

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BLAKE ROGERS, et al.,)	CASE NO.: 1:20-CV-2568
)	
Plaintiffs,)	JUDGE: J. PHILIP CALABRESE
)	
vs.)	<u>ANSWER TO PLAINTIFFS' FIRST</u>
)	<u>AMENDED COMPLAINT</u>
MARTIN HORWITZ, et al.,)	
)	
Defendants.)	<u>(Jury Demand Endorsed Hereon)</u>

Now come Defendants, Martin Horwitz, Gary Haba, Diane Calta, Nathalie Supler, James Pasch and the City of Beachwood, by and through counsel Mazanec, Raskin & Ryder Co., L.P.A., and for their answer to Plaintiffs' Complaint state as follows:

1. Answering Paragraph 1 of Plaintiffs' Complaint, Defendants admit Blake Rogers is employed as a police officer for the City of Beachwood and has been so employed since June 17, 2013. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

2. Answering Paragraph 2 of Plaintiffs' Complaint, Defendants are without sufficient information or belief to form an opinion as to the truth of the allegations contained therein and therefore deny the same.

3. Answering Paragraph 3 of Plaintiffs' Complaint, Defendants admit their official acts were under color or law. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

4. Answering Paragraph 4 of Plaintiffs' Complaint, Defendants admit Mayor Horwitz is an attorney licensed to practice law in the State of Ohio and serves as the Mayor and Safety Director of the City of Beachwood. Further answering said Paragraph, Defendants admit Mayor

Horwitz' actions as Mayor and Safety Director were within the course and scope of his employment. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

5. Answering Paragraph 5 of Plaintiffs' Complaint, Defendants admit Gary Haba was the Chief of Police for the City of Beachwood and retired in July of 2020. Further answering said Paragraph, Defendants admit Chief Haba's official actions were within the course and scope of his employment. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

6. Answering Paragraph 6 of Plaintiffs' Complaint, Defendants admit Diane Calta is the Law Director for the City of Beachwood and is an attorney licensed to practice law in the State of Ohio and that her official actions were within the course and scope of her employment. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

7. Answering Paragraph 7 of Plaintiffs' Complaint, Defendants admit Natalie Supler is the Assistant Law Director for the City of Beachwood and is an attorney licensed to practice law in the State of Ohio. Further answering said Paragraph, Defendants admit Natalie Supler's official actions were within the course and scope of her employment. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

8. Answering Paragraph 8 of Plaintiffs' Complaint, Defendants admit James Pasch is President of Beachwood City Council and is an attorney licensed to practice law in the State of Ohio. Further answering said Paragraph, Defendants admit Mr. Pasch's official actions were within the course and scope of his employment. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

9. Answering Paragraph 9 of Plaintiffs' Complaint, Defendants admit the City of Beachwood is a political subdivision of the State of Ohio. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

10. Answering Paragraph 10 of Plaintiffs' Complaint, Defendants admit this Honorable Court has jurisdiction over Plaintiffs' federal claims and has discretion to exercise jurisdiction over Plaintiffs' supplemental state law claims. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

11. Answering Paragraph 11 of Plaintiffs' Complaint, Defendants admit venue is proper in this Court.

12. Answering Paragraph 12 of Plaintiffs' Complaint, Defendants reallege and reaver all the admissions, averments and denials contained in paragraphs 1 through 11 of their answer as if fully rewritten herein.

13. Answering Paragraph 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 of Plaintiffs' Complaint, Defendants avers said paragraphs are rhetorical and do not require an answer by these Answering Defendants. Further answering said Paragraphs, Defendants aver Plaintiff's Roger's duty assignments, commendations and discipline are set forth in his personnel file and that such records speak for themselves. Further answering said Paragraphs, Defendants are without sufficient information or belief to form an opinion as to any remaining allegations contained therein and therefore deny the same.

14. Answering Paragraph 27 of Plaintiffs' Complaint, Defendants admit in June of 2016 Plaintiff Rogers advised the City of Beachwood of his desire to use FMLA leave concerning the birth of a child. Further answering said Paragraph, Defendants are without sufficient

information or belief to form an opinion as to any remaining allegations contained therein and therefore deny the same.

