

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Michelle Semelbauer, Paulette Bosch, Denise Vos, Crisa Brown, Latrece Baker, Tammy Speers, Londora Kitchens, Stashia Collins, Andrea Dorn, Judy Pauley, and Delilah Wickliffe, individually and on behalf of all similarly situated persons,

Plaintiffs,

vs.

Muskegon County, a municipal corporation; Dean Roesler, in his official capacity as Muskegon County Sheriff; Lt. Mark Burns, in his official capacity as Jail Administrator; Correctional Officers Ivan Morris, Grieves, DeYoung, and David Gutowski, in their individual capacities; and unknown correctional officers, in their individual capacities

Defendants.

Case No. 1:14-cv-01245-JTN

HON. JANET T. NEFF

**DEFENDANTS' MOTION  
TO STRIKE**

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American Civil Liberties Union Fund of MI  
Miriam J. Aukerman (P63165)  
Marc S. Allen (NY 5230008)  
1514 Wealthy Street SE-Suite 242  
Grand Rapids MI 49506  
616-301-0930  
[maukerman@aclumich.org](mailto:maukerman@aclumich.org)

Sofia V. Nelson (P77960)  
Daniel S. Korobkin (P72842)  
Michael J. Steinberg (P43085)  
Kary L. Moss (P49759)  
2966 Woodward Avenue  
Detroit MI 48201  
313-578-6800  
[snelson@aclumich.org](mailto:snelson@aclumich.org)

Pitt, McGehee, Palmer & Rivers, P.C.  
Michael L. Pitt (P24429)  
Beth M. Rivers (P33614)

---

Allan C. Vander Laan (P33893)  
Andrew J. Brege (P71474)  
CUMMINGS, MCCLOREY, DAVIS & ACHO  
Attorneys for Defendants  
2851 Charlevoix Dr., S.E. - Suite 327  
Grand Rapids MI 49546  
616-975-7470  
[avanderlaan@cmda-law.com](mailto:avanderlaan@cmda-law.com)  
[abrege@cmda-law.com](mailto:abrege@cmda-law.com)

Douglas M. Hughes (P30958)  
Williams Hughes PLLC  
120 W Apple Ave  
PO Box 599  
Muskegon, MI 49443  
Phone: (231) 727-2119  
Fax: (231) 727-2130  
e-Mail: las  
[doughughes@williamshugheslaw.com](mailto:doughughes@williamshugheslaw.com)

Kevin M. Carlson (P67704)  
Andrea J. Johnson (P74596)  
Cooperating Attorneys, American Civil  
Liberties Union Fund of MI  
117 West Fourth Street-Suite 200  
Royal Oak MI 48067  
248-398-9800  
[mpitt@pittlawpc.com](mailto:mpitt@pittlawpc.com)  
[brivers@pittlawpc.com](mailto:brivers@pittlawpc.com)  
[kcarlson@pittlawpc.com](mailto:kcarlson@pittlawpc.com)  
[ajohnson@pitrllawpc.com](mailto:ajohnson@pitrllawpc.com)

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### **DEFENDANTS' MOTION TO STRIKE**

Defendants, through their counsel, move to strike Plaintiff's First Amended Complaint for the following reasons:

1. Plaintiffs filed their first amended complaint on February 6, 2015.
2. Plaintiffs did not seek leave to file the amended complaint. Therefore, Defendants assume Plaintiffs filed the complaint pursuant to Fed. R. Civ. P. 15(a).
3. In Plaintiffs' amended complaint, they do not substantially alter or change any of the factual or legal allegations. Rather, Plaintiffs seek only to add three additional Plaintiffs.
4. Fed. R. Civ. P. 15 is not the proper rule upon which Plaintiffs may add or otherwise alter the parties.
5. Fed. R. Civ. P. 21 provides that the Court may, on motion, add parties. No motion under Rule 21 was filed by the current Plaintiffs.
6. Fed. R. Civ. P. 24 provides that the Court may, on timely motion, permit parties to intervene. No motion under Rule 24 was filed by the proposed new plaintiffs.
7. Defendants requested concurrence in this motion, and the same was denied.

Wherefore, Defendants request the Court strike Plaintiffs' First Amended Complaint, at least with regard to the Plaintiffs' attempts to add parties, as such was done without authority or leave of the Court.

Respectfully submitted,

CUMMINGS, McCLOREY, DAVIS & ACHO, P.L.C.

/s/ Andrew J. Brege

Allan C. Vander Laan (P33893)

Andrew J. Brege (P71474)

Attorneys for Defendants

Cummings, McClorey, Davis & Acho. P.L.C.

2851 Charlevoix Drive, SE, Ste. 327

Grand Rapids, MI 49546

616/975-7470

E-mail: [avanderlaan@cmda-law.com](mailto:avanderlaan@cmda-law.com)

[abrege@cmda-law.com](mailto:abrege@cmda-law.com)

Dated: February 11, 2015

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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**BRIEF IN SUPPORT OF  
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American Civil Liberties Union Fund of MI  
Miriam J. Aukerman (P63165)  
Marc S. Allen (NY 5230008)  
1514 Wealthy Street SE-Suite 242  
Grand Rapids MI 49506  
616-301-0930  
[maukerman@aclumich.org](mailto:maukerman@aclumich.org)

Sofia V. Nelson (P77960)  
Daniel S. Korobkin (P72842)  
Michael J. Steinberg (P43085)  
Kary L. Moss (P49759)  
2966 Woodward Avenue  
Detroit MI 48201  
313-578-6800  
[snelson@aclumich.org](mailto:snelson@aclumich.org)

