

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 112
Trenton, New Jersey 08625
Attorney for Defendants

By: Matthew J. Lynch
Deputy Attorney General
(609) 633-7786

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
TRENTON VICINAGE

NEW JERSEY SECOND AMENDMENT :
SOCIETY AND MARK CHEESEMAN, : Civil Action

Plaintiffs, : Hon. Michael A. Shipp,
 : U.S.D.J.
 : Civil Action No. 16-04906

v. :
 : **ANSWER TO COMPLAINT,**
CHRISTOPHER S. PORRINO, in : **AFFIRMATIVE DEFENSES**
his Official Capacity as : **AND JURY DEMAND**
Acting Attorney General of :
New Jersey, and COLONEL RICK :
FUENTES, in his Official :
Capacity as Superintendent :
of the New Jersey State :
Police, :

Defendants.

Defendants, Christopher S. Porrino and Colonel Rick Fuentes by way and through the undersigned counsel, hereby responds to the allegations set forth in plaintiff's Complaint and by way of Answer to said Complaint states:

I. PARTIES

1. Admitted that Plaintiff, New Jersey Second Amendment Society is a civil rights advocacy group. Defendants deny knowledge and information sufficient to form a belief as to the balance of the remaining allegations of Paragraph 1 of the Complaint.
2. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiff to his proofs.
3. Admitted that Christopher S. Porrino is the Attorney General of the State of New Jersey. All remaining allegations in Paragraph 3 are denied.
4. Admitted that Colonel Rick Fuentes is the Superintendent of the New Jersey State Police. All remaining allegations in Paragraph 4 are denied.

II. JURISDICTION AND VENUE

5. Admitted.
6. Admitted.

III. STATEMENT OF FACTS

a. The Second Amendment

7. Admitted.
8. This paragraph contains legal conclusions, not allegations of operative fact, therefore no response is required. To the extent that it alleges factual matter, same are denied.

9. This paragraph contains legal conclusions, not allegations of operative fact, therefore no response is required. To the extent that it alleges factual matter, same are denied.
10. This paragraph contains legal conclusions, not allegations of operative fact, therefore no response is required. To the extent that it alleges factual matter, same are denied.
11. This paragraph contains legal conclusions, not allegations of operative fact, therefore no response is required. To the extent that it alleges factual matter, same are denied.
12. This paragraph contains legal conclusions, not allegations of operative fact, therefore no response is required. To the extent that it alleges factual matter, same are denied.

b. Tasers

13. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.
14. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.
15. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.

16. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.
17. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.
18. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.
19. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.
20. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.
21. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.
22. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.
23. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.

24. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.
25. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.
26. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.
27. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.
28. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.
29. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.
30. This paragraph contains legal conclusions, not allegations of operative fact, therefore no response is required. To the extent that it alleges factual matter, same are denied.
31. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.

32. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.

33. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.

34. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.

35. This paragraph contains legal conclusions, not allegations of operative fact, therefore no response is required. To the extent that it alleges factual matter, same are denied.

c. New Jersey Law

36. This paragraph contains legal conclusions, not allegations of operative fact, therefore no response is required. To the extent that it alleges factual matter, same are denied.

37. This paragraph contains legal conclusions, not allegations of operative fact, therefore no response is required. To the extent that it alleges factual matter, same are denied.

38. This paragraph contains legal conclusions, not allegations of operative fact, therefore no response is required. To the extent that it alleges factual matter, same are denied.

39. This paragraph contains legal conclusions, not allegations of operative fact, therefore no response is required. To the extent that it alleges factual matter, same are denied.

d. Plaintiff New Jersey Second Amendment Society

40. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.

41. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.

42. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.

43. This paragraph contains legal conclusions, not allegations of operative fact, therefore no response is required. To the extent that it alleges factual matter, same are denied.

44. Admitted.

e. Plaintiff Mark Cheeseman

45. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.

46. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.

47. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.
48. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.
49. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.
50. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.
51. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.
52. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.
53. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.
54. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.

55. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in this paragraph, and leave plaintiffs to their proofs.

COUNT I

U.S. CONST., AMEND. II, 42 U.S.C. 1983 AGAINST ALL DEFENDANTS

56. This paragraph contains legal conclusions, not allegations of operative fact, therefore no response is required. To the extent that it alleges factual matter, same are denied.

57. This paragraph contains legal conclusions, not allegations of operative fact, therefore no response is required. To the extent that it alleges factual matter, same are denied.

WHEREFORE, Defendants respectfully request that the complaint be dismissed with prejudice and that they be awarded the costs and fees of this action.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

At all times relevant hereto, Defendants have acted in good faith and without fraud or malice.

SECOND AFFIRMATIVE DEFENSE

Defendants have not deprived Plaintiffs of any right, privilege or immunity secured to them by the United States Constitution or federal law.

THIRD AFFIRMATIVE DEFENSE

Defendants have not deprived Plaintiffs of any right, privilege or immunity secured to them by the Constitution and laws of the State of New Jersey.

FOURTH AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

FIFTH AFFIRMATIVE DEFENSE

Defendants are immune from suit based upon the doctrine of sovereign immunity.

SIXTH AFFIRMATIVE DEFENSE

Defendants' actions are protected by the doctrine of qualified immunity.

SEVENTH AFFIRMATIVE DEFENSE

To the extent the claims against the Defendants are based on the theory of respondeat superior, such claims fail to state a claim under 42 U.S.C. § 1983.