15. Answering Paragraph 28 of Plaintiffs' Complaint, Defendants are without sufficient information or belief to form an opinion as to the truth of the allegations contained therein and therefore deny the same.

16. Answering Paragraph 29 of Plaintiffs' Complaint, Defendants aver said paragraph is rhetorical and that the law speaks for itself. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

17. Answering Paragraph 30 of Plaintiffs' Complaint, Defendants admit Plaintiff Rogers took three weeks of FMLA leave. Further answering said Paragraph, Defendants are without sufficient information or belief to form an opinion as to the truth of any remaining allegations contained therein and therefore deny the same.

18. Answering Paragraphs 31, 32, 33 and 34 of Plaintiffs' Complaint, Defendants admit Plaintiff Rogers was granted three weeks of FMLA leave. Further answering said Paragraphs, Defendants deny any remaining allegations contained therein.

19. Answering Paragraphs 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

20. Answering Paragraph 45 of Plaintiffs' Complaint, Defendants admit several permanent night shift positions became available toward the end of 2017. Further answering said Paragraph, Defendants are without sufficient information or belief to form an opinion as to the truth of any remaining allegations contained therein and therefore deny the same.

21. Answering Paragraph 46 of Plaintiffs' Complaint, Defendants are without sufficient information or belief to form an opinion as to the truth of the allegations contained therein and therefore deny the same.

22. Answering Paragraph 47 of Plaintiffs' Complaint, Defendants are without sufficient information or belief to form an opinion as to the truth of the allegations contained therein and therefore deny the same.

23. Answering Paragraph 48 of Plaintiffs' Complaint, Defendants aver personnel records with respect to seniority speak for themselves. Further answering said Paragraph, Defendants are without sufficient information or belief to form an opinion as to the truth of any remaining allegations contained therein and therefore deny the same.

24. Answering Paragraphs 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62 and 63 of Plaintiffs' Complaint, Defendants deny Plaintiffs' characterization of the events contained therein. Further answering said Paragraphs, Defendants admit Plaintiff Rogers was placed on permanent night shift in or about March of 2018. Further answering said Paragraphs, Defendants deny Plaintiffs' description of the reasons Plaintiff Rogers was not initially placed on permanent night shift at that time. Further answering said Paragraphs, Defendants deny any remaining allegations contained therein.

25. Answering Paragraph 64 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

26. Answering Paragraph 65 of Plaintiffs' Complaint, Defendants admit Plaintiff Rogers was assigned to permanent night shift. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

27. Answering Paragraph 66 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

28. Answering Paragraph 67 of Plaintiffs' Complaint, Defendants admit the allegations contained therein.

29. Answering Paragraph 68 of Plaintiffs' Complaint, Defendants aver said paragraph is rhetorical and does not require an answer by these Answering Defendants. To the extent an answer is required to Paragraph 68 of Plaintiffs' Complaint, Defendants are without sufficient information or belief to form an opinion as to the truth of the allegations contained therein and therefore deny the same.

30. Answering Paragraphs 69 and 70 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

31. Answering Paragraph 71 of Plaintiffs' Complaint, Defendants aver the records of the examination speak for themselves. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

32. Answering Paragraph 72 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

33. Answering Paragraph 73 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

34. Answering Paragraph 74 of Plaintiffs' Complaint, Defendants aver the provisions with respect to "Chief's Points" speak for themselves. Further answering said Paragraph, had Plaintiff received the maximum number of Chief's Points his promotional ranking would not have changed. Further answering said paragraph, Defendants deny any remaining allegations contained therein.

35. Answering Paragraphs 75 and 76 of Plaintiffs' Complaint, Defendants deny Plaintiffs' characterization of the events contained therein and therefore deny the allegations of said Paragraphs.

36. Answering Paragraphs 77, 78, 79, 80, 81, 82 and 83 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

37. Answering Paragraph 84 of Plaintiffs' Complaint, Defendants are without sufficient information or belief to form an opinion as to the truth of the allegations contained therein and therefore deny the same.

