

***** PUBLIC DOCKET *****

**U.S. District Court
Southern District of Indiana (Evansville)
CIVIL DOCKET FOR CASE #: 3:23-cv-00084-RLY-CSW**

BREAKIRON v. BUCK et al
Assigned to: District Judge Richard L Young
Referred to: Magistrate Judge Crystal S. Wildeman
Demand: \$50,000
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 05/16/2023
Jury Demand: Defendant
Nature of Suit: 555 Prisoner Petitions -
Prison Condition
Jurisdiction: Federal Question

Plaintiff**DWAYNE BREAKIRON**

represented by **DWAYNE BREAKIRON**
252900
PLAINFIELD - CF
PLAINFIELD CORRECTIONAL
FACILITY
Inmate Mail/Parcels
727 MOON ROAD
PLAINFIELD, IN 46168
PRO SE

V.

Defendant

JOSHUA BUCK
Dentist

represented by **Melanie A. Kalmbach**
DREWRY SIMMONS VORNEHM, LLP
(Carmel)
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ATTORNEY TO BE NOTICED

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Date Filed	#	Docket Text
05/16/2023	<u>1</u>	CONSENT to Prisoner E-Service by DWAYNE BREAKIRON located at BRANCHVILLE CF. Pursuant to General Order 2013-1, documents submitted by DWAYNE BREAKIRON to the court for filing will generate a Notice of Electronic Filing that will constitute official service upon registered users of CM/ECF. If any parties to the case are not registered CM/ECF users, the Clerk of the Court will mail the document via U.S. Postal Service on behalf of the inmate. NOTE: The E-Filing Program does not affect the obligation of other parties to serve copies of documents in accordance with the Federal Rules of Civil Procedure. (MEH) (Entered: 05/16/2023)
05/16/2023	<u>2</u>	COMPLAINT against All Defendants, filed by DWAYNE BREAKIRON. (No fee paid with this filing) (Attachments: # <u>1</u> Exhibit Grievance documents)(MEH) (Entered: 05/16/2023)
05/16/2023	<u>3</u>	MOTION for Leave to Proceed in forma pauperis, filed by Plaintiff DWAYNE BREAKIRON. (Attachments: # <u>1</u> Exhibit trust account documents)(MEH) (Entered: 05/16/2023)
05/16/2023	<u>4</u>	MAGISTRATE JUDGE's NOTICE of Availability to Exercise Jurisdiction issued. (MEH) (Entered: 05/16/2023)
05/16/2023	<u>5</u>	Notice to File Rule 7.1 Disclosure Statement. (RAGS) (MEH) (Entered: 05/16/2023)
05/16/2023	<u>6</u>	NOTICE to Pro se Litigant - The following information is provided to pro se litigants to inform them about rules and procedures governing how they communicate with the Court. (MEH) (Entered: 05/16/2023)
05/17/2023	<u>7</u>	CONSENT to Jurisdiction to US Magistrate Judge by DWAYNE BREAKIRON. (JDC) (Entered: 05/17/2023)
05/18/2023	<u>8</u>	ORDER granting <u>3</u> Motion for Leave to Proceed in forma pauperis - The plaintiff's motion to proceed in forma pauperis, dkt. <u>3</u> , is granted to the extent that the plaintiff is assessed an initial partial filing fee of Fifty-Two Dollars and Ninety-Eight Cents (\$52.98). The plaintiff shall have through June 14, 2023, in which to pay this sum to the clerk of the district court. The plaintiff is informed that after the initial partial filing fee is paid, he will be obligated to make monthly payments of 20 percent of the preceding month's income each month that the amount in his account exceeds \$10.00, until the full filing fee of \$350.00 is paid. After the initial partial filing fee is received, a collection order will be issued to the plaintiff and the plaintiff's custodian, and the Court will screen the complaint in accordance with 28 U.S.C. § 1915A. Signed by District Judge Richard L Young on 05/18/2023. (AAS) (Entered: 05/18/2023)
05/30/2023	9	RECEIPT #EV428 for Partial Filing Fee fee in the amount of \$52.98, paid by Dwayne Breakiron. (JRB) (Entered: 05/30/2023)
08/18/2023	10	Updated address for plaintiff from Branchville CF to Plainfield CF per phone call from plaintiff's mother and confirmed on IDOC website. Plaintiff will mail a written Notice of Change of Address to the court. (MEH) (Entered: 08/18/2023)




