

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

JOSE L. MURANO,)	
)	
Plaintiff,)	Case No. 19-CV-2075
)	
vs.)	
)	Judge Colin Stirling Bruce
CITY OF KANKAKEE)	
KANKAKEE POLICE OFFICERS)	Magistrate Judge Eric I. Long
LOGAN ANDERSEN and JOE ENGLISH,)	
)	JURY TRIAL DEMANDED
Defendants.)	

**DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSE TO PLAINTIFF'S COMPLAINT**

NOW COME Defendants CITY OF KANKAKEE, LOGAN ANDERSEN and JOE ENGLISH, by and through their attorney, MICHAEL W. CONDON of HERVAS, CONDON & BERSANI, P.C., and for their Answer and Affirmative Defense to Plaintiff's Complaint at Law, state as follows:

1. This is an action for money damages brought pursuant to 42 U.S.C. § 1983, and the common law and statutes of the State of Illinois.

ANSWER: Defendants admit only that the Plaintiff is bringing this action for money damages pursuant to 42 U.S.C. § 1983 but deny the remaining allegations contained in Paragraph 1 of Plaintiff's Complaint

2. Jurisdiction for Plaintiff's federal claims is based on 28 U.S.C. §§ 1331 and 1343(a).

ANSWER: Defendants admit the allegations contained in Paragraph 2 of Plaintiff's Complaint.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), in that the claims arose in this district as alleged below.

ANSWER: Defendants admit the allegations contained in Paragraph 3 of Plaintiff's Complaint.

Parties

4. Plaintiff is a resident of Kankakee, Illinois.

ANSWER: Defendants have insufficient knowledge to either admit or deny the allegations contained in Paragraph 4 of Plaintiff's Complaint and therefore deny same and demand strict proof thereof.

5. Defendant-Officers LOGAN ANDERSEN ("Defendant ANDERSEN") and JOE ENGLISH ("Defendant ENGLISH") are duly appointed and sworn Kankakee police officers. At all times relevant to this Complaint, the Defendant-Officers were acting in the course and scope of their employment, and under color of state law, ordinance and/or regulation.

ANSWER: Defendants admit the allegations contained in Paragraph 5 of Plaintiff's Complaint.

6. The Defendant-Officers are sued in their individual capacities.

ANSWER: Defendants admit the allegations contained in Paragraph 6 of Plaintiff's Complaint.

7. Defendant CITY OF KANKAKEE is a municipal corporation, duly incorporated under the laws of the State of Illinois, and is the employer and principal of the Defendant-Officers.

ANSWER: Defendants admit the allegations contained in Paragraph 7 of Plaintiff's Complaint.

Facts

8. On August 18, 2017, after finishing work and waiting to meet a friend, Plaintiff was approached by Defendant ANDERSEN.

ANSWER: Defendants admit only that Defendant Anderson approached Plaintiff during the evening hours on August 18, 2017. Defendants have insufficient knowledge regarding the remaining allegations contained in Paragraph 8 of Plaintiff's Complaint and therefore deny same and demand strict proof thereof.

9. Plaintiff is Hispanic.

ANSWER: Defendants admit the allegations contained in Paragraph 9 of Plaintiff's Complaint.

10. Upon information and belief, Defendant ANDERSEN was investigating an alleged armed robbery. The suspect of the armed robbery was white and wearing different-colored clothing than Plaintiff.

ANSWER: Defendants admit that Defendant Andersen was investigating an armed robbery. Defendants deny the remaining allegations contained in Paragraph 10 of Plaintiff's Complaint.

11. Plaintiff was not involved in the alleged armed robbery.

ANSWER: Defendants have insufficient knowledge to either admit or deny the allegations contained in Paragraph 11 of Plaintiff's Complaint and therefore deny same and demand strict proof thereof.

12. Defendant ANDERSEN ordered Plaintiff to come speak with him.

ANSWER: Defendants admit the allegations contained in Paragraph 12 of Plaintiff's Complaint.

13. Plaintiff was frightened by Defendant ANDERSEN's demeanor and attempted to ride away on his bike.

ANSWER: Defendants admit that Plaintiff attempted to ride away on his bike. Defendants have insufficient knowledge to either admit or deny the remaining allegations contained in Paragraph 13 of Plaintiff's Complaint and therefore deny same and demand strict proof thereof.

14. Defendant ANDERSEN violently grabbed Plaintiff off the bike.

ANSWER: Defendants admit only that Defendant Andersen grabbed Plaintiff off of his bike but deny that he did so in a violent manner.

15. Plaintiff was seized and not free to leave when Defendant ANDERSEN grabbed him.

ANSWER: Defendants admit the allegations contained in Paragraph 15 of Plaintiff's Complaint.

16. Plaintiff had not violated any city, state or federal law. Defendant ANDERSEN did not have any reason to believe that Plaintiff had violated, or was about to violate, any city, state or

federal law. Defendant ANDERSEN did not have an arrest warrant, probable cause, reasonable suspicion, consent, or any other lawful basis to stop, detain, or search Plaintiff.