38. Answering Paragraph 85 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

39. Answering Paragraph 86 of Plaintiffs' Complaint, Defendants admit the allegations contained therein.

40. Answering Paragraph 87 of Plaintiffs' Complaint, Defendants deny Plaintiffs' characterization of the events contained therein and therefore deny Paragraph 87 of Plaintiffs' Complaint

41. Answering Paragraph 88 of Plaintiffs' Complaint, Defendants admit Beachwood did not have a K-9 unit prior to its creation. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

42. Answering Paragraphs 89, 90, 91, 92 and 93 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

43. Answering Paragraph 94 of Plaintiffs' Complaint, Defendants admit the allegations contained therein.

44. Answering Paragraph 95 of Plaintiffs' Complaint, Defendants are without sufficient information or belief to form an opinion as to the truth of this irrelevant allegation and therefore deny the same.

45. Answering Paragraphs 96, 97, 98, 99 and 100 of Plaintiffs' Complaint, Defendants deny Plaintiffs' characterization of the events contained therein and therefore deny the allegations of said Paragraphs. Further answering said Paragraphs, Defendants admit that Plaintiff Rogers responded to scene of the alleged shop lifting and confronted the alleged shoplifter outside Saks Fifth Avenue. Defendants further admit that Plaintiff Roger's foot was run over by the alleged shoplifter as he fled the scene after refusing to comply with the commands and directions of Plaintiff Rogers. Further answering said Paragraphs, Defendants deny any remaining allegations contained therein.

46. Answering Paragraph 101 of Plaintiffs' Complaint, Defendants admit that Plaintiff Rogers shot the alleged shoplifter after the alleged shoplifter ran over his foot and passing Plaintiff Rogers. Further answering said Paragraph, Defendants aver the remaining allegations contained therein were not known to Plaintiff Rogers at the time and are irrelevant to these proceedings. Further answering said Paragraph, Defendants aver court records with respect to Mr. Jones speak for themselves.

47. Answering Paragraph 102 of Plaintiffs' Complaint, Defendants admit Mr. Jones fled from the scene after being shot. Further answering said Paragraph, Defendants are without sufficient information or belief to form an opinion as to the truth of any remaining allegations contained therein and therefore deny the same.

48. Answering Paragraphs 103 and 104 of Plaintiffs' Complaint, Defendants are without sufficient information or belief to form an opinion as to the truth of the allegations contained therein and therefore deny the same.

49. Answering Paragraph 105 of Plaintiffs' Complaint, Defendants admit Plaintiff Rogers was placed on administrative leave on or about June 27, 2019 by Mayor Horwitz. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

50. Answering Paragraph 106 of Plaintiffs' Complaint, Defendants deny Plaintiffs' characterization of the events contained therein and therefore deny the allegations of Paragraph 106 of Plaintiffs' Complaint.

51. Answering Paragraph 107 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

52. Answering Paragraph 108 of Plaintiffs' Complaint, Defendants admit Jones ran over Plaintiff Roger's foot. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

53. Answering Paragraph 109 of Plaintiffs' Complaint, Defendants aver the court records with respect to Mr. Jones speak for themselves. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

54. Answering Paragraph 110 of Plaintiffs' Complaint, Defendants admit in March of 2019 Beachwood Officer Terrill Rodgers shot at a stolen police vehicle as it was fleeing the scene. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

55. Answering Paragraph 111 of Plaintiffs' Complaint, Defendants admit the allegations contained therein.

56. Answering Paragraph 112 of Plaintiffs' Complaint, Defendants admit Beachwood Police Officer Dana Gollner shot an unarmed suspect who attempted to grab his rifle during a domestic violence call. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

57. Answering Paragraph 113 of Plaintiffs' Complaint, Defendants deny Dana Gollner is African American. Further answering said Paragraph, Defendants admit Mr. Gollner was not placed on administrative leave.

58. Answering Paragraph 114 of Plaintiffs' Complaint, Defendants admit the allegations contained therein.

59. Answering Paragraph 115 of Plaintiffs' Complaint, Defendants are without sufficient information or belief to form an opinion as to Plaintiffs' characterization of the events contained therein and therefore deny the same.

