

2240/16-6816. D

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
URBANA DIVISION

FELITA MCGEE, as Independent	)	
Administrator of the Estate of MICHAEL	)	
CARTER, SR., deceased and as next-of-kin,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2:16-cv-02221-CSB-EIL
	)	
MACON COUNTY SHERIFF'S	)	
DEPARTMENT; DECATUR MEMORIAL	)	Judge Colin S. Bruce
HOSPITAL; DMH CORPORATE HEALTH	)	
SERVICES; ROBERT BRACO, M.D., JO	)	
BATES, LPN; RANDELL WEST; LARRY	)	
PARSANO; TERRY COLLINS; MICHAEL	)	Magistrate Judge Eric I. Long
PATTON; and JOSHUA PAGE,	)	
	)	
Defendants.	)	

**ANSWER TO AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES  
BY DEFENDANTS MACON COUNTY SHERIFF'S DEPARTMENT,  
LARRY PARSANO, TERRY COLLINS, MICHAEL PATTON and JOSHUA PAGE**

NOW COME the Defendants, MACON COUNTY SHERIFF'S DEPARTMENT, LARRY PARSANO, TERRY COLLINS, MICHAEL PATTON and JOSHUA PAGE, by and through one of their attorneys, William W. Kurnik, and, for their Amended Answer to the Amended Complaint at Law of the Plaintiff, FELITA MCGEE, as Independent Administrator of the Estate of MICHAEL CARTER, SR., deceased and as next-of-kin, state as follows:

**PRELIMINARY STATEMENT**

1. Michael Carter, Sr., a 35 year-old African-American male, and United States citizen, was taken into custody of the Macon County Sheriff's Department at its jail in Decatur, Illinois on July 13, 2015. His prescribed diabetes medication was confiscated at booking, Mr. Carter became ill after being deprived of his medication, and was then deprived of emergency medical care for an obviously serious diabetic condition, and denied emergency ambulatory

transport to the hospital. On July 18, 2015, and just five days after Mr. Carter's arrest, he died alone in a jail cell due to diabetic ketoacidosis.

**ANSWER:** These Defendants admit the allegations contained in the first sentence of this paragraph and that Mr. Carter thereafter became ill and died on July 18, 2015. These Defendants deny the remaining allegations contained in this paragraph.

### **PARTIES**

2. Plaintiff, Felita McGee, is a resident of the City of Decatur, State of Illinois.

**ANSWER:** These Defendants are without knowledge or information sufficient to form a belief concerning the truth of the allegations contained in this paragraph.

3. Decedent, Michael Carter, Sr., was U.S. citizen and a resident of the City of Decatur, County of Macon, State of Illinois.

**ANSWER:** These Defendants are without knowledge or information sufficient to form a belief concerning the truth of the allegations contained in this paragraph.

4. Defendant Decatur Memorial Hospital is an Illinois corporation with offices in the City of Decatur, Illinois.

**ANSWER:** These Defendants are without knowledge or information sufficient to form a belief concerning the truth of the allegations contained in this paragraph.

5. Defendant Macon County Sheriff's Department is a governmental entity with offices in the City of Decatur, Illinois.

**ANSWER:** These Defendants admit the allegations contained in this paragraph.

6. Defendant DMH Corporate Services is an Illinois corporation with offices in the City of Decatur, Illinois.

**ANSWER:** These Defendants are without knowledge or information sufficient to form a belief concerning the truth of the allegations contained in this paragraph.

7. Defendant Robert Braco, MD, was a resident of Illinois at the time of the events described herein, was employed, retained, and/or contracted by Defendant Macon County

Sheriff's Department, Decatur Memorial Hospital, and/or DMH Corporate Services as a medical doctor to provide medical care to inmates at Macon County Jail. He is sued in his individual and official capacities, and as an agent of Macon County Sheriff's Department, Decatur Memorial Hospital, and/or DMH Corporate Services.

**ANSWER:** These Defendants deny that Robert Braco was an agent of the Macon County Sheriff's Department or that the department employed, retained, or contracted with him, but they admit the remaining allegations contained in this paragraph.

8. Defendant, Jo Bates, LPN, was a resident of the State of Illinois at the time of the events described herein, and was employed by Macon County Sheriff's Department, Decatur Memorial Hospital, and/or DMH Corporate Services as a nurse to provide medical and nursing treatment to inmates at the Macon County Sheriff's jail facility. She is sued in her individual capacity and official capacities, and as an agent of Macon County Sheriff's Department, Decatur Memorial Hospital, and/or DMH Corporate Services.

**ANSWER:** These Defendants deny that Jo Bates was employed by or an agent of the Macon County Sheriff's Department, but they admit the remaining allegations contained in this paragraph.

