

9002017-1004686  
BMS/BJV/tlp

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

Benjamin Mann and	)	
Samantha M. Wade,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No.: 17-cv-2300
	)	
City of Urbana Police Officers Jennifer Difanis,	)	
Colby G. Wright, Sara M. Links, Seth R. King,	)	
Jay Loschen, Chad Burnett, Don C. McClellan,	)	
Adam Marcotte, John Franquemont, Sgt. Zach	)	
Makalik, and as yet Unknown Officers, the City of	)	
Urbana, a municipal corporation, and University of	)	
Illinois Police Officer Chris Elston,	)	
	)	
Defendants.	)	

**DEFENDANTS' ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT  
AND AFFIRMATIVE DEFENSES**

NOW COME the Defendants, CITY OF URBANA, JENNIFER DIFANIS, COLBY WRIGHT, SARAH LINKS, SETH KING, JAY LOSCHEN, CHAD BURNETT, DON McCLELLAN, ADAM MARCOTTE, JOHN FRANQUEMONT, ZACH MIKALIK, and CHRIS ELSTON, by BRIAN M. SMITH of HEYL, ROYSTER, VOELKER & ALLEN, their attorneys, and for their Answer to Plaintiffs' First Amended Complaint and Affirmative Defenses, state as follows:

**INTRODUCTION**

1. This is an action for civil damages brought pursuant to 42 U.S.C. §1983 for the deprivation of Plaintiff's constitutional rights. This Court has jurisdiction pursuant to 28 U.S.C. §§1331 and 1343.

**ANSWER: Defendants admit Plaintiffs' lawsuit sounds in 42 U.S.C. § 1983, and that jurisdiction is proper under 28 U.S.C. §§ 1331 and 1343. Defendants deny the remaining allegations of Paragraph 1.**

2. Venue in this district is proper pursuant to 28 U.S.C. § 1391 (b), because the facts which give rise to the claims asserted herein occurred in the Central District of Illinois.

**ANSWER: Defendants admit the allegations of Paragraph 2.**

3. Benjamin Mann is an African-American man who, at all times relevant hereto, was present in, and a resident of, the Central District of Illinois.

**ANSWER: Defendants admit that Plaintiff Mann is an African-American male, but lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 3.**

4. Samantha Wade, is woman who, at all times relevant hereto, was present in, and a resident of, the Central District of Illinois.

**ANSWER: Defendants admit that Plaintiff Wade is a woman, but lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 3.**

5. Defendants, Urbana Police Officers Jennifer Difanis, Colby G. Wright, Sara M. Links, Seth R. King, Sergeant Jay Loschen, Officer Chad Burnett and additional officers as yet to be identified ("Defendant Officer Group 1") were at all times material hereto, duly appointed Urbana Police Officers employed by the City of Urbana acting in the capacity of sworn law enforcement officials and therefore acting under color of law.

**ANSWER: Defendants admit the allegations of Paragraph 5, but lack knowledge or information sufficient to form a belief about the truth regarding additional unidentified officers.**

6. Defendants, Urbana Police Officers Jennifer Difanis, Chad Burnett, Don C. McClellan, Adam Marcotte, John Franquemont, Sergeant Zach Mikalik, and additional officers as yet to be identified and Defendant University of Illinois Police Officer Chris Elston ("Defendant Officer Group 2") were, with the exception of Officer Elston, at all times material hereto, duly appointed Urbana Police Officers employed by the City of Urbana acting in the capacity of sworn law enforcement officials and therefore acting under color of law.

**ANSWER: Defendants admit the allegations of Paragraph 6, but lack knowledge or information sufficient to form a belief about the truth regarding additional unidentified officers.**

7. Officer Elston was, at all times material hereto, a duly appointed University of Illinois Police Officer employed by the Board of Trustees of the University of Illinois, acting in the capacity of sworn law enforcement officials and therefore acting under color of law

**ANSWER: Defendants admit the allegations of Paragraph 7.**

8. The Defendant, City of Urbana, Illinois (hereinafter "City"), at all relevant times, was an Illinois Municipal Corporation, duly chartered and organized under the Laws of the State of Illinois, located entirely within this judicial district.

**ANSWER: Defendants admit the allegations of Paragraph 8.**

9. The Defendant, Board of Trustees of the University of Illinois (hereinafter "University"), is the corporate governing body which operates the University of Illinois at Urbana-Champaign and the University of Illinois Police Department, located within this judicial district.

**ANSWER: The Board of Trustees of the University of Illinois was dismissed as a Defendant; therefore, no answer is required to the allegations of Paragraph 9.**

10. Because the City of Urbana is part of a larger metropolitan area, the Urbana Police Department works closely with the Champaign Police Department and the University of Illinois Police Department.

**ANSWER: Defendants admit that Urbana works alongside the Champaign Police Department, the University of Illinois Police Department, and other law enforcement agencies. The term "larger metropolitan area" is vague and ambiguous, and Defendants deny the remaining allegations of Paragraph 10.**

#### **FACTUAL SUMMARY**

11. Mr. Mann is a well-known civil rights activist within the Champaign-Urbana local community and he has been the subject of several articles in the local press.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 11.**

12. Mr. Mann successfully brought a police misconduct lawsuit against the now disgraced City of Champaign police officer Matt Rush.

