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Our File Number: 47620-93

Attorney for Defendants, Nicholas William Falcicchio; Joshua Steven Giercyk; Dennis Felsing, Sr.; Rosemary Milano; Bud Boyer; Jon Gansert; Steve Conte; Anthony Garreffo; Frank Taylor; William J. Kennedy, Chief of Police; City of Sea Isle, a body politic and municipal corporation; and John Does (1-10), fictitious names.

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY - CAMDEN**

Robert McLoughlin, as Guardian Ad Litem for Thomas Edward McLoughlin, a minor; Thomas Edward McLoughlin, a minor; and Robert McLoughlin, individually,

Plaintiffs,

v.

Nicholas William Falcicchio; Joshua Steven Giercyk; Dennis Felsing, Sr.; Rosemary Milano; Bud Boyer; Jon Gansert; Steve Conte; Anthony Garreffo; Frank Taylor; William J. Kennedy, Chief of Police; City of Sea Isle, a body politic and municipal corporation; and John Does (1-10), fictitious names,

Defendants.

Civil Action
Number 07-cv-5264

**ANSWER ON BEHALF OF
DEFENDANTS
WITH SEPARATE and
AFFIRMATIVE DEFENSES,
NOTICE OF DESIGNATION
OF TRIAL COUNSEL, and
JURY DEMAND**

Defendants, Nicholas William Falcicchio; Joshua Steven Giercyk; Dennis Felsing, Sr.; Rosemary Milano; Bud Boyer; Jon Gansert; Steve Conte; Anthony Garreffo; Frank Taylor; William J. Kennedy, Chief of Police; City of Sea Isle, by way of answer to the Plaintiffs' Complaint, say:

INTRODUCTION

1. Defendants have insufficient information to either admit or deny the property address is of the Plaintiffs. Plaintiffs are left to their proofs. The remaining general allegations are denied.

JURISDICTION and VENUE

2. Denied. Plaintiffs do not have viable claims under the Fifth, Sixth or Eighth Amendments and Defendants reserve the right to dismiss on that basis.

3. Neither admitted nor denied. Plaintiffs are left to their proofs.

4. Neither admitted nor denied. Plaintiffs are left to their proofs.

5. Neither admitted nor denied. Plaintiffs are left to their proofs.

6. Neither admitted nor denied. Plaintiffs are left to their proofs.

THE PARTIES

7. Neither admitted nor denied. Plaintiffs are left to their proofs.

8. Neither admitted nor denied. Plaintiffs are left to their proofs.

9. Admitted. Defendant Nicholas William Falcicchio was employed as a Special Law Enforcement Officer.

10. Admitted. Defendant Joshua Steven Giercyk was employed as a Special Law Enforcement Officer.

11. Admitted.

12. Admitted

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted.

17. Admitted.

18. Admitted in part and denied in part. It is admitted that William Kennedy is a citizen of the United States and resident of the State of New Jersey, but it is denied that at all relevant times he was the duly-appointed Acting Chief of Police of Sea Isle City Police Department. William Kennedy became the permanent Chief of Police of March 18, 2005.

19. Upon the advice of counsel, because the allegations are made against fictitious people, Defendants lack sufficient information at this time to either admit or deny this allegation. To the extent an answer is required, the allegation is denied.

20. Admitted.

FACTUAL BACKGROUND

21. Neither admitted nor denied. Plaintiffs are left to their proofs.

22. Upon the advice of counsel, due to the fact that a time has not been inserted into the Complaint as to alleged acts, the allegation is neither admitted nor denied. Plaintiffs are left to their proofs.

23. Upon the advice of counsel, due to the fact that a time has not been inserted into the Complaint as to alleged acts, the allegation is neither admitted nor denied. Plaintiffs are left to their proofs.

24. Denied.

25. Denied.

26. Due to the fact that the transcript of the juvenile hearing conducted in the Superior Court of New Jersey, Cape May County, on February 1 and 2, 2007 are sealed, and not a public record, upon the advice of counsel the Defendants cannot admit or deny the allegations contained in this numbered paragraph. To the extent that an answer is required at this time, the allegations are denied, and Plaintiffs are left to their proofs.