10. Corporal Randell West was a resident of the State of Illinois at the time of the events described herein, and was employed by Macon County Sheriff's Department. He is sued in his official capacity, individual capacity, and as an agent and/or employee of Macon County Sheriff's Department.

**ANSWER:** These Defendants admit the allegations contained in this paragraph.

11. Larry Parsano was a resident of the State of Illinois at the time of the events described herein, and was employed by Macon County Sheriff's Department. He is sued in his official capacity, individual capacity, and as an agent and/or employee of Macon County Sheriff's Department.

**ANSWER:** These Defendants admit the allegations contained in this paragraph.

12. Terry Collins was a resident of the State of Illinois at the time of the events described herein, and was employed by Macon County Sheriff's Department. He is sued in his official capacity, individual capacity, and as an agent and/or employee of Macon County Sheriff's Department.

**ANSWER:** These Defendants admit the allegations contained in this paragraph.

13. Michael Patton was a resident of the State of Illinois at the time of the events described herein, and was employed by Macon County Sheriff's Department. He is sued in his official capacity, individual capacity, and as an agent and/or employee of Macon County Sheriff's Department.

**ANSWER:** These Defendants admit the allegations contained in this paragraph.

14. Joshua Page was a resident of the State of Illinois at the time of the events described herein, and was employed by Macon County Sheriff's Department. He is sued in his official capacity, individual capacity, and as an agent and/or employee of Macon County Sheriff's Department.

**ANSWER:** These Defendants admit the allegations contained in this paragraph.

15. At all relevant times, all defendants acted under color of state law, and within the scope of their employment and/or agency.

**ANSWER:** These Defendants admit that at all times relevant hereto, these Defendants acted under color of law and within the scope of their employment. These Defendants deny that any of the Defendants, other than these Defendants, acted within the scope of their employment or as agents of the Macon County Sheriff's Department.

### **JURISDICTION & VENUE**

16. This Court has jurisdiction over plaintiff's claims to 28 U.S.C. §1331, 28 U.S.C. §1343, and 28 U.S.C. § 1983 because the matters in controversy arise under the Constitution and laws of the United States.

**ANSWER:** These Defendants admit the allegations contained in this paragraph.

17. This Court has supplemental jurisdiction of the Illinois state law claims pursuant to 28 U.S.C. §1367.

**ANSWER:** These Defendants admit the allegations contained in this paragraph.

18. Venue is proper in this Court under 28. U.S.C. §1391(b) because a substantial part of the events that give rise to plaintiff's claims took place within the Central District of Illinois.

**ANSWER:** These Defendants admit the allegations contained in this paragraph.

**STATEMENT OF CLAIM**

19. At all times relevant to the matters stated in this Complaint, there was in force and effect the Constitution of the United States which provided in relevant part as follows:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

– Constitution of the United States, Amendment X IV

**ANSWER:** These Defendants admit the allegations contained in this paragraph.

20. At all times relevant to the matters stated in this Complaint, there was in force and effect a federal law known as the Civil Rights Act of 1871 which provided in relevant part as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 U.S.C. §1983.

**ANSWER:** These Defendants admit the allegations contained in this paragraph.

21. At all times relevant to the matters stated in this Complaint, there was in force and effect certain statutes in the State of Illinois which provided in relevant part as follows:

Sheriff custodian of courthouse and jail.

He or she shall have the custody and care of the courthouse and jail of his or her county, except as is otherwise provided. 55 ILCS 5/3-6017.

\* \* \*

The Sheriff of each county in this State shall be the warden of the jail of the county, and have the custody of all prisoners in the jail, except when otherwise provided in the “County Department of Corrections Act”. The Sheriff may appoint a superintendent of the jail, and remove him at his pleasure, for whose conduct and training, he shall be responsible. The Sheriff shall also be responsible for the hiring and training of all personnel necessary to operate and maintain the jail. 730 ILCS 125/2 and 3.

\* \* \*

The Warden of the jail shall furnish necessary bedding, clothing, fuel and medical aid for all prisoners under his charge, and keep an accurate account of the same. 730 ILCS 125/17.

**ANSWER:** These Defendants admit the allegations contained in this paragraph.

22. Beginning on or about July 13, 2015, Michael Carter, Sr. was arrested and placed into the custody of defendant Macon County Sheriff's Department at its jail in Decatur, Illinois. During Mr. Carter's initial booking interview, he informed defendants and jail staff that he was diabetic and required medication.

**ANSWER:** These Defendants admit the allegations contained in this paragraph that jail staff were notified but deny that these individual defendants were so notified.

