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Our File Number: 47733-183

Attorney for Defendants, City of Sea Isle City Police Department and  
Sea Isle City, Jointly Severally and in the Alternative

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY – CAMDEN VICINAGE**

CHRISTOPHER MILTENBERG,  
Plaintiff,

vs.

SEA ISLE CITY POLICE  
DEPARTMENT; OFFICER MISTY  
KINGSLAND; AND SEA ISLE CITY,  
Defendants

Civil Action Number  
10-cv-02606-JBS-JS

Civil Action

**ANSWER, SEPARATE AND  
AFFIRMATIVE DEFENSES,  
RESERVATION OF RIGHTS,  
DEMAND FOR SPECIFICATION  
OF DAMAGES, NOTICE OF  
DESIGNATION OF TRIAL  
COUNSEL AND DEMAND FOR  
JURY TRIAL**

On Behalf of Defendants,  
Sea Isle City Police Department and  
The City of Sea Isle City, Jointly, Severally  
and in the Alternative

Now comes the Defendants, Sea Isle City Police Department  
and the City of Sea Isle City, jointly, severally and in the alternative

and by way of answer to the Complaint, hereby state the following:

**JURISDICTION AND VENUE**

1. Jurisdiction is admitted based on Federal question and supplemental jurisdiction admitted and otherwise denied.

2. Admitted.

**PARTIES - PLAINTIFF**

3. The answering Defendant has insufficient information upon which to admit or deny and the Plaintiff is left to his proof.

**PARTIES - DEFENDANTS**

4. Sea Isle City Police Department is not a legal entity that can sue or be sued; otherwise admitted.

5. Sea Isle City Police Department is not a legal entity that can sue or be sued; Defendant Kingsland was a police officer with Badge No. 39 acting in her official capacity and otherwise denied.

6. Admitted.

**COUNT ONE**

7. The answering Defendants presently have insufficient information upon which to admit or deny the allegations of this paragraph and therefore enter a formal denial and puts Plaintiff to proof.

8. The answering Defendants presently have insufficient information upon which to admit or deny the allegations of this paragraph and therefore enter a formal denial and puts Plaintiff to proof.

9. The answering Defendants presently have insufficient information upon which to admit or deny the allegations of this paragraph and therefore enter a formal denial and puts Plaintiff to proof.

10. Admitted.

11. Admitted.

12. Denied.

13 -20. The allegations of this paragraph are not directed toward the answering Defendants and therefore no answer is required; however, to the extent the allegations of this paragraph are intended to inculcate the answering Defendants the same are denied and the Plaintiff is put to proof.

21-26. Denied.

27. Admitted.

28. (a)-(f) Denied.

29. (a)-(d) Denied.

30. Denied.

WHEREFORE, the answering Defendants, Sea Isle City Police Department and the City of Sea Isle City demand judgment dismissing the Complaint against the answering Defendants jointly, severally and in the alternative, and for such further relief as the Court deems to be just and equitable, including but not limited to an award for attorneys' fees and costs of suit.

### **COUNT TWO**

31. The answering Defendants repeat and incorporate herein by reference each and every answer to each of the preceding paragraphs, of the Complaint, as if more fully set forth at length herein.

32. The allegations of this paragraph set forth only a legal averment and therefore no answer is required; however, to the extent the allegations of this paragraph are relied upon by Plaintiff to inculcate the answering Defendants, directly or indirectly, the same are denied and the Plaintiff is put to proof.

33. The answering Defendants presently have insufficient

information upon which to admit or deny the allegations of this paragraph and therefore enter a formal denial and puts Plaintiff to proof.

34-36. The allegations of this paragraph are not directed toward the answering Defendants and therefore no answer is required; however, to the extent the allegations of this paragraph are relied upon by the Plaintiff to inculcate the answering Defendants, directly or indirectly, the same are denied and the Plaintiff is put to proof.

37-41. The allegations set forth only a legal averment and therefore no answer is required; however, to the extent the Plaintiff relies upon the allegations to inculcate the answering Defendants, directly or indirectly, the same are denied and the Plaintiff is put to proof.

42. Denied as to the answering Defendants.

WHEREFORE, the answering Defendants, Sea Isle City Police Department and the City of Sea Isle City, demand judgment dismissing the Complaint against the answering Defendants jointly, severally and in the alternative, and for such further relief as the Court deems to be just and equitable, including but not limited to

an award for attorneys' fees and costs of suit.

**COUNT THREE**

43. The answering Defendants repeat and incorporate herein by reference each and every answer to each of the preceding paragraphs, of the Complaint as if more fully set forth at length herein.

44. Denied as to the answering Defendants.

WHEREFORE, the answering Defendants, Sea Isle City Police Department and the City of Sea Isle City, demand judgment dismissing the Complaint against the answering Defendants jointly, severally and in the alternative, and for such further relief as the Court deems to be just and equitable, including but not limited to an award for attorneys' fees and costs of suit.

**COUNT FOUR**

45. The answering Defendants repeat and incorporate herein by reference each and every answer to each of the preceding paragraphs, of the Complaint as if more fully set forth at length herein.

