

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

LEONARD POZNER,  
Plaintiff

vs.

Case No. 18CV3122

JAMES FETZER,  
MIKE PALECEK,  
WRONGS WITHOUT WREMEDIES, LLC,  
Defendants.

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NOTICE OF MOTION AND MOTION TO STRIKE DEFENDANT FETZER'S  
ANSWER

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PLEASE TAKE NOTICE that Plaintiff, by Plaintiff's undersigned counsel, will appear before the Dane County Circuit Court, the Honorable Frank Remington presiding, at a date and time to be determined by the Court, and move to strike the answer filed by Defendant James Fetzer pursuant to Wis. Stat. § 802.06(6) and, in addition, the allegations of fraud pursuant to Wis. Stat. § 802.03(2).

**INTRODUCTION**

Plaintiff moves to strike Defendant Fetzer's purported "Answer" because it fails to meet the basic requirements of Wis. Stat. § 802.02.

Plaintiff's Complaint included fifty-one numbered paragraphs containing the averments giving rise to Plaintiff's claims. Rather than admitting or denying those simple, concise averments, Defendant Fetzer served a rambling missive rehashing his contention that the Sandy Hook Elementary School shooting was a government conspiracy and that no one, including Plaintiff's son, actually died. Because that submission does not fairly meet the substance of Plaintiff's averments, Plaintiff

hereby moves this Honorable Court for an Order striking the Answer pursuant to Wis. Stat. § 802.06(6).

In addition, Defendant Fetzer now baselessly asserts that the State of Connecticut issued a counterfeit death certificate. To the extent Defendant Fetzer is accusing Plaintiff and/or the State of Connecticut of committing fraud, he has failed to plead that allegation with the required degree of particularity. Plaintiff requests that those allegations be stricken.

Plaintiff respectfully requests that the Court grant Defendant Fetzer an appropriate period of time to submit a compliant answer.

### **BACKGROUND**

This is a defamation case. Plaintiff Leonard Pozner is the father of Noah Pozner. Noah was six years old when he was murdered by Adam Lanza during the 2012 mass shooting at Sandy Hook Elementary in Newtown, Connecticut.

Shortly after the shooting, conspiracy theorists began to assert that the Sandy Hook shooting was an elaborate government plot and that no one actually died at the school. Plaintiff, along with his family, was the target of many false assertions, some of which are now the subject of litigation pending in this and other jurisdictions.

One oft-repeated claim spouted by the hoaxers was that Noah Pozner did not die at Sandy Hook. Eventually, in an attempt to put to rest that highly-offensive falsehood, among others, Plaintiff posted his son's certified death certificate to a social media site Plaintiff maintains honoring the memory of his deceased son.

Faced with incontrovertible proof that Noah Pozner was a real person who died in a real tragedy, Defendant Fetzer doubled-down on his attacks, publishing the statements set forth in Plaintiff's complaint that accuse Plaintiff of circulating a counterfeit death certificate. It is that single, exceedingly narrow defamatory accusation that forms the basis of this case.

Given his "Answer", it seems clear that Defendant Fetzer wants to use this litigation as a platform to litigate his broader theory that the Sandy Hook tragedy never happened. To that end, Defendant Fetzer's Answer does not respond to the straightforward averments in Plaintiff's Complaint. Instead, it rehashes irrelevant and farfetched theories about the underlying Sandy Hook tragedy. Despite Defendant's desire to litigate Sandy Hook, this is not that case.

Counsel for Plaintiff contacted Defendant Fetzer shortly after the "Answer" was served and identified these deficiencies. *See* Declaration of Jacob Zimmerman at ¶ 2. Plaintiff's counsel offered Defendant Fetzer additional time to submit a compliant Answer. *Id.* Defendant Fetzer has refused to do so. Plaintiff respectfully moves this Court for an Order striking the "Answer" and providing Defendant a reasonable deadline to submit a compliant responsive pleading.

### **ARGUMENT**

#### **A. Procedural Rules Apply to *Pro Se* Litigants**

At the outset, Plaintiff notes that Defendant has elected to represent himself. However, "[t]he right to self-representation is '[not] a license not to comply with relevant rules of procedural and substantive law.'" *Waushara County v. Graf*, 480 N.W.2d 16, 20 (Wis. 1992) (brackets in *Waushara*), quoting *Farretta v. California*,

422 U.S. 806, 834 n. 46 (1975). Plaintiff acknowledges that the Court has discretion to accord a *pro se* litigant appropriate latitude. But that does not mean Defendant Fetzer can avoid the basic rules governing pleadings.

The requirement that *pro se* litigants be held to procedural rules applies here with full force. While the Answer implies that Defendants simply have not had time to locate counsel, that is belied by the pre-suit history. This case was not a surprise. Plaintiff's counsel sent a letter to each Defendant in October of 2018 requesting a full retraction of the defamatory material. *See Zimmerman Aff.* at ¶ 4, Ex. 1. Defendant Fetzer has publicly invited Plaintiff to sue him.<sup>1</sup> Likewise, he attempted to inject himself via a purported *amicus* filing into case filed in Texas state court by Plaintiff and other parents of Sandy Hook victims against other defendants. *See Zimmerman Aff.* at ¶ 5, Ex. 2.