23. At intake, Mr. Carter possessed prescription oral medication to manage his diabetes. Mr. Carter asked various defendants, at various times, to administer his medication as prescribed.

**ANSWER:** These Defendants deny that Mr. Carter asked various employees of the Macon County Sheriff's Department or any of these Defendants to administer his medication as prescribed, but they admit the remaining allegations contained in this paragraph.

24. That in spite of notice of Mr. Carter's diabetic condition, Mr. Carter's prescribed medication was confiscated, and in furtherance of the policies and customs of Macon County Sheriff's Department and Decatur Memorial Hospital.

**ANSWER:** These Defendants deny that "in spite of notice" of Mr. Carter's condition, any of these Defendants confiscated his medication, but admit that an employee of the Macon County Sheriff's Department confiscated the medication in furtherance of the policies and customs of the Macon County Sheriff's Department but deny any suggestion by virtue of this admission that he was deprived of his medication.

25. That for all times relevant, Macon County Sheriff's Department and Decatur Memorial Hospital maintained a contractual partnership to provide healthcare and healthcare management services to individuals detained at the Macon County Jail.

**ANSWER:** These Defendants admit the allegations contained in this paragraph.

26. Shortly after being assigned a jail cell, Mr. Carter began to complain to jail staff and defendants that he was ill, need his medication, and asked to see a doctor. His pleas went ignored.

**ANSWER:** These Defendants deny the allegations contained in this paragraph.

27. Mr. Carter's health deteriorated rapidly over the next two days. He repeatedly complained to his fiancée on the phone about extreme abdominal pain, vomiting, weakness, fatigue, and shortness of breath. She knew he was in serious medical danger based on his obvious difficulty breathing and disorientation.

**ANSWER:** These Defendants are without knowledge or information sufficient to form a belief concerning the truth of the allegations contained in this paragraph.

28. That on July 15, 2015, Mr. Carter was transferred to the jail's medical unit for observation. He still was not given medication to treat his diabetic condition. He was then transferred back to a general population jail cell, where he was not monitored for his medical distress, and received no treatment for his worsening diabetic condition.

**ANSWER:** These Defendants admit that on July 15, 2015, Mr. Carter was transferred to the jail's medical unit for observation and was later transferred back to a general population jail cell. These Defendants deny the remaining allegations contained in this paragraph.

29. That on July 17, 2015, Mr. Carter told his fiancée he had been returned to a general population jail cell, in spite of his obvious difficulty in breathing. Mr. Carter asked defendants for help multiple times, but no one assisted.

**ANSWER:** These Defendants deny that Mr. Carter asked any of these Defendants for help multiple times but no one assisted. These Defendants are without knowledge or information sufficient to form a belief concerning the allegations contained in the first sentence of this paragraph.

30. That on July 17, 2015, Mr. Carter's mother called the Macon County Sheriff's Department's jail division and spoke with defendant Jo Bates, a nurse working at the jail. Mr. Carter's mother informed defendant Bates that she too was a nurse, and that her son was diabetic and was having respiratory distress, shortness of breath, vomiting, and was clearly disoriented.

**ANSWER:** These Defendants admit that Mr. Carter's mother called the Macon County Sheriff's Department Jail Division and spoke with Defendant Jo Bates, a nurse working at the jail. These Defendants deny the remaining allegations contained in this paragraph.

31. Mr. Carter's mother warned defendant Bates that his symptoms sounded like diabetes ketoacidosis, an emergency life-threatening medical situation. She asked defendant Bates to immediately transfer him to a nearby hospital so he could receive adequate medical attention and an IV insulin drip. Defendant Bates refused, telling Mr. Carter's mother that defendant Doctor Braco would check on him the following day. Defendant Bates further told Mr. Carter's mother that he was simply having "anxiety" about being incarcerated.

**ANSWER:** These Defendants deny the allegations contained in this paragraph.

32. That sometime later on July 17, 2015, Mr. Carter was again returned to the jail's medical unit. Later that evening, he was briefly seen by defendant Dr. Braco, but not treated. No glucose level tests were performed, and defendant Dr. Braco continued to refuse to give Mr. Carter diabetic medication to treat his deteriorating condition. And in spite of his obvious and serious medical distress, Dr. Braco ordered that Mr. Carter be return to a general population jail cell the following morning.

**ANSWER:** These Defendants admit that on July 17, 2015, Mr. Carter was again returned to the jail medical unit. Further answering, these Defendants are without knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in this paragraph.

33. That on the following morning of July 18, 2015, Mr. Carter was in obvious medical distress and unable to stand on his own, and was unable to speak clearly. He was lethargic and completely disoriented. He had not eaten his dinner meal from the evening before. His glucose level was greater than 500 milligrams per deciliter. He still had not been given insulin or his prescribed diabetes medication.

