

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

<p>JOSEPH SAAD, INDIVIDUALLY, ZIHRA SAAD, INDIVIDUALLY,</p> <p style="text-align:center">PLAINTIFFS,</p> <p style="text-align:center">- Vs -</p> <p>CITY OF DEARBORN HEIGHTS, ET AL.,</p> <p style="text-align:center">DEFENDANTS.</p>	<p>CIVIL CASE No. 2:11-cv-10103</p> <p style="text-align:center"><b>MOTION TO AMEND COMPLAINT</b></p> <p style="text-align:center">- HONORABLE PATRICK J. DUGGAN –</p> <p style="text-align:center">- MAGISTRATE JUDGE MARK A. RANDON -</p>
--	---

**HADOUSCO. |PLLC**

NEMER N. HADOUS  
|AZ: 027529 | CA: 264431|  
UNITED STATES DISTRICT COURTS:  
- DISTRICT OF ARIZONA  
- EASTERN DISTRICT OF MICHIGAN  
835 MASON STREET, SUITE 150-A  
DEARBORN, MICHIGAN 48124  
P: (313) 450-4670  
F: (888) 450-0687  
D: (313) 415-5559  
E: NHADOUS@HADOUSCO.COM

ATTORNEY FOR PLAINTIFFS  
*JOSEPH SAAD AND ZIHRA SAAD*

**PUCKETT & FARAJ, PC**

HAYTHAM FARAJ |P-72581|  
835 MASON STREET, SUITE 150-A  
DEARBORN, MICHIGAN 48124  
P: (760) 521-7934  
E: HAYTHAM@PUCKETTFARAJ.COM

ATTORNEY FOR PLAINTIFFS  
*JOSEPH SAAD AND ZIHRA SAAD*

**CUMMINGS, MCCLOREY, DAVIS & ACHO, PLC**

JEFFREY R. CLARK |P-33074|  
33900 SCHOOLCRAFT ROAD  
LIVONIA, MICHIGAN 48150  
P: (734) 261-2400  
E: JCLARK@CMDA-LAW.COM

ATTORNEY FOR DEFENDANTS

---

**MOTION TO AMEND COMPLAINT**

1 Plaintiffs Joseph Saad and Zihra Saad (collectively, "Plaintiffs"), by counsel, and pursuant  
2 to Fed. R. Civ. P. 15(a)(2), hereby submit this Motion to Amend the Complaint to add the  
3 following claims:

- 4 1. 42 U.S.C. § 1983 – Conspiracy (Defendants Keller and Cates)
- 5 2. 42 U.S.C. § 1983 – Fourteenth Amendment – *Brady* Violation (Defendants Keller  
6 and Cates)
- 7 3. 42 U.S.C. § 1983 – Fourteenth Amendment – Perjury (Defendant Keller)
- 8 4. 42 U.S.C. § 1983 – Fourteenth Amendment – *Monell* Claim: Unconstitutional  
9 Custom, Policy, and Practice (Defendant City of Dearborn Heights)

10 Plaintiffs sought but did not obtain concurrence in the relief sought herein pursuant to  
11 Local Rule 7.1. In support of this Motion, Plaintiffs rely on the arguments and authorities set  
12 forth in their Memorandum in Support filed contemporaneously herewith.

13  
14 **RESPECTFULLY SUBMITTED THIS 21ST DAY OF OCTOBER 2011,**

15  
16 **HADOUSCO. | PLLC**

17  
18 **/s/NEMER N. HADOUS**

19 **BY:** NEMER N. HADOUS |AZ: 027529 | CA: 264431|

20 UNITED STATES DISTRICT COURTS:

21 - DISTRICT OF ARIZONA

22 - EASTERN DISTRICT OF MICHIGAN

23 835 MASON STREET, SUITE 150-A

24 DEARBORN, MICHIGAN 48124

25 P: (313) 450-0687

26 F: (888) 450-0687

27 E: NHADOUS@HADOUSCO.COM

28 ATTORNEY FOR PLAINTIFFS

29 JOSEPH SAAD AND ZIHRA SAAD  
30  
31  
32  
33  
34  
35  
36

**MEMORANDUM IN SUPPORT**

**A. INTRODUCTORY STATEMENT**

This Motion seeks an Order by the Court pursuant to Fed. R. Civ. P. 15(a)(2) to permit entry of the Plaintiffs' Amended Complaint on the basis of evidence obtained from the Defendants during discovery. (**Exhibit – 1 Amended Complaint**). Fed. R. Civ. P. 15 provides that leave to amend shall be freely given when justice requires.

