

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
NICHOLAS R. KAMPAROSYAN,
TELEMAK E. KAMPAROSAYN,

07 CIV 2691

Plaintiffs,

**ANSWER TO
PLAINTIFFS' COMPLAINT**

- against -

THE CITY OF NEW YORK; POLICE OFFICER
MILTON RUSSI, SHIELD NO. 933306; POLICE OFFICER
TERENCE ROONEY, SHIELD NO. 929080; LIETENANT
THOMAS LOEFFEL, SHIELD NO. 890371; STERLING
METS L.P.; NEW YORK METS SECURITY GUARD
KEVIN ANDERSON; NEW YORK METS SECURITY
GUARD TREVOR "DOE"; AND NEW YORK METS
SECURITY GUARD JOHN DOES #1-8,

Defendants.
-----X

PLEASE TAKE NOTICE, that defendants KEVIN ANDERSON and TREVOR THOMAS, by their attorneys, Havkins Rosenfeld Ritzert & Varriale, LLP, as and for their Answer to plaintiffs' Complaint, respectfully allege, upon information and belief, as follows:

INTRODUCTION

1. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "1" of the Complaint.
2. Deny each and every allegation contained in paragraph "2" of the Complaint.
3. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "3" of the Complaint.
4. Deny each and every allegation contained in paragraph "4" of the Complaint.

5. Deny each and every allegation contained in paragraph "5" of the Complaint.
6. Deny each and every allegation contained in paragraph "6" of the Complaint.

THE PARTIES

7. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "7" of the Complaint.

8. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "8" of the Complaint.

9. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "9" of the Complaint.

10. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "10" of the Complaint.

11. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "11" of the Complaint.

12. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "12" of the Complaint and respectfully refer all questions of law to the Court.

13. Deny each and every allegation contained in paragraph "13" of the Complaint and respectfully refer all questions of law to the Court.

14. Deny each and every allegation contained in paragraph "14" of the Complaint and respectfully refer all questions of law to the Court.

15. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "15" of the Complaint and respectfully refer all questions of law to the Court.

16. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "16" of the Complaint.

JURISDICTION AND VENUE

17. Deny each and every allegation contained in paragraph "17" of the Complaint except admit that plaintiffs purport to bring this action as stated therein.

18. Deny each and every allegation contained in paragraph "18" of the Complaint except admit that plaintiffs purport to invoke the jurisdiction of the Court as stated therein.

19. Deny each and every allegation contained in paragraph "19" of the Complaint except admit that plaintiffs purport to base venue as stated therein.

20. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "20" of the Complaint.

JURY DEMAND

21. Paragraph "21" of the Complaint sets forth plaintiffs' demand for trial by jury and does not require a response thereto.

FACTUAL ALLEGATIONS

22. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "22" of the Complaint.

23. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "23" of the Complaint.

24. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "24" of the Complaint.

25. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "25" of the Complaint.

26. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "26" of the Complaint.

27. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "27" of the Complaint.

28. Deny each and every allegation contained in paragraph "28" of the Complaint and respectfully refer the Court to the referenced documents and materials and the terms therein and all questions of fact and law to the Court.

29. Deny each and every allegation contained in paragraph "29" of the Complaint.

30. Deny each and every allegation contained in paragraph "30" of the Complaint.

31. Deny each and every allegation contained in paragraph "31" of the Complaint.

32. Deny each and every allegation contained in paragraph "32" of the Complaint.

33. Deny each and every allegation contained in paragraph "33" of the Complaint.

34. Deny each and every allegation contained in paragraph "34" of the Complaint.

35. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "35" of the Complaint.