**ANSWER:** These Defendants deny the allegations contained in this paragraph.

34. In spite of Mr. Carter's obvious serious medical distress, and severe risk of great injury and/or death, he was forcibly removed from his medical his cell by defendants West, Parsano, Patton, Collins, and Page, all employed by defendant Macon County Sheriff's Department. Defendant West stepped on Mr. Carter's hand and kicked him numerous times, before picking him up around his neck, putting him into a wheelchair. He was wheeled to a segregated housing area of the jail known as "deadlock", an area reserved for uncooperative inmates. He had been considered uncooperative simply because he couldn't stand on his own and was non-responsive. The segregated cell he was taken to contained no video surveillance for medical monitoring.

**ANSWER:** These Defendants deny the allegations contained in this paragraph.

35. That throughout the morning of July 18, 2015, various jail staff and the defendants observed Mr. Carter in his jail cell in obvious medical distress and still refused to call an ambulance. As hours passed by, an officer at the jail finally demanded defendant Bates



summon an ambulance so he could be transported to the hospital. Defendant Bates refused, and instead telephoned defendant Dr. Braco, who was away from the jail facility. In spite of various jail staff and defendants witnessing Mr. Carter's obvious medical distress, no one called an ambulance.

**ANSWER:** These Defendants admit that late in the morning, a correctional officer at the jail requested that Mr. Carter be transported to the hospital via an ambulance. Further answering, these Defendants deny the remaining allegations contained in this paragraph.

36. That even after defendant Bates told defendant Dr. Braco that Mr. Carter was in obvious serious medical distress. Dr. Braco refused to allow Mr. Carter's emergency transfer to the hospital, saying he would evaluate him on his regular rounds later that day. Only after pressure from officer at the jail, did defendants Dr. Braco and Bates finally relent and authorize Mr. Carter's transfer to a hospital, but only by patrol car. None of the patrol cars were equipped to handle a medical emergency.

**ANSWER:** These Defendants admit that following conversation between Defendant Bates and Defendant Braco, Braco first stated that he would evaluate Mr. Carter on his regular rounds later that day, and later those two Defendants agreed to authorize Carter's transfer to the hospital via a patrol car and that patrol cars were not equipped to handle medical emergencies. Further answering, these Defendants are without knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in this paragraph.

37. That although it was common knowledge that failure to treat diabetes could result in diabetic ketoacidosis and death, defendant Dr. Braco ordered that Mr. Carter could only be transferred to the hospital using a regular patrol car because he didn't want to incur the \$1000 bill for an ambulance. Defendant Bates agreed.

**ANSWER:** These Defendants deny the allegations contained in this paragraph.

38. Nearly three hours after being forcibly removed from the medical unit, and denied ambulatory transport to the hospital, Mr. Carter died, alone, in a segregated jail cell due to diabetes ketoacidosis.

**ANSWER:** These Defendants admit that on July 18, 2015, Mr. Carter died. Further answering, these Defendants are without knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in this paragraph.

39. Defendants, by their acts or omissions as set forth above, showed deliberate indifference to a serious and known medical condition of the decedent.

**ANSWER:** These Defendants deny the allegations contained in this paragraph.

40. As a consequence of one or more of the foregoing acts or omissions of the various defendants, as set forth above, failed to provide Mr. Carter with adequate medical care and demonstrated a deliberate indifference to his medical condition. As the proximate result of all the above, Mr. Carter suffered excruciated pain and suffering, and ultimately death.

**ANSWER:** These Defendants deny the allegations contained in this paragraph.

41. The Court has authority pursuant to 42 U.S.C. § 1983 to award appropriate actual, consequential, compensatory, and punitive damages, and has authority under 42 U.S.C. § 1988 to award attorneys fees and costs to successful civil rights plaintiffs.

**ANSWER:** These Defendants admit the allegations contained in this paragraph, but deny the Plaintiff's entitlement to recovery.

## **CAUSES OF ACTION**

### **COUNT I: DENIAL OF MEDICAL CARE**

#### **Deprivation of Fourteenth Amendment Rights and 42 U.S.C. §1983 All Defendants**

42. Plaintiff re-alleges and incorporates by reference the allegations set forth in each preceding paragraph as if fully set forth herein.

**ANSWER:** These Defendants incorporate by reference, as though set forth fully herein, Paragraphs 1 through 41, inclusive, of their answer to this Amended Complaint as their answer to this Paragraph 42.

43. Defendants, each of them, had a duty to take reasonable measures in response to the obvious serious medical need and risk posed by Mr. Carter's condition.

