

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MICHAEL JACKSON	:	Case No. 1:08CV203
	:	
Plaintiff	:	Judge Barrett
	:	
vs	:	<u>ANSWER OF HAMILTON</u>
	:	<u>COUNTY, OHIO, SERGEANT</u>
HAMILTON COUNTY, OHIO, et al.	:	<u>MICHELLE MOORE AND</u>
	:	<u>SHERIFF SIMON L. LEIS, JR.</u>
Defendants	:	
	:	

Now come defendants Hamilton County, Ohio, Sergeant Michelle Moore and Sheriff Simon L. Leis, Jr. (hereinafter “County Defendants”) in all capacities sued and for their Answer to Plaintiff’s Complaint state as follows:

FIRST DEFENSE

1. Plaintiff’s Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

2. County Defendants deny the allegations contained in paragraphs 1,7,18,19,20, 21,22,23,24,25,26 and 27 of Plaintiff’s Complaint.
3. County Defendants deny for lack of knowledge the allegations contained in paragraphs 2 and 3 of Plaintiff’s Complaint.
4. County Defendants admit the allegations contained paragraphs 4,11,12,13,15,16 and 17 of Plaintiff’s Complaint.
5. County Defendants admit that Defendant Michelle Moore was at all times relevant to this action an employee of Hamilton County, Ohio assigned as a correction officer in Hamilton County Justice Center but deny the remaining allegations in paragraph 5 of Plaintiff’s Complaint.

6. County Defendants admit that Defendant Sheriff Simon L. Leis, Jr. was at all times relevant to the actions of Sheriff of Hamilton County, Ohio but deny the remaining allegations in paragraph 6 of Plaintiff's Complaint.

7. County Defendants admit that Plaintiff was housed at the Hamilton County Jail on misdemeanor charges on or about August 10, 2007 when the events referenced in Plaintiff's Complaint occurred and admit that he was there both before and after but do not admit for lack of knowledge the specific dates of his incarceration as alleged in paragraph 8 of Plaintiff's Complaint.

8. County Defendants admit that Plaintiff was housed in administrative segregation for a period of time but deny the specific allegations contained in paragraph 9 and 10 of Plaintiff's Complaint.

9. County Defendants admit that chemical pepper spray was discharged into Mr. Jackson's cell but deny the specific allegations contained in paragraph 14 for lack of knowledge.

THIRD DEFENSE

10. County Defendants are entitled to immunity pursuant to Ohio Revised Code Chapter 2744 et seq. and the 11th Amendment to the U.S. Constitution.

FOURTH DEFENSE

11. Recovery of punitive damages against these County Defendants is barred by state and federal law.

FIFTH DEFENSE

12. All actions or omissions, if any, by these defendants, their offices, agents or other employees, which may have affected Plaintiff were undertaken in good faith and within the scope of discretionary authority and pursuant to duties imposed upon said defendants by the Ohio Revised

Code.

SIXTH DEFENSE

13. The allegations in the Complaint relating to the conduct of the County Defendants do not set forth a deprivation of rights, privileges, or immunities secured by the Constitution or laws of the United States.

SEVENTH DEFENSE

14. The County Defendants cannot be liable to plaintiffs under the doctrine of respondeat superior for monetary damages.

EIGHTH DEFENSE

15. The County Defendants are not responsible for the tortious conduct of unrelated third persons who were not acting under color of state law.

NINTH DEFENSE

16. This Court has no jurisdiction over the subject matter of the Plaintiff's claims.

TENTH DEFENSE

17. The County Defendants have no liability for the actions of their employees or agents under §1983.

ELEVENTH DEFENSE

18. The County Defendants are entitled to qualified immunity as to all claims against them under 42 USC § 1983 and any force used in this matter was appropriate for the circumstances.

TWELFTH DEFENSE

19. Any allegation not herein admitted to be true or denied is hereby denied.

THIRTEENTH DEFENSE

20. Plaintiffs lack standing and legal capacity to bring this action pursuant to federal and state law.

FOURTEENTH DEFENSE

21. The County Defendants state that all of the activities of the County Defendants were proper, valid, legal, and conducted in good faith.

