

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

LEONARD SHELTON,	)	CASE NO.: 1:10-CV-00951
	)	
Plaintiff,	)	JUDGE DAN AARON POLSTER
	)	
vs.	)	<b><u>ANSWER OF DEFENDANTS MICHAEL</u></b>
	)	<b><u>STEWART, KENNETH KULCZYCKI,</u></b>
	)	<b><u>CITY OF LAKEWOOD, CITY OF</u></b>
	)	<b><u>LAKEWOOD POLICE DEPARTMENT,</u></b>
MICHAEL STEWART, et al.,	)	<b><u>EDWARD FITZGERALD, KEVIN</u></b>
	)	<b><u>BUTLER AND BRIAN POWERS</u></b>
	)	<b><u>TO PLAINTIFF'S FIRST AMENDED</u></b>
Defendants.	)	<b><u>COMPLAINT</u></b>
	)	
	)	<b><u>(Jury Demand Endorsed Hereon)</u></b>

Now come Defendants Michael Stewart, Kenneth Kulczycki, City of Lakewood, City of Lakewood Police Department, Edward Fitzgerald, Kevin Butler and Brian Powers, by and through counsel Mazanec, Raskin, Ryder & Keller Co., L.P.A., and for their answer to the Plaintiff's First Amended Complaint state as follows:

**FIRST DEFENSE**

1. Defendants deny or deny for want of information all allegations contained in Paragraph 1 of Plaintiff's First Amended Complaint.
2. Defendants admit the allegations contained in Paragraph 2 of Plaintiff's First Amended Complaint.
3. In reply to the allegations contained in Paragraph 3 of Plaintiff's First Amended Complaint, Defendants admit that Defendant Kulczycki is a police officer in the City of Lakewood. Further pleading, Defendants deny or deny for want of information all allegations contained in said Paragraph 3.

4. In reply to the allegations contained in Paragraph 4 of Plaintiff's First Amended Complaint, Defendants admit that Defendant Stewart was an employee of Defendant Lakewood but deny or deny for want of information all other allegations contained in said Paragraph 4.

5. In reply to the allegations contained in Paragraph 5 of Plaintiff's First Amended Complaint, Defendants admit that Defendant Kulczycki is an employee of Defendant Lakewood assigned to the Lakewood Police Department. Further pleading, Defendants deny or deny for want of information all remaining allegations contained in said Paragraph 5.

6. Defendants admit the allegations contained in Paragraph 6 of Plaintiff's First Amended Complaint.

7. In reply to the allegations contained in Paragraph 7 of Plaintiff's First Amended Complaint, Defendants admit that Defendants Butler and Powers are City of Lakewood Council Members. Further pleading, Defendants deny or deny for want of information all remaining allegations contained in said Paragraph 7.

8. Defendants admit the allegations contained in Paragraph 8 of Plaintiff's First Amended Complaint.

9. In reply to the allegations contained in Paragraph 9 of Plaintiff's First Amended Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

10. In reply to the allegations contained in Paragraph 10 of Plaintiff's First Amended Complaint, Defendants admit that several ordinances have been enacted in Chapter 506 of the City of Lakewood's Codified Ordinances pertaining to dangerous or vicious animals within the City of Lakewood. Further pleading, Defendants state that those ordinances speak for themselves and deny all allegations contained in said Paragraph 10 to the extent that they depart

from law. Further pleading, Defendants deny all remaining allegations contained in said Paragraph 10.

11. Defendants deny or deny for want of information all allegations contained in Paragraphs 11 and 12 of Plaintiff's First Amended Complaint.

12. In reply to the allegations contained in Paragraph 13 of Plaintiff's First Amended Complaint, Defendants admit that Defendant Stewart is responsible for enforcement of the City of Lakewood Ordinances contained in Chapter 506. Further pleading, Defendants deny all remaining allegations contained in said Paragraph 13.

13. In reply to the allegations contained in Paragraph 14 in Plaintiff's First Amended Complaint, Defendants admit that Defendant Kulczycki was responsible for the enforcement of the City of Lakewood's Ordinances contained in Chapter 506. Further pleading, Defendants deny all remaining allegations contained in said Paragraph 14.

14. Defendants deny all allegations contained in Paragraph 15 of Plaintiff's First Amended Complaint and further deny all liability in this matter.

