

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

WISCONSIN CARRY, INC., and
KRYSTA SUTTERFIELD

Plaintiffs,

v.

Case No. 10-CV-881

CITY OF BROOKFIELD,
GRANT B. PALICK,
MARK A. TUSHAUS,
RONALD N. BETHIA, and
SARAH J. MORK,

Defendants.

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES

Defendants, City of Brookfield, Grant B. Palick, Mark A. Tushaus, Ronald N. Bethia, and Sarah J. Mork, by their attorneys, Gunta & Reak, S.C., submit the following Answer and Affirmative Defenses to Plaintiffs' Complaint.

INTRODUCTION

1. Paragraph 1 states a legal conclusion and requires no response.

JURISDICTION & VENUE

2. Paragraph 2 states a legal conclusion and requires no response.
3. Admit.
4. Paragraph 4 states a legal conclusion and requires no response.

PARTIES

5. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 5, and therefore deny the same.

6. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 6, and therefore deny the same.

7. Admit.

8. Admit.

9. Admit.

FACTUAL BACKGROUND

10. Admit.

11. Admit.

12. Admit

13. Admit.

14. Admit.

15. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 15, and therefore deny the same.

16. Admit that Officer Palick directed Sutterfield to exit her vehicle and that he later searched it.

17. Admit.

18. Admit.

19. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 19, and therefore deny the same.

20. Admit.

21. Deny.

22. Admit that Defendants were directed by their Chief not to arrest for Illegal Transfer of a Weapon under Wis. Stats. § 167.31, but allege that such arrests are authorized by Wis. Stats. § 23.57.

23. Admit.

24. Admit.

25. Deny.

26. Deny.

27. Deny.

28. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 28, and therefore deny the same.

29. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 29, and therefore deny the same.

30. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 30, and therefore deny the same.

Count 1 – Violations of Fourteenth Amendment

31. Deny.

32. Deny.

33. Deny.

34. Deny.

35. Deny.

36. Deny.

37. Deny.

AFFIRMATIVE DEFENSES

1. Plaintiffs' complaint fails to state a claim upon which relief may be granted.

2. Plaintiffs' state law claims, if any, are subject to the procedural prerequisites for bringing or maintaining a cause of action under § 893.80(1)(a) and (1)(b), Wis. Stats. and the exclusions, immunities and limitations on liability set forth in § 893.80, Wis. Stats.

3. If any injuries were suffered by the plaintiffs, all of such injuries and damages were caused through their own conduct, negligence and behavior or through the conduct and behavior of third parties and through no fault on the part of these answering defendants.

4. All individual defendants are entitled to the defense of qualified immunity.

5. The City of Brookfield is protected by discretionary act immunity.

6. Wisconsin Carry, Inc. lacks standing to bring this action and has suffered no injury.

7. Plaintiff may have failed to mitigate her damages.

8. Plaintiff's injuries, if any, were caused by her own negligence or other misconduct.

9. The defendants' conduct was privileged.

10. Defendants had probable cause to arrest Plaintiff for violation of Wis. Stats. § 343.43(1)(g).

WHEREFORE, defendants request judgment as follows:

1. Dismissing the complaint of the plaintiffs on its merits, together with costs and disbursements as well as attorneys fees in favor of defendants.

2. For such other further relief as the Court may deem just and equitable and to which the defendants are entitled.

JURY DEMAND

Defendants City of Brookfield, Grant B. Palick, Mark A. Tushaus, Ronald N. Bethia, and Sarah J. Mork, demand a trial by jury of all issues so triable.

Respectfully submitted at Milwaukee, Wisconsin this 28th day of October, 2010.

/s/ Kevin P. Reak

Gregg J. Gunta WI Bar Number: 1004322

E-Mail Address: gjg@gunta-reak.com

Kevin P. Reak WI Bar Number: 1004316

E-Mail Address: kpr@gunta-reak.com

John A. Wolfgang WI Bar Number: 1045325

E-Mail Address: jaw@gunta-reak.com

Attorneys for Defendants

GUNTA & REAK, S.C.

219 North Milwaukee Street, Fifth Floor

Milwaukee, Wisconsin 53202

Telephone: (414) 291-7979

Facsimile: (414) 291-7960