

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

P.W., a minor, by his mother and next)
Friend, BRITTANY WHITWORTH,)
And)
BRITTANY WHITWORTH and)
JONATHAN WHITWORTH,)

Plaintiffs,)

v.)

Case No.: 2:10-cv-04208-NKL

LANCE BOLINGER, MICHAEL)
CAVENER, CRYSTAL CLEMENTS,)
CATHY DODD, ROBERT FOX,)
SCOTT HENDRICK, RICHARD)
HORRELL, KYLE LUCAS, THOMAS)
QUINTANA, MICHAEL PARSONS,)
JEFFREY RUKSTAD, ROGER)
SCHLUDE, AND CITY OF)
COLUMBIA)

Defendants.)

**DEFENDANTS LANCE BOLINGER, MICHAEL CAVENER, CRYSTAL
CLEMENTS, CATHY DODD, ROBERT FOX, SCOTT HENDRICK, RICHARD
HORRELL, KYLE LUCAS, THOMAS QUINTANA, MICHAEL PARSONS,
JEFFREY RUKSTAD, ROGER SCHLUDE, JR., AND CITY OF COLUMBIA,
MISSOURI'S ANSWER TO PLAINTIFFS' COMPLAINT AND
COUNTERCLAIM AGAINST PLAINTIFFS BRITTANY WHITWORTH
AND JONATHAN WHITWORTH**

ANSWER

COME NOW Defendants Lance Bolinger, Michael Cavener, Crystal Clements,
Cathy Dodd, Robert Fox, Scott Hendrick, Richard Horrell, Kyle Lucas, Thomas

Quintana, Michael Parsons, Jeffrey Rukstad, Roger Schlude, Jr., and City of Columbia, Missouri (hereinafter referred to collectively as “Defendants”), by and through their attorneys, Chris P. Rackers and Brad C. Letterman of Schreimann, Rackers, Francka & Blunt, L.L.C., and for their Answer to Plaintiffs’ Complaint state to the Court as follows:

1. In response to the allegations of Paragraph 1, Defendants admit that on February 11, 2010, officers employed by the City of Columbia executed a search warrant at 1501 Kinloch Court, Columbia, Missouri, and deny the remaining allegations of Paragraph 1.

2. In response to the allegations of Paragraph 2, Defendants admit that the home was occupied by Jonathan Whitworth, Brittany Whitworth (f/k/a Brittany Montgomery), and a child. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 2 and therefore deny same.

3. In response to the allegations of Paragraph 3, Defendants state that initially officers knocked on the front door and announced their presence, and deny the remaining allegations of Paragraph 3.

4. In response to the allegations of Paragraph 4, Defendants admit that a dog barked, and deny the remaining allegations of Paragraph 4.

5. Defendants deny the allegations of Paragraph 5.

6. Defendants deny the allegations of Paragraph 6.

7. Defendants deny the allegations of Paragraph 7.

8. Defendants deny the allegations of Paragraph 8.
9. Defendants deny the allegations of Paragraph 9.
10. Paragraph 10 alleges a legal conclusion and is therefore denied.
11. Paragraph 11 alleges a legal conclusion and is therefore denied.
12. Defendants, at this time, are without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 12 and therefore deny same.
13. Defendants, at this time, are without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 13 and therefore deny same.
14. Defendants, at this time, are without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 14 and therefore deny same.
15. Paragraph 15 alleges a legal conclusion and is therefore denied.
16. Defendants deny the allegations of Paragraph 16.
17. In response to the allegations of Paragraph 17, Defendants admit that Lance Bolinger is a police officer employed by the City of Columbia. The remaining allegations of Paragraph 17 allege legal conclusions and are therefore denied.
18. In response to the allegations of Paragraph 18, Defendants admit that Michael Cavener is a police officer employed by the City of Columbia. The remaining allegations of Paragraph 18 allege legal conclusions and are therefore denied.
19. In response to the allegations of Paragraph 19, Defendants admit that Crystal Clements is a police officer employed by the City of Columbia. The remaining allegations of Paragraph 19 allege legal conclusions and are therefore denied.

20. In response to the allegations of Paragraph 20, Defendants admit that Kathy Dodd is a police officer employed by the City of Columbia. The remaining allegations of Paragraph 20 allege legal conclusions and are therefore denied.

21. In response to the allegations of Paragraph 21, Defendants admit that Robert Fox is a police officer employed by the City of Columbia. The remaining allegations of Paragraph 21 allege legal conclusions and are therefore denied.

