

Holston, MacDonald, Uzdavinis, Eastlack, Ziegler & Lodge

66 Euclid Street

P.O. Box 358

Woodbury, N.J. 08096

(856) 848-5858

Attorneys for Defendant City of Camden (improperly pled as Camden Police Department)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

<p>JOEL BARNES</p> <p style="text-align: center;">Plaintiff</p> <p style="text-align: center;">v.</p> <p>KEVIN MICHAEL PARRY; JASON STETSER; ROBERT BAYARD; ANTONIO FIGUEROA; DAN MORRIS; DOES 1 – 10; CAMDEN POLICE DEPARTMENT; CAMDEN COUNTY PROSECUTOR WARREN FAULK; AND ATTORNEY GENERAL OF NEW JERSEY PAULA DOW</p> <p style="text-align: center;">Defendants</p>	<p>DOCKET NO.: 1:10-CV-3827 NLH/KMW</p> <p style="text-align: center;">CIVIL ACTION</p> <p>ANSWER AND CROSSCLAIMS OF DEFENDANT CITY OF CAMDEN (improperly pled as Camden Police Department)</p>
--	--

Defendant, City of Camden (improperly pled as the Camden Police Department)

hereby says as follows:

PRELIMINARY STATEMENT

1. No response required.
2. Neither admitted nor denied as the allegations are not directed toward the answering defendant. To the extent that any of the allegations are directed to the answering defendant, said allegations are denied.

JURISDICTION AND VENUE

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

PARTIES

7. Neither admitted nor denied as the answering defendant lacks in formation to formulate a response to same. Plaintiff is left to his proofs.

8. It is admitted that defendant Parry was a police officer employed by the City of Camden. To the balance of the allegations, neither admitted nor denied as the allegations are not directed towards the answering defendant. Plaintiff is left to his proofs. As to the allegation that the defendant committed wrongful acts pursuant to any laws, policies or customs of the City of Camden, said allegations are denied.

9. It is admitted that defendant Stetser was a police officer employed by the City of Camden. To the balance of the allegations, neither admitted nor denied as the allegations are not directed towards the answering defendant. Plaintiff is left to his proofs. As to the allegation that the defendant committed wrongful acts pursuant to any laws, policies or customs of the City of Camden, said allegations are denied.

10. It is admitted that defendant Bayard was a police officer employed by the City of Camden. To the balance of the allegations, neither admitted nor denied as the allegations are not directed towards the answering defendant. Plaintiff is left to his proofs. As to the allegation that the defendant committed wrongful acts pursuant to any laws, policies or customs of the City of Camden, said allegations are denied.

11. It is admitted that defendant Figueroa was a police officer employed by the City of Camden. To the balance of the allegations, neither admitted nor denied as the

allegations are not directed towards the answering defendant. Plaintiff is left to his proofs. As to the allegation that the defendant committed wrongful acts pursuant to any laws, policies or customs of the City of Camden, said allegations are denied.

12. It is admitted that defendant Morris was a police officer employed by the City of Camden. To the balance of the allegations, neither admitted nor denied as the allegations are not directed towards the answering defendant. Plaintiff is left to his proofs. As to the allegation that the defendant committed wrongful acts pursuant to any laws, policies or customs of the City of Camden, said allegations are denied.

13. Denied.

14. Admitted that the City of Camden employs a police force. It is denied that the Camden Police Department is its own entity. The balance of the allegations in this paragraph are denied.

15. Admitted that Mr. Faulk is the Camden County Prosecutor. It is admitted that the Camden County Prosecutor had superseded the operation of the Camden Police Force at times relevant to this complaint. As to the balance of the allegations, neither admitted nor denied as the allegations are not directed toward the answering defendant. If any of these allegations are directed toward the answering defendant, said allegations are denied.

16. It is admitted that Paula Dow is the Attorney General of the State of New Jersey. As to the balance of the allegations, neither admitted nor denied as the allegations are not directed toward the answering defendant. To the extent that any of these allegations are directed toward the answering defendant, said allegations are denied.

FACTUAL ALLEGATIONS

17. Neither admitted nor denied as the answering defendant is without information to formulate a response to same. Plaintiff is left to his proofs.

