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KEF/tlp

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

FELITA MCGEE, as Independent)	
Administrator of the Estate of MICHAEL)	
CARTER, SR., <i>deceased</i> and as next-of-kin,)	
)	
Plaintiff,)	
)	
vs.)	No.: 2:16-cv-02221
)	
MACON COUNTY SHERIFF'S DEPARTMENT;)	
DECATUR MEMORIAL HOSPITAL; DMH)	
CORPORATE HEALTH SERVICES; ROBERT)	
BRACO, MD; JO BATES, LPN; RANDELL)	
WEST; LARRY PARSANO; TERY COLLINS;)	
MICHAEL PATTON; and JOSHUA PAGE,)	
)	
Defendants.)	

**DEFENDANT WEST'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S
AMENDED COMPLAINT**

NOW COMES the Defendant, RANDELL WEST, by Keith E. Fruehling of Heyl, Royster, Voelker & Allen, his attorneys, and for his Answer and Affirmative Defenses to the Amended Complaint of the Plaintiff, states as follows:

NOTE: Plaintiff's Amended Complaint is directed at this Defendant in Counts I and IX. Defendant only responds and answers as to those Counts. Defendant's Answer below is intended to respond for him and him alone. To the extent that he is apparently included as a group of other Macon County employees in said allegations, he responds only on his behalf unless otherwise noted.

PRELIMINARY STATEMENT

1. Michael Carter, Sr., a 35 year-old African-American male, and United States citizen, was taken into custody of the Macon County Sheriff's Department at its jail in Decatur, Illinois on July 13, 2015. His prescribed diabetes medication was confiscated at booking.

Mr. Carter became ill after being deprived of his medication, and was then deprived of emergency medical care over several days for an obviously serious diabetic condition, and denied emergency ambulatory transport to the hospital. On July 18, 2015, and just five days after Mr. Carter's arrest, he died alone in a jail cell due to diabetic ketoacidosis.

ANSWER: Defendant does not have personal information regarding the allegations set forth in the first two sentences of Paragraph 1. Defendant denies the remaining allegations of the paragraph.

PARTIES

2. Plaintiff, Felita McGee, is a resident of the City of Decatur, State of Illinois.

ANSWER: Defendant has insufficient personal information with which to admit or deny the allegations of this paragraph, and therefore, denies the same.

3. Decedent, Michael Carter, Sr., was U.S. citizen and a resident of the City of Decatur, County of Macon, State of Illinois.

ANSWER: Defendant has insufficient personal information with which to admit or deny the allegations of this paragraph, and therefore, denies the same.

4. Defendant Decatur Memorial Hospital is an Illinois corporation with offices in the City of Decatur, Illinois.

ANSWER: Defendant has insufficient personal information with which to admit or deny the allegations of this paragraph, and therefore, denies the same.

5. Defendant Macon County Sheriff's Department is a governmental entity with offices in the City of Decatur, Illinois.

ANSWER: Defendant admits the allegations of this paragraph.

6. Defendant DMH Corporate Services is an Illinois corporation with offices in the City of Decatur, Illinois.

ANSWER: Defendant has insufficient personal information with which to admit or deny the allegations of this paragraph, and therefore, denies the same.

7. Defendant Robert Braco, MD, was a resident of Illinois at the time of the events described herein, was employed, retained, and/or contracted by Defendant Macon County Sheriff's Department, Decatur Memorial Hospital, and/or DMH Corporate Services as a medical doctor to provide medical care to inmates at Macon County Jail. He is sued in his individual and official capacities, and as an agent of Macon County Sheriff's Department, Decatur Memorial Hospital, and/or DMH Corporate Services.

ANSWER: Defendant has insufficient personal information with which to admit or deny the allegations of this paragraph, and therefore, denies the same.

8. Defendant, Jo Bates, LPN, was a resident of the State of Illinois at the time of the events described herein, and was employed by Macon County Sheriff's Department, Decatur Memorial Hospital, and/or DMH Corporate Services as a nurse to provide medical and nursing treatment to inmates at the Macon County Sheriff's jail facility. She is sued in her individual capacity and official capacities, and as an agent of Macon County Sheriff's Department, Decatur Memorial Hospital, and/or DMH Corporate Services.