08/23/2023	11	NOTICE of Change of Address for DWAYNE BREAKIRON at Plainfield CF. (Attachments: # 1 Envelope) (JRB) (Entered: 08/23/2023)
09/05/2023	12	Notice of Reassignment of Case to Magistrate Judge Crystal S. Wildeman. Magistrate Judge Mark J. Dinsmore is no longer assigned to this case. Please include the new case number (3:23-cv-00084-RLY-CSW), which includes the initials of the newly assigned judge, on all future filings in this matter. (BRR) (Entered: 09/05/2023)
09/19/2023	13	ORDER - Directing Monthly Payments be made from Prison Account of DWAYNE BREAKIRON. Plaintiff's custodian is directed to withhold sums from the inmate trust account of DWAYNE BREAKIRON, 252900, and to forward such sums to the Clerk of this Court at 46 East Ohio Street, Room 105, Indianapolis, Indiana 46204 consistent with paragraph 2 of this Entry. The appropriate cause number, 3:23-CV-00084-RLY-CSW, should be placed on each payment sent to the Clerk. Signed by Magistrate Judge Crystal S. Wildeman on 9/19/2023. Copies Mailed(CKM) (Entered: 09/19/2023)
09/26/2023	14	Order Screening Complaint and Directing Further Proceedings - If Mr. Breakiron believes that additional claims were alleged in the complaint, but not identified by the court, he shall have through October 19, 2023, in which to identify those claims. The clerk is directed pursuant to Fed. R. Civ. P. 4(c)(3) to issue process to defendants Dr. Buck and Ms. Payne in the manner specified by Rule 4(d). Process shall consist of the complaint, dkt. 2 , applicable forms (Notice of Lawsuit and Request for Waiver of Service of Summons and Waiver of Service of Summons), and this Order. The clerk is directed to serve Centurion employees electronically. SEE ORDER. Copy sent to Plaintiff via US Mail. Signed by District Judge Richard L Young on 9/26/2023.(JRB) (Entered: 09/26/2023)
09/26/2023	15	NOTICE of Lawsuit & Waiver Issued by Clerk as to 1) Joshua Buck; and 2) Tricia Payne. (JRB) (Entered: 09/26/2023)
09/26/2023	16	Documents to be Sent via Electronic Notice - re 15 NOTICE of Lawsuit & Waiver Issued by Clerk, 2 Complaint, 14 Order Electronic Notice to Centurion. (JRB) (Entered: 09/26/2023)
10/02/2023	17	MOTION for Court Assistance re Fee, filed by Plaintiff DWAYNE BREAKIRON. (Attachments: # 1 Envelope)(LF) (Entered: 10/03/2023)
10/05/2023	18	NOTICE of Appearance by Sean Thomas Devenney on behalf of Defendants JOSHUA BUCK, TRICIA PAYNE. (Devenney, Sean) (Entered: 10/05/2023)
10/05/2023	19	NOTICE of Appearance by Melanie A. Kalmbach on behalf of Defendants JOSHUA BUCK, TRICIA PAYNE. (Kalmbach, Melanie) (Entered: 10/05/2023)
10/05/2023	20	WAIVER OF SERVICE Returned Executed, filed by TRICIA PAYNE, JOSHUA BUCK. All Defendants. (Kalmbach, Melanie) (Entered: 10/05/2023)
10/10/2023	21	ORDER granting 17 Motion for Court Assistance to the extent that the Court explains that Plaintiff may pay the entirety of the remaining \$297.02 that he owes toward the filing fee in this case in one lump sum if he chooses to do so. Copy sent to Plaintiff via US Mail. Signed by Magistrate Judge Crystal S. Wildeman on 10/10/2023. (JRB) (Entered: 10/10/2023)