**ANSWER: Defendants deny the allegations of Paragraph 12 because Defendants lack direct knowledge.**

13. In part because of Mr. Mann's lawsuit against Officer Rush and several of his fellow officers, the City of Champaign terminated Officer Rush's employment. Eventually, the City of Champaign settled Mr. Mann's lawsuit against it and settled at least two other lawsuits involving Officer Rush brought by Kısica Seets, who was kned by Rush on video, and by Precious Jackson, who was violently slammed to the ground without reasonable justification.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 13.**

14. Although Mr. Mann has since moved to the City of Urbana, Mr. Mann has been repeatedly victimized by local law enforcement, including officers from the City of Urbana Police Department, in retaliation for Mr. Mann's exercise of his right to free speech under the First Amendment.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of when Mann moved to the City of Urbana. Defendants deny the remaining allegations of Paragraph 14.**

**Incident Dated March 19, 2017**

15. On March 19, 2017, Plaintiffs were driving home with Ms. Wade's nine-year-old son when they nearly got into an auto accident with a woman named Koraysia Pierce. This woman yelled and screamed and, eventually, followed Plaintiffs to the area of their residence in Urbana, Illinois.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 15.**

16. Anticipating some type of confrontation, Ms. Wade directed her son to go upstairs, away from any argument that appeared likely to ensue. Mr. Mann called 911 for help.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 16.**

17. Plaintiffs were then assaulted by Ms. Pierce and three male individuals. One of these men had a gun.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 17.**

18. Instead of conducting legitimate police work, Defendant Officer Group 1, as well as several additional police officers, turned their dash cameras off or, pleading in the alternative, intentionally failed to initiate recording of their dash cameras. Defendant Officer Group 1 then handcuffed and detained Plaintiffs and her boyfriend.

**ANSWER: Defendants admit that Defendant Officer Group 1 handcuffed both Samantha Wade and Benjamin Mann, and deny the remaining allegations of Paragraph 18.**

19. Defendant Officer Group 1 demanded that Ms. Wade give them the name of her child and physically obstructed Ms. Wade's path to her child by inserting their bodies in Ms. Wade's path.

**ANSWER: Defendants admit they asked Plaintiff Wade for her child's name. The Defendants deny the remaining allegations of Paragraph 19.**

20. At this time, Defendant Officer Group 1 had no reason to believe that Plaintiffs had committed any crime.

**ANSWER: Defendants deny the allegations in Paragraph 20.**

21. In fact, Mr. Mann had called 911. In addition, Defendant Officer Group 1 observed a vehicle not associated with Plaintiff's flee the scene and Defendant Officer Group 1's took a statement from a neighbor that firmly corroborated Plaintiffs' account that they were attacked by Koraysia Pierce and 3 male individuals.

**ANSWER: Defendants admit that Mann called 911, that they talked with a neighbor of Plaintiffs on March 19, 2017, and saw a vehicle leave the scene. The Defendants deny the remaining allegations of Paragraph 21.**

22. Due to the mistreatment Plaintiffs were being subjected to by Defendant Officer Group 1 and the other officers described above, Ms. Wade raised her voice in objection.

**ANSWER: Defendants admit Plaintiff Wade raised her voice, and deny the remaining allegations of Paragraph 22.**

23. Defendant Officer Group 1 warned Ms. Wade that she would be arrested if she "did not calm down."

**ANSWER: Defendants deny the allegations of Paragraph 23.**

24. Defendant Officer Group 1 then arrested Ms. Wade and caused her to be charged with one count of Aggravated Assault and one count of Resisting or Obstructing a Peace Officer. These charges were false.

**ANSWER: Defendants admit they arrested Plaintiff Wade, who was ultimately charged with Aggravated Assault and Resisting or Obstructing a Peace Officer. Defendants deny the remaining allegations in Paragraph 24.**

25. Defendant Officer Group 1 also arrested Mr. Mann and caused him to be charged with aggravated assault and resisting arrest.

**ANSWER: Defendants admit they arrested Plaintiff Mann, and that he was ultimately charged with aggravated assault and resisting arrest. Defendant denies the remaining allegations in Paragraph 25.**

26. During the course of Mr. Mann's arrest on March 19, 2017, Defendant King slammed Mr. Mann to the ground and badly twisted Mr. Mann's ankle.

**ANSWER: Defendants deny the allegations of Paragraph 26.**

27. Plaintiffs were then detained in jail at the Champaign County Satellite Jail.

**ANSWER: Defendants admit the allegation in Paragraph 27.**

28. Defendant Officer Group 1 fabricated police reports and other official documents in order to justify the illegal arrests of Plaintiffs.

**ANSWER: Defendants deny the allegations of Paragraph 28.**

29. For example, Defendant Difanis falsely stated in her police report that Ms. Wade "stepped quickly and directly into me, chest bumping me" and that Ms. Wade "balled up [her] fist and swung the bag back as if she were going to sing it at me."

**ANSWER: Defendants admit that Defendant Difanis' police report contains the quoted language. Defendants deny the remaining allegations in Paragraph 29.**

30. In fact, Ms. Wade never did these things to Defendant Difanis and Defendant Wright admitted in her report that all Ms. Wade ever did was "yelling and screaming."

**ANSWER: Defendants admit the quoted language is in Defendant Wright's police report. Defendants deny the remaining allegations in Paragraph 30.**

31. Defendant Officer Group 1 also fabricated police reports regarding Mr. Mann, falsely stating that Mr. Mann “pulled away” and “reach[ed] toward his waistband” during his arrest.

**ANSWER: Defendants deny the allegations of Paragraph 31.**

32. To make matters even worse, Defendant King then initiated a false report to the Illinois Department of Children and Family Services (“DCFS”), claiming without any basis that Ms. Wade neglected her child and placed him at risk of harm. Among the false statements that Defendant King made to DCFS, Defendant King claimed that Ms. Wade “chest bumped” Defendant Difanis.

**ANSWER: Defendants deny the allegations of Paragraph 32.**

33. On or about May 8, 2017, DCFS determined that the charges initiated by Defendant King against Ms. Wade were “unfounded.”

**ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 33.**

34. Ms. Wade was tried before a jury of her peers and was acquitted on both counts on August 23, 2017.

**ANSWER: Defendants admit the allegations of Paragraph 34.**

35. Mr. Mann was tried by a jury of his peers in connection with the March 19, 2017 incident and was similarly acquitted on all counts on November 29, 2017.

**ANSWER: Defendants admit the allegations of Paragraph 35.**

**Incident Dated July 30, 2017**

36. On or about July 30, 2017 in the evening, Plaintiffs were at the home that they shared.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 36.**

37. Defendant Officer Group 2 arrived at Plaintiffs' home because of a police call for service reporting, on information and belief, nonspecific noises coming from the home.

**ANSWER: Defendants admit they arrived at Plaintiffs' apartment complex due to a reported potential crime. Defendants deny the remaining allegations of Paragraph 37.**

38. Defendant Officer Group 2 did not personally hear any noises or sounds coming from inside Plaintiffs' home.

**ANSWER: Defendants deny the allegations of Paragraph 38.**

39. Defendant Officer Group 2 did not have a warrant to enter or to search Plaintiffs' home and there were no exigent circumstances that would require Defendant Officer Group 2 to immediately enter Plaintiffs' home without a warrant or consent.

**ANSWER: Defendants deny the allegations of Paragraph 39.**

40. Mr. Mann answered the door when the police arrived.

**ANSWER: Defendants admit Plaintiff Mann answered the door, but deny the remaining allegations of Paragraph 40.**

41. Mr. Mann asked Defendant Officer Group 2 if they had a warrant to enter his home

**ANSWER: Defendants admit the allegations of Paragraph 41.**

42. One of the officers from Defendant Officer Group 2 told Plaintiffs that they did not need a warrant to enter the home because they need to make sure everyone was okay.

**ANSWER: Defendants admit the allegations of Paragraph 42.**

43. Mr. Mann told the officers that they could not enter the home and attempted to close the door.

**ANSWER: Defendants admit the allegations in Paragraph 43.**

44. During this time, Defendant Officer Group 2 observed a female individual inside the home who spoke in a calm voice, showed no injuries and gave Defendant Officer Group 2 no reason to believe that she being coerced or threatened by Mr. Mann.

**ANSWER: Defendants admit they briefly observed a female in the apartment unit, but for insufficient time to determine her status. Defendants deny the remaining allegations in Paragraph 44.**

45. In fact, the female, Ms. Wade, specifically told Defendant Officer Group 2 that she was not injured and did not need assistance.

**ANSWER: Defendants deny the allegations of Paragraph 45, as alleged.**

46. One or more of Defendant Officer Group 2 attempted to prevent Mr. Mann from closing the door to the home by moving their feet across the threshold.

**ANSWER: Defendants admit they tried to prevent the door from closing by stopping the door with their feet, and deny the remaining allegations of Paragraph 46.**

47. Mr. Mann told Defendant Officer Group 2 to move their feet out of his home.

**ANSWER: Defendants deny the allegations of Paragraph 47.**

48. The Defendant Officer Group 2 refused to move their feet from Plaintiffs' home, preventing Mr. Mann from closing his door.

**ANSWER: Defendants admit they tried to keep the door open, and deny the remaining allegations of Paragraph 48.**

49. One or more of the individuals from Defendant Officer Group 2 grabbed the door handle to prevent Plaintiffs from closing the door.

**ANSWER: Defendants admit the allegations of Paragraph 49.**

50. Mr. Mann continually requested Defendant Officer Group 2 to move their feet and allow him to close his door, telling them they were breaking the law.

**ANSWER: Defendants admit the allegations of Paragraph 50.**

51. Mr. Mann was eventually able to close the door to his home.

**ANSWER: Defendants admit the allegations of Paragraph 51.**

52. Defendant Officer Group 2 continued to look for ways to harass Mr. Mann, despite the clear evidence that there was no lawful basis to enter Plaintiffs' home.

**ANSWER: Defendants deny the allegations of Paragraph 52.**

53. Defendant Officer Groups 1 and 2 took the actions described herein because they are aware that they will not be disciplined for violating the rights of citizens and because they wanted to retaliate against Mr. Mann for filing a civil rights lawsuit against their fellow officers from the Champaign-Urbana law enforcement community.

**ANSWER: Defendants deny the allegations of Paragraph 53.**

54. Defendant Officer Group 2 then entered Plaintiffs' home by force, using a battering ram to break open the door.

**ANSWER: Defendants admit a ram was used to enter in Plaintiffs' apartment. The remaining allegations of Paragraph 54 are denied.**

55. Defendant Officer Group 2 entered Benjamin's home without a warrant, consent by any occupant, or any exigent circumstance.

**ANSWER: Defendants admit they did not have consent to enter the apartment unit. Defendants deny the remaining allegations of Paragraph 55.**

56. Mr. Mann called 911 to inform the police that they could not enter his home and that there was no need for them to enter his home.

**ANSWER: Defendants admit the allegations of Paragraph 56 to the extent Paragraph 56 only stands for what Plaintiff Mann communicated to 911. The remaining allegations in Paragraph 56 are denied.**

57. Plaintiffs were extremely frightened and anxious because of the past civil rights violations they had endured by the Champaign and Urbana Police Departments, and the ongoing harassment from the Champaign and Urbana Police Departments directed at Mr. Mann and his community.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations regarding Plaintiffs' state of mind. Defendants deny the remaining allegations of Paragraph 57.**

58. Mr. Mann explained that there was no need for the police to enter his home and that he did not consent to them entering his home.

**ANSWER: Defendants admit Plaintiff Mann did not consent to Defendants' entry into his home. Defendants deny the remaining allegations of Paragraph 58.**

59. Ms. Wade spoke to Defendant Officer Group 2 on the phone and specifically stated "My name is Samantha Wade, I'm not injured and I'm not harmed."