60. Answering Paragraph 116 of Plaintiffs' Complaint, Defendants aver Plaintiff Rogers' medical records speak for themselves. Further answering said Paragraph, Defendants are without sufficient information or belief to form an opinion as to the truth of the allegations contained therein and therefore deny the same.

61. Answering Paragraph 117 of Plaintiffs' Complaint, Defendants are without sufficient information or belief to form an opinion as to the truth of the allegations contained therein and therefore deny the same.

62. Answering Paragraph 118 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

63. Answering Paragraph 119 of Plaintiffs' Complaint, Defendants are without sufficient information or belief to form an opinion as to the truth of the allegations contained therein and therefore deny the same.

64. Answering Paragraphs 120 and 121 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

65. Answering Paragraph 122 of Plaintiffs' Complaint, Defendants admit Mayor Horwitz had been a workers' compensation lawyer during his working life. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

66. Answering Paragraph 123 of Plaintiffs' Complaint, Defendants admit they do not interfere with employees' workers' compensation claims. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

67. Answering Paragraph 124, 125 and 126 of Plaintiffs' Complaint, Defendants aver any records with respect to Ms. Slapak speak for themselves. Further answering said Paragraphs, Defendants admit they did not interfere with Ms. Slapak's workers' compensation claim or rights.

68. Answering Paragraph 127 of Plaintiffs' Complaint, Defendants deny Plaintiffs' characterization of the events contained therein and therefore deny the Paragraph 127 of Plaintiffs' Complaint.

69. Answering Paragraph 128 of Plaintiffs' Complaint, Defendants are without sufficient information or belief to form an opinion as to Plaintiff Rogers' conditions and abilities and therefore deny the same. Further answering said Paragraph, Defendants deny the allegations contained therein.

70. Answering Paragraph 129 of Plaintiffs' Complaint, Defendants deny Plaintiffs' characterization of the circumstances contained therein and therefore deny Paragraph 129 of Plaintiffs' Complaint.

71. Answering Paragraphs 130 and 131 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

72. Answering Paragraphs 132 and 133 of Plaintiffs' Complaint, Defendants aver any records with respect to Luke Combs and Monica Slapak speak for themselves. Further answering said Paragraphs, Defendants deny any remaining allegations contained therein.

73. Answering Paragraphs 134 and 135 of Plaintiffs' Complaint, Defendants aver any statements by Mr. Pasch speak for themselves and represent Mr. Pasch's "opinions." Further answering said Paragraphs, Defendants deny any remaining allegations contained therein.

74. Answering Paragraph 136 of Plaintiffs' Complaint, Defendants aver Mr. Pasch's statements speak for themselves. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

75. Answering Paragraph 137 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

76. Answering Paragraph 138 of Plaintiffs' Complaint, Defendants are without sufficient information or belief to form an opinion as to the truth of the allegations contained therein and therefore deny the same.

77. Answering Paragraphs 139, 140, 141, 142, 143, 144 and 145 of Plaintiffs' Complaint, Defendants deny the allegations contained therein. Further answering said Paragraph 145, Defendants admit Plaintiff Rogers' shooting concerning Mr. Jones was presented to the Grand Jury.

78. Answering Paragraph 146 of Plaintiffs' Complaint, Defendants admit the Grand Jury returned a No Bill. Further answering said Paragraph 146, Defendants deny any remaining allegations contained therein.

79. Answering Paragraphs 147, 148 and 149 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

80. Answering Paragraph 150 of Plaintiffs' Complaint, Defendants admit the City of Beachwood is conducting its own internal review of Plaintiff Rogers' shooting of Mr. Jones. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

81. Answering Paragraph 151 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

82. Answering Paragraph 152 of Plaintiffs' Complaint, Defendants aver the Collective Bargaining Agreement speaks for itself. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

83. Answering Paragraph 153 of Plaintiffs' Complaint, Defendants admit the allegations contained therein.

84. Answering Paragraph 154 of Plaintiffs' Complaint, Defendants admit the allegations contained therein.

85. Answering Paragraph 155 of Plaintiffs' Complaint, Defendants aver any statement by Mayor Horwitz speaks for itself. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

86. Answering Paragraph 156 of Plaintiffs' Complaint, Defendants admit Mayor Horwitz interviewed candidates for the Beachwood Police Department Chief of Police position in

2020. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

87. Answering Paragraphs 157 and 158 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

88. Answering Paragraph 159 of Plaintiffs' Complaint, Defendants aver Chief Stillman's personnel file speaks for itself. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

89. Answering Paragraph 160 of Plaintiffs' Complaint, Defendants reallege and reaver all the admissions, averments and denials contained in paragraphs 1 through 88 of their answer as if fully rewritten herein.