15. In reply to the allegations contained in Paragraph 16 of Plaintiff's First Amended Complaint, Defendants admit that Defendant Stewart spoke to Plaintiff regarding City of Lakewood's pit bull ban due to the strong resemblance between Plaintiff's dog and the banned dogs. Further pleading, Defendants state that Defendant Stewart provided Plaintiff with three weeks to comply with the city's ordinance or challenge the classification of his dog as a pit bull. Defendants admit that Defendant Stewart also advised Plaintiff of the penalties that could be incurred for failing to comply with the ordinance. Further pleading, Defendants deny all remaining allegations contained in said Paragraph 16.

16. Defendants deny the allegations contained in Paragraph 17 of Plaintiff's First Amended Complaint.

17. In reply to the allegations contained in Paragraph 18 of Plaintiff's First Amended Complaint, Defendants admit that Defendant Kulczycki stopped Plaintiff on the street due to the strong resemblance between Plaintiff's dog and the banned pit bull dogs. Further pleading, Defendants state that Defendant Kulczycki then contacted Defendant Stewart to look at the dog and speak with Plaintiff regarding the ordinance. Further pleading, Defendants deny all remaining allegations contained in said Paragraph 18.

18. Defendants deny the allegations contained in Paragraphs 19 and 20 of Plaintiff's First Amended Complaint.

19. In reply to the allegations contained in Paragraph 21 of Plaintiff's First Amended Complaint, Defendants admit that Defendant Stewart informed Plaintiff that he could challenge the classification of his dog as a pit bull through DNA testing. Further pleading, Defendants deny all remaining allegations contained in said Paragraph 21.

20. Defendants deny all allegations contained in Paragraphs 22, 23, 24, 25, 26 and 27 of Plaintiff's First Amended Complaint. Further pleading, Defendants expressly deny all liability herein.

21. In reply to the allegations contained in Paragraph 28 of Plaintiff's First Amended Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

22. Defendants deny the allegations contained in Paragraph 29 of Plaintiff's First Amended Complaint.

23. In reply to the allegations contained in Paragraph 30 of Plaintiff's First Amended Complaint, Defendants admit that Defendant Stewart is responsible *inter alia* for enforcing Chapter 506 of the Lakewood Codified Ordinances but deny or deny for want of information all other allegations contained in said Paragraph 30.

24. Defendants deny the allegations contained in Paragraphs 31, 32 and 33 of Plaintiff's First Amended Complaint.

25. In reply to the allegations contained in Paragraph 34 of Plaintiff's First Amended Complaint, Defendants admit that Defendant Stewart informed Plaintiff that he could challenge the classification of his dog as a pit bull through DNA evidence. Further pleading, Defendants deny all remaining allegations contained in said Paragraph 34.

26. Defendants deny the allegations contained in Paragraphs 35 and 36 of Plaintiff's First Amended Complaint.

27. Defendants deny or deny for want of information the allegations contained in Paragraph 37 of Plaintiff's First Amended Complaint.

28. Defendants admit the allegations contained in Paragraph 38 of Plaintiff's First Amended Complaint.

29. Defendants deny or deny for want of information the allegations contained in Paragraphs 39, 40 and 41 of Plaintiff's First Amended Complaint. Further pleading, Defendants deny all liability herein.

30. In reply to the allegations contained in Paragraph 42 of Plaintiff's First Amended Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

31. In reply to the allegations contained in Paragraph 43 of Plaintiff's First Amended Complaint, Defendants admit that Defendant Stewart had certain duties imposed by law and deny the allegations in said paragraph to the extent that they depart from the law.

32. Defendants deny or deny for want of information all allegations contained in Paragraphs 44 and 45 of Plaintiff's First Amended Complaint.

33. In reply to the allegations contained in Paragraph 46 of Plaintiff's First Amended Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

34. In reply to the allegations contained in Paragraph 47 of Plaintiff's First Amended Complaint, Defendants admit that Defendant Stewart was acting in his capacity as an animal control officer and in the course and scope of his employment with Defendant Lakewood at all pertinent times herein but Defendants deny or deny for want of information all other allegations contained in said Paragraph 47.

35. Defendants deny the allegations contained in Paragraph 48 of Plaintiff's First Amended Complaint.

36. In reply to the allegations contained in Paragraph 49 of Plaintiff's First Amended Complaint, Defendants admit that Defendant Stewart is responsible *inter alia* for enforcing Chapter 506 of the Lakewood Codified Ordinances but deny or deny for want of information all other allegations contained in said Paragraph 49.