27. Denied.

28. Denied.

29. It is admitted that minor Plaintiff, Thomas Edward McLoughlin was charged in a juvenile delinquency complaint bearing Docket No. FJ-05-152-07. It is neither admitted nor denied

as to date referenced in paragraph 29. N.J.S.A. 2C:12-1B(5) (A) speaks for itself.

30. Admitted.

31. It is admitted that the minor Plaintiff, Thomas Edward McLoughlin, was charged with a violation of N.J.S.A. 2C:29-2A(3) (a). That Statute speaks for itself.

32. Admitted.

33. It is neither admitted nor denied as to the date of filing of the juvenile delinquency complaint. It is admitted that the complaint was signed by Officer N. Falcicchio on 8/03/2006. The remaining allegations are denied.

34. Denied.

35. Denied.

36. Upon the advice of counsel, the allegations in paragraph 36 are deemed admitted.

37. It is neither admitted nor denied as to the letter of Christine L. Smith, Esquire, Assistant Prosecutor. The remaining allegations are denied.

38. The investigation reports speak for themselves. The remaining allegations are denied.

39. Upon the advice of counsel, this allegation can neither be admitted nor denied. The transcript of the juvenile matter has not been released from the Superior Court of New Jersey. To the extent that an answer is required, the allegations are denied.

40. Admitted.

41. Judge Connors Memorandum of Decision speaks for itself.

42. Denied.

43. Admitted.

44. It is denied that the minor Plaintiff, Thomas Edward McLoughlin's treatment at medical institutions, to which he is left to his proofs, is a result of the actions of the Defendants.

45. Denied.

COUNT ONE
**Violation of Civil Rights Generally and for
Use of Excessive Force and Assault and Battery**

46. The Defendants repeat each and every answer to the allegations contained in paragraphs One through Forty-Five as if the same were set forth at length herein.

47. Denied.

48. Denied.

49. Denied.

50. Upon the advice of counsel, neither admitted nor denied.

Plaintiffs are left to their proofs.

51. Denied.

WHEREFORE, the Defendants demand that the Complaint be dismissed, together with interest and costs of suit.

COUNT TWO
**Violation of Civil Rights Generally and
For False Arrest and Detainment**

52. The Defendants repeat each and every answer to the allegations contained in paragraphs One through Fifty-One as if the same were set forth at length herein.

53. Denied.

54. Denied.

55. Upon the advice of counsel, neither admitted nor denied.

Plaintiffs are left to their proofs.

56. Denied.

WHEREFORE, the Defendants demand that the Complaint be dismissed, together with interest and costs of suit.

COUNT THREE
**Violation of Civil Rights Generally and for
Wrongful Prosecution**

57. The Defendants repeat each and every answer to the allegations contained in paragraphs One through Fifty-Six as if the same were set forth at length herein.

58. Denied.

59. Denied.

60. Upon the advice of counsel, neither admitted nor denied.

Plaintiffs are left to their proofs.

61. Denied.

WHEREFORE, the Defendants demand that the Complaint be dismissed, together with interest and costs of suit.

COUNT FOUR
Violation of Civil Rights Generally and
Violation for Filing of False Reports

62. The Defendants repeat each and every answer to the allegations contained in paragraphs One through Sixty-One as if the same were set forth at length herein.

63. Denied.

64. Denied.

65. Upon the advice of counsel neither admitted nor denied. Plaintiffs are left to their proofs.

66. Denied.

WHEREFORE, the Defendants demand that the Complaint be dismissed, together with interest and costs of suit.

COUNT FIVE
Violation of Civil Rights Generally and a
Violation for False Testimony

67. The Defendants repeat each and every answer to the allegations contained in paragraphs One through Sixty-Six as if the same were set forth at length herein.

68. Denied.

69. Denied.

70. Upon the advice of counsel neither admitted nor denied.
Plaintiffs are left to their proofs.

71. Denied.

WHEREFORE, the Defendants demand that the Complaint be dismissed, together with interest and costs of suit.

COUNT SIX
**Violation of Civil Rights Generally and a
Violation of Concealment**

72. The Defendants repeat each and every answer to the allegations contained in paragraphs One through Seventy-One as if the same were set forth at length herein.