46-47. The allegations are not directed toward the answering Defendants and therefore no answer is required;

however, to the extent the allegations are relied upon by the Plaintiff to inculcate the answering Defendants, the same are denied and the Plaintiff is put to proof.

WHEREFORE, the answering Defendants, Sea Isle City Police Department and the City of Sea Isle City, demand judgment dismissing the Complaint against the answering Defendants jointly, severally and in the alternative, and for such further relief as the Court deems to be just and equitable, including but not limited to an award for attorneys' fees and costs of suit.

#### **COUNT FIVE**

48. The answering Defendants repeat and incorporate herein by reference each and every answer to each of the preceding paragraphs, of the Complaint as if more fully set forth at length herein.

49-51. The allegations are not directed toward the answering Defendants and therefore no answer is required; however, to the extent the allegations are relied upon by the Plaintiff to inculcate the answering Defendants, the same are denied and the Plaintiff is put to proof.

WHEREFORE, the answering Defendants, Sea Isle City Police

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Answer to Plaintiff's Complaint

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Department and the City of Sea Isle City, demand judgment dismissing the Complaint against the answering Defendants jointly, severally and in the alternative, and for such further relief as the Court deems to be just and equitable, including but not limited to an award for attorneys' fees and costs of suit.

### **COUNT SIX**

52. The answering Defendants repeat and incorporate herein by reference each and every answer to each of the preceding paragraphs, of the Complaint as if more fully set forth at length herein.

53-55. The allegations are not directed toward the answering Defendants and therefore no answer is required; however, to the extent the allegations are relied upon by the Plaintiff to inculcate the answering Defendants, the same are denied and the Plaintiff is put to proof.

WHEREFORE, the answering Defendants, Sea Isle City Police Department and the City of Sea Isle City, demand judgment dismissing the Complaint against the answering Defendants jointly, severally and in the alternative, and for such further relief as the Court deems to be just and equitable; including but not limited to



an award for attorneys' fees and costs of suit.

### **COUNT SEVEN**

56. The answering Defendants repeat and incorporate herein by reference each and every answer to each of the preceding paragraphs, of the Complaint as if more fully set forth at length herein.

57-58. The allegations are not directed toward the answering Defendants and therefore no answer is required; however, to the extent the allegations are relied upon by the Plaintiff to inculcate the answering Defendants, the same are denied and the Plaintiff is put to proof.

WHEREFORE, the answering Defendants, Sea Isle City Police Department and the City of Sea Isle City, demand judgment dismissing the Complaint against the answering Defendants jointly, severally and in the alternative, and for such further relief as the Court deems to be just and equitable, including but not limited to an award for attorneys' fees and costs of suit.

### **COUNT EIGHT**

59. The answering Defendants repeat and incorporate herein by reference each and every answer to each of the preceding

paragraphs, of the Complaint as if more fully set forth at length herein.

60. Denied as to the answering Defendants.

WHEREFORE, the answering Defendants, Sea Isle City Police Department and the City of Sea Isle City, demand judgment dismissing the Complaint against the answering Defendants jointly, severally and in the alternative, and for such further relief as the Court deems to be just and equitable, including but not limited to an award for attorneys' fees and costs of suit.

#### **COUNT NINE**

61. The answering Defendants repeat and incorporate herein by reference each and every answer to each of the preceding paragraphs, of the Complaint as if more fully set forth at length herein.

62-63. Denied.

WHEREFORE, the answering Defendants, Sea Isle City Police Department and the City of Sea Isle City, demand judgment dismissing the Complaint against the answering Defendants jointly, severally and in the alternative, and for such further relief as the Court deems to be just and equitable, including but not limited to

an award for attorneys' fees and costs of suit.

**COUNT TEN**

64. The answering Defendants repeat and incorporate herein by reference each and every answer to each of the preceding paragraphs, of the Complaint as if more fully set forth at length herein.

65. The allegations are not directed toward the answering Defendants and therefore no answer is required; however, to the extent the allegations are relied upon by the Plaintiff to inculcate the answering Defendants, the same are denied and the Plaintiff is put to proof.

66. Denied as to the answering Defendants.

WHEREFORE, the answering Defendants, Sea Isle City Police Department and the City of Sea Isle City, demand judgment dismissing the Complaint against the answering Defendants jointly, severally and in the alternative, and for such further relief as the Court deems to be just and equitable, including but not limited to an award for attorneys' fees and costs of suit.

**SEPARATE AND AFFIRMATIVE DEFENSES**  
**PLED JOINTLY, SEVERALLY AND IN THE ALTERNATIVE ON**  
**BEHALF OF THE DEFENDANTS, SEA ISLE CITY POLICE**  
**DEPARTMENT AND THE CITY OF SEA ISLE CITY**

1. Any injuries or damages sustained by the Plaintiff are the result of the act or acts of independent, intervening agencies over which the answering Defendants had no power or control.

2. The answering Defendants did not breach any duty which may have been owed to the Plaintiff in this action.

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

4. The claims of the Plaintiff are barred by reason of the Statutory Immunity of the answering Defendants; and, the answering Defendants reserve the right to move to dismiss the Plaintiff's Complaint on that ground.