**ANSWER:** These Defendants deny the allegations contained in this paragraph.

44. Defendants, each of them, were aware that Mr. Carter condition began to deteriorate, and yet took no action to provide or request medical care for Mr. Carter, disregarding the obvious risk to his health.

**ANSWER:** These Defendants deny the allegations contained in this paragraph.

45. That the conduct and actions of defendants, acting under color of law, in failing to request or obtain medical attention for Michael Carter, Sr., was unreasonable, was done intentionally, willfully, maliciously, with a deliberate indifference and/or with a reckless disregard for his serious medical needs, and was designed to and did cause specific and serious physical and emotional pain and suffering in violation of his substantive due process rights as guaranteed under 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution. The defendants knew Mr. Carter faced a substantial risk of harm, and disregarded that risk by failing to take reasonable measure to abate it. As a direct and proximate result of the foregoing, Mr. Carter was subjected to great physical and emotional pain and suffering, and ultimately death.

**ANSWER:** These Defendants deny the allegations contained in this paragraph.

WHEREFORE, the Defendants, MACON COUNTY SHERIFF'S DEPARTMENT, LARRY PARSANO, TERRY COLLINS, MICHAEL PATTON and JOSHUA PAGE, deny that the Plaintiff is entitled to any judgment whatsoever as against these Defendants.

**COUNT II: MONELL CLAIM**

**Macon County Sheriff's Department  
42 U.S.C. 1983**

46. Plaintiff re-alleges and incorporates by reference the allegations set forth in each preceding paragraph as if fully set forth herein.

**ANSWER:** The Defendant, MACON COUNTY SHERIFF'S DEPARTMENT, incorporates by reference, as though set forth fully herein, Paragraphs 1 through 45, inclusive, of its answer to this Amended Complaint as its answer to this Paragraph 46.

47. Defendant Macon County Sheriff's Department directly caused the constitutional violations suffered by decedent, and is liable for the damages suffered as a result of the conduct of the defendant employees and/or agents of defendant Macon County Sheriff's Department. The conduct of the defendant officers was a direct consequence of policies and practices of Macon County Sheriff's Department.

**ANSWER:** This Defendant denies the allegations contained in this paragraph.

48. At all times relevant to this Complaint, Macon County Sheriff's Department, acting through its employees and/or agents and through the defendants had policies, practices, customs, and usages of encouraging jail staff to ignore obvious signs of medical distress involving individuals detained in its custody.

**ANSWER:** This Defendant denies the allegations contained in this paragraph.

49. At all times relevant to this Complaint, defendant Macon County Sheriff's Department, acting through its employees and/or agents and through the defendants had policies, practices, customs, and usages discouraging staff, employees, contractors, and/or agents from calling necessary emergency medical rescue personnel to the jail in order to save costs, even when an inmate displays obvious signs of life-threatening medical distress.

**ANSWER:** This Defendant denies the allegations contained in this paragraph.

50. At all times relevant to this Complaint, defendant Macon County Sheriff's Department, acting through its employees and/or agents and through the defendants had policies, practices, customs, and usages which refused to properly train, monitor, supervise or ensure staff and/or agents or utilize a proper protocol concerning summoning emergency medical personnel to the jail to assist an inmate in obvious serious medical distress.

**ANSWER:** This Defendant denies the allegations contained in this paragraph.

51. At all times relevant to this Complaint, defendant Macon County Sheriff's Department, acting through its employees and/or agents and through the defendants had policies, practices, customs, and usages which, in an effort to reduce costs, discouraged jail staff and defendants from summoning emergency medical rescue personnel, even during times of obvious signs of serious medical distress. This fails to discourage constitutional violations.

**ANSWER:** This Defendant denies the allegations contained in this paragraph.

52. At all times relevant to this Complaint, defendant Macon County Sheriff's Department, acting through its employees and/or agents and through the defendants had policies, practices, customs, and usages requiring confiscation of bona fide prescription medication upon a person's booking in jail, without regard to whether or not its life-saving medication.

**ANSWER:** This Defendant denies the allegations contained in this paragraph.

53. As a result of the above described policies and customs, jail staff and the defendants believed that their actions and/or inaction would not be properly monitored by supervisory officers and that misconduct would not be investigated or sanctioned, but would be tolerated.

**ANSWER:** This Defendant denies the allegations contained in this paragraph.

54. The wrongful policies, practices, customs, and/or usages complained of herein demonstrated a deliberate indifference on the part of defendant Macon County Sheriff's Department to the constitutional rights of persons needing medical care in its jail facility, and were the direct and proximate cause of the violations of Mr. Carter's rights alleged herein.