In the instant case, Defendants provided a Supplemental Response to Plaintiffs' First Request for Production of Documents No. 3 by correspondence and enclosure dated October 6, 2011. Enclosed with the Defendants' Response were digital copies of the individually-named Defendants' in-car video and audio recording of the incident giving rise to the Plaintiffs' cause of action, which the Defendants initially concealed/withheld during the course of the false and unjust criminal proceedings against the Plaintiffs and did not disclose when Plaintiffs made their First Request for Production of Documents to the Defendant City of Dearborn Heights.<sup>1</sup>

The contents of these recordings establish that Plaintiff Joseph Saad did not "physically assault" Defendant Keller prior to his arrest and that Joseph was prosecuted on the basis of Defendant Keller's false and perjured testimony that he was "physically assaulted" by the Joseph Saad when asked Joseph to produce identification. **These recordings were never provided to the Plaintiffs or to their defense counsel during the course of the Defendants' criminal proceedings against them.**

**B. FACTUAL BACKGROUND**

**1. THE UNJUST CRIMINAL PROCEEDINGS AND PERJURED TESTIMONY AT-ISSUE**

The events giving rise to this cause of action occurred at the Plaintiffs' residence on July 10, 2010. Following the Plaintiffs' arrest, Defendant Keller submitted a police report wherein he stated that Plaintiff Joseph Saad physically shoved him.

---

<sup>1</sup> When Plaintiffs made an identical request for production in Case No. 10-12635 (Saad v. Krause, et al.), which is currently pending on Defendants' appeal of this Court's denial of qualified immunity, Defendant responded, "Defendant has no such recordings." (**Exhibit 2 – Defendants' Response to Plaintiffs' First Request for Production of Documents**). If such audio/video recordings exist or existed, they would appear to resolve whether Defendant Krause, as alleged, ever engaged in a physical struggle with Joseph Saad after he drew a firearm on Joseph prior to Joseph's entry into his home. A claim Joseph vehemently denied. **On October 21, 2011, Mr. Hadous inquired with Mr. Sturdy whether, in light of the existence of the recordings in this matter, similar recordings existed regarding the earlier case. Mr. Sturdy responded that, "it was not relevant" and that he would not "waste his time discussing it."**

1 R/O [Keller] walked one more step toward the door and Joe [Plaintiff Joseph  
2 Saad] physically shoved R/O back toward the porch step . . . .  
3

4 **(Exhibit 3 - Police Report of Defendant Keller dated July 10, 2010).**

5 The police report submitted by Defendant Cates was distinctively different regarding the  
6 alleged “physical assault”:

7  
8 Skelton arrived on the scene and advised R/O Keller, after being explained the  
9 situation that Joseph needed to be placed under arrest for assaulting R/O Keller by  
10 slamming the door on his left foot, and further hindering an investigation.  
11

12 **(Exhibit 4 - Police Report of Defendant Cates dated July 10, 2010).**

13 During a direct examination by Assistant Wayne County Prosecuting Attorney Kal Najjar  
14 at the Preliminary Examination in “The People of the State of Michigan v. Joseph Saad, and  
15 Zihra Saad,” Defendant Keller continued to offer perjured testimony:

16  
17 **Keller:** When I asked for his identification after he was done screaming at  
18 me, he **shoved** me back and said he’s not giving me shit, to get off  
19 his property.  
20

21 **Mr. Najjar:** When you say he shoved you back, tell us exactly—  
22 **physically** what happened?  
23

24 **Keller:** He shoved me in the chest toward the steps to the front  
25 porch.  
26

27 **Mr. Najjar:** With his hands?  
28

29 **Keller:** Yes.  
30

31 **Mr. Najjar:** Did he push you with one hand, two hands?  
32

33 **Keller:** Two hands.  
34

35 **(Exhibit 5 – Preliminary Exam Transcripts at p. 9)**

36 During the criminal trial in “The People of the State of Michigan v. Joseph Saad,”  
37 Defendant Keller continued to offer perjured testimony which the Assistant Wayne County  
38 Prosecutor Jamil Khuja relied on in attempting to convict Joseph unjustly.

39 **Mr. Khuja:** And, Officer Keller’s going to say that he then shoved him.  
40

1           **Mr. Khuja:** Officer Keller then says he will not leave because he just  
2 assaulted a police officer, so he waits for a supervisor to  
3 come.  
4

5 **(Exhibit 6 – Trial Transcripts, People v. Joseph Saad at pp. 59 - 60).**

6           And on direct examination Defendant Keller offered the same perjured testimony.  
7

8           **Keller:** [A]t that point he shoved me backwards towards the step  
9 coming up onto the front porch.