ANSWER: Defendants admit only that Defendant Andersen did not have an arrest warrant for Plaintiff. Defendants deny the remaining allegations contained in Paragraph 16 of Plaintiff's Complaint.

17. Once on the ground, Defendant ANDERSEN began to strike Plaintiff, including hitting Plaintiff in the head with his firearm.

ANSWER: Defendants admit only that Defendant Andersen struck Plaintiff, including hitting him in the head with his firearm, because Plaintiff was physically resisting and fighting with Defendant Andersen who feared for his physical safety and great bodily harm.

18. Plaintiff was able to get free from Defendant ANDERSEN's grasp and run away.

ANSWER: Defendants admit the allegations contained in Paragraph 18 of Plaintiff's Complaint.

19. Defendant ANDERSEN got on the radio and falsely claimed that Plaintiff had attacked him.

ANSWER: Defendants admit only that Defendant Andersen advised over the radio that Plaintiff had physically attacked him. Defendants deny the remaining allegations contained in Paragraph 19 of Plaintiff's Complaint.

20. A short time later, Defendant ANDERSEN saw Plaintiff running.

ANSWER: Defendants admit the allegations contained in Paragraph 20 of Plaintiff's Complaint.

21. Defendant ANDERSEN hit Plaintiff with his vehicle.

ANSWER: Defendants deny the allegations contained in Paragraph 21 of Plaintiff's Complaint.

22. Defendant ANDERSEN got out of the vehicle and tackled Plaintiff.

ANSWER: Defendants admit the allegations contained in Paragraph 22 of Plaintiff's Complaint.

23. At this time, Defendant ENGLISH arrived on the scene and violently kicked Plaintiff in the face as he lay on the ground.

ANSWER: Defendants admit only that Defendant English arrived on the scene and kicked Plaintiff once while Plaintiff was on the ground because Plaintiff was fighting with Defendant Andersen and physically resisting his arrest. Defendants deny the remaining allegations contained in Paragraph 23 of Plaintiff's Complaint.

24. Plaintiff was taken into custody.

ANSWER: Defendants admit the allegations contained in Paragraph 24 of Plaintiff's Complaint.

25. Plaintiff was searched. No contraband or evidence of criminal activity was found.

ANSWER: Defendants admit that Plaintiff was searched. Defendants have insufficient knowledge to either admit or deny the remaining allegations contained in Paragraph 25 of Plaintiff's Complaint and therefore deny same and demand strict proof thereof.

26. As a result of an investigation into the use of force by Defendant ANDERSEN on Plaintiff, he was suspended 10 days,

ANSWER: Defendants admit the allegations in Paragraph 26 of Plaintiff's Complaint but further state that Defendant Andersen filed a grievance and his suspension as to excessive use of force was overturned on appeal.

27. Each individual Defendant-Officer acted willfully and wantonly, maliciously, and with a conscious disregard and deliberate indifference to Plaintiff's rights.

ANSWER: Defendants deny the allegations contained in Paragraph 27 of Plaintiff's Complaint.

28. As a direct and proximate result of the acts of the Defendants described above, Plaintiff suffered damages including loss of physical liberty, physical pain and suffering, emotional distress and pecuniary damages including medical expenses.

ANSWER: Defendants deny the allegations contained in Paragraph 28 of Plaintiff's Complaint.

COUNT I

(42 U.S.C. § 1983 – Unreasonable Seizure)

29. Plaintiff realleges paragraphs 1 through 28 as if fully set forth herein.

ANSWER: Defendants restate and incorporate their answers to paragraphs 1-28 as their answer to paragraph 29 of Plaintiff's Complaint.

30. After Defendant ANDERSEN pulled Plaintiff off his bike, Plaintiff was not free to leave.

ANSWER: Defendants admit the allegations contained in Paragraph 30 of Plaintiff's Complaint.

31. Defendant ANDERSEN seized Plaintiff.

ANSWER: Defendants admit the allegations contained in Paragraph 31 of Plaintiff's Complaint.

32. Defendant ANDERSEN did not have a reasonable suspicion, based on specific and articulable facts, that Plaintiff was involved in criminal activity at the time.

ANSWER: Defendants deny the allegations contained in Paragraph 32 of Plaintiff's Complaint.

33. Defendant ANDERSEN did not have any other legal justification to seize Plaintiff.

ANSWER: Defendants deny the allegations contained in Paragraph 33 of Plaintiff's Complaint.

34. The seizure of Plaintiff without reasonable suspicion or any other legal justification violated his Fourth Amendment right, as guaranteed by the Fourteenth Amendment, to be free from unreasonable seizures.

ANSWER: Defendants deny the allegations contained in Paragraph 34 of Plaintiff's Complaint.

WHEREFORE, Defendants CITY OF KANKAKEE, LOGAN ANDERSEN and JOE ENGLISH deny that the Plaintiff is entitled to any judgment whatsoever against them, and pray this Honorable Court will enter judgment in their favor and allow for the costs of defending this lawsuit.

COUNT II
(42 U.S.C. § 1983 – Excessive Force)

35. Plaintiff realleges paragraphs 1 through 28 as if fully set forth herein.

ANSWER: Defendants restate and incorporate their answers to paragraphs 1-28 as their answer to paragraph 35 of Plaintiff’s Complaint.