18. Neither admitted nor denied as the answering defendant is without information to formulate a response to same. Plaintiff is left to his proofs.

19. Neither admitted nor denied as the allegations are not directed towards the answering defendant. To the extent that any of the allegations are directed toward the answering defendant, said allegations are denied.

20. Neither admitted nor denied as the allegations are not directed towards the answering defendant. To the extent that any of the allegations are directed toward the answering defendant, said allegations are denied.

21. Neither admitted nor denied as the allegations are not directed towards the answering defendant. To the extent that any of the allegations are directed toward the answering defendant, said allegations are denied.

22. Neither admitted nor denied as the allegations are not directed towards the answering defendant. To the extent that any of the allegations are directed toward the answering defendant, said allegations are denied.

23. Neither admitted nor denied as the allegations are not directed towards the answering defendant. To the extent that any of the allegations are directed toward the answering defendant, said allegations are denied.

24. Neither admitted nor denied as the allegations are not directed towards the answering defendant. To the extent that any of the allegations are directed toward the answering defendant, said allegations are denied.

25. Neither admitted nor denied as the allegations are not directed towards the answering defendant. To the extent that any of the allegations are directed toward the answering defendant, said allegations are denied.

26. Neither admitted nor denied as the answering defendant lacks information to formulate a response to same. Plaintiff is left to his proofs.

27. Neither admitted nor denied as the answering defendant lacks information to formulate a response to same. Plaintiff is left to his proofs.

28. Upon information and belief, defendant Parry pled guilty to federal charges. As to the balance of the allegations, neither admitted nor denied. Plaintiff is left to his proofs.

29. Upon information and belief, defendant Stetser pled guilty to federal charges. As to the balance of the allegations, neither admitted nor denied. Plaintiff is left to his proofs.

30. Denied.

31. Neither admitted nor denied as answering defendant lacks information to formulate a response to same. Plaintiff is left to his proofs.

32. Denied.

33. Denied.

FIRST CLAIM FOR RELIEF

34. Answering defendant repeats its preceding responses.

35. Neither admitted nor denied as the referenced provision speaks for itself.

36. Denied.

37. Denied.

SECOND CLAIM FOR RELIEF

- 38. Answering defendant repeats its preceding responses.
- 39. Neither admitted nor denied as the referenced provision speaks for itself.
- 40. Denied.
- 41. Denied.

THIRD CLAIM FOR RELIEF

- 42. Answering defendant repeats its preceding responses.
- 43. Neither admitted nor denied as the referenced provision speaks for itself.
- 44. Denied.
- 45. Denied.

FOURTH CLAIM FOR RELIEF

- 46. Answering defendant repeats its preceding responses.
- 47. Neither admitted nor denied as the referenced provision speaks for itself.
- 48. Denied.
- 49. Denied.

FIFTH CLAIM FOR RELIEF

- 50. Answering defendant repeats its preceding responses.
- 51. Neither admitted nor denied as the referenced provision speaks for itself.
- 52. Denied.
- 53. Denied.

SIXTH CLAIM FOR RELIEF

- 54. Answering defendant repeats its preceding responses.
- 55. Neither admitted nor denied as the referenced provision speaks for itself.

56. Denied.

57. Denied.

SEVENTH CLAIM FOR RELIEF

58. Answering defendant repeats its preceding responses.

59. Neither admitted nor denied as the referenced provision speaks for itself.

60. Denied.

EIGHTH CLAIM FOR RELIEF

61. Answering defendant repeats its preceding responses.

62. Neither admitted nor denied as the referenced provision speaks for itself.

63. Denied.

NINTH CLAIM FOR RELIEF

64. Answering defendant repeats its preceding responses.

65. Neither admitted nor denied as the allegation constitutes a legal conclusion.

66. Neither admitted nor denied as the allegations are not directed towards the answering defendant. Plaintiff is left to his proofs. To the extent that any of the allegations are directed towards the answering defendant, said allegations are denied.

