

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI**

CHARLES LEE THORNTON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:07CV0079-CDP
	)	
CITY OF KIRKWOOD,	)	
	)	
Defendant.	)	

**DEFENDANT’S ANSWER AND AFFIRMATIVE AND  
ADDITIONAL DEFENSES TO PLAINTIFF’S “COMPLAINT”**

COMES NOW Defendant the City of Kirkwood (hereinafter, “Kirkwood” or “Defendant”), by and through its undersigned counsel, and for its Answer to Plaintiff Charles Lee Thornton’s (hereinafter, “Plaintiff”) “Complaint,”<sup>1</sup> states as follows:

1. Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 1 of Plaintiff’s Complaint and, therefore, denies the same.
  
2. Defendant admits that it is a municipality located in St. Louis County, Missouri.

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<sup>1</sup> On or about January 18, 2007, Plaintiff filed both: (1) a four page pleading titled “Complaint Seeking for Temporary Restraining Order without notice, and Preliminary and Permanent Injunction;” and (2) a one page pleading also titled “Complaint Seeking for Temporary Restraining Order without Notice and Preliminary and Permanent Injunction” (which was simply the first page of the four page pleading). According to the docket entries on the web site for the United States District Court for the Eastern District of Missouri, the four page pleading serves as the Complaint and the one page pleading serves as the Motion for Preliminary Injunction and Motion for Temporary Restraining Order.

The instant pleading is filed in response to the Complaint, the four page duplicative pleading. A hearing on Defendant’s Motion for Temporary Restraining Order was previously held on January 18, 2007, and this Court denied same.

3. Defendant admits that Plaintiff purports to file this claim on the basis of “Content Speech Based Discrimination.” However, Defendant specifically denies that it is liable to Plaintiff on this legal basis, or for any other reason set forth in the Complaint (or other pleadings filed by Plaintiff with this Court). Defendant further states that Local Rule 3-2.07(A)(1) of the United States District Court for the Eastern District of Missouri is a local rule regarding the counties composing the Eastern District. Unless specifically admitted herein, Defendant denies all additional allegations contained in Paragraph 3 of Plaintiff’s Complaint.

4. Defendant denies all allegations contained in Paragraph 4 of Plaintiff’s Complaint.

5. Defendant denies all allegations contained in Paragraph 5 of Plaintiff’s Complaint.

6. Defendant denies all allegations contained in Paragraph 6 of Plaintiff’s Complaint.

7. Defendant denies all allegations contained in Paragraph 7 of Plaintiff’s Complaint.

### **AFFIRMATIVE AND ADDITIONAL DEFENSES**

#### **FIRST DEFENSE**

Plaintiff’s Complaint fails to state a claim upon which relief may be granted.

#### **SECOND DEFENSE**

Plaintiff’s Complaint fails to adequately allege facts that establish the jurisdiction of this Court.

**THIRD DEFENSE**

Defendant is not liable for any of the alleged actions articulated in Plaintiff's Complaint by virtue of the doctrines of absolute immunity, official immunity, sovereign immunity, governmental immunity, and/or qualified immunity.

**FOURTH DEFENSE**

Defendant has authority under the laws of Missouri to enforce its municipal ordinances and policies for the benefit of its residents within its territorial boundaries.

**FIFTH DEFENSE**

Plaintiff's claims are barred by the doctrine of laches, waiver and/or estoppel.

**SIXTH DEFENSE**

Plaintiff's claims are moot and/or are barred by the doctrines of res judicata and/or collateral estoppel.

WHEREFORE, having fully answered Plaintiff's "Complaint," Defendant the City of Kirkwood respectfully requests that this Court dismiss Plaintiff's Complaint, award it its costs herein, and award such further other relief as this Court deems just and proper under the circumstances.

Respectfully submitted,

**LEWIS, RICE & FINGERSH, L.C.**

By: /s/ John M. Hessel  
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Attorneys for Defendant

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 21<sup>st</sup> day of February, 2007, a true and correct copy of the foregoing document was served via U.S. Mail, first class postage prepaid, to the following:

Charles L. Thornton  
351 Attucks Street  
Kirkwood, MO 63122

/s/ John M. Hessel