73. Denied.

74. Denied.

75. Upon the advice of counsel neither admitted nor denied.
Plaintiffs are left to their proofs.

76. Denied.

WHEREFORE, the Defendants demand that the Complaint be dismissed, together with interest and costs of suit.

COUNT SEVEN
**Violation of Civil Rights Generally and a
Violation for Improper and Inadequate Training and
Supervision**

77. The Defendants repeat each and every answer to the allegations contained in paragraphs One through Seventy-Six as if the same were set forth at length herein.

78. Denied.

79. It is denied that the City of Sea Isle City failed to adequately train and or supervise its employees.

80. Denied.

81. Denied.

82. Upon the advice of counsel neither admitted nor denied.

Plaintiffs are left to their proofs.

83. Denied.

84. Denied.

WHEREFORE, the Defendants demand that the Complaint be dismissed, together with interest and costs of suit.

COUNT EIGHT
**Common Law Cause of Action for Use of
Excessive Force and Assault and Battery**

85. The Defendants repeat each and every answer to the allegations contained in paragraphs One through Eighty-Four as if the same were set forth at length herein.

86. Denied.

87. Denied.

WHEREFORE, the Defendants demand that the Complaint be dismissed, together with interest and costs of suit.

COUNT NINE
Common Law Cause of Action for False Arrest

88. The Defendants repeat each and every answer to the allegations contained in paragraphs One through Eighty-Seven as if the same were set forth at length herein.

89. Denied.

90. Denied.

WHEREFORE, the Defendants demand that the Complaint be dismissed, together with interest and costs of suit.

COUNT TEN

Common Law Cause of Action for Malicious Prosecution

91. The Defendants repeat each and every answer to the allegations contained in paragraphs One through Ninety as if the same were set forth at length herein.

92. Denied.

93. Denied.

WHEREFORE, the Defendants demand that the Complaint be dismissed, together with interest and costs of suit.

COUNT ELEVEN

Common Law Cause of Action for False Police Reports

94. The Defendants repeat each and every answer to the allegations contained in paragraphs One through Ninety-Three as if the same were set forth at length herein.

95. Denied.

96. Denied.

WHEREFORE, the Defendants demand that the Complaint be dismissed, together with interest and costs of suit.

COUNT TWELVE
Common Law Cause of Action for False Testimony

97. The Defendants repeat each and every answer to the allegations contained in paragraphs One through Ninety-Six as if the same were set forth at length herein.

98. Denied.

99. Denied.

WHEREFORE, the Defendants demand that the Complaint be dismissed, together with interest and costs of suit.

COUNT THIRTEEN
Common Law Cause of Action for Concealment

100. The Defendants repeat each and every answer to the allegations contained in paragraphs One through Ninety-Nine as if the same were set forth at length herein.

101. Denied.

102. Denied.

WHEREFORE, the Defendants demand that the Complaint be dismissed, together with interest and costs of suit.

COUNT FOURTEEN
**Common Law Cause of Action for
Inadequate Training and Supervision**

103. The Defendants repeat each and every answer to the allegations contained in paragraphs One through One Hundred and Two as if the same were set forth at length herein.

104. Denied.

105. Denied.

WHEREFORE, the Defendants demand that the Complaint be dismissed, together with interest and costs of suit.

COUNT FIFTEEN
Civil Conspiracy

106. The Defendants repeat each and every answer to the allegations contained in paragraphs One Hundred and Five as if the same were set forth at length herein.

107. Denied.

108. Denied.

WHEREFORE, the Defendants demand that the Complaint be dismissed, together with interest and costs of suit.

COUNT SIXTEEN
Emotional Stress and Duress of Robert McLoughlin

109. The Defendants repeat each and every answer to the allegations contained in paragraphs One Hundred and Eight as if the same were set forth at length herein.

110. Neither admitted nor denied as to what Plaintiff Robert McLoughlin witnessed. Plaintiffs are left to their proofs. The remaining allegations are denied.

111. Neither admitted nor denied. Plaintiffs are left to their proofs.

112. Denied.

113. Denied.

114. Denied.

WHEREFORE, the Defendants demand that the Complaint be dismissed, together with interest and costs of suit.