11/06/2023	22	Objection for Production of Documents, filed by Plaintiff DWAYNE BREAKIRON (Attachments: # 1 Envelope) (JRB) (Entered: 11/06/2023)
11/06/2023	23	RECEIPT #EV671 for Partial Filing Fee fee in the amount of \$23.00, paid by Dwayne Breakiron. (JRB) (Entered: 11/06/2023)
11/08/2023	24	Entry Addressing Objection for Production of Documents - The Court understands Plaintiff to be objecting that the Court has not yet set a schedule that allows him to pursue discovery that he needs, such as electronic documents and medical records. That objection is overruled. At this point, Defendants have not answered yet. After Defendants file their answers, the Court will issue an appropriate scheduling order that will govern discovery in this case. Copy sent to Plaintiff via US Mail. Signed by Magistrate Judge Crystal S. Wildeman on 11/8/2023.(JRB) (Entered: 11/09/2023)
11/20/2023	25	MOTION for Plaintiff to have access to Library, filed by Plaintiff DWAYNE BREAKIRON. (Attachments: # 1 Envelope)(LF) (Entered: 11/22/2023)
11/27/2023	26	ANSWER to 2 Complaint <i>Affirmative Defenses and Jury Trial Demand</i> , filed by JOSHUA BUCK, TRICIA PAYNE.(Kalmbach, Melanie) (Entered: 11/27/2023)
11/28/2023	27	Order Denying Motion for Access to Law Library - This court lacks authority to grant the relief requested, and the motion, dkt. 25 , must be denied. The court notes, however, that Defendants have now appeared and that the court will issue a scheduling order by separate entry. That scheduling order will establish various deadlines for the case. (See Order.) Signed by District Judge Richard L. Young on 11/28/2023. Copy to Plaintiff via US mail. (JSR) (Entered: 11/28/2023)
11/28/2023	28	ORDER SETTING PRETRIAL SCHEDULE AND DISCUSSING DISCOVERY IN PRISONER LITIGATION: This Order sets the schedule for how this action shall proceed. Part I sets forth the pretrial deadlines. Part II discusses various aspects of discovery. Facilitating the discovery process can be difficult, and this Order is issued in an effort to help explain and streamline the process for the parties. The parties should carefully read this Order. *SEE ORDER FOR ADDITIONAL INFORMATION*. Dispositive Motions due by 6/27/2024. Discovery due by 5/28/2024. Copy sent to Plaintiff via US Mail. Signed by Magistrate Judge Crystal S. Wildeman on 11/28/2023.(JRB) (Entered: 11/29/2023)
11/28/2023	29	ORDER SETTING INITIAL DISCOVERY CONFERENCE - This case is set for an Initial Discovery Conference on February 5, 2024, at 10:00 a.m. (Central time), with Magistrate Judge Crystal S. Wildeman. The Court will contact counsel through the Court's electronic filing system with the call-in information to be used to participate in the conference. The Court will contact staff at the Plainfield Correctional Facility by separate email to obtain the call-in information needed to connect Mr. Breakiron to the conference. SEE ORDER. Copy sent to Plaintiff via US Mail. Signed by Magistrate Judge Crystal S. Wildeman on 11/28/2023.(JRB) (Entered: 11/29/2023)
11/28/2023	30	ORDER to Make Inmate Available - via Telephone. Warden of Plainfield CF ordered to make Dwayne Breakiron Available - via Telephone for court proceeding on 2/5/2024. Copy sent to Plaintiff via US Mail. Signed by Magistrate Judge Crystal S. Wildeman on 11/28/2023.(JRB) (Entered: 11/29/2023)
12/11/2023	31	RECEIPT #EV716 for Partial Filing Fee fee in the amount of \$78.78, paid by Dwayne Breakiron. (JRB) (Entered: 12/11/2023)

