

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
URBANA DIVISION

PLAINTIFF MANN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 14-2200
	)	
CITY OF CHAMPAIGN, ILLINOIS,	)	
et al.,	)	
	)	
Defendants.	)	

**ANSWER**

NOW COMES the Defendant, CITY OF CHAMPAIGN, ILLINOIS, by its attorney, David E. Krchak of Thomas, Mamer & Haughey, LLP and in answer to the complaint in this matter, states as follows:

**JURISDICTION AND VENUE**

1. Defendant City of Champaign admits the allegations contained in paragraph 1 of Plaintiff's complaint.
2. Defendant City of Champaign admits the allegations contained in paragraph 2 of the complaint.

**PARTIES**

3. Defendant City of Champaign admits the allegations contained in paragraph 3.
4. Defendant City of Champaign admits the allegations contained in paragraph 4 as they relate to the City of Champaign.
5. Defendant City of Champaign admits the allegations contained in paragraph 5.

**FACTS COMMON TO ALL COUNTS**

6. Defendant City of Champaign neither admits nor denies the allegations contained in paragraph 6 of the complaint as it lacks knowledge or information sufficient to form a belief about the truth of the allegation.

7. Defendant City of Champaign neither admits nor denies the allegations contained in paragraph 7 of the complaint as it lacks knowledge or information sufficient to form a belief about the truth of the allegation.

8. Defendant City of Champaign neither admits nor denies the allegations contained in paragraph 8 of the complaint as it lacks knowledge or information sufficient to form a belief about the truth of the allegation.

9. Defendant City of Champaign neither admits nor denies the allegations contained in paragraph 9 of the complaint as it lacks knowledge or information sufficient to form a belief about the truth of the allegation.

10. Defendant City of Champaign neither admits nor denies the allegations contained in paragraph 10 of the complaint as it lacks knowledge or information sufficient to form a belief about the truth of the allegation.

11. Defendant City of Champaign admits that Officer Rush and Officer Henry were the first to arrive at the scene. Defendant City of Champaign denies that Plaintiff waived his arms in order to direct officers to his residence. Defendant City of Champaign neither admits nor denies the remaining allegations as it lacks sufficient to form a belief about the truth of the allegations.

12. Defendant City of Champaign admits that Officer Rush and Officer Henry were first to arrive on the scene and admits they got out of their vehicles and approached the Plaintiff but

denies the remainder of the allegations of paragraph 12 as it lacks sufficient information to form a belief about the truth of the allegations.

13. Defendant City of Champaign denies each and every allegation contained in paragraph 13.

14. Defendant City of Champaign denies each and every allegation contained in paragraph 14.

15. Defendant City of Champaign admits that when Plaintiff refused to remove his hand from his right hand pocket, Plaintiff was told to turn around and put his hands behind his back. Defendant City of Champaign denies that Plaintiff complied with orders. Defendant City of Champaign denies that any of the commands were unjustified. Defendant further denies that Plaintiff did not ask what was going on or whether he was being arrested.

16. Defendant City of Champaign denies that Officer Rush and Officer Henry failed to respond to any questions. Defendant City of Champaign denies that when Officer Rush grabbed a hold of Plaintiff's wrists, they were already behind his back. Defendant City of Champaign admits that Officer Rush placed handcuffs on Plaintiff's wrist. Defendant City of Champaign denies that any actions taken by Officer Rush or Officer Henry were unprovoked.

17. Defendant City of Champaign denies each and every allegation contained in paragraph 17.

18. Defendant City of Champaign admits Plaintiff fell to the ground, denies that Plaintiff complied in any way with officers' commands. Defendant City of Champaign denies that either Officer Rush or Officer Henry struck Plaintiff in the back of the head.

19. Defendant City of Champaign admits that Officer Rush and Officer Henry repeatedly told Plaintiff to stop resisting. Defendant City of Champaign denies that Plaintiff ever

stopped resisting. Defendant City of Champaign denies that any of officers' actions were part of a conspiracy or that such a conspiracy would be consistent with the City of Champaign's de facto policy of failing to provide meaningful discipline and credible oversight of its officers.

