**UNITED STATES DISTRICT COURT**
**DISTRICT OF MASSACHUSETTS**

**CIVIL ACTION NO. 12-11117-MLW**

FRIEDRICH LU,
**Plaintiff,**

**v.**

GEORGE HULME, in his individual capacity and in his official capacity, TRUSTEES OF THE BOSTON PUBLIC LIBRARY,
**Defendants.**

**DEFENDANT TRUSTEES OF THE BOSTON PUBLIC LIBRARY'S ANSWER TO PLAINTIFF'S VERIFIED COMPLAINT**

Defendant Trustees of the Boston Public Library ("Trustees" or "Defendant") hereby answer Plaintiff Friedrich Lu's Verified Complaint as follows:

1. Admitted.

2. Defendant admits the allegations contained in Paragraph 2 to the extent that the Trustees are named collectively and without reference to any individual trustees. Defendant is a municipal entity that oversees the Boston Public Library ("BPL"), a department of the City of Boston.

3. Defendant admit that it was incorporated by the Acts of 1878, Chap. 114 as alleged by Plaintiff in Paragraph 3. Likewise, to the extent that Plaintiff is alleging that the Defendant is a state actor, Defendant admits that its official actions are carried out on behalf of the City of Boston. As for the remainder of the allegations in Paragraph 3, Defendant is unable to ascertain their meaning within the context of this lawsuit and, therefore, is unable to offer a further response.

4. Defendant admits that Plaintiff is citing public documents and referring to various BPL holdings in Paragraph 4. As for the remainder of the allegations in Paragraph 4, these allegations do not pertain to the Defendant and, therefore, no answer is required. To the extent, however, that Paragraph 4 can be construed as alleging facts against the Defendant, they are denied.

5. Defendant admits that the phrase "Free to All" is engraved over the BPL's entrance as cited by Plaintiff in Paragraph 5. As for the remainder of the allegations in Paragraph 5, these allegations do not pertain to the Defendant and, therefore, no answer is required. To the extent that Paragraph 5 can be construed as alleging facts against the Trustees, they are denied.

6. The allegations contained in Paragraph 6 do not pertain to the Trustees and, therefore, no answer is required. To the extent that the allegations may be construed as alleging facts against the Trustees, they are denied.

7. The allegations contained in Paragraph 7 contain descriptions of events that were not witnessed by the Trustees and, therefore, no answer is required. To the extent that Paragraph 7 contains factual allegations against the Trustees, they are denied.

8. Defendant denies the allegations contained in Paragraph 8 and notes that the BPL is open for use by all members of the general public, including Plaintiff.

9. The allegations contained in Paragraph 9 do not pertain to the Trustees and, therefore, no answer is required. To the extent that the allegations may be construed as alleging facts against the Trustees, they are denied.

10. Defendant denies the allegations contained in Paragraph 10 and notes that the BPL is open for use by all members of the general public.

11. Defendant denies the allegations contained in Paragraph 11 and notes that the BPL has published rules for patron use of the library's facilities.

12. Defendant denies the allegations contained in Paragraph 12. To the extent that the BPL has limited the amount of items that patrons may bring into the BPL, any such limitation is based on its "Appropriate Library Use Policy."

13. Defendant denies the allegations contained in Paragraph 13. To the extent that Plaintiff is alleging that the Trustees denied him access to the BPL and interfered with his Constitutional rights, such allegations are denied.

14. Defendant denies the allegations contained in Paragraph 14. Furthermore, the allegations contained in Paragraph 14 do not cite any specific conduct by the Defendant and, therefore, it is unable to respond with any specificity. To the extent that Plaintiff is alleging that the Trustees interfered with his rights under the Massachusetts Civil Rights Act, M.G.L. c. 12, § 11, such allegations are denied.

15. Paragraph 15 does not set forth any factual allegations and, therefore, does not require a response. To the extent that Paragraph 15 can be construed as alleging facts against the Defendant, they are denied.

## AFFIRMATIVE DEFENSES

### First Affirmative Defense

Plaintiff's complaint fails to state a claim upon which relief may be granted.

### Second Affirmative Defense

Plaintiff's injuries and/or damagers, if any, were proximately caused by his own negligent or intentional conduct and/or by the conduct of others, not by the conduct of the Defendant.

### Third Affirmative Defense

Defendant, at all times, acted in good faith upon reasonable belief that its actions were in accordance with the Constitution and laws of the United States and the Commonwealth of Massachusetts.

### Fourth Affirmative Defense

Plaintiff is by his own acts, omissions or negligence estopped by asserting any claims against Defendant.

### Fifth Affirmative Defense

The Defendant is imune from suit as it was engaged in discretionary functions.

### Sixth Affirmative Defense

The Defendant's acts and conduct were performed according to, and protected by, law and/or legal process and, therefore, the Plaintiff cannot recover.

### Seventh Affirmative Defense

None of the Defendant's acts or omissions were a proximate cause of injuries or damages, if any, allegedly sustained by the Plaintiff. Nor were these alleged injuries or damages cause by any person or entity within the Defendant's responsibility or control.

### Eight Affirmative Defense

The Defendant is immune from suit because its actions are protected by the doctrine of qualified immunity.

Ninth Affirmative Defense

Plaintiff has not been deprived of any rights secured by either the Constitution, the laws of the United States or of the Commonwealth of Massachusetts.

Tenth Affimative Defense

Plaintiff's claims are barred by the doctrine of laches and/or the statute of limitations.

**DEMAND FOR JURY TRIAL**

Defendant, Trustees of the Boston Public Library, hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

TRUSTEES OF THE BOSTON PUBLIC LIBRARY,

By its attorneys:

William F. Sinnott
Corporation Counsel

/s/Caroline O. Driscoll
Caroline O. Driscoll, BBO # 647916
Assistant Corporation Counsel
City of Boston Law Department
Room 615, City Hall
Boston, MA 02201
caroline.driscoll@cityofboston.gov
(617) 635-4925

Dated: June 12, 2013

**CERTIFICATE OF SERVICE**

I hereby certify that on June 12, 2013, I filed this document through the Court's CM/ECF system and that a copy will be emailed to Plaintiff Lu as agreed through prior communication.

/s/Caroline O. Driscoll
Caroline O. Driscoll