ANSWER: Defendant has insufficient personal information with which to admit or deny the allegations of this paragraph, and therefore, denies the same.

10. Corporal Randell West was a resident of the State of Illinois at the time of the events described herein, and was employed by Macon County Sheriff's Department. He is sued in his official capacity, individual capacity, and as an agent and/or employee of Macon County Sheriff's Department.

ANSWER: Defendant admits the first sentence of this paragraph. Defendant admits the allegations of the second sentence, except that Defendant denies that he is capable of being sued in an official capacity.

11. Larry Parsano was a resident of the State of Illinois at the time of the events described herein, and was employed by Macon County Sheriff's Department. He is sued in his official capacity, individual capacity, and as an agent and/or employee of Macon County Sheriff's Department.

ANSWER: Defendant admits the first sentence of this paragraph. Defendant admits the allegations of the second sentence, except that Defendant denies that Mr. Parsano is capable of being sued in an official capacity.

12. Terry Collins was a resident of the State of Illinois at the time of the events described herein, and was employed by Macon County Sheriff's Department. He is sued in his official capacity, individual capacity, and as an agent and/or employee of Macon County Sheriff's Department.

ANSWER: Defendant admits the first sentence of this paragraph. Defendant admits the allegations of the second sentence, except that Defendant denies that Mr. Collins is capable of being sued in an official capacity.

13. Michael Patton was a resident of the State of Illinois at the time of the events described herein, and was employed by Macon County Sheriff's Department. He is sued in his official capacity, individual capacity, and as an agent and/or employee of Macon County Sheriff's Department.

ANSWER: Defendant admits the first sentence of this paragraph. Defendant admits the allegations of the second sentence, except that Defendant denies that Mr. Patton is capable of being sued in an official capacity.

14. Joshua Page was a resident of the State of Illinois at the time of the events described herein, and was employed by Macon County Sheriff's Department. He is sued in his official capacity, individual capacity, and as an agent and/or employee of Macon County Sheriff's Department.

ANSWER: Defendant admits the first sentence of this paragraph. Defendant admits the allegations of the second sentence, except that Defendant denies that Mr. Page is capable of being sued in an official capacity.

15. At all relevant times, all defendants acted under color of state law, and within the scope of their employment and/or agency.

ANSWER: Defendant admits that at all times relevant to the allegations of the Complaint, he acted under color of law and within the scope of his employment with the Macon County Sheriff's Department. Defendant makes no answer as to the other Defendants.

JURISDICTION & VENUE

16. This Court has jurisdiction over plaintiff's claims pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. § 1983 because the matters in controversy arise under the Constitution and laws of the United States.

ANSWER: Defendant admits the allegations of this paragraph.

17. This Court has supplemental jurisdiction of the Illinois state law claims pursuant to 28 U.S.C. § 1367.

ANSWER: Defendant admits the allegations of this paragraph.

18. Venue is proper in this Court under 28. U.S.C. § 1391(b) because a substantial part of the events that give rise to plaintiff's claims took place within the Central District of Illinois.

ANSWER: Defendant admits the allegations of this paragraph.

STATEMENT OF CLAIM

19. At all times relevant to the matters stated in this Complaint, there was in force and effect the Constitution of the United States which provided in relevant part as follows:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the United States, Amendment XIV

ANSWER: Defendant admits the allegations of this paragraph.

20. At all times relevant to the matters stated in this Complaint, there was in force and effect a federal law known as the Civil Rights Act of 1871 which provided in relevant part as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 U.S.C. § 1983.

ANSWER: Defendant admits the allegations of this paragraph.

21. At all times relevant to the matters stated in this Complaint, there was in force and effect certain statutes in the State of Illinois which provided in relevant part as follows:

Sheriff custodian of courthouse and jail.

He or she shall have the custody and care of the courthouse and jail of his or her county, except as is otherwise provided. 55 ILCS 5/3-6017.

The Sheriff of each county in this State shall be the warden of the jail of the county, and have the custody of all prisoners in the jail, except when otherwise provided in the "County Department of Corrections Act". The Sheriff may appoint a superintendent of the jail, and remove him at his pleasure, for whose conduct and training, he shall be responsible. The Sheriff shall also be responsible for the hiring and training of all personnel necessary to operate and maintain the jail. 730 ILCS 125/2 and 3.