**ANSWER: Defendants admit Plaintiff Wade communicated on the phone that she was not harmed. Defendants deny the remaining allegations of Paragraph 59.**

60. Defendant Officer Group 2 again ignored Ms. Wade's statements.

**ANSWER: Defendants deny the allegations of Paragraph 60.**

61. Without probable cause, a search warrant, or any legal basis to enter Plaintiffs' home, Defendant Officer Group 2 used a ram to break open the front door and enter it without lawful justification.

**ANSWER: Defendants admit a ram was used to enter the apartment. Defendants deny the remaining allegations of Paragraph 61.**

62. Defendant Officer Group 2 damaged Plaintiffs' door in this way.

**ANSWER: Defendants deny the allegations of Paragraph 62.**

63. Mr. Mann did not resist or obstruct the officers; however, Defendant Officer Group 2 arrested Mr. Mann without probable cause.

**ANSWER: Defendants deny the allegations of Paragraph 63.**

64. Mr. Mann's arrest for resisting/obstruction lacked probable cause. As described herein, this false resisting/obstruction charge is part of a larger pattern and practice by the City of Urbana and its police officers to charge members of the public with false resisting/obstructing charges in order to cover up their misconduct in arresting people without the individual having committed any underlying crime.

**ANSWER: Defendants deny the allegations of Paragraph 64.**

65. Urbana Police Officers know they will not face discipline for such actions because they are not properly trained and they are not properly disciplined. The City of Urbana does not have a meaningful or effective disciplinary process and the City is aware the process is broken.

**ANSWER: Defendants deny the allegations of Paragraph 65.**

66. Mr. Mann, in fear for his safety, and the safety of Ms. Wade, videotaped a portion of the arrest, including the illegal entry into his home by Defendant Officer Group 2.

**ANSWER: Defendants admit Plaintiff Mann recorded a cellphone video of the incident. Defendants deny the remaining allegations of Paragraph 66.**

67. On July 31, 2017, the State charged Mr. Mann with the offense of Resisting or Obstructing a Peace officer, a Class A Misdemeanor, by Information. The Misdemeanor Obstruction charge against Mr. Mann alleged that he "knowingly obstructed the performance of Don McClellan of an authorized act within his official capacity namely the investigation of a domestic battery complaint, knowing Don McClellan to be a peace officer engaged in the execution of his official duties, in that the defendant refused to open the door at the command of Don McClellan."

**ANSWER: Defendants admit Plaintiff Mann was charged with one count of Resisting/Obstructing a Peace Officer, a Class A misdemeanor, on July 31, 2017. Defendants lack a copy of the charge, and thus lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 67.**

68. Mr. Mann was forced to attend criminal court for months defending against the false criminal charges described herein.

**ANSWER: Defendants deny the allegations of Paragraph 68.**

69. Mr. Mann worked with his attorney to challenge the wrongful July 2017 arrest and ensuing prosecution caused by the Defendant Officer Group 2.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 69. Defendants deny Plaintiff was wrongfully arrested in July of 2017 or that Defendant Officer Group 2 called the prosecution.**

70. On October 16, 2017, Mr. Mann, through his counsel, filed a motion to dismiss the criminal case against him.

**ANSWER: Defendants admit the allegations of Paragraph 70 for lack of direct information.**

71. Just two days later, the State dismissed the criminal case against Mr. Mann in a manner indicating his innocence and indicating that probable cause for the charges against Mr. Mann were lacking.

**ANSWER: Defendants admit the cause was dismissed on October 18, 2017, and deny the remaining allegations of Paragraph 71.**

**COUNT I**  
**(Section 1983: 1st Amendment Retaliation)**  
**(Mr. Mann Against All Defendants)**

72. Plaintiff re-allages and incorporates paragraphs 1-70 above as if fully restated and re-alleged herein.

**ANSWER: Defendants incorporate their answers for Paragraphs 1-70 as if alleged herein.**

73. On March 16, 2014, Plaintiff was beaten and falsely arrested and prosecuted by Champaign Police Officers. Plaintiff sued in federal court and secured a \$225,000 settlement from the City Champaign in December of 2015. The main officer involved in Plaintiff's prior lawsuit, Matt Rush, was disgraced in several news articles and was ultimately separated.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 73.**

74. Since this time, Plaintiff has served as an example in his community that it is possible for citizens to stand up for themselves when local law enforcement overstep the great trust the public places within them.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 74.**

75. Since this time, members of the Urbana Police Department have regularly harassed Plaintiff, including the instances from March and July of 2017 described more fully above.

**ANSWER: Defendants deny the allegations in Paragraph 75.**

76. It is well known that the Champaign, Urbana, and University of Illinois police departments operate closely with one another, the officers know each other, and the officers of one agency consider an "attack" on one agency to be an "attack" on the other.

**ANSWER: Defendants deny the allegations of Paragraph 76.**

77. For example, Urbana Police Chief Patrick Connolly reported in a memorandum to Mayor Prussing on December 5, 2016, that because of Urbana's size, location, and limited resources, the Urbana Police Department relies on nearby police agencies for support. One of those agencies is the Champaign Police Department.

**ANSWER: Defendants admit the allegations of Paragraph 77.**

78. In yet another example, Officer Matt Rush, former of the Champaign Police Department was stopped by officers for the University of Illinois Police Department on suspicion of drunk driving but the University of Illinois Police Officers involved in that case inexplicably took no law enforcement action against Officer Rush.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 78.**

79. In the manner described more fully above, Defendant Officer Group 1 and Defendant Officer Group 2 (collectively "Defendant Officers") violated Mr. Mann's rights as secured by the First Amendment of the U.S. Constitution. Mr. Mann's complaints and speech about the misconduct of Defendant Officers and other police officers that work and with Defendant Officers constituted protected speech and expression under the First Amendment.