67. Denied.

68. Denied.

WHEREFORE, the answering defendant demands judgment on all counts dismissing plaintiff's complaint with prejudice, together with counsel fees, costs of suit and any other relief which the court deems equitable and just.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to comply with the notice provisions of the New Jersey Tort Claims Act, specifically 59:8-1 et seq., and answering defendant reserves the right to move to dismiss plaintiff's complaint on this basis.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's complaint is barred by the applicable Statute of Limitations.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's complaint fails to set forth, with specificity, facts alleging constitutional violations, and as such plaintiff's complaint is barred, and answering defendant reserves the right to move to dismiss plaintiff's complaint on this basis.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's complaint for punitive damages must be dismissed pursuant to N.J.S.A. 59:9-2c.

FIFTH AFFIRMATIVE DEFENSE

Answering defendant hereby reserves the right to claim damages recoverable under Federal Rule 11 and/or the New Jersey Frivolous Law Suit Statute, N.J.S.A. 2A:15-59, 1 et seq.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's complaint fails to state a cause of action upon which relief may be granted.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff is estopped from filing a lawsuit against the answering defendant for common law negligence as plaintiff has failed to file a timely and adequate notice of a Tort Claim pursuant to the provisions of N.J.S.A. 59:8-1 et seq.

EIGHTH AFFIRMATIVE DEFENSE

This Court lacks in personam jurisdiction to hear the Complaint.

NINTH AFFIRMATIVE DEFENSE

Answering defendant is immune from suit for the acts alleged in plaintiff's complaint.

TENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to file a timely complaint pursuant to the provisions of N.J.S.A. 2A:14-2.

ELEVENTH AFFIRMATIVE DEFENSE

Answering defendant did not know and could not have been reasonably expected to know that any action taken by the remaining defendants named or unnamed with respect to plaintiff was in violation of plaintiff's constitutional rights, and accordingly, answering defendant, is immune from liability.

TWELFTH AFFIRMATIVE DEFENSE

Answering defendant acted reasonably and in good faith based upon the information available to answering defendant.

THIRTEENTH AFFIRMATIVE DEFENSE

This Court lacks subject matter jurisdiction to hear the complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff is barred by the Doctrine of Equitable/Legal Estoppel.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's complaint is barred by the Doctrine of Unclean Hands.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's complaint is barred by the Doctrine of Laches.

SEVENTHTH AFFIRMATIVE DEFENSE

Plaintiff lacks standing to bring the within complaint.

EIGHTEENTH AFFIRMATIVE DEFENSE

Answering defendant breached no duties to plaintiff.

NINETEENTH AFFIRMATIVE DEFENSE

The incident described in the complaint was caused wholly or partly by the negligence or intentional acts of the plaintiff and plaintiff is barred from recovery or his recovery is reduced thereby.

TWENTIETH AFFIRMATIVE DEFENSE

A public entity is not liable for the acts or omissions of a public employee constituting a crime, actual fraud, actual malice, or willful misconduct pursuant to N.J.S.A. 59:2-10.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Answering defendant has breached no obligation and/or duty owed to the plaintiff.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Answering defendant acted upon reasonable grounds and without malice and is therefore not answerable to the plaintiff in damages.

TWENTY-THIRD AFFIRMATIVE DEFENSE

In the event that it is found that the acts of the agents, servants or employees of Defendant City of Camden or Camden Police Department were performed with malice and based upon unreasonable grounds, said acts are outside the scope of authorization from said Defendant, and is outside the scope of employment. As such, answering defendant is not answerable to the plaintiff for damages as liability would not attach to said defendant.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

The City of Camden Police Department properly trains and supervises its police officers.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Answering defendant has performed each and every duty owed to the plaintiff. If answering defendant is found to have breached any obligation or duties owed to the plaintiff, which breach is specifically denied, such breach was not the approximate cause of any injuries which may have been sustained by the plaintiff.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Answering defendant pleads all those defenses that would have been permissible to defendant in accordance with common law.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

The plaintiff's contributory negligence or intentional acts were the sole and/or proximate cause of any alleged injuries suffered by the plaintiff.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Answering defendant plead all those statutory defenses permissible in accordance with New Jersey Criminal Code.

TWENTY-NINTH AFFIRMATIVE DEFENSE

This action is barred by N.J.S.A. 59:1-1 et seq.

THIRTIETH AFFIRMATIVE DEFENSE

This action is governed by the provisions of N.J.S.A. 59:1-1 et seq., and the same are incorporated herein as if set forth herein at length.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Pursuant to N.J.S.A. 59:9-2(d), plaintiff is not entitled to recover for pain and suffering.