The Warden of the jail shall furnish necessary bedding, clothing, fuel and medical aid for all prisoners under his charge, and keep an accurate account of the same. 730 ILCS 125/17.

ANSWER: Defendant admits the allegations of this paragraph.

22. Beginning on or about July 13, 2015, Michael Carter, Sr. was arrested and placed into the custody of defendant Macon County Sheriff's Department at its jail in Decatur, Illinois. During Mr. Carter's initial booking interview, he informed defendants and jail staff that he was diabetic and required medication.

ANSWER: Defendant has insufficient personal information with which to admit or deny the allegations of this paragraph as alleged, and therefore, denies the same.

23. At intake, Mr. Carter possessed prescription oral medication to manage his diabetes. Mr. Carter asked various defendants, at various times, to administer his medication as prescribed.

ANSWER: Defendant denies Mr. Carter asked him to administer him medication. Defendant has insufficient personal information with which to admit or deny the remaining allegations as alleged (as to others) of this paragraph, and therefore, denies the same.

24. That in spite of notice of Mr. Carter's diabetic condition, Mr. Carter's prescribed medication was confiscated, and in furtherance of the polices and customs of Macon County Sheriff's Department and Decatur Memorial Hospital.

ANSWER: Defendant denies any of the conduct in the allegations of this paragraph as to himself. Defendant has insufficient personal information with which to admit or deny the remaining allegations (as to others) of this paragraph as alleged, and therefore, denies the same.

25. That for all times relevant, Macon County Sheriff's Department and Decatur Memorial Hospital maintained a contractual partnership to provide healthcare and healthcare management services to individuals detained at the Macon County Jail.

ANSWER: Defendant does not have personal information regarding any specific contractual information or partnership to provide healthcare and healthcare management services to individuals detailed at the Macon County Jail as alleged.

26. Shortly after being assigned a jail cell, Mr. Carter began to complain to jail staff and defendants that he was ill, requested his medication, and wanted to see a doctor. His pleas went ignored.

ANSWER: Denied as alleged.

27. Mr. Carter's health deteriorated rapidly over the next two days. During this time, complained to his fiancée on the phone about extreme abdominal pain, vomiting, weakness, fatigue, and shortness of breath. She knew he was in serious medical danger based on his obvious difficulty breathing and disorientation.

ANSWER: Defendant has insufficient personal information with which to admit or deny the allegations of this paragraph as alleged, and therefore, denies the same.

28. That on July 15, 2015, Mr. Carter was transferred to the jail's medical unit for observation. He still was not given medication to treat his diabetic condition. He was then transferred back to a general population jail cell, where he was not monitored for his medical distress, and received no treatment for his worsening diabetic condition.

ANSWER: Defendant has insufficient personal information with which to admit or deny the allegations of this paragraph as alleged, and therefore, denies the same.

Defendant denies personal involvement in any of the specific allegations.

29. That on July 17, 2015, Mr. Carter told his fiancée he had been returned to a general population jail cell, in spite of his obvious difficulty in breathing. Mr. Carter asked defendants for help multiple times, but no one assisted.

ANSWER: Defendant denies Mr. Carter communicated with him as alleged at any time.

Defendant has insufficient personal information with which to admit or deny the remaining allegations of this paragraph as alleged, and therefore, denies the same.

30. That on July 17, 2015, Mr. Carter's mother called the Macon County Sheriff's Department's jail division and spoke with defendant Jo Bates, a nurse working at the jail. Mr. Carter's mother informed defendant Bates that she too was a nurse, and that her son was diabetic and was having respiratory distress, shortness of breath, vomiting, and was clearly disoriented.

ANSWER: Defendant has insufficient personal information with which to admit or deny the allegations of this paragraph, and therefore, denies the same.

