

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

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MARK ALLEN BURGESS, ELIZABETH
DIAN BURGESS, (Minor child) M.S.B.
/01, (Minor child) A.N.B. /04, (Minor child)
E.J.B. /15, :

Plaintiff, :

v. :

JOINT ANSWER

CITY OF SIOUX FALLS, SIOUX FALLS
POLICE DEPARTMENT, OFFICER
MACFARLANE #943, OFFICER
WESTRUM #898, OFFICER BRANCH
#884, :

Defendants.

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Defendants, of Sioux Falls “City”, Sioux Falls Police “Department”, Jeff MacFarlane, Ian Branch, and Chad Westrum, for their Joint Answer to Plaintiffs’ Complaint state and allege as follows:

1. As an affirmative defense, these Defendants, and each of them, allege that Plaintiffs have failed to obtain valid service of process on any of them thus barring Plaintiffs’ claims.

2. As an affirmative defense, allege that Department is not an entity amenable to suit and ought to be dismissed as a party Defendant.

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Joint Answer

3. As an affirmative defense, allege that there is no valid claim for *respondeat superior* against City and City ought to be dismissed as a party defendant.

4. Defendants MacFarlane, Branch, and Westrum are protected by the doctrine of qualified immunity thus barring Plaintiffs' suit against any of them.

5. Any alleged state claims against Defendants, or any of them, are barred by Plaintiffs' failure to give timely notice pursuant to SDCL 3-21-2.

6. On information and belief, Plaintiff Mark Allen Burgess is not an attorney at law licensed by the State of South Dakota or otherwise authorized to practice before this Court, except on his own behalf *pro se*. Thus, Plaintiff Elizabeth Dian Burgess and three minor children have no standing and fail to state any claim against Defendants, or either of them.

7. Plaintiffs Complaint fails to state a claim or cause of action against these Defendants, or any of them, upon which relief can be granted.

8. Specifically deny that Defendants MacFarlane, Branch or Westrum, or any of them, used excessive force against Plaintiff Mark Burgess or unlawfully arrested him or unlawfully searched or seized any property in violation of his rights.

9. As a further affirmative defense, allege that Plaintiff Mark Burgess plead guilty to the charge or charges levied against him as a result of his February 27, 2016 arrest thus precluding any claim for unlawful arrest.

10. Specifically deny that Plaintiffs, or any of them, have been damaged or injured in the manner or to the extent claimed in their Complaint.

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11. Each Defendant denies every allegation or thing that may be construed as a claim or cause of action against any of them in Plaintiffs' Complaint.

WHEREFORE, Defendants request that this Court enter an Order dismissing Plaintiffs' Complaint on its merits, with prejudice, that Plaintiffs recover nothing, that Defendants recover their costs and attorney fees incurred herein, and for such further relief as the Court deems just.

Dated this 21st day of March, 2017.

WOODS, FULLER, SNULTZ & SMITH P.C.

By 

Gary P. Thimsen

Joel E. Engel III

300 South Phillips Avenue, Suite 300

Post Office Box 5027

Sioux Falls, South Dakota 57117-5027

Telephone: (605) 336-3890

Facsimile: (605) 339-3357

Email: Gary.Thimsen@woodsfuller.com

Joel.Engel@woodsfuller.com

Attorneys for Defendants

DEMAND FOR JURY TRIAL

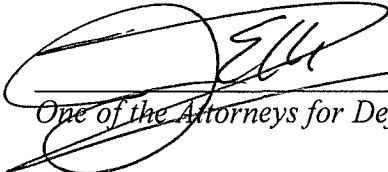
Defendants demand a trial by jury.

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of March, 2017, a true and correct copy of the foregoing *Joint Answer* was served by United States Mail, postage prepaid, upon the following:

Mark Allen Burgess
1205 N. Harlem Ave
Sioux Falls, SD 57104



One of the Attorneys for Defendant