90. Answering Paragraphs 161, 162, 163, 164, 165, 166, 167, 168 and 169 of Plaintiffs' Complaint, Defendants admit the City of Beachwood is an employer under the FMLA, that Plaintiff Rogers had worked enough hours as an employee to be entitled to leave under the FMLA at the time he requested leave for the birth of his child, and that taking and requesting leave are protected activities under the FMLA. Further answering said Paragraphs, Defendants aver the law with respect to FMLA speaks for itself. Further answering said Paragraphs, Defendants deny any remaining allegations contained therein.

91. Answering Paragraph 170 of Plaintiffs' Complaint, Defendants are without sufficient information or belief to form an opinion as to the truth of the allegations contained therein and therefore deny the same.

92. Answering Paragraphs 171, 172, 173 and 174 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

93. Answering Paragraph 175 of Plaintiffs' Complaint, Defendants admit the allegations contained therein.

94. Answering Paragraphs 176, 177, 178, 179, 180, 181 and 182 of Plaintiffs' Complaint, Defendants deny the allegations contained therein. Further answering said Paragraphs, Defendants deny assignment as a K-9 handler is a "promotion." Rather, assignment as a K-9 handler is a duty assignment.

95. Answering Paragraph 183 of Plaintiffs' Complaint, Defendants reallege and reaver all the admissions, averments and denials contained in paragraphs 1 through 94 of their answer as if fully rewritten herein.

96. Answering Paragraphs 184 and 185 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

97. Answering Paragraph 186 of Plaintiffs' Complaint, Defendants deny Plaintiffs' characterization of the events contained therein and therefore deny Paragraph 186 of Plaintiffs' Complaint.

98. Answering Paragraph 187 of Plaintiffs' Complaint, Defendants are without sufficient information or belief to form an opinion as to the truth of the allegations contained therein and therefore deny the same.

99. Answering Paragraph 188 of Plaintiffs' Complaint, Defendants deny the characterization of the events contained therein and therefore deny Paragraph 188 of Plaintiffs' Complaint.

100. Answering Paragraphs 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205 and 206 of Plaintiffs' Complaint, Defendants aver the report prepared by

attorney Rendon speaks for itself. Further answering said Paragraphs, Defendants deny any remaining allegations contained therein.

101. Answering Paragraph 207 of Plaintiffs' Complaint, Defendants admit in March of 2019 Beachwood Police Officer Terrill Rodgers shot at a stolen Beachwood Police Cruiser as it was fleeing the scene. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

102. Answering Paragraph 208 of Plaintiffs' Complaint, Defendants admit Officer Terrill Rodgers who is African American was not placed indefinite administrative leave as a result of that shooting. Further answering said Paragraph, Defendants deny Officer T. Rodgers is similarly situated to Plaintiff B. Rogers with respect to his shooting of Mr. Jones. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

103. Answering Paragraph 209 of Plaintiffs' Complaint, Defendants admit Beachwood Police Officer Dana Gollner, while acting as part of the SWAT team on behalf of the City of Lyndhurst shot an unarmed suspect who was attempting to grab his rifle during a domestic violence call.

104. Answering Paragraph 210 of Plaintiffs' Complaint, Defendants deny that Dana Gollner is African American and deny that he was similarly situated to Plaintiff Rogers. Further answering said Paragraph, Defendants admit Mr. Gollner was not placed on indefinite administrative leave.

105. Answering Paragraph 211 of Plaintiffs' Complaint, Defendants admit the allegations contained therein.

106. Answering Paragraph 212 of Plaintiffs' Complaint, Defendants are without sufficient information or belief to form an opinion as to the truth of the allegations contained therein and therefore deny the same.