22. In response to the allegations of Paragraph 22, Defendants admit that Scott Hendrick is a police officer employed by the City of Columbia. The remaining allegations of Paragraph 22 allege legal conclusions and are therefore denied.

23. In response to the allegations of Paragraph 23, Defendants admit that Richard Horrell is a police officer employed by the City of Columbia. The remaining allegations of Paragraph 23 allege legal conclusions and are therefore denied.

24. In response to the allegations of Paragraph 24, Defendants admit that Kyle Lucas is a police officer employed by the City of Columbia. The remaining allegations of Paragraph 24 allege legal conclusions and are therefore denied.

25. In response to the allegations of Paragraph 25, Defendants admit that Thomas Quintana is a police officer employed by the City of Columbia. The remaining allegations of Paragraph 25 allege legal conclusions and are therefore denied.

26. In response to the allegations of Paragraph 26, Defendants admit that Michael Parsons is a police officer employed by the City of Columbia. The remaining allegations of Paragraph 26 allege legal conclusions and are therefore denied.

27. In response to the allegations of Paragraph 27, Defendants admit that Roger Schlude is a police officer employed by the City of Columbia. The remaining allegations of Paragraph 27 allege legal conclusions and are therefore denied.

28. Defendants deny the allegations of Paragraph 28.

29. Defendants admit the allegations of Paragraph 29.

30. Defendants, at this time, are without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 30 and therefore deny same.

31. In response to the allegations of Paragraph 31, Defendants admit that members of the Columbia Police Department SWAT Team assembled at the front door of a home, and deny the remaining allegations of Paragraph 31.

32. Defendants deny the allegations of Paragraph 32.

33. Defendants deny the allegations of Paragraph 33.

34. Defendants deny the allegations of Paragraph 34.

35. In response to the allegations of Paragraph 35, Defendants admit that officers employed by the City of Columbia, Missouri, lawfully entered a home, and deny the remaining allegations of Paragraph 35.

36. In response to the allegations of Paragraph 36, Defendants admit that Defendant Quintana discharged one round from a H&K MP5, and deny the remaining allegations of Paragraph 36.

37. In response to the allegations of Paragraph 37, Defendants admit that Defendant Fox discharged two rounds from a H&K MP5, and deny the remaining allegations of Paragraph 37.

38. In response to the allegations of Paragraph 38, Defendants admit that Defendant Schlude discharged three rounds from a H&K USP, and deny the remaining allegations of Paragraph 38.

39. Defendants deny the allegations of Paragraph 39.

40. Defendants deny the allegations of Paragraph 40.

41. Defendants deny the allegations of Paragraph 41.

42. In response to the allegations of Paragraph 42, Defendants admit that Plaintiff Jonathan Whitworth was ordered to the ground in the hallway of the home, and that he ultimately complied. Defendants deny the remaining allegations of Paragraph 42.

43. Defendants deny the allegations of Paragraph 43.

44. Defendants deny the allegations of Paragraph 44.

45. Defendants deny the allegations of Paragraph 45.

46. Defendants deny the allegations of Paragraph 46.

COUNT I

COME NOW Defendants, by and through their attorneys, and for their Answer to the allegations of Count I, state to the Court as follows:

47. In response to the allegations of Paragraph 47, Defendants incorporate their answers to Paragraphs 1 through 46 as though fully set forth herein.

48. Defendants deny the allegations of Paragraph 48.
49. Defendants deny the allegations of Paragraph 49.
50. Defendants deny the allegations of Paragraph 50.
51. Defendants deny the allegations of Paragraph 51.
52. Defendants deny the allegations of Paragraph 52.
53. Defendants deny the allegations of Paragraph 53.
54. Defendants deny the allegations of Paragraph 54.

WHEREFORE, having answered the allegations of Count I of Plaintiffs' Complaint, Defendants pray that the same be dismissed, allowing them to go hence with their costs herein, and for such further relief as the Court deems just and proper in the premises.

COUNT II

COME NOW Defendants, by and through their attorneys, and for their Answer to the allegations of Count II, state to the Court as follows:

55. In response to the allegations of Paragraph 55, Defendants incorporate their answers to Paragraphs 1 through 54 as though fully set forth herein.
56. Defendants deny the allegations of Paragraph 56.
57. Defendants deny the allegations of Paragraph 57.
58. Defendants deny the allegations of Paragraph 58.
59. Defendants deny the allegations of Paragraph 59.
60. Defendants deny the allegations of Paragraph 60.