**ANSWER:** This Defendant denies the allegations contained in this paragraph.

WHEREFORE, the Defendant, MACON COUNTY SHERIFF'S DEPARTMENT, denies that the Plaintiff is entitled to any judgment whatsoever as against this Defendant.

**COUNT III: MONELL CLAIM**

**Decatur Memorial Hospital, 42 U.S.C. 1983**

These Defendants, MACON COUNTY SHERIFF'S DEPARTMENT, LARRY PARSANO, TERRY COLLINS, MICHAEL PATTON and JOSHUA PAGE, make no response to the allegations contained in Count III of the Plaintiff's Amended Complaint at Law, as that count is not directed against these Defendants.

**COUNT IV: INSTITUTIONAL NEGLIGENCE**  
**(Illinois claim)**

**Macon County Sheriff's Department**

65. Plaintiff re-alleges and incorporates by reference the allegations set forth in each preceding paragraph as if fully set forth herein.

**ANSWER:** The Defendant, MACON COUNTY SHERIFF'S DEPARTMENT, incorporates by reference, as though set forth fully herein, the foregoing paragraphs of its answer to this Amended Complaint as its answer to this Paragraph 65.

66. At all times relevant to this Complaint, Macon County Sheriff's Department, acting through its employees and/or agents and through the other defendants had policies, practices, customs, and usages encouraging jail staff and medical to ignore obvious signs of medical distress involving individuals detained in jail custody.

**ANSWER:** The Defendant, MACON COUNTY SHERIFF'S DEPARTMENT, denies the allegations contained in this paragraph.

67. At all times relevant to this Complaint, defendant Macon County Sheriff's Department, acting through its employees and/or agents and through the defendants had policies, practices, customs, and usages discouraging staff, employees, contractors, and/or agents from

calling necessary emergency medical rescue personnel to the jail in order to save costs, even when an inmate displays obvious signs of life-threatening medical distress.

**ANSWER:** This Defendant denies the allegations contained in this paragraph.

68. At all times relevant to this Complaint, defendant Macon County Sheriff's Department, acting through its employees and/or agents and through the defendants had policies, practices, customs, and usages which refused to properly train, monitor, supervise or ensure staff and/or agents or utilize a proper protocol concerning summoning emergency medical personnel to the jail to assist an inmate in obvious serious medical distress.

**ANSWER:** This Defendant denies the allegations contained in this paragraph.

69. At all times relevant to this Complaint, defendant Macon County Sheriff's Department, acting through its employees and/or agents and through the defendants had policies, practices, customs, and usages which, in an effort to reduce costs, discouraged jail staff and defendants to summon emergency medical rescue personnel, even during times of obvious signs of serious medical distress.

**ANSWER:** This Defendant denies the allegations contained in this paragraph.

70. At all times relevant to this Complaint, defendant Macon County Sheriff's Department, acting through its employees and/or agents and through the defendants had policies, practices, customs, and usages requiring confiscation of bona fide prescription medication upon a person's booking in jail, without regard to whether or not its life-saving medication.

**ANSWER:** This Defendant denies the allegations contained in this paragraph.

71. As a result of the above described policies and customs, jail staff and the defendants believed that their actions and/or inaction would not be properly monitored by supervisory officers and that misconduct would not be investigated or sanctioned, but would be tolerated.

**ANSWER:** This Defendant denies the allegations contained in this paragraph.

72. The wrongful policies, practices, customs, and/or usages complained of herein on the part of defendant Macon County Sheriff's Department to the constitutional rights of persons needing medical care in its jail facility created and unreasonably safe environment for inmates with health concerns, and were the direct and proximate cause of Mr. Carter's death.

**ANSWER:** This Defendant denies the allegations contained in this paragraph.

WHEREFORE, the Defendant, MACON COUNTY SHERIFF'S DEPARTMENT, denies that the Plaintiff is entitled to any judgment whatsoever as against this Defendant.

**COUNT V: INSTITUTIONAL NEGLIGENCE**  
**(Illinois Claim)**

**Decatur Memorial Hospital**

These Defendants, MACON COUNTY SHERIFF'S DEPARTMENT, LARRY PARSANO, TERRY COLLINS, MICHAEL PATTON and JOSHUA PAGE, make no response to the allegations contained in Count V of the Plaintiff's Amended Complaint at Law, as that count is not directed against these Defendants.

**COUNT VI: MEDICAL MALPRACTICE/WRONGFUL DEATH**  
**(Illinois Claim)**

**Decatur Memorial Hospital, DMH Corporate Health Services, Dr. Braco, Nurse Bates \***

These Defendants, MACON COUNTY SHERIFF'S DEPARTMENT, LARRY PARSANO, TERRY COLLINS, MICHAEL PATTON and JOSHUA PAGE, make no response to the allegations contained in Count VI of the Plaintiff's Amended Complaint at Law, as that count is not directed against these Defendants.