37. Defendants deny the allegations contained in Paragraphs 50, 51 and 52 of Plaintiff's First Amended Complaint

38. In reply to the allegations contained in Paragraph 53 of Plaintiff's First Amended Complaint, Defendants admit that Defendant Stewart informed Plaintiff that he could challenge

the classification of his dog as a pit bull through DNA testing. Further pleading, Defendants deny the remaining allegations contained in said Paragraph 53.

39. Defendants deny or deny for want of information all allegations contained in Paragraphs 54, 55 and 56 of Plaintiff's First Amended Complaint.

40. Defendants admit the allegations contained in Paragraph 57 of Plaintiff's First Amended Complaint.

41. Defendants deny or deny for want of information all allegations contained in Paragraphs 58 and 59 of Plaintiff's First Amended Complaint. Further pleading, Defendants deny all liability herein.

42. In reply to the allegations contained in Paragraph 60 of Plaintiff's First Amended Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

43. In reply to the allegations contained in Paragraph 61 of Plaintiff's First Amended Complaint, Defendants admit that Defendant Stewart informed Plaintiff that he could challenge the classification of his dog as a pit bull through the use of DNA testing. Further pleading, Defendants deny all remaining allegations contained in said Paragraph 61.

44. Defendants deny or deny for want of information all allegations contained in Paragraphs 62, 63, 64, 65, 66 and 67 of Plaintiff's First Amended Complaint.

45. In reply to the allegations contained in Paragraph 68 of Plaintiff's First Amended Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

46. In reply to the allegations contained in Paragraphs 69 of Plaintiff's First Amended Complaint, Defendants admit that Defendant Stewart informed Plaintiff that he could challenge

the classification of the dog as a pit bull through the use of DNA testing. Further pleading, Defendants deny all remaining allegations contained in said Paragraph 69.

47. Defendants deny or deny for want of information all allegations contained in Paragraphs 70, 71, 72 and 73 of Plaintiff's First Amended Complaint.

48. In reply to the allegations contained Paragraph 74 of Plaintiff's First Amended Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

49. Defendants deny or deny for want of information all allegations contained in Paragraphs 75 and 76 of Plaintiff's First Amended Complaint.

50. In reply to the allegations contained in Paragraph 77 of Plaintiff's First Amended Complaint, Defendants admit that Defendant Kulczycki was responsible for the enforcement of the City of Lakewood's Ordinances contained in Chapter 506. Further pleading, Defendants deny or deny for want of information all remaining allegations in said Paragraph 77.

51. Defendants deny the allegations contained in Paragraphs 78, 79, 80 and 81 of Plaintiff's First Amended Complaint.

52. In reply to the allegations contained in Paragraph 82 of Plaintiff's First Amended Complaint, Defendants admit that Defendant Kulczycki was acting under color of state law. Further pleading, Defendants deny or deny for want of information all remaining allegations contained in said Paragraph 82.

53. Defendants deny or deny for want of information all allegations contained in Paragraphs 83, 84 and 85 of Plaintiff's First Amended Complaint. Further pleading, Defendants deny all liability herein.

54. In reply to the allegations contained in Paragraph 86 of Plaintiff's First Amended Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

55. Defendants deny or deny for want of information all allegations contained in Paragraph 87 of Plaintiff's First Amended Complaint.

56. In reply to the allegations contained in Paragraph 88 of Plaintiff's First Amended Complaint, Defendants admit that Defendant Kulczycki was acting in his official capacity as a police officer with the City of Lakewood at the time of the incident complained of herein. Further pleading, Defendants deny or deny for want of information all remaining allegations contained in said Paragraph 88.

57. Defendants deny the allegations contained in Paragraph 89 of Plaintiff's First Amended Complaint.

58. In reply to the allegations contained in Paragraph 90 of Plaintiff's First Amended Complaint, Defendants admit that Defendant Kulczycki was responsible for the enforcement of the City of Lakewood Ordinances contained in Chapter 506. Further pleading, Defendants deny or deny for want of information all remaining allegations contained in said Paragraph 90.

59. Defendants deny or deny for want of information all allegations contained in Paragraphs 91, 92, 93 and 94 of Plaintiff's First Amended Complaint.

60. In reply to the allegations contained in Paragraph 95 of Plaintiff's First Amended Complaint, Defendants admit that Defendant Kulczycki was acting under the color of state law at the time of the incident complained of in Plaintiff's First Amended Complaint. Further pleading, Defendants deny or deny for want of information all remaining allegations contained in said Paragraph 95.