COUNT SEVENTEEN
Robert McLoughlin's Claim for Expenses

115. The Defendants repeat each and every answer to the allegations contained in paragraphs One through One Hundred and Fourteen as if the same were set forth at length herein.

116. Denied.

WHEREFORE, the Defendants demand that the Complaint be dismissed, together with interest and costs of suit.

COUNT EIGHTEEN
Independent Actions/Inactions
Of the Defendant, City of Sea Isle

117. The Defendants repeat each and every answer to the allegations contained in paragraphs One through One Hundred Sixteen as if the same were set forth at length herein.

118. Denied.

119. Denied.

120. Denied.

WHEREFORE, the Defendants demand that the Complaint be dismissed, together with interest and costs of suit.

COUNT NINETEEN
Joint and Several

121. The Defendants repeat each and every answer to the allegations contained in paragraphs One through One Hundred and Twenty as if the same were set forth at length herein.

WHEREFORE, the Defendants demand that the Complaint be dismissed, together with interest and costs of suit.

SEPARATE and AFFIRMATIVE DEFENSES on BEHALF OF THE ANSWERING DEFENDANTS, Jointly, Severally and/or in the Alternative

1. Any injuries or damages sustained by the Plaintiffs are the result of the act and/or acts of independent, intervening agencies or the attorneys for Plaintiffs over which these answering Defendants had no power or control.

2. These answering Defendants did not breach any duty which may have been owed to Plaintiffs in this action.

3. The Plaintiffs' Complaint fails to set forth a cause of action and the answering Defendants reserve the right to move to dismiss the Plaintiffs' Complaint on that ground.

4. This action is barred by reason of the Statutory Immunity of the answering Defendants and the answering Defendants reserve the right to move to dismiss the Plaintiffs' Complaint on that ground.

5. The Plaintiffs' Complaint is barred by the provisions of the New Jersey Tort Claims Act. [N.J.S.A. 59:1-1, et. seq.]

6. The answering Defendants are immune from liability pursuant to the provisions of N.J.S.A. 59:2-1, et. seq.

7. The answering Defendants assert the applicability of the provisions of N.J.S.A. 59:2-1, and 59:2-2, as to the immunities available to the public entity and/or public employees.

8. The answering Defendants are not liable to the Plaintiffs in that there is no liability upon any public employees pursuant to the provisions of N.J.S.A. 59:2-2(b).

9. The answering Defendants are immune from liability pursuant to the provision of N.J.S.A. 59:3-1, et. seq.

10. The answering Defendants assert the applicability of the provisions of N.J.S.A. 59:2-3 through 59:3-2 as to the absence of liability from the exercise of judgment or discretion.

11. The answering Defendants assert the applicability of the provisions of N.J.S.A. 59:8-3 through 59:8-7 regarding failure to provide adequate and timely notice of claim.

12. The answering Defendants assert the applicability of the provisions of N.J.S.A. 59:8-8 through 59:8-11 regarding failure to

timely file a notice of claim and/or failure to file a notice of claim as set forth therein.

13. Any recovery to which the Plaintiffs might otherwise be entitled is subject to reduction in accordance with the judgments, damages and interest provided in N.J.S.A. 59:9-2.

14. The answering Defendants assert the applicability of N.J.S.A. 59:9-3 and 59:9-4 regarding joint tortfeasors and the comparative negligence of the Plaintiffs.

15. The answering Defendants, by pressing the aforementioned defense(s), do not intend to limit their defenses and/or rights under the Act, and hereby affirmatively plead the procedural and substantive provisions of the New Jersey Tort Claims Act [N.J.S.A. 59:1-1, et. seq.] which provisions are applicable and have not been previously cited in this Answer.

16. The claims are barred or limited by reason of the New Jersey Joint and Several Liability Act [N.J.S.A. 2A:15-1, et. seq.] and/or the New Jersey Comparative Negligence Act [N.J.S.A. 2A:53A-1, et. seq.].

17. The claims are barred or limited by reason of the New Jersey Collateral Source Rule [N.J.S.A. 2A:15-97] or as provided by the New Jersey Tort Claim Act.

