

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

HOWARD BROWN

CIVIL DOCKET NO.: 3:22-cv-00264

VERSUS

JUDGE DICK

CITY OF CENTRAL, ET AL.

MAGISTRATE BOURGEOIS

**ANSWER TO COMPLAINT
WITH AFFIRMATIVE DEFENSES**

NOW INTO COURT, through undersigned counsel, comes Defendant, **the City of Central**, for the purpose of answering the Plaintiff's Complaint and for asserting affirmative defenses, as follows, to wit:

FIRST DEFENSE

Plaintiff's Complaint fails to state a claim for which this Court may grant relief. Therefore, Plaintiff has no cause of action as to the Defendant. The Defendant also reserves its right to assert all motions and issues under the F.R.C.P. Rules.

SECOND DEFENSE

The Defendant pleads both aspects of qualified immunity with respect to the Plaintiff's claims – that being immune from suit and being immune from liability.

THIRD DEFENSE

In the alternative, and subject to the allegations herein set forth above, the Defendant answers the specific allegations of Plaintiff's Complaints as follows:

1.

The allegations contained in the section of Plaintiff's Complaint entitled "Complaint and Jury Demand on All Counts Applicable" are essentially informational for purposes of the filing of his complaint. To the extent they assert any liability or fault on the part of the City, the City's Chief, or

the City's Officers, the allegations contained therein are denied.

2.

The allegations contained in the section of Plaintiff's Complaint entitled "Introduction", the allegations contained therein are denied.

3.

In response to the allegations contained in the section of Plaintiff's Complaint entitled "Jurisdiction", Defendant believes that this Court has Jurisdiction and that this is a proper venue.

4.

The allegations contained in the section of Plaintiff's Complaint entitled "Parties" regarding the City of Central, the City's Chief, or the City's Officers are admitted only as to their status, However, Defendant specifically denies any assertion of liability on the part of the City, the City's Chief, or the City's Officers. All remaining allegations contained therein are denied for lack of sufficient information to justify a reasonable belief therein..

5.

The allegations contained in the section of Plaintiff's Complaint entitled "Facts", the allegations contained therein are denied, denied as written, and denied for lack of sufficient information to justify a reasonable belief therein. Defendant specifically denies any assertion of liability on the part of the City, the City's Chief, or the City's Officers.

6.

The allegations contained in the section of Plaintiff's Complaint entitled "Non-Compliance with State Criminal Codes", the allegations contained therein are denied.

7.

The allegations contained in the section of Plaintiff's Complaint entitled "Claim 1: Unlawful

Seizure under the Fourth Amendment - Color of State Law” are denied as to any assertion of liability on the part of the City, the City’s Chief, or the City’s Officers. All remaining allegations contained therein are denied, denied as written, and denied for lack of sufficient information to justify a reasonable belief therein.

8.

The allegations contained in the section of Plaintiff’s Complaint entitled “Claim 2: Conspiracy Against Rights” are denied as to any assertion of liability on the part of the City, the City’s Chief, or the City’s Officers. All remaining allegations contained therein are denied, denied as written, and denied for lack of sufficient information to justify a reasonable belief therein.

9.

The allegations contained in the section of Plaintiff’s Complaint entitled “Claim 3: Deprivation of Rights Under Color of Law” are denied as to any assertion of liability on the part of the City, the City’s Chief, or the City’s Officers. All remaining allegations contained therein are denied, denied as written, and denied for lack of sufficient information to justify a reasonable belief therein.

10.

The allegations contained in the section of Plaintiff’s Complaint entitled “Claim 4: Common Law Conspiracy” are denied as to any assertion of liability on the part of the City, the City’s Chief, or the City’s Officers. All remaining allegations contained therein are denied, denied as written, and denied for lack of sufficient information to justify a reasonable belief therein.

11.

The allegations contained in the section of Plaintiff’s Complaint entitled “Claim 5: Trespass” are denied as to any assertion of liability on the part of the City, the City’s Chief, or the City’s

Officers. All remaining allegations contained therein are denied, denied as written, and denied for lack of sufficient information to justify a reasonable belief therein.

12.

The allegations contained in the section of Plaintiff's Complaint entitled "Count 6: Intentional Infliction of Emotional Distress" are denied as to any assertion of liability on the part of the City, the City's Chief, or the City's Officers. All remaining allegations contained therein are denied, denied as written, and denied for lack of sufficient information to justify a reasonable belief therein.

13.

The allegations contained in the section of Plaintiff's Complaint entitled "Claim 7: Conversions" are denied as to any assertion of liability on the part of the City, the City's Chief, or the City's Officers. All remaining allegations contained therein are denied, denied as written, and denied for lack of sufficient information to justify a reasonable belief therein.

14.

The allegations contained in the section of Plaintiff's Complaint entitled "Request for Relief" are denied as to any assertion of liability on the part of the City, the City's Chief, or the City's Officers. All remaining allegations contained therein are denied, denied as written, and denied for lack of sufficient information to justify a reasonable belief therein.

AND NOW, and further answering in the alternative, Defendant, **the City of Central**, affirmatively pleads as follows:

FOURTH DEFENSE

The Defendant answering herein submits that the Plaintiff's claims are frivolous, groundless,

and unreasonable. As such, it is entitled to an award against the Plaintiff for all attorney's fees and costs expended in this matter pursuant to the Civil Rights Attorney's Fee Awards Act of 1976, codified as 42 U.S.C.A. §1988(b) and as interpreted by *Hensley v. Eckerhart*, 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed. 2d 40 (1983) and its progeny.