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Allan C. Vander Laan (P33893)  
Andrew J. Brege (P71474)  
CUMMINGS, MCCLOREY, DAVIS & ACHO  
Attorneys for Defendants  
2851 Charlevoix Dr., S.E. - Suite 327  
Grand Rapids MI 49546  
616-975-7470  
[avanderlaan@cmda-law.com](mailto:avanderlaan@cmda-law.com)  
[abrege@cmda-law.com](mailto:abrege@cmda-law.com)

Douglas M. Hughes (P30958)  
Williams Hughes PLLC  
120 W Apple Ave  
PO Box 599  
Muskegon, MI 49443  
Phone: (231) 727-2119  
Fax: (231) 727-2130  
e-Mail: las  
[doughughes@williamshugheslaw.com](mailto:doughughes@williamshugheslaw.com)

Kevin M. Carlson (P67704)  
Andrea J. Johnson (P74596)  
Cooperating Attorneys, American Civil  
Liberties Union Fund of MI  
117 West Fourth Street-Suite 200  
Royal Oak MI 48067  
248-398-9800  
[mpitt@pittlawpc.com](mailto:mpitt@pittlawpc.com)  
[brivers@pittlawpc.com](mailto:brivers@pittlawpc.com)  
[kcarlson@pittlawpc.com](mailto:kcarlson@pittlawpc.com)  
[ajohnson@pitrllawpc.com](mailto:ajohnson@pitrllawpc.com)

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### **BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO STRIKE**

On December 4, 2014, Plaintiffs Michelle Semelbauer, Paulette Bosch, Denise Vos, Crisa Brown, Latrece Baker, Tammy Speers, Londora Kitches, and Stashia Collins filed the present action alleging they have suffered from allegedly unconstitutional conditions of confinement at the Muskegon County Jail. At the time, all Plaintiffs except Stashia Collins, were former inmates or pretrial detainees of the Muskegon County Jail. Ms. Collins was a current inmate, but has since been released. Their lawsuit requests class certification, damages, and injunctive relief against Muskegon County, the Sheriff, Jail Administrator and several officers. Plaintiffs also filed motions for class certification and injunctive relief.

On February 2, 2015, Defendants filed their responses to Plaintiffs' motion for preliminary injunction and motion for class certification. Because none of the Plaintiffs were current inmates in the Muskegon County Jail, none had standing to pursue injunctive relief or could adequately represent the purported injunctive classes. It seems that in response to this significant procedural defect in their case, Plaintiffs filed their amended complaint adding three inmates they claim to be currently housed in the jail. Plaintiffs' amended complaint must be stricken because they do not have authority

to add plaintiffs on their own without seeking leave, and have not filed a motion to add parties.

Fed.R.Civ.P. 21 states that, “[o]n motion or on its own, the court may at any time, on just terms, add or drop a party.” The Sixth Circuit has yet to decide whether Rule 21 or Rule 15 control when an amendment seeks to add parties to a lawsuit. ***Broyles v. Corr. Med. Servs.***, No. 08–1638, 2009 WL 3154241 (6th Cir., Jan. 23, 2009); see also ***Dura Global Technologies, Inc. v. Magna Donnelly Corp.***, No. 07–10945, 2011 WL 4532875 at \*2 (E.D. Mich. Sept. 30, 2011) (holding that while Rule 20 governs joinder, Rules 15 and 21 governs amendment of the pleadings even when amendment seeks to join parties, which requires leave of the court); ***Keller v. University of Michigan***, 411 F.Supp. 1055 (E.D. Mich. 1974) (holding that a party could not avoid the joinder requirement by filing an amended complaint under Fed. R. Civ. P 15(a)). Where a party seeks leave, the standard is the same under each rule. “Rules 15 and 21 allow amendment of pleadings ‘when justice so requires’ and ‘on just terms.’” ***Kunin v. Costco Wholesale Corp.***, No. 10–11456, 2011 WL 6090132, at \*2 (E.D. Mich., Dec. 7, 2011) (citing Fed. R. Civ. P. 15 and 21). The cases that have allowed a plaintiff to add parties when filing an amended complaint once as a matter of course have only allowed the addition of defendants. See ***Broyles***, *supra*.

This procedural posture of this case is not the same as that in ***Broyles***, where the Court held that the party had an absolute right to amend once as a matter of course to add defendants when no responsive pleadings had been filed. Here, Defendants have already responded to Plaintiff’s substantive allegations in their responses to the motion for preliminary injunction and for class certification. (See **Dkt Nos. 14 & 15**,

respectively) While Defendants have not yet filed their answer to the original complaint, the substance of their response is clearly known to Plaintiffs through Defendants' responses to their motions. While the Sixth Circuit has yet to decide whether Rule 21 or 15 governs adding parties to an amended complaint, it is clear that given the position of this case, Plaintiffs should have sought leave, regardless of the rule. Plaintiffs did not, however, and therefore, the amended complaint should be stricken.

WHEREFORE, Defendants respectfully request this Court enter an order striking Plaintiff's Amended Complaint.

Respectfully submitted,

CUMMINGS, McCLOREY, DAVIS & ACHO, P.L.C.

/s/ Andrew J. Brege  
Allan C. Vander Laan (P33893)  
Andrew J. Brege (P71474)  
Attorneys for Defendants  
Cummings, McClorey, Davis & Acho. P.L.C.  
2851 Charlevoix Drive, SE, Ste. 327  
Grand Rapids, MI 49546  
616/975-7470  
E-mail: avanderlaan@cmda-law.com  
abrege@cmda-law.com

Dated: February 11, 2015