01/10/2024	32	CONSENT to Prisoner E-Service by DWAYNE BREAKIRON located at PLAINFIELD CF. Pursuant to General Order 2013-1, documents submitted by DWAYNE BREAKIRON to the court for filing will generate a Notice of Electronic Filing that will constitute official service upon registered users of CM/ECF. If any parties to the case are not registered CM/ECF users, the Clerk of the Court will mail the document via U.S. Postal Service on behalf of the inmate. NOTE: The E-Filing Program does not affect the obligation of other parties to serve copies of documents in accordance with the Federal Rules of Civil Procedure. (JSR) (Entered: 01/11/2024)
01/10/2024	33	RESPONSE to Production of Documents, filed by Plaintiff DWAYNE BREAKIRON. (Attachments: # 1 Exhibits) (JSR) (Entered: 01/11/2024)
01/10/2024	34	Submission of Additional Documents in Support of 33 Response to Production of Documents, filed by Plaintiff DWAYNE BREAKIRON. (JRB) (Entered: 01/12/2024)
02/06/2024	36	MINUTE ORDER for proceedings held before Magistrate Judge Crystal S. Wildeman: Discovery Conference held on 2/5/2024. The parties discussed case status, case deadlines, and the discovery process. Mr. Breakiron stated that he had not received a copy of the scheduling order for this case, and the Court agreed to send him another copy. No further orders were issued. The clerk is directed to enclose copies of the following with Mr. Breakiron's copy of this Order: (1) public docket sheet; and (2) Order Setting Schedule for Discovery and Other Pretrial Matters in Prisoner Litigation, Dkt. 28 . Signed by Magistrate Judge Crystal S. Wildeman. (Attachments: # 1 Public Docket Sheet, # 2 Scheduling Order Dkt 28)(TMB) (Entered: 02/06/2024)
02/14/2024	37	RECEIPT #9041 for partial filing fee in the amount of \$181.61, paid by DWAYNE BREAKIRON. (DJH) (Entered: 02/14/2024)
02/14/2024	38	***STRICKEN PER 65 ORDER*** AMENDED COMPLAINT against JOSHUA BUCK, TRICIA PAYNE, filed by DWAYNE BREAKIRON. (Attachments: # 1 Cover Letter)(KAA) Modified on 3/25/2025 (DWH). (Entered: 02/14/2024)
03/13/2024	39	RECEIPT #9484 for Partial Filing fee in the amount of \$13.63, paid by DWAYNE BREAKIRON. (CCG) (Entered: 03/13/2024)
03/20/2024	40	Witness List <i>Expert</i> , filed by Defendants JOSHUA BUCK, TRICIA PAYNE. (Kalmbach, Melanie) (Entered: 03/20/2024)
04/10/2024	41	First REQUEST for Production of Documents, filed by Plaintiff DWAYNE BREAKIRON. (Attachments: # 1 Cover Letter)(TPS) (Entered: 04/11/2024)
04/16/2024	42	Plaintiff's First REQUEST for Production of Documents, filed by Plaintiff DWAYNE BREAKIRON. (Attachments: # 1 Cover Letter)(KAA) (Entered: 04/18/2024)
04/19/2024	43	MOTION to Correct Error, filed by Plaintiff DWAYNE BREAKIRON. (Attachments: # 1 Cover Letter) (BAA) (Entered: 04/23/2024)
04/26/2024	44	NOTICE <i>Regarding Settlement Conference</i> , filed by Defendants JOSHUA BUCK, TRICIA PAYNE (Kalmbach, Melanie) (Entered: 04/26/2024)
05/17/2024	45	Second REQUEST for Production of Documents, filed by Plaintiff DWAYNE BREAKIRON. (Attachments: # 1 Cover Letter)(KAA) (Entered: 05/17/2024)

