

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERNEST FLAGG, as Next Friend of JONATHAN BOND,
a minor, TARIS JACKSON, as Next Friend of ASHLY
JACKSON, a minor; and DR. BRIAN GREENE,
as Next Friend of INDIA
BOND, a minor

Plaintiffs,

v

Case No.: 05-CV-74253
Hon. Gerald E. Rosen
Magistrate Judge R. Steven Whalen

CITY OF DETROIT, a municipal corporation;
DETROIT POLICE CHIEF ELLA BULLY-CUMMINGS;
DEPUTY DETROIT POLICE CHIEF CARA BEST;
JOHN DOE POLICE OFFICERS 1-20; ASST.
DEPUTY POLICE CHIEF HAROLD CURETON;
COMMANDER CRAIG SCHWARTZ; POLICE LT.
BILLY JACKSON; MAYOR KWAME M. KILPATRICK,
CHRISTINE BEATTY, jointly and severally,

Defendants.

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**DEFENDANT, CHRISTINE BEATTY'S, ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' THIRD
AMENDED COMPLAINT AND DEMAND FOR TRIAL BY JURY**

NOW COMES Defendant, Christine Beatty (“Beatty”), by and through her attorneys, Morganroth & Morganroth, PLLC, and hereby answers Plaintiffs’ Third Amended Complaint and Demand for Trial by Jury as follows:

1. In answer to Paragraph 1, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

2. In answer to Paragraph 2, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

3. In answer to Paragraph 3, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

4. In answer to Paragraph 4, Beatty neither admits nor denies the legal conclusion and leaves Plaintiffs to their proofs.

5. In answer to Paragraph 5, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

6. In answer to Paragraph 6, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

7. In answer to Paragraph 7, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

8. In answer to Paragraph 8, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

9. In answer to Paragraph 9, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

10. In answer to Paragraph 10, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

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11. In answer to Paragraph 11, Beatty admits.

GENERAL ALLEGATIONS

12. In answer to Paragraph 12, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

13. In answer to Paragraph 13, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

14. In answer to Paragraph 14, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

15. In answer to Paragraph 15, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

16. In answer to Paragraph 16, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

17. In answer to Paragraph 17, Beatty admits that Harold Nelthrope (“Nelthrope”) was a detective in EPU at one time, but denies for reason untrue the remainder of the allegations in this paragraph.

18. In answer to Paragraph 18, Beatty neither admits denies the allegation for lack of sufficient information upon which to form a belief.

19. In answer to Paragraph 19, Beatty neither admits nor denies the allegations for lack of sufficient information upon which to form a belief.

20. In answer to Paragraph 20, Beatty admits that Jones and Mayor Kilpatrick went to high school together, and were members of the football team. Beatty denies the allegation for lack of sufficient information upon which to form a belief as to whether they were “football buddies.”

21. In answer to Paragraph 21, Beatty neither admits nor denies the allegations for lack

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of sufficient information upon which to form a belief.

22. In answer to Paragraph 22, Beatty neither admits nor denies the allegations for lack of sufficient information upon which to form a belief.

23. In answer to Paragraph 22, Beatty neither admits nor denies the allegations for lack of sufficient information upon which to form a belief.

24. In answer to Paragraph 23, Beatty neither admits nor denies the allegations for lack of sufficient information upon which to form a belief.

25. In answer to Paragraph 25, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

26. In answer to Paragraph 26, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

27. In answer to Paragraph 27, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

28. In answer to Paragraph 28, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

29. In answer to Paragraph 29, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

30. In answer to Paragraph 30, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

31. In answer to Paragraph 31, Beatty denies for reason untrue in the manner and form presented.

32. In answer to Paragraph 32, Beatty denies for reason untrue.

33. In answer to Paragraph 33, Beatty denies for reason untrue.

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34. In answer to Paragraph 34, Beatty denies for reason untrue.

35. In answer to Paragraph 35, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

36. In answer to Paragraph 36, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

37. In answer to Paragraph 37, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

38. In answer to Paragraph 38, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

39. In answer to Paragraph 39, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

40. In answer to Paragraph 40, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

41. In answer to Paragraph 41, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

42. In answer to Paragraph 42, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief. In further answer, Beatty denies for reason untrue in the manner and form alleged that Chief of Police Jerry Oliver and Defendant Ella Buklly-Cummings answered to Beatty.

43. In answer to Paragraph 43, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

44. In answer to Paragraph 44, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

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45. In answer to Paragraph 45, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

46. In answer to Paragraph 46, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

47. In answer to Paragraph 47, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

48. In answer to Paragraph 48, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

49. In answer to Paragraph 49, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

50. In answer to Paragraph 50, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

51. In answer to Paragraph 51, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

52. In answer to Paragraph 52, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

53. In answer to Paragraph 53, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

54. In answer to Paragraph 54, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

55. In answer to Paragraph 55, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

56. In answer to Paragraph 56, Beatty neither admits nor denies the allegation for lack

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of sufficient information upon which to form a belief.

