

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

MICHIGAN OPEN CARRY, INC., and
KENNETH HERMAN,

Plaintiffs,

Judge Archie L. Hayman

vs.

No. 15-104373-CZ

CLIO AREA SCHOOLS, FLETCHER
SPEARS, III, and KATRINA MITCHELL,

Defendants.

DEAN G. GREENBLATT (P54139)
DEAN G. GREENBLATT, PLC
Attorney for Plaintiffs
4190 Telegraph Road, Ste. 3500
Bloomfield Hills, MI 48302
(248) 644-7520

TIMOTHY J. MULLINS (P28021)
JOHN L. MILLER (P71913)
GIARMARCO, MULLINS & HORTON, P.C.
Attorneys for Defendants
101 W. Big Beaver Road, 10th Floor
Troy, MI 48084-5280
(248) 457-7020

ANSWER

Defendants, CLIO AREA SCHOOLS, FLETCHER SPEARS, III, and KATRINA MITCHELL, by and through their attorneys, GIARMARCO, MULLINS & HORTON, P.C., state their answer to Plaintiffs' Verified Complaint as follows:

Parties, Jurisdiction, Venue

1. In answer to paragraph 1, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

2. In answer to paragraph 2, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

3. In answer to paragraph 3, Defendants admit that Clio Area School District is a Michigan Public School District performing a governmental function in Genesee County, Michigan, to wit, providing a free and appropriate public education for the students thereof and, as such, is immune from suit herein. As to the remaining allegations contained therein, Defendants deny same for the reason that they are untrue.

4. In answer to paragraph 4, Defendants admit the allegations contained therein.

5. In answer to paragraph 5, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

6. In answer to paragraph 6, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

7. In answer to paragraph 7, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

8. In answer to paragraph 8, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

9. In answer to paragraph 9, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

10. In answer to paragraph 10, Defendants deny the allegations contained therein for the reason that they are untrue.

11. In answer to paragraph 11, Defendants deny the allegations contained therein for the reason that they are untrue.

12. In answer to paragraph 12, Defendants deny the allegations contained therein for the reason that they are untrue.

Allegations

13. In answer to paragraph 13, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

14. In answer to paragraph 14, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

15. In answer to paragraph 15, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

16. In answer to paragraph 16, Defendants neither admit nor deny the allegations contained therein for the reason that they constitute conclusions of law, rather than allegations of fact, and, therefore, leave Plaintiffs to their proofs thereon with a final determination by the Court.

17. In answer to paragraph 17, Defendants neither admit nor deny the allegations contained therein for the reason that they constitute conclusions of law, rather than allegations of fact, and, therefore, leave Plaintiffs to their proofs thereon with

a final determination by the Court.

18. In answer to paragraph 18, Defendants deny the allegations contained therein for the reason that they are untrue.

19. In answer to paragraph 19, Defendants neither admit nor deny the allegations contained therein for the reason that they constitute conclusions of law, rather than allegations of fact, and, therefore, leave Plaintiffs to their proofs thereon with a final determination by the Court.

20. In answer to paragraph 20, Defendants neither admit nor deny the allegations contained therein for the reason that they constitute conclusions of law, rather than allegations of fact, and, therefore, leave Plaintiffs to their proofs thereon with a final determination by the Court.

21. In answer to paragraph 21, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

22. In answer to paragraph 22, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

23. In answer to paragraph 23, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

24. In answer to paragraph 24, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

25. In answer to paragraph 25, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

26. In answer to paragraph 26, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

27. In answer to paragraph 27, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

28. In answer to paragraph 28, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

29. In answer to paragraph 29, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

30. In answer to paragraph 30, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

31. In answer to paragraph 31, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

32. In answer to paragraph 32, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and,

therefore, leave Plaintiff to their proofs.

