

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Ernest Flagg, as Next Friend of

3000 Town Center, Suite 1500
Southfield, Michigan 48075
(248) 355-3084

**DEFENDANTS CITY OF DETROIT, HAROLD CURRETON, CRAIG SCHWARTZ,
AND CARA BEST'S ANSWER TO PLAINTIFFS' THIRD AMENDED COMPLAINT**

Defendants City of Detroit, Ella Bully-Cummings, Craig Schwarz, Kwame Kilpatrick, and Christine Beatty hereby respond, through counsel, to Plaintiff's Second Amended Complaint.

1. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

2. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

3. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

4. The allegations of the paragraph corresponding hereto constitute a conclusion of law requiring no response.

5. The allegations of the paragraph corresponding hereto are admitted.

6. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

7. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

8. The allegations of the paragraph corresponding hereto are denied.

9. The allegations of the paragraph corresponding hereto are denied.

10. The allegations of the paragraph corresponding hereto are denied.

11. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

General Allegations

12. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

13. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

14. The allegations of the paragraph corresponding hereto are denied.

15. The allegations of the paragraph corresponding hereto are denied.

16. The allegations of the paragraph corresponding hereto are denied.

17. The allegations of the paragraph corresponding hereto are denied.

18. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

19. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

20. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

21. Having insufficient information or knowledge of the allegations of the paragraph

corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

22. The allegations of the paragraph corresponding hereto are denied.

23. The allegations of the paragraph and sub-paragraphs corresponding hereto are denied.

24. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

25. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

26. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

27. The allegations of the paragraph corresponding hereto are denied.

28. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

29. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

30. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

31. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

32. The allegations of the paragraph corresponding hereto are denied.

33. The allegations of the paragraph corresponding hereto are denied.

34. The allegations of the paragraph corresponding hereto are denied.

35. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

36. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

37. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

38. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

39. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

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41. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

42. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave

Plaintiff to proof thereof.

43. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

44. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

45. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

46. The allegations of the paragraph corresponding hereto are denied.

47. The allegations of the paragraph corresponding hereto are denied.

48. The allegations of the paragraph corresponding hereto are denied.

49. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

50. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

51. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

52. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

53. Having insufficient information or knowledge of the allegations of the paragraph

corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

54. The allegations of the paragraph corresponding hereto are denied.

55. The allegations of the paragraph corresponding hereto are denied.

56. The allegations of the paragraph corresponding hereto are denied.

57. The allegations of the paragraph corresponding hereto are denied.

58. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

59. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

60. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

61. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

62. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

63. The allegations of the paragraph corresponding hereto are denied.

64. The allegations of the paragraph corresponding hereto are denied.

65. Having insufficient information or knowledge of the allegations of the paragraph corresponding hereto, Defendants neither admit nor deny the allegations contained therein and leave Plaintiff to proof thereof.

66. The allegations of the paragraph corresponding hereto are denied.
67. The allegations of the paragraph corresponding hereto are denied.
68. The allegations of the paragraph corresponding hereto are denied.
69. The allegations of the paragraph corresponding hereto are denied.
70. The allegations of the paragraph corresponding hereto are denied.
71. The allegations of the paragraph corresponding hereto are denied.
72. The allegations of the paragraph corresponding hereto are denied.
73. The allegations of the paragraph corresponding hereto are denied.
74. The allegations of the paragraph corresponding hereto are denied.
75. The allegations of the paragraph corresponding hereto are denied.

**Count I - Violation of the 1st and 14th Amendments
Pursuant to Title 42 USC 1983
(Right of Access to the Courts)**

76. The assertions of the paragraph corresponding hereto do not require a response; alternatively, Defendants herein incorporate the responses offered above as if fully stated.

77. The allegations of the paragraph corresponding hereto are denied.
78. The allegations of the paragraph corresponding hereto are denied.
79. The allegations of the paragraph and sub-paragraphs corresponding hereto are denied.
80. The allegations of the paragraph corresponding hereto are denied.
81. The allegations of the paragraph corresponding hereto are denied.
82. The allegations of the paragraph corresponding hereto are denied.
83. The allegations of the paragraph corresponding hereto are denied.
84. The allegations of the paragraph corresponding hereto are denied.

**Count II - Conspiracy to Violate Constitutional Right of Access to Courts
in Violation of 42 USC 1985**

85. The assertions of the paragraph corresponding hereto do not require a response; alternatively, Defendants herein incorporate the responses offered above as if fully stated.