18. The answering Defendants did not act with malice but did act in good faith; therefore, the Plaintiffs are not entitled to damages.

19. The answering Defendants assert that the actions taken by the answering Defendants were subject to immunity or partial immunity or authorized by law.

20. The answering Defendants assert that the actions taken by the answering Defendants were subject to qualified immunity. The answering Defendants assert that the Plaintiffs have failed to plead any constitutional violations with such specificity as to state a cognizable claim under 42 U.S.C.A. §1983.

21. The answering Defendants assert that the Plaintiffs' Fifth Amendment claims must be dismissed as a matter of law because the Fifth Amendment only restricts federal government action and all the Defendants are state actors.

22. The answering Defendants assert that the Plaintiffs' Eighth Amendment claims must be dismissed as a matter of law because the Eighth Amendment protects those convicted of crimes and Plaintiffs were never incarcerated.

23. The answering Defendants assert that the Plaintiffs' Fourteenth Amendment claims must be dismissed as a matter of law because claims made against law enforcement officers alleging excessive use of force are properly analyzed under the Fourth Amendment. Plaintiffs were not denied procedural or substantive due process or equal protection under the law.

24. The answering Defendants assert that the Plaintiffs' Sixth Amendment claims must be dismissed as a matter of law because Plaintiffs were not denied access to counsel after legal proceedings had commenced.

25. The answering Defendants assert that the Plaintiffs' punitive damages claims against the City of Sea Isle must be dismissed as a matter of law because punitive damages are not recoverable against a municipal entity under 42 U.S.C. §1983.

26. As to the municipality of the City of Sea Isle City, the answering Defendants assert that the Plaintiffs are not able to establish improper supervision by inaction in the face of persistent, widespread practices so common and well settled as to be imputable to the answering Defendants constituting a blatant and routine disregard or a deliberate indifference to the rights of Plaintiffs.

27. As to the City of Sea Isle City, the answering Defendant asserts that appropriate training and disciplinary procedures were in place and utilized as necessary to assure protection of the rights of citizens involved.

28. As to the City of Sea Isle City, the answering Defendant asserts that the Plaintiffs are unable to show any attributable policy or procedure which was so inadequate as to amount to a deliberate indifference to Plaintiffs' constitutional rights.

29. As to the City of Sea Isle City, the answering Defendant asserts that the Plaintiffs are unable to establish a policy and/or custom of the City of Sea Isle City which deprived citizens of constitutional rights actionable under 42 U.S.C. §1983.

30. Any damage alleged to have been suffered by the Plaintiffs is not causally related to any act or omission alleged to be chargeable to the answering Defendants.

REQUEST FOR STATEMENT OF DAMAGES

The answering Defendants demand that the Plaintiffs furnish a written statement specifying the amount of damages claimed in the above-entitled action.

NOTICE OF DESIGNATION OF TRIAL COUNSEL

A. Michael Barker, Esquire, of the Law Offices of Barker, Scott & Gelfand, P.C. is hereby designated as trial counsel on behalf of the Defendants, Nicholas William Falcicchio; Joshua Steven Giercyk; Dennis Felsing, Sr.; Rosemary Milano; Bud Boyer; Jon Gansert; Steve Conte; Anthony Garreffo; Frank Taylor; William J. Kennedy, Chief of Police; City of Sea Isle.

JURY DEMAND

The answering Defendants, Nicholas William Falcicchio; Joshua Steven Giercyk; Dennis Felsing, Sr.; Rosemary Milano; Bud Boyer; Jon Gansert; Steve Conte; Anthony Garreffo; Frank Taylor;

William J. Kennedy, Chief of Police; City of Sea Isle, hereby demand trial by jury on all issues so triable and joined in this action.

Respectfully Submitted:
BARKER, SCOTT & GELFAND

Dated: 2/7/08

By: A. Michael Barker

A. Michael Barker, Esquire
on behalf of the Defendants,
Nicholas William Falcicchio; Joshua
Steven Giercyk; Dennis Felsing, Sr.;
Rosemary Milano; Bud Boyer; Jon
Gansert; Steve Conte; Anthony
Garreffi; Frank Taylor; William J.
Kennedy, Chief of Police; City of Sea
Isle