**COUNT VII: MEDICAL MALPRACTICE/SURVIVAL ACTION**  
**(Illinois Claim)**

**Decatur Memorial Hospital, DMH Corporate Health Services, Dr. Braco, Nurse Bates**

These Defendants, MACON COUNTY SHERIFF'S DEPARTMENT, LARRY PARSANO, TERRY COLLINS, MICHAEL PATTON and JOSHUA PAGE, make no response to the allegations contained in Count VII of the Plaintiff's Amended Complaint at Law, as that count is not directed against these Defendants.

**COUNT VIII: NEGLIGENT SUPERVISION, RETENTION AND TRAINING**  
**(Illinois Claim)**

**Macon County Sheriff's Department**

93. Plaintiff re-alleges and incorporates by reference the allegations set forth in each preceding paragraph as if fully set forth herein.

**ANSWER:** The Defendant, MACON COUNTY SHERIFF'S DEPARTMENT, incorporates by reference, as though set forth fully herein, the foregoing paragraphs of its answer to this Amended Complaint as its answer to this Paragraph 93.

94. Defendant Macon County Sheriff's Department negligently trained, retained, and supervised its staff and others, including, defendants Braco, Bates, West, Parsano, Collins, Patton, and Page. The acts and conduct of the aforementioned defendants were the direct and proximate cause of injury.

**ANSWER:** This Defendant denies the allegations contained in this paragraph.

WHEREFORE, the Defendant, MACON COUNTY SHERIFF'S DEPARTMENT, denies that the Plaintiff is entitled to any judgment whatsoever as against this Defendant.

**COUNT IX: BATTERY**  
**(Illinois Claim)**

**Randell West and Macon County Sheriff's Department**

95. Plaintiff re-alleges and incorporates by reference the allegations set forth in each preceding paragraph as if fully set forth herein.

**ANSWER:** The Defendant, MACON COUNTY SHERIFF'S DEPARTMENT, incorporates by reference, as though set forth fully herein, the foregoing paragraphs of its answer to this Amended Complaint as its answer to this Paragraph 95.

96. By the conduct and actions described above, defendant West inflicted the tort of batter upon the decedent. The acts and conduct of defendant West was the direct and proximate cause of injury and damage.

**ANSWER:** This Defendant denies the allegations contained in this paragraph.



97. Defendant West's acts constituted an assault upon decedent in that West intentionally attempted to injure plaintiff or commit a battery upon him, and further that West's actions represented a grievous affront to decedent.

**ANSWER:** This Defendant denies the allegations contained in this paragraph.

98. Defendant West's acts constituted a battery upon the decedent in that the above described bodily contact was intentional, unauthorized, and grossly offensive in nature.

**ANSWER:** This Defendant denies the allegations contained in this paragraph.

99. The actions of defendant West were intentional, reckless, and unwarranted, and without any just cause or provocation, and defendant West knew, or should have known, that his actions were without the consent of the decedent.

**ANSWER:** This Defendant denies the allegations contained in this paragraph.

100. At all times, defendant West acted in the course and scope of his employment with defendant Macon County Sheriff's Department.

**ANSWER:** This Defendant denies the allegations contained in this paragraph.

101. As a direct and proximate result of the foregoing, decedent was subjected to great physical and emotional pain and humiliation, was deprived of his liberty and was otherwise damaged and injured.

**ANSWER:** This Defendant denies the allegations contained in this paragraph.

WHEREFORE, the Defendant, MACON COUNTY SHERIFF'S DEPARTMENT, denies that the Plaintiff is entitled to any judgment whatsoever as against this Defendant.

Respectfully submitted by,

/s/ William W. Kurnik

WILLIAM W. KURNIK, Attorney #01550632  
Attorneys for Defendants MACON COUNTY  
SHERIFF'S DEPARTMENT, LARRY PARSANO,  
TERRY COLLINS, MICHAEL PATTON and  
JOSHUA PAGE

**AFFIRMATIVE DEFENSES**

NOW COME the Defendants, MACON COUNTY SHERIFF'S DEPARTMENT, LARRY PARSANO, TERRY COLLINS, MICHAEL PATTON and JOSHUA PAGE, by and through one of their attorneys, William W. Kurnik, and, for their Affirmative Defenses to the Amended Complaint at Law of the Plaintiff, FELITA McGEE, as Independent Administrator of the Estate of MICHAEL CARTER, SR., deceased and as next-of-kin, state as follows:

**FIRST AFFIRMATIVE DEFENSE  
(for Count I – Defendants Larry Parsano, Terry Collins,  
Michael Patton And Joshua Page)**

1. Based upon the totality of the circumstances surrounding the medical treatment of Mr. Carter and his death, including their reliance upon the statements and opinions of Defendants Braco and Bates and other employees of Decatur Memorial Hospital and DMH Corporate Health Services, the conduct of these Defendants did not violate clearly-established constitutional rights and these Defendants are entitled to qualified immunity.