107. Answering Paragraph 213 of Plaintiffs' Complaint, Defendants admit Plaintiff Rogers saw the suspect running from Saks Fifth Avenue into the adjacent parking lot. Further answering said Paragraph, Defendants deny that Plaintiff Rogers knew the identity of the suspect at that time or the Plaintiff Rogers knew he would later become a convicted felon. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

108. Answering Paragraph 214 of Plaintiffs' Complaint, Defendants admit Plaintiff Rogers approached in his cruiser. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

109. Answering Paragraph 215 of Plaintiffs' Complaint, Defendants admit Plaintiff Rogers got out of his vehicle as he saw Jones entering a vehicle and gave Jones commands to stop and put up his hands. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

110. Answering Paragraph 216 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

111. Answering Paragraph 217 of Plaintiffs' Complaint, Defendants admit Mr. Jones ran over Plaintiff Rogers' foot as he fled the scene in his vehicle and that he did not comply with Plaintiff Rogers' commands. Further answering said Paragraph, Defendants aver any court records with respect to Mr. Jones speak for themselves and are subsequent to the events at issue. Further answering said Paragraph, Defendants are without sufficient information or belief to form an opinion as to the truth of any remaining allegations contained therein and therefore deny the same.

112. Answering Paragraph 218 of Plaintiffs' Complaint, Defendants aver any court records with respect to Mr. Jones speak for themselves. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

113. Answering Paragraph 219 of Plaintiffs' Complaint, Defendants admit Mr. Jones fled the scene after being shot. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

114. Answering Paragraphs 220 and 221 of Plaintiffs' Complaint, Defendants are without sufficient information or belief to form an opinion as to the truth of the allegations contained therein and therefore deny the same.

115. Answering Paragraph 222 of Plaintiffs' Complaint, Defendants admit subsequent to the Beachwood Place shooting by Plaintiff Rogers, he was placed on indefinite administrative leave by Mayor Horwitz. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

116. Answering Paragraphs 223 and 224 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

117. Answering Paragraph 225 of Plaintiffs' Complaint, Defendants admit Mr. Jones ran over Plaintiff Rogers' foot. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

118. Answering Paragraph 226 of Plaintiffs' Complaint, Defendants aver any court records with respect to Mr. Jones speak for themselves. Further answering said Paragraph, Defendants are without sufficient information or belief to form an opinion as to the truth of any remaining allegations contained therein and therefore deny the same.

119. Answering Paragraph 227 of Plaintiffs' Complaint, Defendants admit Plaintiff Rogers was placed indefinite administrative leave by Mayor Horwitz following the shooting. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

120. Answering Paragraph 228 of Plaintiffs' Complaint, Defendants deny Plaintiffs' characterization of the circumstances described therein and therefore deny Paragraph 228 of Plaintiffs' Complaint.

121. Answering Paragraph 229 of Plaintiffs' Complaint, Defendants admit Plaintiff Rogers remains on administrative leave and that he is Caucasian. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

122. Answering Paragraph 230 of Plaintiffs' Complaint, Defendants admit Plaintiff Rogers is Caucasian. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

123. Answering Paragraph 231 of Plaintiffs' Complaint, Defendants are without sufficient information or belief to form an opinion as to the truth of the allegations contained therein and therefore deny the same.

124. Answering Paragraphs 232, 233, 234 and 235 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

125. Answering Paragraph 236 of Plaintiffs' Complaint, Defendants reallege and reaver all the admissions, averments and denials contained in paragraphs 1 through 124 of their answer as if fully rewritten herein.

126. Answering Paragraphs 237, 238 and 239 of Plaintiffs' Complaint, Defendants aver the law with respect to the ADA speaks for itself. Further answering said Paragraphs, Defendants deny any remaining allegations contained therein.

127. Answering Paragraph 240 of Plaintiffs' Complaint, Defendants deny Plaintiffs' characterization of the events contained therein and therefore deny Paragraph 240 of Plaintiffs' Complaint.