31. Mr. Carter's mother warned defendant Bates that his symptoms sounded like diabetes ketoacidosis, an emergency life-threatening medical situation. She asked defendant Bates to immediately transfer him to a nearby hospital so he could receive adequate medical attention and an IV insulin drip. Defendant Bates refused, telling Mr. Carter's mother that defendant Doctor Braco would check on him the following day. Defendant Bates further told Mr. Carter's mother that he was simply having "anxiety" about being incarcerated.

ANSWER: Defendant has insufficient personal information with which to admit or deny the allegations of this paragraph, and therefore, denies the same.

32. That sometime later on July 17, 2015, Mr. Carter was again returned to the jail's medical unit. Later that evening, he was briefly seen by defendant Dr. Braco, but not treated. No glucose level tests were performed, and defendant Dr. Braco continued to refuse to give Mr. Carter diabetic medication to treat his deteriorating condition. And in spite of his obvious and serious medical distress, Dr. Braco ordered that Mr. Carter be returned to a general population jail cell the following morning.

ANSWER: Defendant has insufficient personal information with which to admit or deny the allegations of this paragraph as alleged, and therefore, denies the same.

33. That on the following morning of July 18, 2015, Mr. Carter was in obvious medical distress and unable to stand on his own, and was unable to speak clearly. He was lethargic and completely disoriented. He had not eaten his dinner meal from the evening before. His glucose level was greater than 500 milligrams per deciliter. He still had not been given insulin or his prescribed diabetes medication.

ANSWER: Defendant denies this paragraph as alleged.

34. In spite of Mr. Carter's obvious serious medical distress on July 18, 2015, and severe risk of great injury and/or death, he was forcibly removed from his medical his cell by defendants West, Parsano, Patton, Collins, and Page, all employed by defendant Macon County Sheriff's Department. Defendant West stepped on Mr. Carter's hand and kicked him numerous times, before picking him up around his neck, and putting him into a wheelchair. He was wheeled to a segregated housing area of the jail known as "deadlock", an area reserved for uncooperative inmates. He had been considered uncooperative simply because he couldn't stand on his own and was non-responsive. The segregated cell he was taken to contained no video surveillance for medical monitoring.

ANSWER: Defendant denies this paragraph as alleged.

35. That throughout the morning of July 18, 2015, various jail staff and the defendants observed Mr. Carter in his jail cell in obvious medical distress and still refused to call an ambulance. As hours passed by, an officer at the jail finally demanded defendant Bates summon an ambulance so he could be transported to the hospital. Defendant Bates refused, and instead telephoned defendant Dr. Braco, who was away from the jail facility. In spite of various jail staff and defendants witnessing Mr. Carter's obvious medical distress, no one called an ambulance.

ANSWER: Defendant has insufficient personal information with which to admit or deny the allegations of this paragraph as alleged, and therefore, denies the same.

36. That even after defendant Bates told defendant Dr. Braco that Mr. Carter was in obvious serious medical distress, Dr. Braco refused to allow Mr. Carter's emergency transfer to the hospital, saying he would evaluate him on his regular rounds later that day. Only after pressure from officer at the jail, did defendants Dr. Braco and Bates finally relent and authorize Mr. Carter's transfer to a hospital, but only by patrol car. None of the patrol cars were equipped to handle a medical emergency.

ANSWER: Defendant has insufficient personal information with which to admit or deny the allegations of this paragraph as alleged, and therefore, denies the same.

37. That although it was common knowledge that failure to treat diabetes could result in diabetic ketoacidosis and death, defendant Dr. Braco ordered that Mr. Carter could only be transferred to the hospital using a regular patrol car because he didn't want to incur the \$1000 bill for an ambulance. Defendant Bates agreed.

ANSWER: Defendant has insufficient personal information with which to admit or deny the allegations of this paragraph as alleged, and therefore, denies the same.

38. Nearly three hours after being forcibly removed from the medical unit, and denied ambulatory transport to the hospital, Mr. Carter died, alone, in a segregated jail cell due to diabetes ketoacidosis.

ANSWER: Defendant admits he is aware Mr. Carter passed. Defendant denies that Mr. Carter passed at the jail. However, Defendant has insufficient personal information with which to admit or deny the allegations of this paragraph, and therefore, denies the same.

39. Defendants, by their acts or omissions as set forth above, showed deliberate indifference to a serious and known medical condition of the decedent.