57. In answer to Paragraph 57, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

58. In answer to Paragraph 58, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

59. In answer to Paragraph 59, Beatty denies for reason untrue.

60. In answer to Paragraph 60, Beatty denies for reason untrue.

61. In answer to Paragraph 61, Beatty denies for reason untrue.

62. In answer to Paragraph 62, Beatty denies for reason untrue.

63. In answer to Paragraph 63, Beatty denies for reason untrue.

64. In answer to Paragraph 64, Beatty denies for reason untrue.

65. In answer to Paragraph 65, Beatty neither admits nor denies the allegation for lack of sufficient information upon which to form a belief.

66. In answer to Paragraph 66, Beatty denies for reason untrue.

67. In answer to Paragraph 67, Beatty denies for reason untrue.

68. In answer to Paragraph 68, Beatty denies for reason untrue.

69. In answer to Paragraph 69, Beatty denies for reason untrue.

70. In answer to Paragraph 70, Beatty denies for reason untrue.

71. In answer to Paragraph 71, Beatty denies for reason untrue.

72. In answer to Paragraph 72, Beatty denies for reason untrue.

73. In answer to Paragraph 73, Beatty denies for reason untrue.

74. In answer to Paragraph 74, Beatty denies for reason untrue.

75. In answer to Paragraph 75, Beatty denies for reason untrue.

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COUNT I - VIOLATION OF THE 1ST14TH AMENDMENT (RIGHT OF ACCESS TO COURTS) PURSUANT TO TITLE 42 U.S.C. § 1983

76. Beatty hereby incorporates and realleges Paragraphs 1 through 75 of this Answer as if repeated word for word.

77. In answer to Paragraph 77, Beatty denies for reason untrue.

78. In answer to Paragraph 78, Beatty denies for reason untrue.

79. In answer to Paragraph 79, Beatty denies for reason untrue.

80. In answer to Paragraph 80, Beatty denies for reason untrue.

81. In answer to Paragraph 81, Beatty denies for reason untrue.

82. In answer to Paragraph 82, Beatty denies for reason untrue.

83. In answer to Paragraph 83, Beatty denies for reason untrue.

84. In answer to Paragraph 84, Beatty neither admits nor denies the legal conclusion stated therein and leaves Plaintiff to his proofs.

WHEREFORE, Beatty respectfully request this Honorable Court to dismiss the instant Third Amended Complaint with prejudice, and award costs and attorney fees so wrongfully incurred by Beatty.

COUNT II - CONSPIRACY TO VIOLATE PLAINTIFFS' CONSTITUTIONALLY GUARANTEED RIGHT OF ACCESS TO COURTS

85. Beatty hereby incorporates and realleges Paragraphs 1 through 84 of this Answer as if repeated word for word.

86. In answer to Paragraph 86, Beatty denies for reason untrue.

87. In answer to Paragraph 87, Beatty denies for reason untrue.

88. In answer to Paragraph 88, Beatty denies for reason untrue.

89. In answer to Paragraph 89, Beatty denies for reason untrue.

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90. In answer to Paragraph 90, Beatty denies for reason untrue.

91. In answer to Paragraph 91, Beatty denies the allegation for reason untrue in the manner and form presented.

WHEREFORE, Beatty respectfully request this Honorable Court to dismiss the instant Third Amended Complaint with prejudice, and award costs and attorney fees so wrongfully incurred by Beatty.

AFFIRMATIVE DEFENSES

Defendant, Beatty, by and through their attorneys, Morganroth & Morganroth, PLLC, hereby states her affirmative defenses to Plaintiffs' Third Amended Complaint as follows:

1. Failure To State A Claim Upon Which Relief May Be Granted.
2. Lack of Standing. Plaintiffs do not have standing to bring the instant claims.
3. Federal Stored Communications Act. The Federal Stored Communications Act prohibits the disclosure of electronic communications which Plaintiffs seek to use as evidence in this case.
4. An Effective and Meaningful State-Court Remedy Is Available. Plaintiffs are precluded from asserting the instant Federal claim inasmuch as an effective and meaningful State Court remedy is available to Plaintiffs.
5. A State Court Action Would Not Be Futile. Plaintiffs could bring a State Court action which would not be futile.
6. Plaintiffs Can Not Demonstrate That They Have Been Denied a State Court Remedy.
7. Plaintiffs Could Bring a State Court Action inasmuch as the Michigan Statute of Limitations to File a Wrongful Death Action Has Not Expired.
8. Plaintiff Fails to Allege Any Actions of Beatty That Caused Plaintiff to be Denied

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Access to a State Court Wrongful Death Action.

9. Waiver. Plaintiffs have waived their rights to file the instant claims inasmuch as Plaintiffs did not even attempt to take any steps to file or pursue an action in Michigan State Court before filing this case.

10. Estoppel. Plaintiffs are estopped from pursuing the instant claims inasmuch as Plaintiffs did not even attempt to take any steps to file or pursue an action in Michigan State Court before filing this case.

11. Reservation to Supplement or Amend. Beatty reserves the right to supplement or amend these Affirmative Defenses as additional information becomes known during discovery.

Respectfully submitted,

MORGANROTH & MORGANROTH, PLLC

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Dated: September 22, 2008

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Norman A. Yatooma, Attorney
Kenneth L. Lewis, Attorney
James C. Thomas, Attorney

John A. Schapka, Attorney
Krystal A. Crittendon, Attorney
Herschel P. Fink, Attorney

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and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants:

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Dated: September 22, 2008

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