**ANSWER: Defendants deny the allegations of Paragraph 79.**

80. Mr. Mann's complaints were also protected under the Petition Clause of the First Amendment: Mr. Mann was petitioning the government for redress of grievances.

**ANSWER: Defendants deny the allegations of Paragraph 80.**

81. In the manner described more fully above, Defendant Officers' actions caused Mr. Mann to suffer injuries that would chill a person of ordinary firmness from continuing to engage in protected activity.

**ANSWER: Defendants deny the allegations of Paragraph 81.**

82. Mr. Mann's protected First Amendment activity was at least a motivating factor in Defendant Officers' decision to take the retaliatory actions of arresting and using excessive force against Mr. Mann in March and July of 2017.

**ANSWER: Defendants deny the allegations of Paragraph 82.**

83. The Defendant Officers would not have unlawfully arrested Mr. Mann in March of 2017 or unlawfully forced their way into Plaintiff's home, falsely arrested plaintiff and wrongfully charged him with obstruction in July of 2017 in the absence of Mr. Mann's protected First Amendment activity.

**ANSWER: Defendants deny the allegations of Paragraph 83.**

84. The misconduct described in this Count was objectively unreasonable and undertaken intentionally, with reckless and deliberate indifference to the rights of others, and in total disregard of the truth and of Mr. Mann's clear innocence.

**ANSWER: Defendants deny the allegations of Paragraph 84.**

85. The Defendant Officers' actions were taken under color of law and within the scope of their employment.

**ANSWER: Defendants admit the allegations of Paragraph 85.**

86. As a result of Defendant Officers' misconduct described in this Count, Mr. Mann suffered loss of liberty, great mental anguish, humiliation, degradation, physical and emotional pain and suffering, and other grievous and continuing injuries and damages as set forth above.

**ANSWER: Defendants deny the allegations of Paragraph 86.**

WHEREFORE, the Defendants, CITY OF URBANA, JENNIFER DIFANIS, COLBY WRIGHT, SARAH LINKS, SETH KING, JAY LOSCHEN, CHAD BURNETT, DON McCLELLAN, ADAM MARCOTTE, JOHN FRANQUEMONT, ZACH MIKALIK, and CHRIS ELSTON, pray that judgment be entered in their favor, and against the Plaintiff, BENJAMIN MANN, and that Defendants recover their costs of suit.

DEFENDANTS DEMAND A TRIAL BY JURY.

**COUNT II**  
**42 U.S.C. § 1983: False Arrest**  
**(Mr. Mann Against All Defendant Officers and Ms. Wade Against Defendant Officer Group 1)**

87. Plaintiffs re-alleges and incorporate all preceding paragraphs as fully stated herein.

**ANSWER: Defendants incorporate all preceding answers as if fully re-alleged herein.**

88. Defendant Officer Group 1 arrested Plaintiffs on March 19, 2017.

**ANSWER: Defendants admit the allegations of Paragraph 88.**

89. Defendant Officer Group 2 arrested Mr. Mann again on or about July 30, 2017.

**ANSWER: Defendants admit the allegations of Paragraph 89.**

90. At the time of the arrests, there was no probable cause to believe that Plaintiffs had committed any crime or violation of any law.

**ANSWER: Defendants deny the allegations of Paragraph 90.**

91. The acts of the Defendant Officers were an unreasonable, deliberate and malicious deprivation of the Plaintiffs' constitutional guarantee to the Plaintiffs by the Fourth Amendment of the Constitution and made applicable to the states by the Fourteenth Amendment.

**ANSWER: Defendants deny the allegations of Paragraph 91.**

92. As a result of the actions of Defendant Officers described more fully above, the Plaintiffs suffered physical and emotional injuries, and other damages in violation of 42 U.S.C. §1983.

**ANSWER: Defendants deny the allegations of Paragraph 92.**

93. The aforementioned actions of the Defendant Officers were the direct and proximate cause of the violations the First, Fourth and Fourteenth Amendments of the Constitution.

**ANSWER: Defendants deny the allegations of Paragraph 93.**

WHEREFORE, the Defendants, JENNIFER DIFANIS, COLBY WRIGHT, SARAH LINKS, SETH KING, JAY LOSCHEN, CHAD BURNETT, DON McCLELLAN, ADAM MARCOTTE, JOHN FRANQUEMONT, ZACH MIKALIK, and CHRIS ELSTON, pray that judgment be entered in their favor, and against the Plaintiff, BENJAMIN MANN, and that Defendants recover their costs of suit.

DEFENDANTS DEMAND A TRIAL BY JURY.

**COUNT III**

**42 U.S.C. § 1983: Excessive Force  
(Mr. Mann Against Defendant Officer Seth R. King)**

94. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully restated herein.

**ANSWER: Defendants incorporate all preceding answers as if fully re-alleged herein.**

95. In the manner fully described above, Defendant Officer King committed excessive force when he slammed Mr. Mann on the ground, badly twisting Mr. Mann's ankle.

**ANSWER: Defendants deny the allegations of Paragraph 95.**

96. The misconduct described above was objectively unreasonable and was undertaken intentionally for the purpose of harming Mr. Mann.

**ANSWER: Defendants deny the allegations of Paragraph 96.**

97. As a proximate cause of the above actions of Defendant Officer King, Mr. Mann was physically injured and deprived his Constitutional rights.

**ANSWER: Defendants deny the allegations of Paragraph 97.**

98. The actions of Defendant Officer King constituted unreasonable, unjustifiable, and excessive force against Mr. Mann, thus violating his rights under the Fourth and Fourteenth Amendments of the Constitution.

**ANSWER: Defendants deny the allegations of Paragraph 98.**

WHEREFORE, the Defendant, SETH KING, prays that judgment be entered in his favor, and against the Plaintiff, BENJAMIN MANN, and that Defendant recover his costs of suit.

