

LAW OFFICES  
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176 MAIN STREET  
SOUTHBRIDGE, MASSACHUSETTS 01550

S. ANTHONY CAPRERA  
ROBERT G. CAPRERA\*

DOROTHY A. CAPRERA  
OF COUNSEL

\*(MA & FL BAR ASSOC.)

February 7, 1997

Richard S Fagone Esquire

Re: **Hyman Forman v Americal Division Veterans Association, Inc.**  
**Civil Action No. 96 CV 1518**

Dear Attorney Fagone:

Please find enclosed my proposed MOTION TO AMEND ANSWER for your review. If you are willing to assent to this answer, may I ask that you sign same and return it to me so that I might file it with the Quincy District Court.

If you are not willing to sign an assent, may I ask that you call me at your very earliest convenience so that we can agree on a motion date to be heard in the Quincy District Court at the earliest convenient time.

Sincerely,

S Anthony Caprera

SAC\kmd

cc: file

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT OF THE COMMONWEALTH  
District Court Department - Quincy Division

NORFOLK, SS

CIVIL ACTION NO  
96-CV-1518

HYMAN FORMAN	}	
PLAINTIFF	}	
V.	}	MOTION TO AMEND
AMERICAL DIVISION VETERANS	}	
ASSOCIATION, INC	}	
DEFENDANT	}	ANSWER

Comes now the Defendant, by and through counsel, and moves the court to amend its answer consistent with the proposed amended answer which is attached hereto and made a part hereof as Exhibit A.

As grounds for this motion counsel now states that the Defendant filed an answer in letter form *pro se* but has now retained legal counsel to file a proper answer.

Wherefore, the Defendant requests that this motion be allowed.

Submitted this \_\_\_\_\_ day of February, 1997.

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S Anthony Caprera  
176 Main Street  
Southbridge MA 01550  
BBO # 073100  
[REDACTED]

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TEL. [REDACTED]

## **CERTIFICATE OF SERVICE**

I, S Anthony Caprera, Esquire of the law office of Caprera & Caprera, of 176 Main Street, Southbridge MA 01550, hereby certify that the within-named document was served on all parties of record in this action by mailing a copy thereof, first-class, postage prepaid, on \_\_\_\_\_, 1997, to the following:

Richard S Fagone, Esquire

[REDACTED]  
[REDACTED]

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S. Anthony Caprera

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TEL. [REDACTED]

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT OF THE COMMONWEALTH  
District Court Department - Quincy Division

NORFOLK, SS

CIVIL ACTION NO  
96-CV-1518

HYMAN FORMAN	}	
PLAINTIFF	}	
	}	
V.	}	ANSWER AND AFFIRMATIVE
	}	DEFENSES
AMERICAL DIVISION VETERANS	}	
ASSOCIATION, INC	}	
DEFENDANT	}	

ANSWER

1. The Defendant admits to the allegations contained in number one of the Plaintiff's complaint.
2. The Defendant admits the allegation contained in number two the complaint
3. The Defendant admits the allegation contained in number 3 of the complaint.
4. The Defendant denies the allegation contained in number 4 of the complaint.
5. The Defendant denies the allegation contained in number 5 of the complaint.
6. The Defendant admits the allegation contained in number 6 of the complaint.
7. The Defendant denies the allegation contained in number 7 of the complaint.

Wherefore, the Defendant requests that the Plaintiff's complaint be dismissed with costs and reasonable attorney fees awarded to the Defendant.

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TEL. [REDACTED]

### **FIRST AFFIRMATIVE DEFENSE**

The complaint of the Plaintiff does not state a cause of action upon which relief can be granted.

Wherefore the Defendant requests that the Plaintiff's complaint be dismissed with costs and reasonable attorney fees awarded to the Defendant.

### **SECOND AFFIRMATIVE DEFENSE**

The complaint of the Plaintiff is barred by the statute of limitations

Wherefore the Defendant requests that the Plaintiff's complaint be dismissed with costs and reasonable attorney fees awarded to the Defendant.

### **THIRD AFFIRMATIVE DEFENSE**

The complaint of the Plaintiff is barred by the doctrine of laches.

Wherefore the Defendant requests that the Plaintiff's complaint be dismissed with costs and reasonable attorney fees awarded to the Defendant.

### **FOURTH AFFIRMATIVE DEFENSE**

The alleged agreement of the Plaintiff lacks consideration and therefore the Plaintiff's case should be dismissed.

Wherefore the Defendant requests that the Plaintiff's complaint be dismissed with costs and reasonable attorney fees awarded to the Defendant.

### **FIFTH AFFIRMATIVE DEFENSE**

The alleged agreement of the Plaintiff lacks mutual assent and therefore the complaint of the Plaintiff should be dismissed.

Wherefore the Defendant requests that the Plaintiff's complaint be dismissed with costs and reasonable attorney fees awarded to the Defendant.

### **SIXTH AFFIRMATIVE DEFENSE**

The alleged acts of the Plaintiff and Defendant corporation constitute ultra vires acts which were conducted without authorization of the corporation and therefore, the complaint of the Plaintiff should be dismissed.

Wherefore the Defendant requests that the Plaintiff's complaint be dismissed with costs and reasonable attorney fees awarded to the Defendant.

**SEVENTH AFFIRMATIVE DEFENSE**

The alleged agreement of the Plaintiff and Defendant corporation is void of any proper authorization from the corporate Defendant and, therefore the complaint of the Plaintiff should be dismissed.

Wherefore the Defendant requests that the Plaintiff's complaint be dismissed with costs and reasonable attorney fees awarded to the Defendant.

**EIGHTH AFFIRMATIVE DEFENSE**

The allegations of the Plaintiff's complaint are frivolous and unfounded in violation of Massachusetts General Laws c. 231 § 6F and therefore the Plaintiff's complaint should be dismissed with all applicable remedies of the act allowable to the Defendant.

Wherefore the Defendant requests that the Plaintiff's complaint be dismissed with costs and reasonable attorney fees awarded to the Defendant.

Defendant demands trial by jury on all issues of this case.

**Submitted this 10th day of February 1997.**

Americans Division Veterans Association, Inc.  
By its attorney,

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S Anthony Caprera  
176 Main Street  
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[REDACTED] [REDACTED]

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