EIGHTH AFFIRMATIVE DEFENSE

This suit is barred by the Eleventh Amendment of the United States Constitution.

NINTH AFFIRMATIVE DEFENSE

The Complaint is barred by the doctrines of res judicata, collateral estoppel, or the United States Supreme Court's decision in Heck v. Humphrey.

TENTH AFFIRMATIVE DEFENSE

Recovery is barred in this action by reason of the applicable statute of limitations.

ELEVENTH AFFIRMATIVE DEFENSE

The matters alleged herein concern the internal administration and management of the New Jersey State Police and the State of New Jersey and, therefore do not give rise to a cause of action.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' damages, if any, are the result of their own actions and/or omissions.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' damages, if any, were actually and proximately caused by the actions of persons and/or entities over whom the Defendants exercised no control.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendants reserve the right to interpose each and every affirmative defense that a continuing investigation and discovery may reveal.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendants are not a person capable of being sued within the meaning of 42 U.S.C. § 1983 or the New Jersey Civil Rights Act.

SIXTEENTH AFFIRMATIVE DEFENSE

Defendants are not liable for acts taken in good faith in the enforcement of any law pursuant to N.J.S.A. 59:3-3.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendants are not liable for injuries resulting from discretionary activities pursuant to N.J.S.A. 59:2-3.

EIGHTEENTH AFFIRMATIVE DEFENSE

Defendants are not liable for adopting or failing to adopt any law, or for failing to enforce any law, pursuant to the provisions of N.J.S.A. 59:3-5.

NINETEENTH AFFIRMATIVE DEFENSE

Any liability that might otherwise be imposed upon the Defendants is subject to reduction by the limitations of proportionate liability set forth in N.J.S.A. 59:9-3.1.

TWENTIETH AFFIRMATIVE DEFENSE

Any liability that might otherwise be imposed upon the Defendants is subject to reduction by the comparative negligence provisions set forth in N.J.S.A. 59:9-4.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Any recovery to which Plaintiff may be entitled against the Defendants is subject to the limitations and reductions on damages set forth in N.J.S.A. 59:9-2.

TWENTY-SECOND AFFIRMATIVE DEFENSE

No liability may be imposed upon the Defendants for failure to protect against a dangerous condition since the conditions precedent to the imposition of such liability as set forth in Tort Claims Act, N.J.S.A. 59:4-1 through 59:4-3, cannot be met.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Defendants are entitled to the immunities and the defenses provided by N.J.S.A. 59:2-1.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiffs did not engage in conduct protected by the First Amendment of the United States Constitution or Article I, Paragraph 6 of the New Jersey State Constitution.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiff does not constitute a protected class for purposes of the Fourteenth Amendment's Equal Protection Clause.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Any actions taken by the Defendants were in the nature of discretionary activity within the meaning of N.J.S.A. 59:3-2, and accordingly, no liability may be imposed upon the Defendants.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Recovery may be barred in this action by reason of a prior judgment or settlement arising out of the same transaction as set forth in N.J.S.A. 59:9-6.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Defendants are immune from civil liability for any damages Plaintiffs may seek pursuant to N.J.S.A. 30:4-16.

THIRTIETH AFFIRMATIVE DEFENSE

Defendants are entitled to all affirmative defenses contained in the Civil Rights Act of 1871 and all of its subsequent amendments, as well as the affirmative defenses incorporated into the New Jersey Civil Rights Act.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrines of waiver, the statute of limitations, estoppel, laches, unclean hands and/or acquiescence.

RESERVATION OF RIGHTS

Defendants reserve the right, at or before trial, to move to dismiss the Complaint and/or move for summary judgment, on the grounds that it fails to state a claim upon which relief can be granted and/or the Defendants are entitled to judgment as a matter of law.

DEMAND FOR JURY TRIAL

Defendants demand a trial by jury for all issues of fact.

DESIGNATION OF TRIAL COUNSEL

Please be advised that Matthew J. Lynch, Deputy Attorney General, is hereby designated as trial counsel.

DEMAND FOR STATEMENT OF DAMAGES

PLEASE TAKE NOTICE that, in accordance with Rule 4:5-21, plaintiffs shall furnish a written statement of the amount of damages claimed against the Defendants within five (5) days of service of this Answer and Affirmative Defenses.

DEMAND FOR DOCUMENTS REFERRED TO IN PLEADING

PLEASE TAKE NOTICE that in accordance with Rule 4:18-2, the Defendants request that any and all documents or papers referred to in the Complaint, not annexed thereto, shall be served on counsel for the Defendants within five (5) days after service of this Answer and Affirmative Defenses.

Respectfully submitted,

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Matthew J. Lynch
Matthew J. Lynch
Deputy Attorney General

Dated: November 10, 2016

Certificate of Service

I hereby certify that on this 10th day of November, 2016, the foregoing was filed electronically with the Clerk of the United States District Court via the Court's Case Management and Electronic Case Filing (CM/ECF) System and was served upon the plaintiff's attorney, Ryan S. Watson, Esq. as follows:

Ryan S. Watson, Esq.
Law Offices of J. Scott Watson, P.C.
24 Regency Plaza
Glen Mills, Pennsylvania 19342
Attorney for Plaintiffs

By: /s/ Matthew J. Lynch
Matthew J. Lynch
Deputy Attorney General

Dated: November 10, 2016