36. Deny each and every allegation contained in paragraph "36" of the Complaint.

37. Deny each and every allegation contained in paragraph "37" of the Complaint.

38. Deny each and every allegation contained in paragraph "38" of the Complaint.

39. Deny each and every allegation contained in paragraph "39" of the Complaint.

40. Deny each and every allegation contained in paragraph "40" of the Complaint.

41. Deny each and every allegation contained in paragraph "41" of the Complaint.

42. Deny each and every allegation contained in paragraph "42" of the Complaint.

43. Deny each and every allegation contained in paragraph "43" of the Complaint.

44. Deny each and every allegation contained in paragraph "44" of the Complaint.
45. Deny each and every allegation contained in paragraph "45" of the Complaint.
46. Deny each and every allegation contained in paragraph "46" of the Complaint.
47. Deny each and every allegation contained in paragraph "47" of the Complaint.
48. Deny each and every allegation contained in paragraph "48" of the Complaint.
49. Deny each and every allegation contained in paragraph "49" of the Complaint.
50. Deny each and every allegation contained in paragraph "50" of the Complaint.
51. Deny each and every allegation contained in paragraph "51" of the Complaint.
52. Deny each and every allegation contained in paragraph "52" of the Complaint.
53. Deny each and every allegation contained in paragraph "53" of the Complaint.
54. Deny each and every allegation contained in paragraph "54" of the Complaint.
55. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "55" of the Complaint.
56. Deny each and every allegation contained in paragraph "56" of the Complaint.
57. Deny each and every allegation contained in paragraph "57" of the Complaint.
58. Deny each and every allegation contained in paragraph "58" of the Complaint.
59. Deny each and every allegation contained in paragraph "59" of the Complaint.
60. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "60" of the Complaint.
61. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "61" of the Complaint.
62. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "62" of the Complaint.

63. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "63" of the Complaint.

64. Deny each and every allegation contained in paragraph "64" of the Complaint.

65. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "65" of the Complaint.

66. Deny each and every allegation contained in paragraph "66" of the Complaint.

67. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "67" of the Complaint.

68. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "68" of the Complaint.

69. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "69" of the Complaint.

70. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "70" of the Complaint.

71. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "71" of the Complaint.

72. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "72" of the Complaint.

73. Deny each and every allegation contained in paragraph "73" of the Complaint.

74. Deny each and every allegation contained in paragraph "74" of the Complaint.

75. Deny each and every allegation contained in paragraph "75" of the Complaint.

76. Deny each and every allegation contained in paragraph "76" of the Complaint.

77. Deny each and every allegation contained in paragraph "77" of the Complaint.

78. Deny each and every allegation contained in paragraph "78" of the Complaint.
79. Deny each and every allegation contained in paragraph "79" of the Complaint.
80. Deny each and every allegation contained in paragraph "80" of the Complaint.
81. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "81" of the Complaint.
82. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "82" of the Complaint.
83. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "83" of the Complaint.
84. Deny each and every allegation contained in paragraph "84" of the Complaint.
85. Deny each and every allegation contained in paragraph "85" of the Complaint.
86. Deny each and every allegation contained in paragraph "86" of the Complaint.
87. Deny each and every allegation contained in paragraph "87" of the Complaint.
88. Deny each and every allegation contained in paragraph "88" of the Complaint.
89. Deny each and every allegation contained in paragraph "89" of the Complaint and respectfully refer all questions of law to the Court.
90. Deny each and every allegation contained in paragraph "90" of the Complaint.

FIRST CAUSE OF ACTION
42 U.S.C. § 1983
(Against the Individual Defendants)

91. The answering defendants repeat and reiterate each and every response to paragraphs numbered "1" through "90" of the Complaint with the same force and effect as if fully set forth herein.
92. Deny each and every allegation contained in paragraph "92" of the Complaint.

- 93. Deny each and every allegation contained in paragraph "93" of the Complaint.
- 94. Deny each and every allegation contained in paragraph "94" of the Complaint.
- 95. Deny each and every allegation contained in paragraph "95" of the Complaint.

SECOND CAUSE OF ACTION

New York State Constitution, Art. I, § 12
(Against All Defendants)

96. The answering defendants repeat and reiterate each and every response to paragraphs numbered "1" through "95" of the Complaint with the same force and effect as if fully set forth herein.

97. Deny each and every allegation contained in paragraph "97" of the Complaint.

98. Deny each and every allegation contained in paragraph "98" of the Complaint.

99. Deny each and every allegation contained in paragraph "99" of the Complaint.

100. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "100" of the Complaint and respectfully refer all questions of law to the Court.

101. Deny each and every allegation contained in paragraph "101" of the Complaint and respectfully refer all questions of law to the Court.

102. Deny each and every allegation contained in paragraph "102" of the Complaint.

THIRD CAUSE OF ACTION

Assault and Battery
(Against All Defendants)

103. The answer defendants repeat and reiterate each and every response to paragraphs numbered "1" through "102" of the Complaint with the same force and effect as if fully set forth herein.

104. Deny each and every allegation contained in paragraph "104" of the Complaint.

105. Deny each and every allegation contained in paragraph "105" of the Complaint.

106. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "106" of the Complaint and respectfully refer all questions of law to the court.

