

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

KARIM KOUBRITI,

Plaintiff,

Case No. 2:07-cv-13678

v.

The Honorable Marianne O. Battani

RICHARD CONVERTINO,  
MICHAEL THOMAS and  
HARRY RAYMOND SMITH,  
Jointly and Severally  
and in their Individual Capacities  
Defendants.

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**DEFENDANT MICHAEL THOMAS'  
ANSWER TO FIRST AMENDED COMPLAINT**

Defendant Michael Thomas, by and through counsel, responds to Plaintiff Karim Koubriti's First Amended Complaint, in accordance with the numbered paragraphs of that Complaint, as follows:

1. Jurisdictional allegation, no response required.
2. Jurisdictional allegation, no response required.
3. Defendant Thomas lacks sufficient knowledge or information in order to admit or deny the allegations of this paragraph and therefore denies same.
4. Defendant Thomas lacks sufficient knowledge or information in order to admit or deny the allegations of this paragraph and therefore denies same.
5. Admitted.
6. Denied.
7. Defendant Thomas admits this First Amended Complaint purports to sue him in his individual capacity. The remainder of the paragraph is denied.
8. Admitted.
9. Denied.
10. Admitted.
11. It is admitted that Plaintiff was arrested and that Plaintiff was initially detained, without bail, on a criminal offense of document fraud. The remainder of the paragraph is denied.
12. Admitted.

13. Denied.
14. Admitted.
15. Denied.
16. Admitted.
17. Admitted.
18. Admitted.
19. It is admitted that the Government at the trial offered the testimony of Yousif Hmimssa concerning Plaintiff and other co-defendants' being "Islamic fundamentalist" and "involved in terrorist activities." The remainder of the paragraph is denied.
20. Denied.
21. Defendant Thomas lacks personal knowledge upon which to admit or deny the basis for the jury's returning a verdict to convict, and thus denies this paragraph's allegations.
22. It is admitted that "Plaintiff and his co-defendants" filed motions and made claims, that there were responses to the motions filed, and that there was one or more evidentiary hearing on motion(s). The allegations, inferences and facts otherwise alleged in this paragraph are denied.
23. It is admitted that Judge Rosen made findings and rulings and issued an order;

those matters are in the record of the district court proceeding. Concerning this paragraph's summary and characterization of the proceedings, Defendant Thomas reserves the right to challenge the substance of this paragraph, and thus denies the allegations and declared facts set forth in this paragraph.

24. Admitted.
25. The fact that the statements were made is admitted. All other factual allegations and inferences are denied.
26. The fact that the statements were made is admitted; the fact of the Order on June 1, 2006 is admitted. All other factual allegations and inferences are denied.
27. Denied.
28. Denied.
29. Defendant admits and denies the allegations of this compound paragraph as follows:

Defendant denies "willfully and intentionally with[holding] exculpatory evidence or fabricated evidence."

- A. Denied.
- B. Denied.
- C. Denied.
- D. Denied.
- E. Denied.

- F. Denied.
  - G. Defendant admits that he did not make 302's of meetings with Hmimssa, but denies that he had a duty to do so.
  - H. Denied.
30. Denied.
31. Defendant incorporates by reference his responses to Paragraphs 1-30, inclusive.
32. Denied.
33. Denied.

## **AFFIRMATIVE DEFENSES**

### **First Affirmative Defense**

By way of affirmative defense, Defendant alleges he was justified in his conduct and acts and therefore is not liable to the Plaintiff as alleged in the Complaint.

### **Second Affirmative Defense**

By way of affirmative defense, Defendant alleges that his actions and conduct were performed according to and protected by law and/or legal process, and that therefore the Plaintiff cannot recover.

### **Third Affirmative Defense**

By way of affirmative defense, Defendant alleges he was privileged in his conduct and acts and that therefore the Plaintiff cannot recover.

#### **Fourth Affirmative Defense**

By way of affirmative defense, Defendant is entitled to immunity based upon good faith in that the harm suffered by Plaintiff was not a result which a reasonable person in Defendant's position would have known to result from his actions.

#### **Fifth Affirmative Defense**

By way of affirmative defense, Defendant alleges that at all times relevant hereto he acted without malice toward the Plaintiff and that Defendant's actions relative to the Plaintiff were privileged by virtue of his acting reasonably and in good faith within the scope of his authority as a federal law enforcement agent.

#### **Sixth Affirmative Defense**

By way of affirmative defense, Defendant alleges he had qualified immunity from this suit as the alleged acts complained of occurred within the scope of Defendant's official duties and Defendant had no knowledge that said alleged acts were illegal and/or unconstitutional nor were said alleged acts clearly violative of Plaintiff's rights at the time they were committed.

#### **Seventh Affirmative Defense**

By way of affirmative defense, Defendant alleges that the damages, if any, sustained by Plaintiff were caused by the acts or omissions of himself or third parties for whose conduct Defendants are not legally responsible.

**Eighth Affirmative Defense**

By way of affirmative defense, Defendant alleges Plaintiff's Complaint, and each allegation of the Complaint, fail to state a claim upon which relief may be granted.

**Ninth Affirmative Defense**

By way of affirmative defense, Defendant alleges Plaintiff is barred from recovery by the doctrine of unclean hands.

**Tenth Affirmative Defense**

By way of affirmative defense, Defendant alleges Plaintiff is barred from recovery by the doctrine of estoppel.

**Eleventh Affirmative Defense**

By way of affirmative defense, Defendant alleges Plaintiff is barred from recovery by the doctrine of waiver.

**Twelfth Affirmative Defense**

By way of affirmative defense, Defendant alleges Plaintiff lacks standing to pursue the instant action.

**Thirteenth Affirmative Defense**

By way of affirmative defense, Defendant alleges absolute immunity.

**Fourteenth Affirmative Defense**

By way of affirmative defense, Defendant alleges qualified immunity.

**Fifteenth Affirmative Defense**

By way of affirmative defense, Defendant alleges Plaintiff has not exhausted the applicable administrative remedies.

**Sixteenth Affirmative Defense**

By way of affirmative defense, Defendant alleges Plaintiff's claims are barred by the applicable statute(a) of limitation.

**Seventeenth Affirmative Defense**

By way of affirmative defense, Defendant alleges he acted in reasonable good faith in the matters of conduct or misconduct alleged against him.

**DEMAND FOR JURY TRIAL**

Defendant demands a jury trial on all triable issues.

WHEREFORE Defendant prays this Court deny each of the Plaintiff's prayers for relief and award Defendant his costs, fees and any other relief this Court deems appropriate.

Respectfully submitted,

By: s/ Richard L. Swick

Richard L. Swick

Counsel for Defendant Michael Thomas

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Date: May 8, 2008





## CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2008, 2008, I presented the foregoing **Defendant Michael Thomas' Answer to First Amended Complaint**, and **Certificate of Service** to the Clerk of the Court for filing and uploading to the ECF system which will send notification of such filing to the following

**Ben Gonek Bgonek@aol.com, lisa@bgonek.com,**

Robert S. Mullen (RobSMullen@gmail.com)

Respectfully attested:

SWICK & SHAPIRO, P.C.

By: s/ Richard L. Swick

Richard L. Swick

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