10           **Mr. Khuja:** When you say he shoved you, where does he shove you?  
11

12           **Keller:** He shoves me, actually hits me in the chest and pushes me  
13 back. Page 85  
14  
15

16 **(Exhibit 6 – Trial Transcripts, People v. Joseph Saad at pp. 84 – 85).**

17           **2. THE CONCEALED/WITHHELD EXCULPATORY EVIDENCE**

18           The Plaintiffs received the in-car audio and video recordings. During the encounter,  
19 Defendant Keller did not once state that he had been pushed, shoved, or physically touched by  
20 the Plaintiff Joseph Saad. **Further, the Plaintiffs explicitly asked on multiple occasions why**  
21 **Plaintiff Joseph Saad was going to be arrested.** Again, Defendant Keller did not once state  
22 that he had been pushed, shoved, or physically touched by the Plaintiff Joseph Saad.

23           A summary of the encounter is as follows:<sup>2</sup>

24           **Zihra:** Please take your foot out of the door.  
25

26           **Cates:** We will not take our foot out of the door.  
27

28           **Zihra:** Why  
29

30           **Keller:** Because your son tried slamming the door in my face, that's why.  
31

32           **Joseph:** Oh, "God" said I couldn't shut this door.  
33

34           **Keller:** I'm . . . Officer Keller, not God, close though.  
35

36           When Joseph asked Defendant Keller whether he had an arrest warrant, Defendant Keller  
37 responded that he didn't need one because he was conducting an "investigation." Defendant

---

<sup>2</sup> The Plaintiffs possess an audio/video recording of this encounter in digital format (DVD) which was provided belatedly to the Plaintiffs in October 2011. The Plaintiffs will supplement this Motion with a transcription of the audio evidence once Plaintiffs obtain a transcribed copy of the same.

1 Keller then repeated that Joseph tried to “slam the door in [his] face,” did not provide his  
2 identification, and “hindered an investigation” (though Defendant Keller admits that when he  
3 asked Joseph if he was Joseph Saad, Joseph said, “yes”).

4 At approximately 21:27 in the recording, the Defendants decide to arrest Joseph and **Zihra**  
5 **explicitly asks, “Why you want to take him to jail?”** Defendant Keller responds, “He’s  
6 broken the law . . . . When I asked for his I.D. he refused to give me his I.D.” At no time during  
7 the foregoing encounter does Defendant Keller ever state or imply that he has been physically  
8 assaulted by Joseph. At no time during the foregoing encounter do any of the other Defendants  
9 who are present state or imply that Defendant Keller was physically assaulted by Joseph. At no  
10 time when asked explicitly by the Plaintiffs why the Defendants were going to arrest Joseph do  
11 any of the Defendants state that Joseph would be arrested for physically assaulting Defendant  
12 Keller.

13 **After Joseph and his mother were arrested, Defendant Keller, assisted by Defendant**  
14 **Cates, prepared a police report, and for the first time, Defendant Keller states that he was**  
15 **physically assaulted by Joseph after he asked Joseph to produce his driver’s license.**  
16 Defendant Keller’s puzzling testimony during trial while being cross-examined by Joseph Saad’s  
17 defense counsel, Mark Haidar, is further proof that the alleged assault never occurred.

18  
19 **Mr. Haidar:** Okay. After he shoved you and you have called for back-up  
20 what happens?

21  
22 **Mr. Haidar:** You’re saying that Mr. Saad pushes you away to close the  
23 door and the deadbolt prevented the door from closing?

24  
25 **Keller:** He pushed me back to get me away from the door.

26  
27 **Mr. Haidar:** Yes.

28  
29 **Keller:** And then tried slamming the door and it didn’t shut all the  
30 way.

31  
32 **Mr. Haidar:** I see. Okay. And you didn’t have anything to do with the  
33 fact that it didn’t shut?

34  
35 **Keller:** Not at that time, no.

36  
37 **(Exhibit 7 – Trial Transcripts, People v. Joseph Saad at pp. 106 - 107).**

1 Not surprisingly, the Honorable Carole F. Youngblood, the judge presiding over People v.  
2 Joseph Saad, categorically admonished this testimony:

3 Here, I have to say that these officers have all been impeached by the Preliminary  
4 Exam transcripts . . . . **They have stated several times different things in their**  
5 **testimony.** If I could go through my notes, I would have a chance to put forth all of  
6 those . . . . **There is - - the evidence is too contradictory. There are just too**  
7 **many, too many misstatements and statements contradicting each other to find**  
8 **Officer Keller's testimony in a light more credible.**  
9

10 (Exhibit 8 – Trial Transcripts, People v. Joseph Saad at pp. 204-206).

11 The Plaintiffs and defense counsel Mark Haidar have confirmed that neither received the  
12 foregoing audio/video recording of the events giving rise to this action. The Plaintiffs will  
13 procure an affidavit from Mr. Haidar attesting to this if necessary.