ANSWER: Defendant denies this paragraph as alleged.

40. As a consequence of one or more of the foregoing acts or omissions of the various defendants, as set forth above, failed to provide Mr. Carter with adequate medical care and demonstrated a deliberate indifference to his medical condition. As the proximate result of all the above, Mr. Carter suffered excruciated pain and suffering, and ultimately death.

ANSWER: Defendant denies this paragraph as alleged.

41. The Court has authority pursuant to 42 U.S.C. § 1983 to award appropriate actual, consequential, compensatory, and punitive damages, and has authority under 42 U.S.C. § 1988 to award attorneys fees and costs to successful civil rights plaintiffs.

ANSWER: Defendant admits the allegations contained in this paragraph, but denies the Plaintiff is entitled to any category of stated recovery.

CAUSES OF ACTION

COUNT I: DENIAL OF MEDICAL CARE

Deprivation of Fourteenth Amendment Rights and 42 U.S.C. §1983 All Defendants

42. Plaintiff re-alleges and incorporates by reference the allegations set forth in each preceding paragraph as if fully set forth herein.

ANSWER: Defendant incorporates by reference, as though set forth fully herein, Paragraphs 1 through 40, inclusive, of his answer to this Complaint as his answer to Paragraph 42.

43. Defendants, each of them, had a duty to take reasonable measures in response to the obvious serious medical need and risk posed by Mr. Carter's condition

ANSWER: Defendant denies the allegations of this paragraph as alleged.

44. Defendants, each of them, were aware that Mr. Carter condition began to deteriorate, and yet took no action to provide or request medical care for Mr. Carter, disregarding the obvious risk to his health.

ANSWER: Defendant denies the allegations of this paragraph as alleged.

45. That the conduct and actions of defendants, acting under color of law, in failing to request or obtain medical attention for Michael Carter, Sr., was unreasonable, was done intentionally, willfully, maliciously, with a deliberate indifference and/or with a reckless disregard for his serious medical needs, and was designed to and did cause specific and serious physical and emotional pain and suffering in violation of his substantive due process rights as guaranteed under 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution. The defendants knew Mr. Carter faced a substantial risk of harm, and disregarded that risk by failing to take reasonable measure to abate it. As a direct and proximate result of the foregoing, Mr. Carter was subjected to great physical and emotional pain and suffering, and ultimately death.

ANSWER: Defendant denies the allegations of this paragraph as alleged.

WHEREFORE, the Defendant, RANDELL WEST, denies that the Plaintiff is entitled to any judgment whatsoever as against him. Defendants asks the Court to enter judgment in his favor and against the Plaintiff, FELITA MCGEE, as Independent Administrator of the Estate of MICHAEL CARTER, SR., deceased and as next-of-kin, for costs of suit and any other relief this court deems fit on his behalf on this Court.

DEFENDANT DEMANDS TRIAL BY JURY ALL COUNTS DIRECTED AT HIM.

COUNT II: MONELL CLAIM
Macon County Sheriff's Dept., 42 U.S.C. 1983

Count II is not directed against this Defendant, RANDELL WEST, and therefore Defendant does not respond to same.

COUNT III: MONELL CLAIM
Decatur Memorial Hospital, 42 U.S.C. 1983

Count III is not directed against this Defendant, RANDELL WEST, and therefore Defendant does not respond to same.

COUNT IV: INSTITUTIONAL NEGLIGENCE

(Illinois Claim)

Macon County Sheriff's Department

Count IV is not directed against this Defendant, RANDELL WEST, and therefore Defendant does not respond to same.

COUNT V: INSTITUTIONAL NEGLIGENCE

(Illinois Claim)

Decatur Memorial Hospital

Count V is not directed against this Defendant, RANDELL WEST, and therefore Defendant does not respond to same.

COUNT VI: MEDICAL MALPRACTICE/WRONGFUL DEATH

(Illinois Claim)

Decatur Memorial Hospital, DMH Corporate Health Services, Dr. Braco, Nurse Bates

Count VI is not directed against this Defendant, RANDELL WEST, and therefore Defendant does not respond to same.