61. Defendants deny or deny for want of information all allegations contained in Paragraphs 96 and 97 of Plaintiff's First Amended Complaint. Further pleading, Defendants deny all liability herein.

62. In reply to the allegations contained in Paragraph 98 of Plaintiff's First Amended Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

63. In reply to the allegations contained in Paragraph 99 of Plaintiff's First Amended Complaint, Defendants admit that Defendants Stewart and Kulczycki are employees of the City of Lakewood. Further pleading, Defendants deny or deny for want of information all the remaining allegations contained in said Paragraph 99.

64. In reply to the allegations contained in Paragraphs 100 and 101 of Plaintiff's First Amended Complaint, Defendants admit that Defendants Stewart and Kulczycki were responsible for enforcing the City of Lakewood ordinances. Further pleading, Defendants deny or deny for want of information all remaining allegations contained in said Paragraphs 100 and 101.

65. Defendants deny the allegations contained in Paragraphs 102, 103 and 104 of Plaintiff's First Amended Complaint. Further pleading, Defendants deny all liability herein.

66. In reply to the allegations contained in Paragraph 105 of Plaintiff's First Amended Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

67. In reply to the allegations contained in Paragraph 106 of Plaintiff's First Amended Complaint, Defendants admit that Defendants Stewart and Kulczycki are employees of the City of Lakewood. Further pleading, Defendants deny or deny for want of information all remaining allegations contained in said Paragraph 106.

68. In reply to the allegations contained in Paragraphs 107 and 108 of Plaintiff's First Amended Complaint, Defendants admit that Defendants Stewart and Kulczycki were responsible for enforcing the City of Lakewood ordinances. Further pleading, Defendants deny or deny for want of information all remaining allegations contained in said Paragraphs 107 and 108.

69. Defendants deny or deny for want of information all allegations contained in Paragraphs 109, 110 and 111 of Plaintiff's First Amended Complaint.

70. In reply to the allegations contained in Paragraph 112 of Plaintiff's First Amended Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

71. Defendants deny or deny for want of information all allegations contained in Paragraphs 113, 114, 115, 116 and 117 of Plaintiff's First Amended Complaint.

72. In reply to the allegations contained in Paragraph 118 of Plaintiff's First Amended Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

73. In reply to the allegations contained in Paragraph 119 of Plaintiff's First Amended Complaint, Defendants admit that Defendants Stewart and Kulczycki were employees of the City of Lakewood. Further pleading, Defendants deny or deny for want of information all remaining allegations in said Paragraph 119.

74. Defendants deny or deny for want of information all allegations contained in Paragraphs 120, 121, 122, 123 and 124 of Plaintiff's First Amended Complaint.

75. In reply to the allegations contained in Paragraphs 125 of Plaintiff's First Amended Complaint, Defendants reaver and reallege all of their answers as though fully rewritten herein.

76. In reply to the allegations contained in Paragraph 126 of Plaintiff's First Amended Complaint, Defendants admit that Defendants Stewart and Kulczycki were employees of the City of Lakewood. Further pleading, Defendants deny or deny for want of information all remaining allegations contained in said Paragraph 126.

77. Defendants deny or deny for want of information all allegations contained in Paragraphs 127, 128, 129, 130, 131 and 132 of Plaintiff's First Amended Complaint.

78. In reply to the allegations contained in Paragraph 133 of Plaintiff's First Amended Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

79. In reply to the allegations contained in Paragraph 134 of Plaintiff's First Amended Complaint, Defendants admit that Defendants Stewart and Kulczycki were employees of the City of Lakewood. Further pleading, Defendants deny or deny for want of information all remaining allegations contained in said Paragraph 134.

80. Defendants deny or deny for want of information all allegations contained in Paragraphs 135, 136, 137, 138 and 139 of Plaintiff's First Amended Complaint.

81. In reply to the allegations contained in Paragraph 140 of Plaintiff's First Amended Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

82. Defendants deny or deny for want of information all allegations contained in Paragraphs 141, 142, 143, 144 and 145 of Plaintiff's First Amended Complaint.

83. In reply to the allegations contained in Paragraph 146 of Plaintiff's First Amended Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

84. In reply to the allegations contained in Paragraph 147 of Plaintiff's First Amended Complaint, Defendants admit that Defendants Stewart and Kulczycki were employees of the City of Lakewood. Further pleading, Defendants deny or deny for want of information all remaining allegations contained in said Paragraph 147.