### 14 ARGUMENT

#### 15 **1. Leave to Amend is “Freely Given”**

16 After a responsive pleading is filed, parties may only amend a complaint with leave of  
17 court or written consent of the adverse party. As Defendants have not consented to entry of an  
18 Amended Complaint, and have not otherwise responded to Plaintiffs’ multiple telephone calls  
19 and email inquiries (EXHIBIT), Plaintiffs seek assistance from this Court.

20 A district judge should freely grant leave to amend when justice requires. See Fed R. Civ.  
21 P. 15(a) (“leave shall be freely given when justice so requires”); *Jet, Inc. v. Sewage Aeration*  
22 *Sys.*, 165 F.3d 419, 425 (6th Cir. 1999) (stating that leave to amend should be freely granted in  
23 order to ensure that cases are tried on the merits). The decision whether to grant leave to amend  
24 is a matter of court discretion. *Foman v. Davis*, 371 U.S. 178, 182; 83 S. Ct. 227; 9 L.E.2d 222  
25 (1962).

26 In *Foman*, the United States Supreme Court set forth the standard regarding whether leave  
27 to amend should be granted:

28 Rule 15(a) declares that leave to amend ‘shall be freely given when justice so  
29 requires’; this mandate is to be heeded. See generally, 3 Moore, Federal Practice  
30 (2d ed. 1948), 15.08, 15.10. If the underlying facts or circumstances relied upon  
31 by a plaintiff may be a proper subject of relief, he ought to be afforded an  
32 opportunity to test his claim on the merits. In the absence of any apparent or  
33 declared reason-such as undue delay, bad faith or dilatory motive on the part of  
34 the movant, repeated failure to cure deficiencies by amendments previously  
35 allowed, undue prejudice to the opposing party by virtue of allowance of the  
36 amendment, futility of amendment, etc.-the leave sought should, as the rules

1 require, be ‘freely given.’ Of course, the grant or denial of an opportunity to  
 2 amend is within the discretion of the District Court. . . .

3  
 4 *Foman* at p. 182.

5 **2. Leave to Amend Would Be in the Interest of Justice**

6 Here, Plaintiffs seek to add claims that are based on evidence received on or about October  
 7 6, 2011. Evidence which the Defendants failed to timely disclose and of the type which they  
 8 contended in the earlier action, “never existed.” Plaintiffs have not unduly delayed Defendants  
 9 and Defendants will suffer no prejudice by a Court Order permitting Plaintiffs to file an  
 10 Amended Complaint. If a party has been unduly delayed and prejudiced, it is the Plaintiffs.

11 **CONCLUSION**

12 For the foregoing reasons, the Plaintiffs respectfully request that this Honorable Court  
 13 grant Plaintiffs’ Motion and enter an Order permitting Plaintiffs to file an Amended Complaint.  
 14 Plaintiffs further respectfully request an award of attorneys’ fees and costs for the filing of this  
 15 Motion.

16 **RESPECTFULLY SUBMITTED THIS 21<sup>ST</sup> DAY OF OCTOBER 2011**

17  
 18 **HADOUSCO. |PLLC**

19  
 20 **/S/NEMER N. HADOUS**

21 **BY:** NEMER N. HADOUS |AZ: 027529 | CA: 264431|

22 UNITED STATES DISTRICT COURTS:

23 - DISTRICT OF ARIZONA

24 - EASTERN DISTRICT OF MICHIGAN

25 835 MASON STREET, SUITE 150-A

26 DEARBORN, MICHIGAN 48124

27 P: (313) 450-0687

28 F: (888) 450-0687

29 E: NHADOUS@HADOUSCO.COM

30 ATTORNEY FOR PLAINTIFFS

31 JOSEPH SAAD AND ZIHRA SAAD  
 32



**CERTIFICATE OF SERVICE**

I hereby certify that on October 21, 2011, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which will send notice of such filing to all attorneys of record in this matter. Since none of the attorneys of record are non-ECF participants, hard copies of the foregoing have not been provided via personal delivery or by postal mail.

**HADOUSCO. |PLLC****/s/NEMER N. HADOUS****BY:** NEMER N. HADOUS |AZ: 027529 | CA: 264431|

UNITED STATES DISTRICT COURTS:

- DISTRICT OF ARIZONA

- EASTERN DISTRICT OF MICHIGAN

835 MASON STREET, SUITE 150-A

DEARBORN, MICHIGAN 48124

P: (313) 450-0687

F: (888) 450-0687

D: (313) 415-5559

E: NHADOUS@HADOUSCO.COM

ATTORNEY FOR PLAINTIFFS

*JOSEPH SAAD AND ZIHRA SAAD*