06/05/2024	46	MOTION to Show Cause, filed by Plaintiff DWAYNE BREAKIRON. (Attachments: # 1 Cover Letter)(AJG) (Entered: 06/06/2024)
06/26/2024	47	MOTION for Summary Judgment , filed by Defendants JOSHUA BUCK, TRICIA PAYNE. (Kalmbach, Melanie) (Entered: 06/26/2024)
06/26/2024	48	BRIEF/MEMORANDUM in Support re 47 MOTION for Summary Judgment , filed by Defendants JOSHUA BUCK, TRICIA PAYNE. (Kalmbach, Melanie) (Entered: 06/26/2024)
06/26/2024	49	Designation of Evidence re 47 MOTION for Summary Judgment , filed by Defendants JOSHUA BUCK, TRICIA PAYNE. (Attachments: # 1 Exhibit Affidavit of Joshua Buck, D.D.S., # 2 Exhibit Affidavit of Tricia Payne, # 3 Exhibit Breakiron's Electronic Dental Records, # 4 Exhibit Offender Commissary Report, # 5 Exhibit Plaintiff's Response to Defendants' Production of Documents)(Kalmbach, Melanie) (Entered: 06/26/2024)
06/26/2024	50	NOTICE <i>Regarding Right to Respond to and Submit Evidence in Opposition to Motion for Summary Judgment</i> , filed by Defendants JOSHUA BUCK, TRICIA PAYNE, re 47 MOTION for Summary Judgment . (Kalmbach, Melanie) (Entered: 06/26/2024)
06/27/2024	51	MOTION Requesting Copies, filed by Plaintiff DWAYNE BREAKIRON. (Attachments: # 1 Envelope)(AJG) (Entered: 07/01/2024)
07/11/2024	52	MOTION for Extension of Time to File Response to 47 MOTION for Summary Judgment , filed by Plaintiff DWAYNE BREAKIRON. (Attachments: # 1 Cover Letter)(JRB) (Entered: 07/12/2024)
07/16/2024	53	ORDER - In summary, Plaintiff's motions to correct error and to order Superintendent Mitchell to show cause, Dkts. 43 , 46 , are denied. His motion for copies, Dkt. 51 , is granted in part and denied in part as stated in Section II. His motion to extend the summary judgment response deadline, Dkt. 52 , is granted as stated in Section III. The clerk is directed to enclose a public docket sheet with Plaintiff's copy of this Order (SEE ORDER FOR INFORMATION AND DEADLINE). Signed by Magistrate Judge Crystal S. Wildeman on 7/16/2024. (Attachments: # 1 Copy of Public Docket Sheet) (DWH) (Entered: 07/16/2024)
07/31/2024	54	MOTION for Issuance of Subpoena to Non Party, filed by Plaintiff DWAYNE BREAKIRON. (JRB) (Entered: 08/01/2024)
07/31/2024	55	MOTION to Reopen Discovery, filed by Plaintiff DWAYNE BREAKIRON. (Attachments: # 1 Envelope)(JRB) (Entered: 08/01/2024)
08/15/2024	56	ORDER - Given the pendency of Plaintiff's discovery motions, Dkt. 54 and 55 , the Court sua sponte extends his deadline to respond to the pending summary judgment motion, Dkt. 47 , up to and including September 30, 2024. The discovery motions, Dkt. 54 and 55 , remain pending and will be decided by separate entry. Signed by Magistrate Judge Crystal S. Wildeman on 8/15/2024.(TMB) (Entered: 08/15/2024)
08/15/2024	57	ORDER - Defendants are ORDERED to respond to the motion to reopen discovery and motion for issuance of a subpoena, Dkt. 54 and 55 , within 7 days of the date of this Order. The motions, Dkt. 54 and 55 , remain pending. SEE ORDER. Signed by Magistrate Judge Crystal S. Wildeman on 8/15/2024.(JRB) (Entered: 08/15/2024)

