STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

OUTBREAK CUSTOMZ, LLC, a
Michigan limited liability company;
and TODD FUHR,

Plaintiffs,

Case No. 15-04840-CKB

vs.

HON. CHRISTOPHER P. YATES

ALEXANDER JAMES WRAY,

Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

In William Shakespeare's *Hamlet*, Polonius observed that "brevity is the soul of wit." Perhaps inspired by the Bard's admonition, Defendant Alexander "AJ" Wray filed a one-page document styled as a "Motion for Summary Disposition" after the close of discovery. To be sure, the Court is heartened by anything concise that is filed in the Specialized Business Docket, which could generate an enormous amount of revenue for Kent County simply by charging filing fees based on the raw tonnage of briefs. But Defendant Wray's effort to obtain summary disposition with such a terse submission stretches the concept of brevity beyond the breaking point. Therefore, although the Court certainly subscribes to the notion that brevity is the soul of legal argument, the Court must deny the motion in this case and set the matter for trial.

As an initial matter, Defendant Wray has not even cited the court rule upon which his motion for summary disposition is based. Given the timing of the motion, however, the Court can safely deduce that Wray seeks summary disposition under MCR 2.116(C)(10). "A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." Maiden v Rozwood, 461 Mich 109, 120 (1999). When evaluating such a motion, the Court "considers affidavits, pleadings, depositions, admissions, and other

evidence submitted by the parties in the light most favorable to the party opposing the motion." See id. "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." Id. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." West v General Motors Corp, 469 Mich 177, 183 (2003).

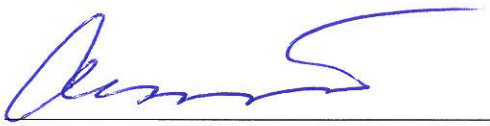
In this case, Defendant Wray has neither cited any legal authority nor provided any evidence – admissible or otherwise – to support his motion. To be sure, a defendant can use a motion for summary disposition under MCR 2.116(C)(10) to force the plaintiffs to present evidence in support of their claims, see MCR 2.116(G)(4), but a summary-disposition request under MCR 2.116(C)(10) devoid of legal and factual support necessarily seems unpersuasive. Moreover, Defendant Wray's motion asks for damages, such as "compensation and reimbursement in the amount of $2085.95" and "[c]ompensation for slander and deformation [sic] of character in the amount of $50,000," even though Wray has never submitted a counterclaim. See MCR 2.110(C). In a nutshell, Wray's submission provides an object lesson in the perils of proceeding *pro se* because the motion Wray drafted on his own behalf is neither factually nor legally persuasive.

Our Court of Appeals recently noted – albeit in an unpublished opinion – that "pro se prisoners are held to 'less stringent standards than formal pleadings drafted by lawyers' because of their right of access to the courts, but pro se civil litigants are not so entitled, and they are particularly not excused from compliance with applicable court rules." See Sabbath v City of Eastpointe, No 313337, slip op at 2 (Mich App April 29, 2014) (unpublished decision). Accordingly, the Court cannot excuse the glaring deficiencies in Defendant Wray's motion for summary disposition simply because, as a *pro se* litigant, he lacks the legal training necessary to formulate a plausible summary-disposition request. Instead, the Court must not only deny Wray's motion for summary disposition, but also preclude him from seeking

damages in his own right in the absence of a proper counterclaim. Thus, IT IS ORDERED that Wray's summary-disposition motion is denied.[1] IT IS FURTHER ORDERED that the case shall be set for trial, at which Wray cannot seek damages without a valid counterclaim.[2]

IT IS SO ORDERED.

Dated: December 10, 2015



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

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[1] The Court shall enter a separate order reserving a decision on the plaintiffs' second motion for sanctions.

[2] Defendant Wray cannot file a counterclaim without first obtaining leave of court to amend his answer, see MCR 2.118(A)(2), so the Court shall treat as a nullity any counterclaim filed without a motion requesting leave of court to file such a document.