128. Answering Paragraph 241 of Plaintiffs' Complaint, Defendants are without sufficient information or belief as to Plaintiff Rogers' conditions and abilities. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

129. Answering Paragraph 242 of Plaintiffs' Complaint, Defendants deny Plaintiffs' characterization of the circumstances described therein and therefore deny Paragraph 242 of Plaintiffs' Complaint.

130. Answering Paragraph 243 of Plaintiffs' Complaint, Defendants deny Plaintiffs' characterization of the events contained therein and therefore deny Paragraph 243 of Plaintiffs' Complaint.

131. Answering Paragraphs 244 and 245 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

132. Answering Paragraphs 246 and 247 of Plaintiffs' Complaint, Defendants aver any records with respect to Luke Combs and Monica Slapak speak for themselves. Further answering said Paragraphs, Defendants deny any remaining allegations contained therein.

133. Answering Paragraphs 248 and 249 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

134. Answering Paragraphs 250 and 251 of Plaintiffs' Complaint, Defendants are without sufficient information or belief to form an opinion as to the truth of the allegations contained therein and therefore deny the same.

135. Answering Paragraphs 252, 253 and 254 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

136. Answering Paragraph 255 of Plaintiffs' Complaint, Defendants reallege and reaver all the admissions, averments and denials contained in paragraphs 1 through 135 of their answer as if fully rewritten herein.

137. Answering Paragraphs 256, 257 and 258 of Plaintiffs' Complaint, Defendants aver Mr. Pasch's statements speak for themselves and are his expression of opinion. Further answering said Paragraphs, Defendants are without sufficient information or belief to form an opinion as to the truth of any remaining allegations contained therein and therefore deny the same.

138. Answering Paragraph 258 and 259 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

139. Answering Paragraph 259 of Plaintiffs' Complaint, Defendants deny Plaintiffs' characterization of the events described therein and therefore deny Paragraph 259 of Plaintiffs' Complaint.

140. Answering Paragraphs 260, 261 and 262 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

141. Answering Paragraph 263 of Plaintiffs' Complaint, Defendants are without sufficient information or belief to form an opinion as to the truth of the allegations contained therein and therefore deny the same.

142. Answering Paragraphs 264 and 265 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

143. Answering Paragraph 266 of Plaintiffs' Complaint, Defendants reallege and reaver all the admissions, averments and denials contained in paragraphs 1 through 142 of their answer as if fully rewritten herein.

144. Answering Paragraphs 267, 268 and 269 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

145. Answering Paragraph 270 of Plaintiffs' Complaint, Defendants deny Plaintiffs' characterization of the events contained therein and therefore deny Paragraph 270 of Plaintiffs' Complaint.

146. Answering Paragraph 271 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

147. Answering Paragraphs 272, 273, 274 and 275 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

148. Answering Paragraph 276 of Plaintiffs' Complaint, Defendants aver any court records with respect to Mr. Jones speak for themselves. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

149. Answering Paragraph 277 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

150. Answering Paragraph 278 of Plaintiffs' Complaint, Defendants admit Plaintiff Rogers' foot was run over by Mr. Jones. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

151. Answering Paragraph 279 of Plaintiffs' Complaint, Defendants admit Plaintiff Rogers shot Mr. Jones after his foot was run over by Mr. Jones and as Mr. Jones drove away from

Plaintiff Rogers. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

152. Answering Paragraph 280 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

153. Answering Paragraph 281 of Plaintiffs' Complaint, Defendants admit the matter was presented to the Grand Jury on or about October 9, 2020. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

154. Answering Paragraph 282 of Plaintiffs' Complaint, Defendants admit the Grand Jury returned a No Bill. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

155. Answering Paragraph 283 of Plaintiffs' Complaint, Defendants admit the Grand Jury No Bill terminated any "prosecution" in favor of Plaintiff Rogers. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

156. Answering Paragraph 284 of Plaintiffs' Complaint, Defendants aver there was probable cause to present the matter to the Grand Jury. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

157. Answering Paragraph 285 of Plaintiffs' Complaint, Defendants admit there was probable cause to present the matter to the Grand Jury and that it was presented in proper form. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