5. The claims of the Plaintiff are barred by the provisions of the New Jersey Tort Claims Act. [NJSA 59:1-1, et. seq.]

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

7. The answering Defendants assert the applicability of the provisions of NJSA 59:2-1, and NJSA 59:2-2, as to the immunities available to a public entity and/or a public employee.

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

9. The answering Defendants are immune from liability pursuant to the provisions of NJSA 59:3-1, et. seq.

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

11. The answering Defendants acted in good faith in the execution of enforcement of law and is not liable pursuant to NJSA 59:3-3.

12. The answering Defendants assert the applicability of the provisions of NJSA 59:8-3 through NJSA 59:8-7 regarding failure to provide adequate and timely notice of claim.

13. The answering Defendants assert the applicability of the provisions of NJSA 59:8-8 through NJSA 59:8-11 regarding failure

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

14. Any recovery to which the Plaintiff might otherwise be entitled is subject to reduction in accord with the judgments, damages and interest provided in NJSA 59:9-2.

15. The answering Defendants assert the applicability of NJSA 59:9-3, NJSA 59:9-3.1 (limitations in contribution) and NJSA 59:9-4 regarding joint tortfeasors and the comparative negligence of the Plaintiff.

16. The answering Defendants assert the applicability of NJSA 59:9-5 to limit fees and costs.

17. The answering Defendants, by pressing the aforementioned defenses, 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 [NJSA 59:1-1, et. seq.] which are applicable and have not been previously cited in this Answer.

18. The answering Defendants enjoy prosecutorial immunity.

19. The answering Defendants assert that the actions taken were privileged or subject to immunity or qualified immunity and/or as authorized by law.

20. The answering Defendants acted without malice and in good faith; therefore, the answering Defendants are not responsible to the Plaintiff in damages.

21. The answering Defendants assert that the Plaintiff has failed to plead a constitutional violation with such specificity so as to state a cognizable claim under 42 USC § 1983.

22. The answering Defendants assert that the Plaintiff is 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 the Plaintiff.

23. The answering Defendants assert that the Plaintiff is unable to show any policy or procedure attributable to the answering Defendants which was so inadequate as to amount to a deliberate indifference to any constitutional rights of Plaintiffs.

24. The answering Defendants assert that the Plaintiff is unable to establish a policy and/or custom attributable to the answering Defendants which deprived citizens of constitutional rights actionable under 42 USC §1983.

25. Any and all damages alleged to have been suffered by the Plaintiff are not causally related to any act or omission alleged to be chargeable to the answering Defendants.

26. Certain claims of the Plaintiff are barred by the Statute of Limitations in such case made and provided.

27. The answering Defendants reserve the right to amend this Answer to assert additional affirmative defenses as revealed or suggested by the completion of on-going investigation and discovery.

### **RESERVATION OF RIGHTS**

The Defendants, Sea Isle City Police Department and the City of Sea Isle City, jointly, severally, and in the alternative, reserve the right, at or before trial, to move to dismiss the Plaintiff's Complaint, and/ or a portion thereof, on the basis the Complaint, or a portion thereof, fails to state a claim upon which relief can be granted, or upon the basis that the Defendants, Sea Isle City Police Department



and the City of Sea Isle City, jointly, severally, and in the alternative, are otherwise entitled to judgment as a matter of law.

**DEMAND FOR SPECIFICITY OF DAMAGES CLAIMED**

The Defendants, City of Sea Isle City Police Department and the City of Sea Isle City, Jointly, Severally, or in the Alternative, demand that the Plaintiff furnish a written statement specifying the amount of damage claimed by the plaintiffs in the above-entitled action.

**NOTICE OF DESIGNATION OF TRIAL COUNSEL**

A. Michael Barker, Esquire is hereby designated as trial counsel on behalf of the Defendants, City of Sea Isle City Police Department and the City of Sea Isle City, jointly, severally, and in the Alternative.

**JURY DEMAND**

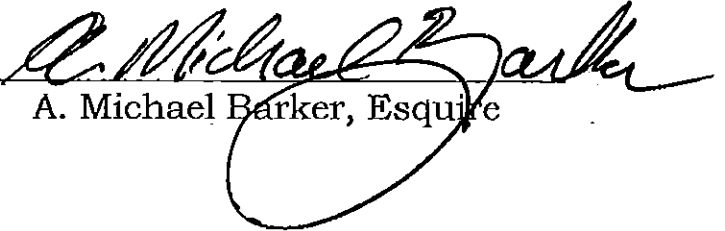
Trial by jury is hereby demanded on all issues raised by the pleadings.

**CERTIFICATION PURSUANT TO L.Civ.R. 11.2**

A. Michael Barker, Esquire of the Law Offices of Barker, Scott & Gelfand, attorney for the Defendant, City of Sea Isle city and City of Sea Isle City Police Department, hereby certifies that the matter

in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

**BARKER, SCOTT & GELFAND  
a Professional Corporation**

By:   
A. Michael Barker, Esquire

Dated: 22 July 2010.