86. The allegations of the paragraph and sub-paragraphs corresponding hereto are denied.
87. The allegations of the paragraph corresponding hereto are denied.
88. The allegations of the paragraph corresponding hereto are denied.
89. The allegations of the paragraph corresponding hereto are denied.
90. The allegations of the paragraph corresponding hereto are denied.
91. The allegation of the paragraph corresponding hereto constitutes a conclusion of law for which no response is required; alternatively, the allegation of the paragraph corresponding hereto is denied.

SPECIAL AND AFFIRMATIVE DEFENSES

1. Plaintiffs fail to state a claim against Defendant City of Detroit upon which relief may be granted.
2. To the extent it predicates City liability upon vicariously asserted theories of recovery, Plaintiffs' Third Amended Complaint fails to state a claim against the City upon which relief may be granted.
3. To the extent it predicates City liability upon grossly negligent or negligent acts or conduct, Plaintiffs' Third Amended Complaint fails to state a claim against the City upon which relief may be granted.
4. To the extent it alleges a violation arising under the Constitution of the United States, Plaintiffs' Third Amended Complaint fails to state a claim against Defendant City upon which relief may be granted.
5. To the extent it alleges a violation of 42 USC 1983, Plaintiffs' Third Amended Complaint fails to state a claim upon which relief may be granted.
6. To the extent it alleges, in substance or in form, a failure to investigate, conduct an adequate investigation, or conduct a complete investigation, Plaintiff's Third Amended Complaint fails to state a claim upon which relief may be granted.
7. At all relevant times Defendants Schwartz, Curreton, and Best acted with good faith

and are therefore immune to liability regarding Plaintiff's federal claims.

8. To the extent Defendants Schwartz, Curreton, and Best did not violate any recognized constitutionally protected rights inuring to Plaintiff, Plaintiff's Third Amended Complaint fails to state a claim upon which relief may be granted.

9. To the extent Defendants Schwartz, Curreton, and Best acted in an objectively reasonable manner, Plaintiff's Third Amended Complaint fails to state a claim upon which relief may be granted.

10. To the extent it reflects a claim arising under the 1st Amendment to the Constitution of the United States, Plaintiff's Third Amended Complaint fails to state a claim upon which relief may be granted.

11. To the extent it reflects a claim arising under the Equal Protection clause of the 14th Amendment to the Constitution of the United States, Plaintiff's Third Amended Complaint fails to state a claim upon which relief may be granted.

12. To the extent Plaintiff has failed to prosecute this matter within the applicable period of limitations, Plaintiff's claims are time barred.

13. To the extent Plaintiff are not time barred because of their minority from pursuing a civil action for loss of consortium and companionship against Tamara Green's killer in state court, Plaintiffs' 14th Amendment denial of access to the courts assertion fails to state a claim upon which relief may be granted.

14. Plaintiffs have failed to mitigate their damages.

15. Plaintiffs have failed to join every legal or equitable claim arising from the incident central to this suit.

RESERVATION OF ADDITIONAL DEFENSES

Defendants City, Schwartz, Curreton, and Best in the above captioned matter, by and through counsel, reserve the right to assert and file any affirmative and special defense which may become known by discovery proceedings in accordance with the rules and practices of this Court. Further,

Defendants do not waive any deficiency or omission in any pleadings filed by any other party to this suit regardless of when filed.

DEMAND FOR COMPULSORY JOINDER OF CLAIMS

Defendants City, Schwartz, Curreton, and Best demand Plaintiffs join in this action all claims Plaintiffs may have against any defendant arising from the subject matter of this action and which does not require for adjudication the presence of third parties over whom the court cannot exercise jurisdiction.

RELIANCE ON JURY DEMAND

Defendants City of Detroit, Schwartz, Curreton, and Best hereby rely on Plaintiff's demand for trial by jury.

Predicated upon the matters presented above, Defendants respectfully demand judgment of no cause of action be entered herein, or in the alternative said cause be dismissed, with prejudice, and costs and attorney fees be awarded to Defendants.

Respectfully submitted

S/John A. Schapka

John A. Schapka
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DATED: 1 October 2008

I hereby certify that on 1 October 2008, I electronically filed the foregoing papers with the Clerk of the Court using the ECF system which will send notification of such filing to the following: all counsel of record; and I do hereby certify that I have cause the paper to be sent by electronic mail to the following non-ECF participants: none.

S/ John A. Schapka (P-36731)

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