DEFENDANT DEMANDS A TRIAL BY JURY.

**COUNT IV**  
**42 U.S.C. § 1983: Fabrication of Evidence**  
**(Mr. Mann Against All Defendant Officers and Ms. Wade Against Defendant Officer Group 1)**

99-103. [Dismissed from lawsuit per Court's April 16, 2018 Order].

**ANSWER: Per the Court's April 16, 2018 Order, Count IV (Count III in original Complaint) was dismissed from Plaintiffs' Complaint. Out of a surplus of caution, all previous answers are incorporated into Defendants' responses to Count IV as if fully re-alleged herein. Furthermore, all allegations in Count IV are denied.**

**COUNT V**  
**42 U.S.C. § 1983: Illegal Search**  
**(All Plaintiffs Against Defendant Officer Group 2)**

104. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully re-stated herein.

**ANSWER: Defendants incorporate all previous answers to all preceding paragraphs as if fully re-alleged herein.**

105. On or about July 30, 2017, Defendant Officer Group 2 did not have a search warrant or probable cause that would allow them to enter Plaintiffs' home. Regardless, Defendant Officer Group 2 rammed open Plaintiffs' front door and entered their home.

**ANSWER: Defendants deny the allegations of Paragraph 105.**

106. Defendant Officer Group 2 violated Plaintiffs' rights protected by the Fourth Amendment of the United States Constitution and the laws of Illinois when they unlawfully entered Plaintiffs' home without probable cause, a warrant, or exigent circumstances.

**ANSWER: Defendants deny the allegations of Paragraph 106.**

107. The misconduct described in this Count and in more detail above was undertaken intentionally, with malice, willfulness, wantonness and reckless indifference to the rights of Plaintiffs.

**ANSWER: Defendants deny the allegations of Paragraph 107.**

108. As a result of the above-described wrongful infringement of Plaintiffs' rights, they suffered financial and other damages, including but not limited to emotional stress and anguish.

**ANSWER: Defendants deny the allegations of Paragraph 108.**

109. The aforementioned actions of the Defendant Officer Group 2 were the direct and proximate cause of the violations of the United States Constitution, specifically, the Fourth Amendment and Fourteenth Amendment.

**ANSWER: Defendants deny the allegations of Paragraph 109.**

WHEREFORE, the Defendants, JENNIFER DIFANIS, COLBY WRIGHT, SARAH LINKS, SETH KING, JAY LOSCHEN, CHAD BURNETT, DON McCLELLAN, ADAM MARCOTTE, JOHN FRANQUEMONT, ZACH MIKALIK, and CHRIS ELSTON, pray that judgment be entered in their favor, and against the Plaintiff, BENJAMIN MANN, and that Defendants recover their costs of suit.

DEFENDANTS DEMAND A TRIAL BY JURY.

**COUNT VI**  
**Conspiracy Under Federal and State Law**  
**(All Plaintiffs Against Defendant Officers)**

110. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully restated herein.

**ANSWER: Defendants incorporate all previous answers to all preceding paragraphs as if fully re-alleged herein.**

111. While Defendant Officer Group 1 were still at the scene of Plaintiffs' March 2017 arrest and after they went back to their police station, Defendant Officer Group 1 had an in-person meeting where they agreed to falsely arrest Plaintiff despite the absence of probable cause.

**ANSWER: Defendants deny the allegations of Paragraph 111.**

112. At the police station, upon information and belief, Defendants Difanis, King, and others agreed that Defendant King would make a false report against Ms. Wade to DCFS in order

to create additional pressure upon Plaintiff and in an effort to cover up the false criminal charges that Defendant Officer Group 1 were lodging against Plaintiffs.

**ANSWER: Defendants deny the allegations of Paragraph 112.**

113. When Defendant Officer Group 2 arrived at Plaintiffs' home on July 30, 2017, upon information and belief, they agreed that they would enter the home regardless of whether it was lawful to do so and then arrest Mr. Mann regardless of whether he was committing any crime.

**ANSWER: Defendants deny the allegations of Paragraph 113.**

114. Defendant Officer Group 2, whose members overlap with Group 1, conspired to illegally enter Plaintiffs' home and take Mr. Mann into custody irrespective of the unlawfulness of their actions because they wanted to punish Mr. Mann for exercising his First Amendment right to free speech as described above and because they wanted to make it more difficult for Plaintiffs to defend themselves against the false criminal charges brought against Plaintiffs by Defendant Group 1 back in March of 2017.

**ANSWER: Defendants deny the allegations of Paragraph 114.**

115. In this manner, Defendant Officers conspired by concerted and overt action to accomplish an unlawful purpose.

**ANSWER: Defendants deny the allegations of Paragraph 115.**

116. In furtherance of this conspiracy Defendant Officers committed overt acts and otherwise demonstrated willful participation in a joint, unlawful activity.

**ANSWER: Defendants deny the allegations of Paragraph 116.**

117. As a direct and proximate result of the illicit prior agreement referenced above, Plaintiffs' rights were violated, and they suffered financial damages, as well as severe emotional distress and anguish, as is more fully alleged above.

**ANSWER: Defendants deny the allegations of Paragraph 117.**

118. The misconduct described above was taken with malice, willfulness and/or the reckless disregard for the rights of Plaintiffs.

**ANSWER: Defendants deny the allegations of Paragraph 118.**

WHEREFORE, the Defendants, JENNIFER DIFANIS, COLBY WRIGHT, SARAH LINKS, SETH KING, JAY LOSCHEN, CHAD BURNETT, DON McCLELLAN, ADAM MARCOTTE, JOHN FRANQUEMONT, ZACH MIKALIK, and CHRIS ELSTON, pray that judgment be entered in their favor, and against the Plaintiff, BENJAMIN MANN, and that Defendants recover their costs of suit.

