

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MICHAEL GOLDEN and CATHLEEN
GOLDEN,

Plaintiffs,

VS.

AUSTIN COUNTY SHERIFF'S
DEPARTMENT, *et al.*,

Defendants.

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CIVIL ACTION NO. H-09-817

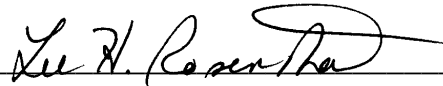
ORDER

The plaintiffs filed an amended complaint and the defendants filed an “Amended Answer Presenting Defenses under Rule 12(B).” The “defenses” included that the complaint failed to state a claim under state or federal law. The relief sought was dismissal with prejudice. (Docket Entry No. 36). The plaintiffs responded to what they referred to as the defendants’ “Third Motion to Dismiss Found in Defendants’ Amended Answer Presenting Defenses under 12(B).” (Docket Entry No. 39). In the response, the plaintiffs outlined their basis for asserting that the amended complaint met Rule 8. The defendants filed a one and one-half page reply, stating that they had not filed a third motion to dismiss, that the plaintiffs’ response was frivolous, and that the defendants would “reserve the right” to apply for the costs of responding under 28 U.S.C. § 1927. (Docket Entry No. 40). The plaintiffs filed a supplemental response to the amended answer, noting that in the “defenses under Rule 12(b), the defendants had specifically requested dismissal of the plaintiffs’ lawsuit at least four times, and that the plaintiffs had appropriately responded.

The defendants' amended answer and defenses did state that dismissal with prejudice based on Rule 12(b)(6) was appropriate. The plaintiffs' response was not frivolous. The defendants' brief reply is not the basis for awarding costs or fees.

The defendants have not presented any basis that would warrant granting a motion to dismiss. Based on the present record, their requests in their amended answer for dismissal with prejudice are denied.

SIGNED on August 25, 2009, at Houston, Texas.

A handwritten signature in black ink, appearing to read "Lee H. Rosenthal", written over a horizontal line.

Lee H. Rosenthal
United States District Judge