158. Answering Paragraph 286 of Plaintiffs' Complaint, Defendants admit the City of Beachwood is conducting a departmental review of Plaintiff Rogers' shooting of Mr. Jones. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

159. Answering Paragraph 287 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

160. Answering Paragraph 288 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

161. Answering Paragraph 289 of Plaintiffs' Complaint, Defendants aver the Collective Bargaining Agreement speaks for itself. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

162. Answering Paragraphs 290 and 291 of Plaintiffs' Complaint, Defendants admit the allegations contained therein.

163. Answering Paragraph 292 of Plaintiffs' Complaint, Defendants aver any statements by Mayor Horwitz speak for themselves. Further answering said Paragraph, Defendants deny any remaining allegations contained therein.

164. Answering Paragraph 293 of Plaintiffs' Complaint, Defendants admit Mayor Horwitz interviewed candidates for the Beachwood Police Department Chief of Police vacancy in 2020.

165. Answering Paragraphs 294, 295, 296 and 297 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

166. Answering Paragraph 298 of Plaintiffs' Complaint, Defendants reallege and reaver all the admissions, averments and denials contained in paragraphs 1 through 165 of their answer as if fully rewritten herein.

167. Answering Paragraphs 299, 300, 301, 302, 303 and 304 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

168. Answering Paragraph 305 of Plaintiffs' Complaint, Defendants reallege and reaver all the admissions, averments and denials contained in paragraphs 1 through 167 of their answer as if fully rewritten herein.

169. Answering Paragraphs 306, 307, 308, 309, 310 and 311 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

170. Answering Paragraph 312 of Plaintiffs' Complaint, Defendants reallege and reaver all the admissions, averments and denials contained in paragraphs 1 through 169 of their answer as if fully rewritten herein.

171. Answering Paragraph 313 and 314 of Plaintiffs' Complaint, Defendants aver the law speaks for itself. Further answering said Paragraphs, Defendants deny any violation of law.

172. Answering Paragraph 315 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

173. Answering Paragraph 316 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

174. Answering Paragraphs 317 and 318 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

175. Answering Paragraphs 319, 320 and 321 of Plaintiffs' Complaint, Defendants deny the allegations contained therein.

176. Answering Paragraph 322 of Plaintiffs' Complaint, Defendants reallege and reaver all the admissions, averments and denials contained in paragraphs 1 through 175 of their answer as if fully rewritten herein.

177. Answering Paragraph 323 of Plaintiffs' Complaint, Defendants are without sufficient information or belief to form an opinion as to the truth of the allegations contained therein and therefore deny the same.

178. Answering Paragraph 324 of Plaintiffs' Complaint, Defendants deny the allegations contained therein and controvert the prayer contained subsequent to Paragraph 324 of Plaintiffs' Complaint.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

179. Defendants reallege and reaver all the admissions, averments and denials contained in paragraphs 1 through 178 of their answer as if fully rewritten herein.

180. Plaintiffs' Complaint, in whole or in part, is barred by qualified immunity.

SECOND DEFENSE

181. Plaintiffs' Complaint, in whole or in part, is barred by Chapter 2744 of the Ohio Revised Code.

THIRD DEFENSE

182. Plaintiffs' Complaint, in whole or in part, is barred by the applicable statute of limitations.

FOURTH DEFENSE

183. Plaintiffs' Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

FIFTH DEFENSE

184. Plaintiffs' Complaint, in whole or in part, is barred by Ohio Revised Code § 4117.01, et seq.

WHEREFORE, having fully answered, Defendants pray that Plaintiffs' Complaint be dismissed, and that they go hence without cost or delay.

Respectfully submitted,

MAZANEC, RASKIN & RYDER CO., L.P.A.

s/John T. McLandrich

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JURY DEMAND

A trial by jury composed of the maximum number of jurors permitted under the law is hereby demanded.

s/John T. McLandrich

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Haba, Diane Calta, Nathalie Supler, James Pasch
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CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2021, a copy of the foregoing Answer to Plaintiffs' First Amended Complaint was filed electronically. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/John T. McLandrich

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NORMA-200246/Beachwood Ds Ans to Ps 1st Amd Comp