85. Defendants deny or deny for want of information all allegations contained in Paragraphs 148, 149, 150, 151 and 152 of Plaintiff's First Amended Complaint.

86. In reply to the allegations contained in Paragraph 153 of Plaintiff's First Amended Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

87. Defendants deny or deny for want of information all allegations contained in Paragraphs 154, 155, 156 and 157 of Plaintiff's First Amended Complaint.

88. In reply to the allegations contained in Paragraph 158 of Plaintiff's First Amended Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

89. Defendants deny or deny for want of information all allegations contained in Paragraphs 159 and 160 of Plaintiff's First Amended Complaint.

90. In reply to the allegations contained in Paragraph 161 of Plaintiff's First Amended Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

91. Defendants deny or deny for want of information all allegations contained in Paragraphs 162, 163, the second Paragraph 160 and the second Paragraph 161 of Plaintiff's First Amended Complaint.

92. In reply to the allegations contained in the second Paragraph 162 of Plaintiff's First Amended Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

93. Defendants deny or deny for want of information all allegations contained in the second Paragraph 163, Paragraphs 164 and 165 of Plaintiff's First Amended Complaint.

94. Defendants deny all allegations contained in Plaintiff's First Amended Complaint which are not otherwise expressly admitted herein.

### **SECOND DEFENSE**

95. Plaintiff's First Amended Complaint fails to state a claim upon which relief can be granted in some or all respects.

### **THIRD DEFENSE**

96. Defendant City of Lakewood Police Department is not an entity capable of suing or being sued and therefore it is not a real party at interest in this action.

### **FOURTH DEFENSE**

97. Immunity pursuant to R.C. Chapter 2744 and/or Ohio Common Law.

### **FIFTH DEFENSE**

98. Qualified good faith immunity.

### **SIXTH DEFENSE**

99. Some or all of Plaintiff's claims are barred by the intra corporate conspiracy doctrine.

### **SEVENTH DEFENSE**

100. Failure to exhaust administrative remedies.

**EIGHTH DEFENSE**

101. Representations concerning future events are not actionable as fraud or a misrepresentation.

**NINTH DEFENSE**

102. Privilege.

**TENTH DEFENSE**

103. Good faith/probable cause.

**ELEVENTH DEFENSE**

104. Insufficiency of process/service of process.

**TWELFTH DEFENSE**

105. This Court lacks personal jurisdiction over some or all of the Defendants.

**WHEREFORE**, having fully answered, Defendants pray that Plaintiff's First Amended Complaint be dismissed, and that they go hence without cost or delay.

Respectfully submitted,

MAZANEC, RASKIN, RYDER & KELLER CO., L.P.A.

*s/Tami Z. Hannon*

JAMES A. CLIMER (0001532)

TAMI Z. HANNON (0079812)

100 Franklin's Row

34305 Solon Road

Cleveland, OH 44139

(440) 248-7906

(440) 248-8861 – Fax

Email: jclimer@mrrklaw.com

thannon@mrrklaw.com

*OF COUNSEL:*

JENNIFER MLADEK  
NORA HURLEY  
City of Lakewood Prosecutor's Office  
Lakewood City Hall  
12650 Detroit Avenue  
Lakewood, Ohio 44107

*Counsel for Defendants Michael Stewart, Kenneth Kulczycki, City of Lakewood City of Lakewood Police Department, Edward Fitzgerald, Kevin Butler and Brian Powers*

**JURY DEMAND**

A trial by jury composed of the maximum number of jurors permitted under the law is hereby demanded.

*s/Tami Z. Hannon*  
\_\_\_\_\_  
JAMES A. CLIMER (0001532)  
TAMI Z. HANNON (0079812)

*Counsel for Defendants Michael Stewart, Kenneth Kulczycki, City of Lakewood City of Lakewood Police Department, Edward Fitzgerald, Kevin Butler and Brian Powers*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 15, 2010, a copy of the foregoing Answer of Defendants Michael Stewart, Kenneth Kulczycki, City of Lakewood, City of Lakewood Police Department, Edward Fitzgerald, Kevin Butler and Brian Powers to Plaintiff's First Amended Complaint was filed electronically. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

*s/Tami Z. Hannon*

\_\_\_\_\_  
JAMES A. CLIMER (0001532)

TAMI Z. HANNON (0079812)

*Counsel for Defendants Michael Stewart, Kenneth Kulczycki, City of Lakewood City of Lakewood Police Department, Edward Fitzgerald, Kevin Butler and Brian Powers*