**SECOND AFFIRMATIVE DEFENSE  
(for Counts IV and VIII – Macon County Sheriff's Department Only)**

2. There was in force and effect, at all times relevant hereto, 745 ILCS 10/4-103 which provides:

Neither a local public entity nor a public employee is liable for failure to provide a jail, detention or correctional facility, or such facility as provided, for failure to provide sufficient equipment, personnel, supervision or facilities therein.

3. Based upon the foregoing section, this Defendant is absolutely immune from liability in connection with the allegations set forth in Count V of the Plaintiff's Complaint.

**THIRD AFFIRMATIVE DEFENSE**  
**(for Count IV and VIII – Macon County Sheriff's Department Only)**

4. There was in force and effect, at all times relevant hereto, 745 ILCS 10/2-201 which provides:

Except as otherwise provided by statute, a public employee, serving in a position involving the determination of policy or the exercise of discretion is not liable for any injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused.

5. In connection with the allegations relating to institutional negligence and negligent training, retention, and supervision, those acts or omissions fall within the meaning of Section 2-201 under which the employee is entitled to absolute immunity, and the Macon County Sheriff's Department is entitled to that absolute immunity, derivatively, under 745 ILCS 10/2-109.

**FOURTH AFFIRMATIVE DEFENSE**  
**(for Counts IV, VIII and IX – Macon County Sheriff's Department Only)**

6. There was in force and effect, at all times relevant hereto, 745 ILCS 10/6-105 which provides:

Neither a local public entity nor a public employee acting within the scope of his employment is liable for any injury caused by the failure to make a physical or mental examination or to make an adequate physical or mental examination of any person for the purpose of determining whether such person has a disease or physical or mental condition that would constitute a hazard to the health or safety of himself or others.

7. The acts of Defendant referred to in Counts IV, VIII, and IX of the Complaint fall within the above-referred to section thus entitling this Defendant to absolute immunity.

**FIFTH AFFIRMATIVE DEFENSE**  
**(for Count IV, VIII, and IX– Macon County Sheriff's Department Only)**

8. There was in force and effect, at all times relevant hereto, 745 ILCS 10/6-106 which provides:

Neither a local public entity nor a public employee acting within the scope of his employment is liable for injury resulting from diagnosing or failing to diagnose that a person is afflicted with mental or physical illness or addiction.

9. The actions of Defendant West, referred to in Counts IV, VIII, and IX of the Complaint, fall within the meaning of Section 6-106 entitling this Defendant to absolute immunity.

**SIXTH AFFIRMATIVE DEFENSE**  
**(All Claims)**

10. The Plaintiff has failed to comply with Federal Rule of Civil Procedure 4(m) which sets forth the time limit for service and requires defendants to be served within ninety (90) days within 90 days after the complaint is filed.

11. The Plaintiff filed the Complaint on July 18, 2016, and Waivers of the Service of Summons were not requested and mailed out until November 21, 2016.

12. The Plaintiff did not act diligently in issuing Waivers of the Service of Summons.

WHEREFORE, these Defendants, MACON COUNTY SHERIFF'S DEPARTMENT, LARRY PARSANO, TERRY COLLINS, MICHAEL PATTON and JOSHUA PAGE, are entitled to judgment in their favor and against the Plaintiff on the basis of the foregoing affirmative defenses.

Respectfully submitted by,

/s/ William W. Kurnik

WILLIAM W. KURNIK, Attorney #01550632  
Attorneys for Defendants MACON COUNTY  
SHERIFF'S DEPARTMENT, LARRY PARSANO,  
TERRY COLLINS, MICHAEL PATTON and  
JOSHUA PAGE

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**CERTIFICATE OF ELECTRONIC SERVICE**

The undersigned, one of the attorneys of record herein, hereby certifies that on February 2, 2018, the foregoing **ANSWER TO AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES BY DEFENDANTS MACON COUNTY SHERIFF'S DEPARTMENT, LARRY PARSANO, TERRY COLLINS, MICHAEL PATTON and JOSHUA PAGE** was electronically filed with the Clerk of the U.S. District Court using the CM/ECF System, which will send notification of such filing to the following:

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