COUNT VII: MEDICAL MALPRACTICE/SURVIVAL ACTION

(Illinois Claim)

Decatur Memorial Hospital, DMH Corporate Health Services, Dr. Braco, Nurse Bates

Count VII is not directed against this Defendant, RANDELL WEST, and therefore Defendant does not respond to same.

COUNT VIII: NEGLIGENT SUPERVISION, RETENTION AND TRAINING

(Illinois Claim)

Macon County Sheriff's Department

Count VIII is not directed against this Defendant, RANDELL WEST, and therefore Defendant does not respond to same.

COUNT IX: BATTERY
(Illinois Claim)

Randell West and Macon County Sheriff's Department (*Respondent Superior*)

95. Plaintiff re-alleges and incorporates by reference the allegations set forth in each preceding paragraph as if fully set forth herein.

ANSWER: The Defendant, RANDELL WEST, incorporates by reference, as though set forth fully herein, the foregoing paragraphs of his answer to this Complaint as his answer to this Paragraph 95.

96. By the conduct and actions described above, defendant West inflicted the tort of battery upon the decedent. The acts and conduct of defendant West was the direct and proximate cause of injury and damage.

ANSWER: Defendant denies the allegations of this paragraph as alleged.

97. Defendant West's acts constituted an assault upon decedent in that West intentionally attempted to injure plaintiff or commit a battery upon him, and further that West's actions represented a grievous affront to decedent.

ANSWER: Defendant denies the allegations of this paragraph as alleged.

98. Defendant West's acts constituted a battery upon the decedent in that the above described bodily contact was intentional, unauthorized, and grossly offensive in nature.

ANSWER: Defendant denies the allegations of this paragraph as alleged.

99. The actions of defendant West were intentional, reckless, and unwarranted, and without any just cause or provocation, and defendant West knew, or should have known, that his actions were without the consent of the decedent.

ANSWER: Defendant denies the allegations of this paragraph as alleged.

100. At all times, defendant West acted in the course and scope of his employment with defendant Macon County Sheriff's Department.

ANSWER: Defendant admits the allegations of this paragraph.

101. As a direct and proximate result of the foregoing, decedent was subjected to great physical and emotional pain and humiliation, was deprived of his liberty and was otherwise damaged and injured.

ANSWER: Defendant denies the allegations of this paragraph as alleged.

WHEREFORE, the Defendant, RANDELL WEST, denies that the Plaintiff is entitled to any judgment whatsoever as against him. Defendants asks the Court to enter judgment in his favor and against the Plaintiff, FELITA MCGEE, as Independent Administrator of the Estate of MICHAEL CARTER, SR., deceased and as next-of-kin, for costs of suit and any other relief this court deems fit on his behalf on this Court.

DEFENDANT DEMANDS TRIAL BY JURY ON ALL COUNTS DIRECTED AT HIM.

Respectfully submitted,

RANDELL WEST, Defendant

BY: s/ Keith E. Fruehling

Attorney for Defendant

ARDC #6216098

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DEFENDANT WEST'S AFFIRMATIVE DEFENSES

NOW COMES the Defendant, RANDALL WEST, by Keith E. Fruehling of Heyl, Royster, Voelker & Allen, his attorneys, and for his Affirmative Defenses to the Amended Complaint at Law of the Plaintiff, FELITA MCGEE, as Independent Administrator of the Estate of MICHAEL CARTER, SR., deceased and as next-of-kin, states as follows:

1. This Court lacks personal jurisdiction over this Defendant. Plaintiff failed to effectuate service of process in a timely fashion pursuant to Rule 4(m) and therefore the Complaint must have been dismissed. Plaintiff never provided the Court with any good cause explanation for the unreasonable and admitted delay. Defendant asserted this objection in his first pre-Answer Motion to Dismiss and continues to assert his objection to personal jurisdiction based on the Plaintiff's admitted untimely and insufficient service of process. The language "sufficiency of the method by which [the summons] is served" does not have the same meaning as "insufficient service of process." The latter is far broader than the former. The latter includes the temporal element mandated by Rule 4(m) whereas the former does not. FRCP 4 clearly sets forth "sufficient methods by which the summons may be served" in Sections (c), (e), (f), (g), (h), (i) and (j). FRCP 4(m) is a section distinct from the sections setting forth "methods of service" authorized by the Rule. Sec. (m) sets forth the mandatory time limit for service pursuant for any of the methods authorized by the rule. Therefore, the "method of the service of summons" is distinct from the time limit to accomplish service of that summons pursuant to one of the methods authorized by FRCP 4. The term "method" under the rule does not include compliance of service pursuant to a method with the time limit. As such, there is no legitimate service of process and personal jurisdiction of this Defendant. Therefore, the Plaintiff's Complaint must be dismissed against this Defendant.