36. Defendant ANDERSEN violated Plaintiff’s Fourth Amendment right, as guaranteed by the Fourteenth Amendment, to be free from the use of excessive and unreasonable force.

ANSWER: Defendants deny the allegations contained in Paragraph 36 of Plaintiff’s Complaint.

WHEREFORE, Defendants CITY OF KANKAKEE, LOGAN ANDERSEN and JOE ENGLISH deny that the Plaintiff is entitled to any judgment whatsoever against them, and pray this Honorable Court will enter judgment in their favor and allow for the costs of defending this lawsuit.

COUNT III
(42 U.S.C. § 1983 – Excessive Force)

37. Plaintiff realleges paragraphs 1 through 28 as if fully set forth herein.

ANSWER: Defendants restate and incorporate their answers to paragraphs 1-28 as their answer to paragraph 37 of Plaintiff’s Complaint.

38. Defendant ENGLISH violated Plaintiff’s Fourth Amendment right, as guaranteed by the Fourteenth Amendment, to be free from the use of excessive and unreasonable force.

ANSWER: Defendants deny the allegations contained in Paragraph 38 of Plaintiff’s Complaint.

WHEREFORE, Defendants CITY OF KANKAKEE, LOGAN ANDERSEN and JOE ENGLISH deny that the Plaintiff is entitled to any judgment whatsoever against them, and pray this Honorable Court will enter judgment in their favor and allow for the costs of defending this lawsuit.

COUNT IV
(Indemnification Claim pursuant to 745 ILCS 10/9-102)

39. The acts of the Defendant-Officers described in the above claims were willful and wanton, and committed in the scope of employment.

ANSWER: Defendants admit only that Defendants Andersen and English were acting within the scope of their employment at the time of the incident on August 18, 2017. Defendants deny the remaining allegations contained in Paragraph 39 of Plaintiff's Complaint.

40. Pursuant to the Illinois Tort Immunity Act, 745 ILCS 10/9-102, Defendant CITY OF KANKAKEE is liable for any judgments for compensatory damages in this case arising from the Defendant-Officers' actions.

ANSWER: Defendants admit the allegations contained in Paragraph 40 of Plaintiff's Complaint.

WHEREFORE, Defendants CITY OF KANKAKEE, LOGAN ANDERSEN and JOE ENGLISH deny that the Plaintiff is entitled to any judgment whatsoever against them, and pray this Honorable Court will enter judgment in their favor and allow for the costs of defending this lawsuit.

Respectfully submitted,

s/ Michael W. Condon

MICHAEL W. CONDON, ARDC No. 06192071

Attorney for Defendants

HERVAS, CONDON & BERSANI, P.C.

333 Pierce Road, Suite 195

Itasca, IL 60143-3156

630-773-4774

mcondon@hcbattorneys.com

FIRST AFFIRMATIVE DEFENSE

NOW COME Defendants LOGAN ANDERSEN and JOE ENGLISH, by and through their attorney, MICHAEL W. CONDON of HERVAS, CONDON & BERSANI, P.C., and for their First Affirmative Defense to Plaintiff's Complaint, Defendants state as follows:

The Defendants did not violate any clearly established constitutional right of which a reasonable person would have known, thus entitling them to qualified immunity.

WHEREFORE, Defendants LOGAN ANDERSEN and JOE ENGLISH deny that the Plaintiff is entitled to any judgment whatsoever against them and pray this Honorable Court will enter a judgment in their favor and allow for the costs of defending this lawsuit.

/s/ Michael W. Condon

MICHAEL W. CONDON, ARDC No. 06192071

Attorney for Defendants

HERVAS, CONDON & BERSANI, P.C.

333 Pierce Road, Suite 195

Itasca, IL 60143-3156

630-773-4774

mcondon@hcbattorneys.com

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

JOSE L. MURANO,)	
)	
Plaintiff,)	Case No. 19-CV-2075
)	
vs.)	
)	Judge Colin Stirling Bruce
CITY OF KANKAKEE)	
KANKAKEE POLICE OFFICERS)	Magistrate Judge Eric I. Long
LOGAN ANDERSEN and JOE ENGLISH,)	
)	JURY TRIAL DEMANDED
Defendants.)	

CERTIFICATE OF SERVICE

I hereby certify that on **June 3, 2019** I electronically filed the foregoing *Defendants’ Answer and Affirmative Defense to Plaintiff’s Complaint* with the Clerk of the District Court for the Central District of Illinois, Urbana Division, using the CM/ECF system, which will send notification to the following CM/ECF participants:

TO: Louis J. Meyer
MEYER & KISS LLC
311 West Stratford Drive
Peoria, IL 61614
louismeyer@meyerkiss.com

/s/ Michael W. Condon
MICHAEL W. CONDON, ARDC No. 06192071
Attorney for Defendants
HERVAS, CONDON & BERSANI, P.C.
333 Pierce Road, Suite 195
Itasca, IL 60143-3156
630-773-4774
mcondon@hcbattorneys.com