FIFTH DEFENSE

None of the acts and/or actions by the City, the City's Chief, or the City's Officers violated any of the Plaintiff's constitutional or statutory rights. Moreover, all acts and actions by the City, the City's Chief, or the City's Officers were within their legal authority as a law enforcement and/or penal officers and were taken in good faith, without malice, with reasonable cause with a sincere belief that said actions were legal and under laws believed to be constitutional in nature, and without any intention whatsoever to harm Plaintiff.

SIXTH DEFENSE

None of the acts and/or actions by the the City, the City's Chief, or the City's Officers support any type of valid *Monell* claim in this matter. *Monell v. New York City Dept. Of Social Services*, 436 U.S. 658 (1978). The Defendant also pleads the defenses of unavoidable accident, aggressor doctrine; emergency doctrine; set-off; lack of mitigation of damages; absolute, discretionary and/or qualified immunity; good faith; probable cause; public duty doctrine; assumption of the risk; and contribution.

SEVENTH DEFENSE

Plaintiff cannot meet his burden of showing that under 42 U.S.C. §1983 a "direct causal link" between the municipal action or omission and the deprivation of the federal rights (which is specifically denied). *Board of County Commissioners v. Brown*, 520 U.S. 397, 404 (1993). Further, the City was not the "moving force" behind the alleged deprivation. *Kentucky v. Graham*, 473 U.S.

159 (1985).

EIGHTH DEFENSE

Plaintiff is not entitled to legal interest against the Defendant.

NINTH DEFENSE

The Defendant pleads as an affirmative defense La. R.S. 9:2798.1 which states that liability shall not be imposed on public entities or their officers or employees based upon the exercise or performance or the failure to exercise or perform their policymaking or discretionary acts when such acts are within the course and scope of their lawful powers and duties.

TENTH DEFENSE

The Defendant pleads the comparative fault of Plaintiff and/or that of other persons and entities, who are not parties to this instant matter. Accordingly, the injuries complained of are a result of the fault of the Plaintiff and/or other third persons or entities. In the alternative, in the event that this Court finds any negligence and/or fault on the part of any of the City, the City's Chief, or the City's Officers, which is specifically denied, then the Defendant respectfully avers, as an affirmative defense, the limitations set forth in Article 2324 of the Louisiana Civil Code under which it cannot be liable for more than any degree of fault assessed to it and that it cannot be solitarily liable with any other party or non-party.

ELEVENTH DEFENSE

The Defendant specifically avers that the Plaintiff has failed to mitigate any damages that he may have suffered, despite a legal duty to do so.

TWELFTH DEFENSE

Defendant pleads as an affirmative defense any and all applicable provisions of the Louisiana Governmental Claims Act (La. R.S. 13:5101, et seq.), specifically including the limitation of liability

contained therein, as well as any and all other statutory or jurisprudential limitation of liability, costs, and interest available to them under the law.

THIRTEENTH DEFENSE

The Defendant specifically avers any and all affirmative defenses specifically enumerated in Louisiana Code of Civil Procedure Article 1005 which are applicable to this case and/or any and all affirmative defenses recognized by this jurisprudence, and these are pled as if copied here *in extenso* to the extent they apply; and specifically, La. R.S. 9:2800, La. R.S. 9:2792.4, La. R.S. 9:2798.1, La. R.S. 9:2798.4, La. R.S. 13:5105, La. R.S. 13:5106; La. R.S. 13:5112; and La. R.S. 42;1441, *et seq.* as to any specific state law claims, if applicable.

FOURTEENTH DEFENSE

The Defendant specifically and affirmatively pleads that the alleged violations of 42 U.S.C. §1983 contained in Plaintiff's Complaint are specifically barred and/or precluded by the holdings in *Heck v. Humphrey*, 512 U.S. 477 (1994) and *Hudson v. Hughes*, 98 F.3d 868, 873 (5th Cir.1996).

FIFTEENTH DEFENSE

Plaintiff is not entitled to recover punitive damages or penalties against the City, the City's Chief, or the City's Officers sued in their official capacity and cannot recover due to the City, the City's Chief, or the City's Officers inability to pay.

SIXTEENTH DEFENSE

The Plaintiff's allegations, even if proven, do not adequately disclose the deprivation of a protected federal constitutional right.

SEVENTEENTH DEFENSE

The City of Central specifically denies both the extent and measure of damages alleges by the Plaintiff in this proceeding and they specifically deny that they are in any manner legally liable

for any of that amount.

EIGHTEENTH DEFENSE

Louisiana Code of Civil Procedure Article 863 is pled herein to recover sanctions, attorney's fees, and costs should the allegations of any state law cause of action be found to be unfounded, uninvestigated or frivolous as to any specific state law claims.

To the extent permitted by law, the Defendant reserve its right to supplement and amend this Answer and to assert additional Affirmative Defenses as future discovery may warrant and require.

WHEREFORE, Defendant, **the City of Central**, prays that this Answer to Plaintiff's Complaint be deemed good and sufficient, and after due proceedings are had, that there be a judgment in favor of the Defendant and against the Plaintiff, dismissing his lawsuit in its entirety with prejudice, at his costs, and with attorney's fees pursuant to 42 U.S.C. §1988.

Respectfully submitted,

s/ J. Scott Thomas

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CERTIFICATE

I hereby certify that on June 8, 2022, a copy of the above and foregoing Answer to Complaint with Affirmative Defenses was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to plaintiffs' and any counsel of record by operation of the court's electronic filing system.

s/ J. Scott Thomas

J. SCOTT THOMAS