33. In answer to paragraph 33, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

34. In answer to paragraph 34, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

35. In answer to paragraph 35, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

36. In answer to paragraph 36, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

37. In answer to paragraph 37, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

38. In answer to paragraph 38, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

39. In answer to paragraph 39, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

40. In answer to paragraph 40, Defendants neither admit nor deny the

allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

41. In answer to paragraph 41, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

42. In answer to paragraph 42, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

43. In answer to paragraph 43, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

44. In answer to paragraph 44, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

45. In answer to paragraph 45, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

46. In answer to paragraph 46, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

47. In answer to paragraph 47, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

48. In answer to paragraph 48, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

49. In answer to paragraph 49, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

50. In answer to paragraph 50, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

51. In answer to paragraph 51, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

52. In answer to paragraph 52, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to their proofs.

53. In answer to paragraph 53, Defendants deny the allegations contained therein for the reason that they are untrue.

54. In answer to paragraph 54, Defendants deny the allegations contained therein for the reason that they are untrue.

Relief Requested

WHEREFORE, Defendant, CLIO AREA SCHOOLS, FLETCHER SPEARS, III, and KATRINA MITCHELL, respectfully request that this Honorable Court enter an order of no cause of action as to Defendants, together with costs and attorney fees so

wrongfully sustained.

GIARMARCO, MULLINS & HORTON, P.C.

By: 

TIMOTHY J. MULLINS (P28021)

Attorney for Defendants

101 W. Big Beaver Road, 10th Floor

Troy, MI 48084-5280

(248) 457-7020

DATED: April 13, 2015

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CLIO AREA SCHOOLS, FLETCHER
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Defendants.

AFFIRMATIVE DEFENSES

Defendants, CLIO AREA SCHOOLS, FLETCHER SPEARS, III, and KATRINA MITCHELL, by and through their attorneys, GIARMARCO, MULLINS & HORTON, P.C., state their Affirmative Defenses as follows:

1. Defendant School District is not a local unit of the government.
2. Plaintiffs' suit is not justiciable because there is no actual controversy and the question presented is hypothetical.
3. Plaintiffs do not have standing.
4. Defendants' actions are authorized by the Revised School Code, Michigan Statutes, the Michigan Constitution and Michigan's common law and Defendant's policies, guidelines and practices are a valid exercise of its authority as a School District.
5. Plaintiffs have sought relief that is not available for the cause of action pled.
6. Plaintiffs are not entitled to attorney fees or costs.

7. To the extent Plaintiffs seek equitable relief, their claim is barred by the doctrine of unclean hands and laches.

8. Defendants will show and rely upon at the time of trial that at all times pertinent hereto, Defendants were engaged in the performance of governmental functions and, therefore, are immune from suit for civil damages for this claim pursuant to the principles of governmental and/or qualified immunity as set forth in case law and the statutes of this State.

9. Defendants will show and rely upon at the time of trial that Plaintiffs have failed to comply with the conditions of the applicable statute.

10. Defendants will show and rely upon at the time of trial that Michigan statute prohibits the brandishing or carrying of weapons, particularly in a school building.

11. Defendants will show and rely upon at the time of trial that Michigan law prohibits the possession of a firearm within a school building or a weapon free zone.

GIARMARCO, MULLINS & HORTON, P.C.

By: 

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Attorney for Defendants
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JURY DEMAND

Defendants, CLIO AREA SCHOOLS, FLETCHER SPEARS, III, and KATRINA MITCHELL, by and through their attorneys, GIARMARCO, MULLINS & HORTON, P.C., hereby demand a jury as to all issues of trial.

GIARMARCO, MULLINS & HORTON, P.C.

By:



TIMOTHY J. MULLINS (P28021)

Attorney for Defendants

101 W. Big Beaver Road, 10th Floor

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PROOF OF SERVICE

ELIZABETH BINNO states that on April 13, 2015, she served a copy of the **Answer, Affirmative Defenses and Jury Demand** upon Dean G. Greenblatt by placing same in a sealed envelope, properly addressed, with sufficient first class postage affixed thereon, in a United States Mail receptacle on the aforementioned date.


ELIZABETH BINNO