

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

GREGORY MCKENNA

Plaintiff,

vs.

THE ST. LOUIS COUNTY POLICE
DEPARTMENT, ET AL.

Defendants.

Cause No. 4:09-cv-01113-CDP

**DEFENDANT D'ANGELO AUTOMOTIVE'S RESPONSE TO PLAINTIFF'S
MOTION TO AMEND COMPLAINT**

Defendant D'Angelo Automotive ("D'Angelo") has previously moved this Court to dismiss the original Complaint filed by Plaintiff Gregory McKenna ("Plaintiff"). Plaintiff previously filed a response and opposition to D'Angelo's Motion. However, now Plaintiff seeks leave of Court to file an Amended Complaint. D'Angelo acknowledges that Federal Rules of Civil Procedure, 15(a) allows for Plaintiff the right to amend his Complaint once as a matter of course before responsive pleading is filed. Defendant D'Angelo acknowledges and for the purposes of "responsive pleadings pursuant to Federal Rule 15(a), a Motion to Dismiss is not considered a responsive pleading. Winfrey v. Brewer, 570 F.2d 761, 764 fn.4 (Eighth Cir. 1978). While Plaintiff has a right to file his proper Amended Complaint, D'Angelo respectfully request that this Court exercise its discretion to consider D'Angelo's previous Motion to Dismiss as it relates to this Amended Complaint.

In support, D'Angelo contends that the arguments made in its pending Motion to Dismiss apply with equal force to the proposed Amended Complaint filed by Plaintiff. Specifically, while Plaintiff amended his Complaint, the crux of the allegations contained in that Complaint lack any degree of plausibility necessary for the Court to exercise Federal question jurisdiction, nor do they state cause for which relief can be granted. As more fully set out in our Motion, Plaintiff's claims against D'Angelo are based on the notion that D'Angelo perpetuated the Mafia conspiracy theory by failing to repair a loud noise in his 1998 Audi vehicle. According to the Plaintiff, it is failure to repair somehow a "aided" an "assisted" the "Italian Mafia" with the alleged stalking and torture scheme. However, Plaintiff completely fails to set out any relationship between the "Italian Mafia" and D'Angelo Automotive. Further, while Plaintiff states that the work performed by D'Angelo did not repair the "loud noise," he does not set out any plausible theory or allegation as to how the alleged non-repair perpetuated any conspiracy. Again, the loud noise existed prior to Plaintiff bringing the vehicle to D'Angelo.

For these reasons and the reasons previously stated in D'Angelo's Motion to Dismiss, D'Angelo respectfully request that the Court apply its pending Motion to Dismiss with an equal force to the purposed Amended Complaint filed by the Plaintiff and for all other and further relief this Court deems just and proper.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy was filed electronically with the Clerk of the Court using the ECF system which constitutes service on the following and mailed a copy:

Mr. Gregory McKenna
9937 Young Drive
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/s/ THOMAS J. LEWIS