THIRTY-SECOND AFFIRMATIVE DEFENSE

Answering defendant claims credit for all collateral sources from which plaintiff has received or may receive benefits, pursuant to N.J.S.A. 59:1-1 et seq.

THIRTY-THIRD AFFIRMATIVE DEFENSE

At all relevant times, the answering defendant, City of Camden conducted itself in compliance with all applicable federal, state and local laws, statutes, ordinances and regulations, which compliance bars plaintiff from asserting the claims herein.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff's complaint is barred in whole or in part due to the absolute and/or qualified immunity afforded to the answering defendant.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiff's complaint should be dismissed for failing to file a timely and adequate Notice of Tort Claim pursuant to N.J.S.A. 59:8-1 et seq.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

The City of Camden and/or the Camden Police Department have not engaged in policy of indifference for incidents of unjustified violence or behavior by its employees.

CROSSCLAIM FOR CONTRIBUTION AND/OR INDEMNIFICATION

While denying any liability in this action, the answering defendant alleges that in the event that the plaintiff obtains a judgment against these answering defendant, the answering defendant is entitled to contribution and/or indemnification against the remaining defendants or John Does. Accordingly, and without admitting any liability whatsoever, the answering defendant hereby demands from any/all codefendants currently named or to be named to this action for contribution and/or indemnification pursuant to any and all applicable provisions of common law and/or contract and/or statute, including but not limited to the New Jersey Joint Tortfeasor Contribution Act, N.J.S.A. 2A:15-5.1 et seq.; the New Jersey Tort Claims Act, N.J.S.A. 59:9-3 and 59:9-4 and/or by way of demand for complete indemnification against all other Defendants currently named or to be named, assert that any negligence on the part of the answering defendant is only secondary, vicarious and imputed whereas the negligence of any/all

such other defendants is primary, direct and active.

WHEREFORE, the answering defendant demands that the remaining Defendants or John Does or parties later added be held jointly and/or severally liable for contribution and/or indemnification to the answering defendant for any recovery made by the plaintiff in the present matter.

DENIAL OF CROSSLCLAIMS

Answering Defendant hereby denies all allegations contained in any cross-claims for contribution and/or indemnification filed against it (or which are subsequently filed against it) by any party.

RESERVATION OF DEFENSES AND OBJECTIONS

The answering defendant reserves the right to assert and raise any additional objections and affirmative defenses which become known during the course of discovery.

DEMAND FOR STATEMENT OF DAMAGES

TAKE NOTICE that the answering defendant herein hereby demands the plaintiff through his attorney, to serve a Statement of Damages claimed within five (5) days of the date of service hereof.

JURY DEMAND

The answering defendant demands trial by jury on the issues.

DESIGNATION OF TRIAL COUNSEL

John C. Eastlack, Jr., Esquire, is hereby designated as trial counsel for the answering defendant in the within action.

CERTIFICATION PURSUANT TO L.CIV.R.11.2

I, Samuel J. Myles, hereby certify as follows:

1. To the best of my knowledge, this matter is not the subject of any other action pending in any court or any pending arbitration proceeding.
2. To the best of my knowledge, no other action or arbitration proceeding is contemplated.
3. To the best of my knowledge, there are no other parties who should be joined in this litigation at this time.
4. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Respectfully submitted,

Date: October 4, 2010

/s/ Samuel J. Myles
Samuel J. Myles, Esquire
**HOLSTON, MacDONALD, UZDAVINIS
EASTLACK, ZIEGLER & LODGE, P.A.**
66 Euclid Street
Woodbury, NJ 08096
Phone: 856-848-5858
Fax: 856-848-1898
Attorney for Defendant City of Camden
(improperly pled as Camden Police Dept.)

CERTIFICATION OF SERVICE

I certify that a copy of this Answer in the within matter was served via electronic filing and regular mail upon all counsel of record.

**HOLSTON, MacDONALD, UZDAVINIS,
EASTLACK, ZIEGLER & LODGE**

Date: October 4, 2010

By: /s/ Samuel J. Myles
Samuel J. Myles