20. Defendant City of Champaign admits that at one point during the struggle, Officer Rush placed his knee on the back of Plaintiff, but denies that Officer Rush ever placed his knee on Plaintiff's head or neck. Defendant City of Champaign admits that throughout his vigorous struggle Plaintiff was screaming. Defendant City of Champaign denies the remainder of the allegations of paragraph 20.

21. Defendant City of Champaign admits that Officer Rush sprayed Plaintiff in the face with OC spray but denies that the spray lasted five or six seconds. Defendant City of Champaign neither admits nor denies that Plaintiff was instantly blinded and unable to breathe, as it lacks sufficient information to form a belief about the truth of the allegation but asserts that Plaintiff continued to struggle.

22. Defendant City of Champaign admits that Officer Rush administered several knee strikes to Plaintiff's thigh while yelling at him to stop resisting. Defendant City of Champaign denies that these commands were either nonsensical or a part of a single cover up.

23. Defendant City of Champaign denies that either Officer Rush or Officer Henry turned Plaintiff around and kned him in the groin. Defendant City of Champaign denies that any officers' actions caused tremendous pain and discomfort in his groin area.

24. Defendant City of Champaign admits that the other officers alleged in paragraph 24 joined in the effort of attempting to arrest Plaintiff. Defendant City of Champaign admits that Officer Schweska placed his knee between Plaintiff's shoulder blades and grabbed his right arm.

Defendant City of Champaign denies that any officers beat Plaintiff without justification and denies any remaining allegations of paragraph 24.

25. Defendant City of Champaign admits that Officer Rush at one point used his expandable baton on Plaintiff's thigh in order to attempt to subdue Plaintiff. Defendant City of Champaign admits that the use of the expandable baton was justified as Plaintiff continued to vigorously struggle and resist and that no objections were voiced. Defendant City of Champaign denies any remaining allegations of paragraph 25.

26. Defendant City of Champaign admits that one of the officers told Plaintiff's girlfriend to get back in the house and shut the door. Defendant City of Champaign denies the remainder of the allegations of paragraph 26.

27. Defendant City of Champaign denies the allegations of paragraph 27.

28. Defendant City of Champaign denies the allegations of paragraph 28.

29. Defendant City of Champaign denies the allegations of paragraph 29.

30. Defendant City of Champaign denies that any officers intentionally omitted any pertinent information from any reports and neither admits nor denies any remaining allegations contained in paragraph 30 of the complaint concerning eyewitnesses as it lacks knowledge or information sufficient to form a belief about the truth of the allegations.

31. Defendant City of Champaign denies the allegations of paragraph 31.

32. Defendant City of Champaign denies the allegations contained in paragraph 32.

33. Defendant City of Champaign denies the allegations of paragraph 33.

34. Defendant City of Champaign admits that one video shows Plaintiff being assisted by officers to the police car and denies any remaining allegations of paragraph 34.

35. Defendant City of Champaign admits that Plaintiff was leaned on the deck of a vehicle to conduct a search of his person, but denies the remaining allegations in paragraph 35.

36. Defendant City of Champaign admits that Officer Epling transported Plaintiff to Carle Hospital emergency room prior to taking him to jail and denies any remaining allegations of paragraph 36.

37. Defendant City of Champaign denies the allegations contained in paragraph 37.

38. Defendant City of Champaign admits Plaintiff screamed, but neither admits nor denies the allegations contained in paragraph 38 of the complaint as it lacks knowledge or information sufficient to form a belief about the truth of the allegations.

39. Defendant City of Champaign neither admits nor denies the allegations contained in paragraph 39 of the complaint as it lacks knowledge or information sufficient to form a belief about the truth of the allegations.