Moreover, Defendant Fetzer consulted with counsel in preparing his answer. Defendant Fetzer's Answer states that the document was prepared with the assistance of counsel.<sup>2</sup> *See Answer by Defendant James Fetzer*, filed January 4, 2019 ("Fetzer Answer"), at ¶ 1. In short, to the extent any leeway is granted to Defendant Fetzer as a *pro se* defendant, it should be modest.

#### **B. Defendant Fetzer's "Answer" Fails Basic Pleading Requirements**

Wisconsin's rules of civil procedure include basic pleading requirements. A Defendant's Answer must "admit or deny the averments" set forth in Plaintiff's Complaint. *See Wis. Stat. § 802.02(2)*. Denials must be directed to "designated

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<sup>1</sup> *See* <https://www.patreon.com/posts/sandy-hook-free-18249347>

<sup>2</sup> Counsel was not identified as required by Wis. Stat. § 802.05(2m)

averments or paragraphs.” *Id.* Defendant Fetzzer’s purported Answer falls short of the statutory requirements because it does not admit or deny Plaintiff’s averments.

The requirements for an Answer are not mere formalities. Requiring the Defendant to admit or deny Plaintiff’s averments ensures that the boundaries of the case is defined. “The purpose of pleadings is to notify the opposing party of the pleader’s position in the case *and to frame the issues to be resolved in the action for the benefit of the litigants and the court.*” *Hansher v. Kaishian*, 255 N.W.2d 564, 570 (Wis. 1977) (emphasis added). Ensuring the issues in dispute are properly framed is especially important in a case like this, where the Defendant is attempting to muddy this litigation with a legally-insufficient defense based on a conspiracy theory of potentially limitless scope.

Properly focusing the issues is particularly important in light of the proportionality requirement in Wis. Stat. § 801.02(2)(a) and (am). The proportionality rule evaluates discovery requests in light of the “claims and defenses at issue....” Inherent in that analysis is that the “defenses” be legitimate defenses, not “insufficient” or “immaterial” defenses subject to exclusion under Wis. Stat. § 802.6(6). Properly defining the scope of the case early will save the parties and the Court time down the road.

Plaintiff asserted a narrow claim for defamation solely on Defendant’s assertion that Plaintiff circulated a fake death certificate. This case is not about the condition of Sandy Hook elementary school. (Answer at 15). It is not a case about the presence or absence of handicapped parking spots in the Sandy Hook

Elementary School parking lot. (Answer at 16). It is not a case about steam or heat rising from the roof of the school building. (Answer at 17). It is not a case about a medical examiner's compliance with applicable medical protocols. (Answer at 24). Those averments are not counterclaims, legally-recognizable defenses, or meaningful responses to Plaintiff's assertions. They are, using the language of Wis. Stat. § 802.06(6), insufficient and immaterial. They are utterly irrelevant, from a legal perspective, to the question of whether Noah Pozner's death certificate is a counterfeit.

Crystallizing the scope of this case is also important to streamline the litigation. The set of disputed, material facts related to the narrow claim of defamation should be minimal, if any. Holding Defendant to the requirement that his answer clearly and unequivocally admit or deny Plaintiffs averments will focus the factual issues in dispute and avoid unnecessary and harassing discovery.

### **C. Allegation of Fraud**

Plaintiff attached to the Complaint a certified copy of Noah Pozner's death certificate bearing the seal of the State of Connecticut. Faced with what is unquestionably a *bona fide*, authentic record duly issued by a state agency, Defendant now speculates that the State of Connecticut is, perhaps along with Plaintiff, part of the conspiracy. *See* Defendant Fetzer's Answer at ¶¶14-15.

Wisconsin law requires fraud to be stated with particularity. *See* Wis. Stat. § 802.03(2). Such allegations must specify "the particular individuals who made the representations [and] the details of where and when the misrepresentations were made, and who the misrepresentations were made to." *Doe v. Archdiocese of*

*Milwaukee*, 700 N.W.2d 180, 194 (Wis., 2005). “Particularity means the ‘who, what, when, where and how,’” and the pleading party must specify “the time, place, and content of an alleged ... misrepresentation.” *Friends of Kenwood v. Green*, 619 N.W.2d 271, 276 (Wis. Ct. App 2000) (internal citations omitted).

Here, Defendant Fetzer offered no information other than the bare (and baseless) allegation that the State of Connecticut is actively engaged in an alleged conspiracy. That allegation is insufficient as a matter of law and should be stricken.

### CONCLUSION

Plaintiff respectfully moves this Court for an Order striking Defendant Fetzer’s flawed Answer and order that a compliant Answer be filed within 14 days.

Dated: February 18, 2019

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