107. Deny each and every allegation contained in paragraph "107" of the Complaint and respectfully refer all questions of law to the Court.

108. Deny each and every allegation contained in paragraph "108" of the Complaint.

FOURTH CAUSE OF ACTION
False Arrest and False Imprisonment
(Against All Defendants)

109. The answering defendants repeat and reiterate each and every response to paragraphs numbered "1" through "108" of the Complaint with the same force and effect as if fully set forth herein.

110. Deny each and every allegation contained in paragraph "110" of the Complaint.

111. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "111" of the Complaint and respectfully refer all questions of law to the Court.

112. Deny each and every allegation contained in paragraph "112" of the Complaint and respectfully refer all questions of law to the Court.

113. Deny each and every allegation contained in paragraph "113" of the Complaint.

FIFTH CAUSE OF ACTION

Negligence
(Against All Defendants)

114. The answering defendants repeat and reiterate each and every response to paragraphs numbered "1" through "113" of the Complaint with the same force and effect as if fully set forth herein.

115. Deny each and every allegation contained in paragraph "115" of the Complaint and respectfully refer all questions of law to the Court.

116. Deny each and every allegation contained in paragraph "116" of the Complaint.

117. Deny each and every allegation contained in paragraph "117" of the Complaint.

118. Deny each and every allegation contained in paragraph "118" of the Complaint.

119. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "119" of the Complaint and respectfully refer all questions of law to the Court.

120. Deny each and every allegation contained in paragraph "120" of the Complaint and respectfully refer all questions of law to the Court.

SIXTH CAUSE OF ACTION

Negligent Hiring and Retention of Employment Services
(Against the City and the New York Mets)

121. The answering defendants repeat and reiterate each and every response to paragraphs numbered "1" through "120" of the Complaint with the same force and effect as if fully set forth herein.

122. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "122" of the Complaint and respectfully refer all questions of law to the Court.

123. Deny each and every allegation contained in paragraph "123" of the Complaint and respectfully refer all questions of law to the Court.

124. Deny each and every allegation contained in paragraph "124" of the Complaint.

125. Deny each and every allegation contained in paragraph "125" of the Complaint.

126. Deny each and every allegation contained in paragraph "126" of the Complaint.

127. Deny each and every allegation contained in paragraph "127" of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

128. Whatever injuries and/or damages plaintiffs may have sustained at the time and place mentioned in the Complaint and/or as a result of the occurrence alleged in the Complaint, all of which is denied by the answering defendants, were caused in whole or in part by the culpable conduct of the plaintiffs. The amount of damages recovered, if any, shall therefore be diminished in the proportion which the culpable conduct, attributable to plaintiffs, bear to the culpable conduct which caused said injuries.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

129. All risks and danger of loss or damages connected with a situation alleged in the Complaint were at the time and place mentioned obvious and apparent and were known by the plaintiffs and voluntarily assumed by plaintiffs.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

130. The injuries and damages alleged were caused by the culpable conduct of some third person or persons over whom the answering defendants neither have nor exercised control.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

131. The liability of the answering defendants is limited by the provisions of Article 16 of the Civil Practice Law and Rules.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

132. Plaintiffs failed to mitigate their damages.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

133. Any verdict, judgment or decision that might be obtained by plaintiffs against the answering defendants shall be reduced by the amount of any collateral source payments received by plaintiffs pursuant to CPLR §4545(c) as determined by the Court.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

134. The Complaint fails to state a cause of action.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

135. The culpable conduct of those responsible for the accident or the occurrence alleged in the Complaint constituted a separate, independent, superseding, intervening culpable acts or acts which constitute the sole proximate cause of the accident or occurrence alleged.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

136. Each claim asserted in this action is barred by the applicable Statute of Limitations.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

137. Plaintiffs' claims for punitive damages violates, and is therefore barred by the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States of America on grounds including the following:

- (a) it is a violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution to impose punitive damages, which are penal in nature, against civil defendants upon plaintiffs' satisfying burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;
- (b) the procedure pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing, which infringes the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution;
- (c) the procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against defendants which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- (d) the procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- (e) the procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts and thus violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;
- (f) the procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes the Due Process Clause of the Fifth And Fourteenth Amendment of the United States Constitution;
- (g) the award of punitive damages to plaintiffs in this action would constitute a deprivation of property without due process of law; and
- (h) the procedures pursuant to which punitive damages are awarded permit the imposition of an excessive fine and penalty.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