2. Based upon the totality of the circumstances surrounding the medical treatment of Mr. Carter and his death, including his reliance upon the professional, medical statements and opinions of Defendants Braco and Bates and other employees of Decatur Memorial Hospital and DMH Corporate Health Services, the conduct of this Defendant did not violate clearly-

established constitutional rights and this Defendant is entitled to qualified immunity as to Count I.

3. Neither a local public entity nor a public employee acting within the scope of his employment is liable for any injury caused by the failure to make a physical or mental examination or to make an adequate physical or mental examination of any person for the purpose of determining whether such person has a disease or physical or mental condition that would constitute a hazard to the health or safety of himself or others pursuant to 745 ILCS 10/6-105. The acts of this Defendant, referred to in Count IX of the Amended Complaint, were undertaken for purposes of determining whether Mr. Carter was faking disease and fall within the above-referred to section, thus entitling this Defendant to absolute immunity.

4. Neither a local public entity nor a public employee acting within the scope of his employment is liable for injury resulting from diagnosing or failing to diagnose that a person is afflicted with mental or physical illness or addiction pursuant to 745 ILCS 10/6-106. The actions of this Defendant, referred to in Count IX of the Amended Complaint, fall within the meaning of Section 6-106 entitling this Defendant to absolute immunity.

5. This Defendant cannot be liable for any act or omission in their execution or enforcement of any law unless such act or omission constitutes willful and wanton conduct pursuant to the Local Governmental and Governmental Employees Tort Immunity Act, Sec. 2-202, on all counts rooted in state law. The actions of this Defendant, referred to in Count IX of the Amended Complaint, fall within the meaning of Section 2-202 entitling this Defendant to absolute immunity.

6. This Defendant cannot be liable for an injury proximately caused by the failure of the employee to furnish or obtain medical care for a prisoner in his custody pursuant to the Local Governmental and Governmental Employees Tort Immunity Act, Sec. 10/4-105, on all counts rooted in state law. The actions of this Defendant, referred to in Count IX of the Amended Complaint, fall within the meaning of Section 4-105 entitling this Defendant to absolute immunity.

7. Under Illinois law, no state-law based civil action may be commenced in any court against a local entity or any of its employees for any injury unless it is commenced within one year from the date that the injury was received or the cause of action accrued pursuant to 745 ILCS 10/8-101 (a).

WHEREFORE, the Defendant, RANDELL WEST, denies that the Plaintiff is entitled to judgment pursuant to the Affirmative Defenses above. Defendant asks the Court to enter judgment in his favor and against the Plaintiff, FELITA MCGEE, as Independent Administrator of the Estate of MICHAEL CARTER, SR., deceased and as next-of-kin, and for costs of suit and any other relief this Court deems fit on his behalf on this Court.

DEFENDANT DEMANDS TRIAL BY JURY ON ALL AFFIRMATIVE DEFENSES.

Respectfully submitted,

RANDELL WEST, Defendant

BY: s/ Keith E. Fruehling

Attorney for Defendant

ARDC #6216098

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CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2017, I electronically filed the foregoing DEFENDANT WEST'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S AMENDED COMPLAINT with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Rahsaan A. Gordon, Esq.
Law Offices of Rahsaan A. Gordon, P.C.
333 W. Wacker Drive, Suite 500
Chicago, IL 60606

William W. Kurnik, Esq.
Mary A. Johnston, Esq.
Knight, Hoppe, Kurnik & Knight, Ltd.
5600 N. River Road, Suite 600
Rosemont, IL 60018-5114

I also hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participant: None

s/ Keith E. Fruehling _____
Heyl, Royster, Voelker & Allen

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