DEFENDANTS DEMAND A TRIAL BY JURY.

#### **COUNT VII**

##### **Malicious Prosecution under State and Federal Law**

**(Mr. Mann Against Defendant Officers and Ms. Wade Against Defendant Officer Group 1)**

119. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully re-stated herein.

**ANSWER: Defendants incorporate all previous answers to all preceding paragraphs as if fully re-alleged herein.**

120. Defendant Officer Group 1 accused Plaintiffs of engaging in the criminal acts described herein knowing that those accusations were false and without genuine probable cause.

**ANSWER: Defendants deny the allegations of Paragraph 120.**

121. Defendant Officer Group 2 accused Mr. Mann of engaging in the criminal acts described herein knowing that those accusations were false and without genuine probable cause.

**ANSWER: Defendants deny the allegations of Paragraph 121.**

122. Defendant Officer Group 1 prepared reports and made statements to trial prosecutors with the intent and effect of exerting influence on the decision to prosecute and causing the commencement and continuation of criminal proceedings against Plaintiffs in relation to their arrests from March of 2017.

**ANSWER: Defendants deny the allegations of Paragraph 122.**

123. Defendant Officer Group 2 prepared reports and made statements to trial prosecutors with the intent and effect of exerting influence on the decision to prosecute and causing the commencement and continuation of criminal proceedings against Mr. Mann in relation to his July 30, 2017 arrest.

**ANSWER: Defendants deny the allegations of Paragraph 123.**

124. Defendant Officers actions were done intentionally, with malice, willfulness, and recklessness disregard to the rights of others.

**ANSWER: Defendants deny the allegations of Paragraph 124.**

125. The criminal proceedings described above were terminated in Plaintiffs' favor and in a manner indicative of their innocence when they were acquitted of all charges in connection with the March 2017 arrests and the charges against Mr. Mann were dismissed in relation to the July 30, 2017 arrest.

**ANSWER: Defendants deny the allegations of Paragraph 125.**

126. As a direct and proximate result of this misconduct, Plaintiffs sustained, and continue to sustain, injuries as set forth above, including loss of liberty, financial damages, and emotional pain and suffering.

**ANSWER: Defendants deny the allegations of Paragraph 126.**

WHEREFORE, the Defendants, JENNIFER DIFANIS, COLBY WRIGHT, SARAH LINKS, SETH KING, JAY LOSCHEN, CHAD BURNETT, DON McCLELLAN, ADAM MARCOTTE, JOHN FRANQUEMONT, ZACH MIKALIK, and CHRIS ELSTON, pray that judgment be entered in their favor, and against the Plaintiff, BENJAMIN MANN, and that Defendants recover their costs of suit.

DEFENDANTS DEMAND A TRIAL BY JURY.

**COUNT VIII**  
**Intentional Infliction of Emotional Distress**  
**(Mr. Mann Against Defendant Officers and Ms. Wade Against Defendant Officer Group 1)**

127. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully restated herein.

**ANSWER: Defendants incorporate all previous answers to all preceding paragraphs as if fully re-alleged herein.**

128. The acts and conduct of Defendant Officer Group 1 toward Plaintiffs and the acts and conduct of Defendant Officers toward Mr. Mann described herein were extreme and outrageous. Defendant Officers' conduct was rooted in an abuse of power or authority, and they were undertaken with maliciousness and intent to cause, or were recklessly indifferent to the great probability that their conduct would cause severe emotional distress to Plaintiffs.

**ANSWER: Defendants deny the allegations of Paragraph 128.**

129. As a direct and proximate result of the conduct of Defendant Officers, Plaintiffs suffered and continue to suffer severe emotional distress.

**ANSWER: Defendants deny the allegations of Paragraph 129.**

WHEREFORE, the Defendants, JENNIFER DIFANIS, COLBY WRIGHT, SARAH LINKS, SETH KING, JAY LOSCHEN, CHAD BURNETT, DON McCLELLAN, ADAM MARCOTTE, JOHN FRANQUEMONT, ZACH MIKALIK, and CHRIS ELSTON, pray that judgment be entered in their favor, and against the Plaintiff, BENJAMIN MANN, and that Defendants recover their costs of suit.

DEFENDANTS DEMAND A TRIAL BY JURY.

**COUNT IX**  
**Municipal Policy Claim**  
**(All Plaintiffs Against Defendant City of Urbana)**

130–141. [Dismissed per April 16, 2018 Court Order].

**ANSWER: Per the Court’s April 16, 2018 Order, Count IX (Count VIII in original Complaint) was dismissed from Plaintiff’s Complaint. Out of a surplus of caution, all previous answers are incorporated into Defendants’ responses to Count IX as if fully re-alleged herein. Furthermore, all allegations in Count IX are specifically denied.**

**COUNT X**  
**Respondeat Superior**  
**(All Plaintiffs Against Defendant City of Urbana and Mr. Mann Against The Board of Trustees of the University of Illinois)**

142. Plaintiffs re-allege and incorporate all preceding paragraphs above as if fully restated herein.

**ANSWER: Defendants incorporate all previous answers to all preceding paragraphs as if fully re-alleged herein.**

143. Defendant Officers, with the exception of Defendant Elston, were, at all times relevant to this complaint, employees of Defendant City of Urbana.

**ANSWER: Defendants admit the allegations of Paragraph 143.**

144. Defendant Elston was, at all relevant times to this complaint an employee of Defendant University.

**ANSWER: Defendants admit the allegations of Paragraph 144.**

145. Defendant Officers were acting within the scope of their employment and their actions are imputed to the Defendant City of Urbana (with the exception of Defendant Elston) under state law pursuant to respondeat superior.