138. Plaintiffs' claims for punitive damages violates, and is therefore barred by the following provisions of the Constitution and the State of New York, Article 1, Sections 5,6,11 and 12 on grounds including the following:

- (a) it is a violation of the Due Process and Equal Protection Clauses to impose punitive damages, which are penal in nature, against civil defendants upon plaintiffs' satisfying burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;
- (b) the procedure pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing;
- (c) the procedures pursuant to which punitive damages are awarded fail to provide a limit on the amount of the award against the defendants;
- (d) the procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages;
- (e) the procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts;
- (f) the procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct;
- (g) the procedures pursuant to which punitive damages are awarded permit the imposition of an excessive fines;
- (h) the award of punitive damages to plaintiffs in this action would constitute a deprivation of property without due process of law; and
- (i) the procedures pursuant to which punitive damages are awarded permit the imposition of an excessive fine and penalty.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

139. The answering defendants deny that it or its employees or agents were acting under pretense and color of state law and to the extent they were, the individual defendants are entitled to qualified immunity because their acts undertaken were objectively reasonable under the circumstances in each instance.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

140. Each act and action taken by each individual defendant was done and undertaken in good faith.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

141. Plaintiffs' arrest and detention by the defendants were lawful, privileged and authorized by New York State Criminal Procedure Law §140.10.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

142. There was reasonable cause to believe that plaintiffs had committed the crime for which they were arrested and charged.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

143. If defendants used any physical force as alleged in plaintiffs' complaint, then said force was justified, reasonable and necessary under the circumstances, to prevent plaintiffs from inflicting physical injury upon defendants and to defend defendants, their agents, servants, employees and customers.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

144. The answering defendants were vested with the proper authority to preserve peace and to maintain order at the subject premises.

AS AND FOR A EIGHTEENTH DEFENSE

145. This Court lacks jurisdiction over the defendants Kevin Anderson and Trevor Thomas.

WHEREFORE, the answering defendants, Kevin Anderson and Trevor Thomas, demand judgment dismissing the plaintiffs' Complaint on all causes of action and award to the answering defendants such other and further relief as this Court may deem just and proper, together with the costs and disbursements of this action.

Dated: New York, New York
March 23, 2009

**HAVKINS ROSENFELD RITZERT
& VARRIALE, LLP**

By: _____

Jarett L. Warner (JW-3849)

Eleven Penn Plaza, Suite 2101
New York, New York 10001
(212) 488-1598

File No.: 03197-0089

Attorneys for Defendants

KEVIN ANDERSON AND TREVOR THOMAS

To:

**EMERY CELLI BRINCKERHOFF &
ABADY LLP**

75 Rockefeller Plaza, 20th Floor
New York, New York 10019
(212) 763-5000

Attorneys for Plaintiffs

*Nicholas Kamparosyan and
Telemak Kamparosyan*

MICHAEL A. CARDOZO, ESQ.

Corporation Counsel of the
City of New York
100 Church Street
New York, New York 10007
(212) 788-9580

Attorneys for Defendants

*City of New York, Milton Russi,
Terrence Rooney and Thomas Loeffel*

CERTIFICATE OF SERVICE

I, **JARETT L. WARNER**, hereby certify that on March 23, 2009, the foregoing document, **ANSWER TO PLAINTIFF'S COMPLAINT**, was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Eastern District's Local Rules, and/or the Eastern District's Rules on Electronic Service upon the following parties and participants::

**EMERY CELLI BRINCKERHOFF &
ABADY LLP**

75 Rockefeller Plaza, 20th Floor
New York, New York 10019
(212) 763-5000

*Attorneys for Plaintiffs
Nicholas Kamparosyan and
Telemak Kamparosyan*

MICHAEL A. CARDOZO, ESQ.

Corporation Counsel of the
City of New York
100 Church Street
New York, New York 10007
(212) 788-9580

*Attorneys for Defendants
City of New York, Milton Russi,
Terrence Rooney and Thomas Loeffel*



JARETT L. WARNER, ESQ.
(JW-3849)

**HAVKINS ROSENFELD RITZERT
& VARRIALE, LLP**

*Attorneys for Defendants
KEVIN ANDERSON AND TREVOR THOMAS*
Eleven Penn Plaza, Suite 2101
New York, New York 10001
(212) 488-1598
File No. 03197-0089