08/20/2024	58	RESPONSE in Opposition re 55 MOTION <i>to Reopen Discovery and Motion Requesting the Issuance of a Subpoena to a Non-Party</i> , filed by Defendants JOSHUA BUCK, TRICIA PAYNE. (Kalmbach, Melanie) (Entered: 08/20/2024)
09/11/2024	59	ORDER - The Court effectively directed Plaintiff to file a motion for relief under Federal Rule of Civil Procedure 56(d). Plaintiff responded with the two motions currently pending before the Court a motion to reopen discovery and a motion to issue a subpoena to Superintendent Mitchell. Plaintiff's motion to reopen discovery and extend the summary judgment deadline, Dkt. 55 , and his motion to issue a subpoena to Superintendent Mitchell, Dkt. 54 , are denied. His deadline for responding to the pending summary judgment motion, Dkt. 47 , remains September 30, 2024. See Dkt. 56. *** SEE ORDER ***. Signed by Magistrate Judge Crystal S. Wildeman on 9/11/2024. (CKM) (Entered: 09/11/2024)
09/20/2024	61	MOTION to Reconsider, filed by Plaintiff DWAYNE BREAKIRON. (Attachments: # 1 Cover Letter)(TPS) (Entered: 10/03/2024)
09/27/2024	60	RESPONSE in Opposition to 47 MOTION for Summary Judgment , filed by Plaintiff DWAYNE BREAKIRON. (Attachments: # 1 Cover Letter, # 2 Exhibit) (JRB) (Entered: 09/30/2024)
10/04/2024	62	REPLY in Support of Motion re 47 MOTION for Summary Judgment , filed by Defendants JOSHUA BUCK, TRICIA PAYNE. (Kalmbach, Melanie) (Entered: 10/04/2024)
10/15/2024	63	MOTION for Surreply to Deny Defendant's Motion for Summary Judgment, filed by Plaintiff DWAYNE BREAKIRON. (Attachments: # 1 Cover Letter)(JRB) (Entered: 10/15/2024)
12/18/2024	64	Correspondence REQUESTING COPY of Case Docket Sheet, filed by Dwayne Breakiron. (Attachments: # 1 Docket Sheet) (JRB) (Entered: 12/18/2024)
03/25/2025	65	ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND DIRECTING FURTHER ACTION - Plaintiff Dwayne Breakiron alleges that Defendants Joshua Buck and Tricia Payne were deliberately indifferent to his serious medical needs in connection with treatment they provided for a painful tooth. In summary, the clerk is directed to strike the amended complaint, dkt. 38 . Mr. Breakiron's motion to reconsider, dkt. 61 , and his motion for leave to file a summary judgment surreply, dkt. 63 , are denied. Defendants' summary judgment motion, dkt. 47 , is granted as to all claims against Ms. Payne and denied as to the claims against Dr. Buck. The claims against Ms. Payne are dismissed with prejudice. Mr. Breakiron's claims against Dr. Buck will be resolved by settlement or trial. The court prefers that Mr. Breakiron be represented by counsel for the remainder of this action. The clerk is directed to send Mr. Breakiron a blank form motion for assistance with recruiting counsel. Mr. Breakiron has 21 days from the entering of this Order to file a motion for counsel or to inform the Court that he wishes to proceed pro se. The presiding Magistrate Judge is requested to hold a status conference after counsel has been recruited or Mr. Breakiron informs the court that he will proceed pro se. The clerk is directed to terminate Defendant Payne as a defendant on the docket. No partial final judgment will enter at this time (SEE ORDER FOR DETAILS). Signed by District Judge Richard L Young on 3/25/2025. (Attachments: # 1 blank form motion for assistance with recruiting counsel) (DWH) (Entered: 03/25/2025)

04/01/2025	66	MOTION for Copies, filed by Defendant JOSHUA BUCK. (JRB) (Entered: 04/01/2025)
04/08/2025	67	ORDER ON PLAINTIFF'S MOTION - Now before the Court is self-represented Plaintiff Dwayne Breakiron's motion requesting a copy of Docket No. 38. (Dkt. 66). The motion is granted to the extent the Court informs Mr. Breakiron that the Amended Complaint (Dkt. 38) was stricken per the Court's Order at (Dkt. 65). The clerk is directed to include copies of (1) the public docket sheet and (2) the Court's Order and blank motion for assistance recruiting counsel form at (Dkt. 65) with Mr. Breakiron's copy of this Order. Furthermore, it is ORDERED that Mr. Breakiron has an extension of time up to and including May 8, 2025, to file a motion for assistance recruiting counsel, or to inform the Court that he wishes to proceed by representing himself in this case. Signed by Magistrate Judge Crystal S. Wildeman on 04/08/2025. (Attachments: # 1 Dkt 1,2,65) (AJG) (Entered: 04/08/2025)
04/08/2025	 68	MOTION for Leave to Proceed in forma pauperis, filed by Plaintiff DWAYNE BREAKIRON. (Attachments: # 1 Trust Account Information)(JRB) (Entered: 04/09/2025)
04/08/2025	 69	MOTION to Appoint Counsel, filed by Plaintiff DWAYNE BREAKIRON. (Attachments: # 1 Exhibit Existing E-consent Form)(CKM) (Main Document 69 replaced on 4/9/2025) (CKM). (Attachment 1 replaced on 4/9/2025) (CKM). (Entered: 04/09/2025)
04/09/2025	 70	MOTION <i>to Alter or Amend this Courts Order Denying His Motion for Summary Judgment</i> , filed by Defendant JOSHUA BUCK. (Kalmbach, Melanie) (Entered: 04/09/2025)
04/16/2025	71	RESPONSE in Opposition re 70 MOTION <i>to Alter or Amend this Courts Order Denying His Motion for Summary Judgment</i> , filed by Plaintiff DWAYNE BREAKIRON. (LF) (Entered: 04/17/2025)

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