

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

STEPHANIE L. BYRON,

Plaintiff,

v.

CASE NO.: 3:16cv236-MCR/CJK

MICHAEL JOHN WOHLERS,

Defendant.

ANSWER AND AFFIRMATIVE DEFENSES
(Amended Complaint)

Defendant, MICHAEL JOHN WOHLERS, by and through his undersigned counsel, hereby files this, his Answer and Affirmative Defenses, to the Amended Complaint. More specifically, Wohlers avers as follows:

1.1 Introduction, Jurisdiction, and Venue

1. Admitted for jurisdictional purposes only.
2. Admitted for jurisdictional purposes only.
3. Admitted for jurisdictional purposes only.
4. Admitted for jurisdictional purposes only.
5. Admitted for venue purposes only.
6. Admitted for jurisdictional purposes only.
7. Denied.
8. Denied.

9. Denied.

10. Admit.

11. Denied.

1.2 Parties

12. Admit.

13. Admit Defendant Mike Wohlers was a law enforcement officer employed by the Escambia County Sheriff's Office; otherwise, denied.

14. Admit David Morgan is the Sheriff of Escambia County, Florida; otherwise denied.

1.3 Background Facts

15. Admit.

16. Admit.

17. Admit.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

- 25. Denied.
- 26. Denied.
- 27. Denied.
- 28. Denied.
- 29. Denied.
- 30. Denied.
- 31. Denied.
- 32. Denied.
- 33. Admit.
- 34. Denied.

2. Claims

2.1 Individual Capacity Claims under 42 U.S.C. § 1983

Count 1 – Violation of 42 U.S.C. § 1983 – 4th Amendment – Excessive Force by Defendant Wohlers

35. Paragraph 35 incorporates prior allegations. Prior responses are incorporated as if fully set forth herein.

- 36. Denied.
- 37. Denied.
- 38. Denied.
- 39. Denied.
- 40. Denied.

41. Denied.

42. Denied.

43. Denied.

2.2 State-Law Claims

Count 2 – State-Law Claim – Battery by Wohlers

44. Paragraph 44 incorporates prior allegations. Prior responses are incorporated as if fully set forth herein.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. Denied.

Count 3 – State Law Official Capacity Claim – Negligence by Defendant David Morgan

50-61. Defendant Wohlers is not a party defendant to Count 3. Accordingly he does not respond to the allegations as contained therein. To the extent said allegations can be construed as having application to causes of action against Defendant Wohlers, they are specifically denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

As a First and separate Affirmative Defense, to the extent Plaintiff has received compensation for claimed damages from third-party sources, Defendant is entitled to off-set any such recovery paid or payable from collateral sources.

Second Affirmative Defense

As a Second and separate Affirmative Defense, as to Count 1, the claimed damages herein are *de minimis* and insufficient to state a claim for relief or compensation for excessive force in violation of the Fourth Amendment.

Third Affirmative Defense

As a Third and separate Affirmative Defense, as to Count 1, Defendant is entitled to qualified immunity in his individual capacity in that his actions were not contrary to clearly established law which a reasonable officer would be expected to know.

Fourth Affirmative Defense

As a Fourth and separate Affirmative Defense, as to Count 1, alternatively, the actions of Defendant, even if true, constitute nothing more than negligence which does not state a claim for violation of an individual's civil or constitutional rights under 42 U.S.C. § 1983.

Fifth Affirmative Defense

As a Fifth and separate Affirmative Defense, as to Count 1, Plaintiff's allegations, even if true, fail to state a claim cognizable under 42 U.S.C. § 1983 of the Constitution of the United States.

Sixth Affirmative Defense

As a Sixth and separate Affirmative Defense, as to Count 1, Defendant is not liable in that he did not demonstrate deliberate indifference towards the constitutional rights of Plaintiff at any time.

Seventh Affirmative Defense

As a Seventh and separate Affirmative Defense, as to Count 1, alternatively, Plaintiff has suffered no constitutional deprivation because Defendant did not act under color of state law.

Eighth Affirmative Defense

As an Eighth and separate Affirmative Defense, as to Count 2, Plaintiff has failed to comply with the necessary conditions precedent prior to filing the claim pursuant to § 768.28(6), Fla. Stat.

Ninth Affirmative Defense

As a Ninth and separate Affirmative Defense, as to Count 2, Defendant Wohlers is not a proper party and is immune from liability as he did not act in bad faith, or with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, pursuant to § 768.28(9)(a), Fla. Stat.

Tenth Affirmative Defense

As a Tenth and separate Affirmative Defense, the actions of Defendant Wohlers, even if true, reflect at worst mere negligence, and therefore, Plaintiff's exclusive remedy is against the head of the agency and Defendant Wohlers enjoys sovereign immunity from suit, pursuant to § 768.28(9)(a), Fla. Stat.

Eleventh Affirmative Defense

As an Eleventh and separate Affirmative Defense, this action is subject to dismissal for failure to obtain jurisdiction over the person within 120 days from the date of filing, pursuant to Rule 1.070(j), Fla. R. Civ. P.

WHEREFORE having fully answered the Complaint, Defendant Michael Wohlers, invokes his right to trial by jury.

Respectfully submitted this 2nd day of August, 2016.

/s/ Kayla Rady _____

KAYLA RADY

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via Email and/or by CM/ECF System delivery to Alistair J. McKenzie, amckenzie@mckenzielawfirm.com, this 2nd day of August, 2016.

/s/ Kayla Rady _____

KAYLA RADY