FIFTEENTH DEFENSE

22. The County Defendants have not adopted or followed any governmental custom, practice, usage or official policy that would give rise to any of the allegations or liabilities set forth in Plaintiff's Complaint.

SIXTEENTH DEFENSE

23. The Plaintiff's Complaint is barred by the doctrines of collateral estoppel, res judicata, accord and satisfaction, waiver, laches, failure to exhaust administrative remedies and by all applicable statutes of limitations.

SEVENTEENTH DEFENSE

24. The County Defendants hereby assert all of the affirmative defenses contained in Federal Civil Rule 12(b) including but not limited to the following:

(1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) improper venue; (4) insufficiency of process; (5) insufficiency of service of process; (6) failure to state a claim upon which relief can be granted; and (7) failure to join a party under Rule 19 and Rule 19(A).

EIGHTEENTH DEFENSE

25. The County Defendants hereby provide notice they intend to assert and rely upon all defenses, avoidances, immunities, counter-claims, cross-claims, and third-party claims that become apparent during the course of discovery and trial and hereby reserve the right to amend this Answer to assert such defenses.

NINETEENTH DEFENSE

26. The Plaintiff's damages, if any, were caused by parties who were not acting under the color of state law.

TWENTIETH DEFENSE

27. Plaintiff's damages if any, were the result of independent, superceding acts committed by individuals for which the County Defendants were not responsible.

TWENTY-FIRST DEFENSE

28. Plaintiff's claims are barred by federal and state common law and statutory law including doctrines of absolute and qualified immunity and the County Defendants hereby assert all applicable credits, set-offs, defenses and immunities available.

TWENTY-SECOND DEFENSE

29. The Court lacks jurisdiction over the persons of the County Defendants.

TWENTY-THIRD DEFENSE

30. The County Defendants' actions and omissions which may have affected the Plaintiff were undertaken in good faith, with probable cause, and pursuant to the duties imposed upon the County by the State of Ohio and under the Ohio Revised Code.

TWENTY-FOURTH DEFENSE

31. Plaintiff's damages, if any, resulted entirely from his own negligent, reckless, intentional, or wrongful conduct.

TWENTY-FIFTH DEFENSE

32. The County Defendants' conduct does not violate any clearly established law.

TWENTY-SIXTH DEFENSE

33. The County Defendants' conduct does not rise to the level of a constitutional violation.

TWENTY-SEVENTH DEFENSE

34. Plaintiff's Complaint fails to state a cognizable cause of action pursuant to 42 U.S.C. §1983.

TWENTY-EIGHTH DEFENSE

35. At all times mentioned, the County Defendants acted in accordance with the Constitution of the United States and the Constitution of the State of Ohio, and all State and local laws relative thereto.

TWENTY-NINTH DEFENSE

36. The decisions of the County Defendants were not arbitrary and capricious, and this Court is urged not to substitute its judgment for that of the County Defendants.

THIRTIETH DEFENSE

37. This Court should not exercise supplemental jurisdiction of the Plaintiff's alleged state law claims.

THIRTY-FIRST DEFENSE

38. To the extent that any claim or cause of action may be inferred or implied from any portion of the Complaint not answered heretofore, any and all such allegations are denied.

THIRTY-SECOND DEFENSE

39. Defendant Hamilton County as named in this action is not *sui juris* and therefore not subject to suit in this Court.

WHEREFORE, defendants respectfully request that the Court dismiss the Plaintiff's Complaint and that County Defendants recover their court costs and attorney fees and that County Defendants be granted all other relief to which they may be entitled.

JOSEPH T. DETERS
PROSECUTING ATTORNEY

/s/ Mark C. Vollman
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JURY DEMAND

The County Defendants hereby demand a trial by jury.

/s/ Mark C. Vollman
Mark C. Vollman (0007040)

CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2008, I electronically filed the foregoing Answer to Complaint with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Mark C. Vollman
Mark C. Vollman (0007040)