**ANSWER: Defendants admit that Defendant Officers (except Defendant Elston) were acting within the scope of their employment. The remaining allegations of Paragraph 145 are legal conclusions, and therefore, Defendants offer no answer.**

146. Defendant Elston was acting within the scope of his employment at all relevant times and his actions are imputed to Defendant University under state law pursuant to respondeat superior.

**ANSWER: Per the Court's April 16, 2018 Order, Defendant University is no longer a party to this litigation. Accordingly, Defendants deny the allegation of Paragraph 146.**

WHEREFORE, the Defendant, CITY OF URBANA, prays that judgment be entered in its favor, and against the Plaintiffs, BENJAMIN MANN and SAMANTHA WADE, and that Defendant recover its costs of suit.

DEFENDANT DEMANDS A TRIAL BY JURY.

**COUNT XI**  
**Statutory Indemnification**  
**(All Plaintiffs Against Defendant City of Urbana and Mr. Mann Against The Board of Trustees of the University of Illinois)**

147. Plaintiffs reallege and incorporate all preceding paragraphs above as if fully restated herein.

**ANSWER: Defendants incorporate all previous answers to all preceding paragraphs as if fully re-alleged herein.**

148. Plaintiffs seeks statutory indemnification under Illinois law against the City of Urbana because the Defendant Officers (with the exception of Defendant Elston) were engaged in the performance of their duties on behalf of the City of Urbana and its police department when Plaintiffs were injured.

**ANSWER: Defendants admit that Defendants were acting within the scope of their employment during the subject incidents, and that Plaintiff is seeking statutory indemnification. Defendants deny the remaining allegations in Paragraph 148.**

149. Mr. Mann seeks statutory indemnification under Illinois law against Defendant University because Defendant Elston was engaged in the performance of his duties on behalf of the University and the University of Illinois Police Department when Mr. Mann was injured as a result of the July 30, 2017 incident.

**ANSWER: Per the Court's April 16, 2018 Order, Defendant University is no longer a party to this litigation. Defendants therefore denies the allegation of Paragraph 149.**

150. Illinois law provides that public entities are directed to pay any tort judgment for which their employees are liable within the scope of their employment activities.

**ANSWER: Defendants allows relevant Illinois law to speak for itself, and denies any allegation inconsistent therewith.**

151. The Defendant Officers (with the exception of Defendant Elston) are or were employees of the City of Urbana Police Department who acted within the scope of their employment in committing the misconduct described herein.

**ANSWER: Defendants admit the Defendant Urbana police officers were acting within the scope of their employment during the subject incidents. Defendants deny the remaining allegations of Paragraph 151.**

152. Defendant Elston is or was an employee of the University and/or the University of Illinois Police Department who acted within the scope of his employment in committing the misconduct described herein.

**ANSWER: Defendants admit Defendant Elston was acting within the scope of his employment during the July 30, 2017 incident. Defendants deny the remaining allegations of Paragraph 152.**

WHEREFORE, the Defendant, CITY OF URBANA, prays that judgment be entered in its favor, and against the Plaintiffs, BENJAMIN MANN and SAMANTHA WADE, and that Defendant recover its costs of suit.

DEFENDANT DEMANDS A TRIAL BY JURY.

**AFFIRMATIVE DEFENSES**

NOW COME the Defendants, CITY OF URBANA, JENNIFER DIFANIS, COLBY WRIGHT, SARAH LINKS, SETH KING, JAY LOSCHEN, CHAD BURNETT, DON McCLELLAN, ADAM MARCOTTE, JOHN FRANQUEMONT, ZACH MIKALIK, AND CHRIS ELSTON, by BRIAN SMITH of HEYL, ROYSTER, VOELKER & ALLEN, their attorneys, and for their Affirmative Defenses to Plaintiffs' First Amended Complaint, state as follows:

1. To the extent that Plaintiffs assert claims based on the United States Constitution against the Defendants, individually, said claims are barred by qualified immunity.
2. Plaintiffs' claims are barred by the presence of probable cause.
3. Plaintiffs cannot reargue dismissed claims from the original Complaint. This Court's Order on April 16, 2018 dismissed the University of Illinois from this lawsuit, dismissed Urbana from Count I regarding First Amendment Retaliation, dismissed Count IV (former Count III) regarding Fabrication of Evidence, and dismissed Count IX (former Count VIII) regarding municipal policies. (ECF #38, p. 23). The Plaintiffs in their Motion for Leave to File their First Amended Complaint "recognize[d] the Court's prior ruling" and advised they were "not seeking to reargue dismissed claims," but only to preserve such claims "for appellate review." (ECF #41, p. 5-6). The Court granted the Plaintiffs' Motion. Therefore, the Plaintiffs are prohibited from rearguing claims dismissed by this Court.
4. To the extent the Plaintiffs assert any claim based on negligence, such a claim is barred by the Illinois Tort Immunity Act.

Respectfully submitted,

Jennifer Difanis, Colby G. Wright, Sarah M. Links,  
Seth R. King, Jay Loschen, Chad Burnett, Don C.  
McClellan, Adam Marcotte, John Franquemont,  
Zach Mikalik, the City of Urbana, a municipal  
corporation, and Chris Elston, Defendants

s/Brian M. Smith

Brian M. Smith, IL ARDC #: 6293822

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#### **PROOF OF SERVICE**

I hereby certify that on May 17, 2018, I electronically filed the foregoing **DEFENDANTS' ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Shneur Z. Nathan – [snathan@nklawllp.com](mailto:snathan@nklawllp.com)

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I also hereby certify that I have mailed by United States Postal Service the foregoing to the following non-CM/ECF participants: None

s/Brian M. Smith

Heyl, Royster, Voelker & Allen