Plaintiffs' claims as alleged in the First Amended Complaint or any of the allegations set forth in your Counterclaim.

ANSWER: See response to Interrogatory #2 above. There are additional as of yet unidentified students expected to be named in addition to other persons who will be identified as discovery continues.

4. Identify each and every statement which you claim Plaintiffs made to defame you, as alleged in your Counterclaim.

ANSWER: Defamatory statements have been made, communicated and published in the investigative report compiled by HR On Call, various newspapers including the Columbus Dispatch and Mount Vernon News and by the testimony of plaintiff's during the state hearing.

5. For each statement identified above, indicate where the statement was published or to whom it was spoken.

ANSWER: See response to Interrogatory #4 above.

6. Identify and describe each and every document or thing you took out of your classroom at the Mount Vernon Middle School after April 1, 2008, indicating the date upon which each item was removed.

ANSWER: Objection. The Interrogatory is so overly broad as to imply Defendant/Counterclaimant Freshwater did or should have maintained documentation to support any answer he may provide.

Without waiving this objection, Defendant/Counterclaimant responds that he does not specifically recall removing anything from the classroom other than items that were routinely removed such as personal items or items brought to and removed from the classroom on a daily or routine basis.


R. Kelly Hamilton

7. Identify each and every handout you have provided to your eighth grade science class over the past five years which was provided to the students in class but you required that the students return to you and not take home.

ANSWER: Objection. The Interrogatory is argumentative and speculative.

Without waiving this objection, Defendant/Counterclaimant responds that he does not specifically recall that he "required" any student to return any handout.


R. Kelly Hamilton

8. Describe the make and model identification of the device which you applied to Zach Dennis on December 6, 2007.

ANSWER: Electro-Technic Products Model BD-10A.

9. With regard to the device you identified in the above interrogatory, provide the names of each and every student for which you have applied a "Tesla coil" type advice to their person in all of your years at Mount Vernon Middle School.

ANSWER: Objection. The Interrogatory is so overly broad as to imply Defendant/Counterclaimant Freshwater did or should have maintained documentation to support any answer he may provide.

Without waiving this objection, Defendant/Counterclaimant responds that he does not specifically recall the name of all the students who participated in the science experiment through his "years at Mount Vernon Middle School". If asked about a specific student, Defendant/Counterclaimant maintains he may remember their participation in the science experiment.


R. Kelly Hamilton

10. State whether you have ever been a plaintiff or defendant in any civil action, other than this one. If so, please identify the case name, case number, county and state in which it was filed, and the substantive claims for relief.

ANSWER: I have not.

11. If you have obtained a written, oral, or tape-recorded statement from any Plaintiff, defendant, or witness regarding the facts at issue in this case, please state the full name, business and residence address, and telephone number of the persons taking the statement and whose statement was taken, along with the date, time, and location of same; its form (affidavit, tape, etc.); and the full name, business and residence address, and telephone number of every person who currently has possession, custody, or control of each such statement.

ANSWER: Objection. The Interrogatory requests materials protected by the attorney-work-product privilege.

Without waiving this objection, Defendant/Counterclaimant responds that he does have knowledge of his legal counsel having obtained information that is recorded in various forms. Also, I did record the interview with the investigator and gave a copy to Bill White. I cannot find my copy.


R. Kelly Hamilton

12. Identify every individual with whom you have spoken regarding the facts and allegations set forth in Plaintiffs' First Amended Complaint and regarding your Counterclaim.

ANSWER: Objection. The Interrogatory is so overly broad as to imply Defendant/Counterclaimant Freshwater did or should have maintained documentation to support any answer he may provide.

Without waiving this objection, Defendant/Counterclaimant responds he has spoken to many people to include the following: R. Kelly Hamilton, Robert Stoffers, Jason Deschler, Bill Kepko, Sherrie Phillips, Roger Weaver, Tom Collier, Don Matolyak, Steve Thompson, Andrew Thompson, Lori Miller, Wes Elifritz, Deb Strouse, many school teachers, HR On Call investigators, my family, my friends, acquaintances and others.


R. Kelly Hamilton

13. Provide the identity and address of all of your current employers.

ANSWER: Mount Vernon City Schools and myself.

14. Identify each and every reason for which you believe that your actions which have now been challenged by the Mount Vernon City School District in termination proceedings were ratified or approved by the administration.

ANSWER: Objection. The Interrogatory requires legal analysis and conclusion.

Without waiving this objection, Defendant/Counterclaimant responds that he does not understand the question.


R. Kelly Hamilton

15. State the purpose for which you directed _____ to go to www.answersingenesis.com as a part of your eighth grade science lecture.

ANSWER: Objection. The characterization of "directed" is not specifically defined. Without waiving this objection, I do not recall doing so.

Respectfully submitted,


s/ R. Kelly Hamilton

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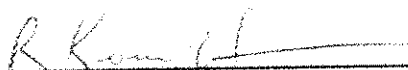
CERTIFICATE OF SERVICE

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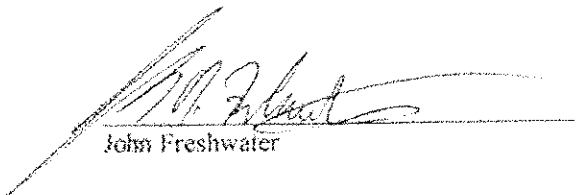
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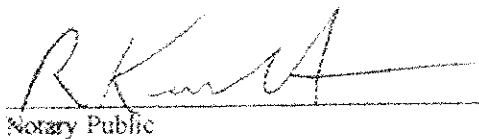
VERIFICATION

I swear that the answers to the foregoing interrogatories are true to the best of my belief and knowledge.


John Freshwater

Sworn to before me and subscribed in my presence this 27 day of December

2008.


Notary Public



R. KELLY HAMERTON, ATTORNEY AT LAW
Notary Public
Bond for the State of Ohio
My Commission Expires No Expiration Date
Section 147.03 R.C.