40. Defendant City of Champaign admits officers requested resisting/obstructing charges be filed and denies the remainder of the allegations of paragraph 40.

41. Defendant City of Champaign neither admits nor denies the allegations about Plaintiff's stay in jail, his arraignment or bail as it lacks knowledge or information sufficient to form a belief about the truth of the allegations. Defendant City of Champaign denies all remaining allegation of paragraph 41.

42. Defendant City of Champaign denies the allegations of paragraph 42.

43. Defendant City of Champaign admits the case was dismissed by the state's attorney's office, denies that witnesses or evidence were unavailable to proceed, but neither admits nor denies the remainder of the allegations contained in paragraph 43 of the complaint as it lacks knowledge or information sufficient to form a belief about the truth of the allegations.

**COUNT I – 42 U.S.C. §1983: EXCESSIVE FORCE**

To the extent that this count asserts claims against the City of Champaign, a Motion to Dismiss has been filed.

**COUNT II – FALSE ARREST**

To the extent that this count asserts claims against the City of Champaign, a Motion to Dismiss has been filed.

**COUNT III – FAILURE TO INTERVENE**

To the extent that this count asserts claims against the City of Champaign, a Motion to Dismiss has been filed.

**COUNT IV – 42 U.S.C. §1983: MUNICIPAL POLICY CLAIM**

Claims against the City of Champaign are the subject of a Motion to Dismiss.

**COUNT V – MALICIOUS PROSECUTION**  
**State Law Claim**

To the extent that this count asserts claims against the City of Champaign, a Motion to Dismiss has been filed.

**COUNT VI – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**  
**State Law Claim**

To the extent that this count asserts claims against the City of Champaign, a Motion to Dismiss has been filed.

**COUNT VII – CONSPIRACY**  
**State Law Claim**

To the extent that this count asserts claims against the City of Champaign, a Motion to Dismiss has been filed.

**COUNT VIII – RESPONDEAT SUPERIOR**

78. Defendant City of Champaign adopts the same responses to the paragraphs above as re-alleged in paragraph 78.

79. Defendant City of Champaign admits that all named officers were employees of the Defendant, City of Champaign at all times relevant to this complaint.

80. Defendant City of Champaign admits that all officers were acting in the scope of their employment, but neither admits nor denies the legal conclusions further contained in paragraph 80 of Plaintiff's complaint as City of Champaign lacks knowledge or information sufficient to form a belief about the truth of the allegations.

81. WHEREFORE, Defendant City of Champaign prays that Count VIII be dismissed with costs awarded.

**COUNT IX – STATUTORY INDEMNIFICATION**

82. Defendant City of Champaign provides the same responses as provided above to those paragraphs re-alleged in Plaintiff's paragraph 82.

83. Defendant City of Champaign admits all officers were engaged in the performance of their duties

84. Defendant City of Champaign states that paragraph 84 is a mere conclusion of law and Defendant moves that paragraph 84 be stricken from the complaint.

85. Defendant City of Champaign admits that all officers were acting in the scope of their employment at all times during this incident but denies that any officers committed any acts of misconduct.



86. WHEREFORE, Defendant City of Champaign prays that Count IX be dismissed with costs awarded.

Respectfully submitted,

CITY OF CHAMPAIGN, ILLINOIS

BY: THOMAS, MAMER & HAUGHEY, LLP

BY:

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**AFFIRMATIVE DEFENSES**

Defendant City of Champaign hereby asserts the following Affirmative Defenses to the allegations contained in the complaint:

1. The City of Champaign has no policy or practice which shows a deliberate indifference to the constitutional rights of individuals.

2. Under the Illinois Tort Immunity Act, 45 ILCS 10/1-101, et seq., the Defendant City of Champaign cannot be liable for any tortious acts unless an employee of the City of Champaign is found to be liable.

Respectfully submitted,

CITY OF CHAMPAIGN, ILLINOIS

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s/ David E. Krchak

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 7, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to Shneur Nathan.

s/ David E. Krchak

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