61. Defendants deny the allegations of Paragraph 61.
62. Defendants deny the allegations of Paragraph 62.
63. Defendants deny the allegations of Paragraph 63

WHEREFORE, having answered the allegations of Count II of Plaintiffs' Complaint, Defendants pray that the same be dismissed, allowing them to go hence with their costs herein, and for such further relief as the Court deems just and proper in the premises.

COUNT III

COME NOW Defendants, by and through their attorneys, and for their Answer to the allegations of Count III, state to the Court as follows:

64. In response to the allegations of Paragraph 64, Defendants incorporate their answers to Paragraphs 1 through 63 as though fully set forth herein.

65. Defendants deny the allegations of Paragraph 65.
66. Defendants deny the allegations of Paragraph 66.
67. Defendants deny the allegations of Paragraph 67.
68. Defendants deny the allegations of Paragraph 68.
69. Defendants deny the allegations of Paragraph 69.
70. Defendants deny the allegations of Paragraph 70.

WHEREFORE, having answered the allegations of Count III of Plaintiffs' Complaint, Defendants pray that the same be dismissed, allowing them to go hence with

their costs herein, and for such further relief as the Court deems just and proper in the premises.

COUNT IV

COME NOW Defendants, by and through their attorneys, and for their Answer to the allegations of Count IV, state to the Court as follows:

71. In response to the allegations of Paragraph 71, Defendants incorporate their answers to Paragraphs 1 through 70 as though fully set forth herein.

72. Defendants deny the allegations of Paragraph 72.

73. Defendants deny the allegations of Paragraph 73.

74. Defendants deny the allegations of Paragraph 74.

75. Defendants deny the allegations of Paragraph 75.

76. Defendants deny the allegations of Paragraph 76.

WHEREFORE, having answered the allegations of Count IV of Plaintiffs' Complaint, Defendants pray that the same be dismissed, allowing them to go hence with their costs herein, and for such further relief as the Court deems just and proper in the premises.

COUNT V

COME NOW Defendants, by and through their attorneys, and for their Answer to the allegations of Count V, state to the Court as follows:

77. In response to the allegations of Paragraph 77, Defendants incorporate their answers to Paragraphs 1 through 76 as though fully set forth herein.

78. Defendants deny the allegations of Paragraph 78.
79. Defendants deny the allegations of Paragraph 79.
80. Defendants deny the allegations of Paragraph 80.
81. Defendants deny the allegations of Paragraph 81.
82. Defendants deny the allegations of Paragraph 82.
83. Defendants deny the allegations of Paragraph 83.
84. Defendants deny the allegations of Paragraph 84.
85. Defendants deny the allegations of Paragraph 85.

WHEREFORE, having answered the allegations of Count V of Plaintiffs' Complaint, Defendants pray that the same be dismissed, allowing them to go hence with their costs herein, and for such further relief as the Court deems just and proper in the premises.

COUNT VI

COME NOW Defendants, by and through their attorneys, and for their Answer to the allegations of Count VI, state to the Court as follows:

86. In response to the allegations of Paragraph 86, Defendants incorporate their answers to Paragraphs 1 through 85 as though fully set forth herein.
87. Defendants deny the allegations of Paragraph 87.
88. Defendants deny the allegations of Paragraph 88.
89. Defendants deny the allegations of Paragraph 89.
90. Defendants deny the allegations of Paragraph 90.

91. Defendants deny the allegations of Paragraph 91.

92. Defendants deny the allegations of Paragraph 92.

93. Defendants deny the allegations of Paragraph 93.

WHEREFORE, having answered the allegations of Count VI of Plaintiffs' Complaint, Defendants pray that the same be dismissed, allowing them to go hence with their costs herein, and for such further relief as the Court deems just and proper in the premises.

COUNT VII

COME NOW Defendants, by and through their attorneys, and for their Answer to the allegations of Count VII, state to the Court as follows:

94. In response to the allegations of Paragraph 94, Defendants incorporate their answers to Paragraphs 1 through 93 as though fully set forth herein.

95. Defendants deny the allegations of Paragraph 95.

96. Defendants deny the allegations of Paragraph 96.

97. Defendants deny the allegations of Paragraph 97.

98. Defendants deny the allegations of Paragraph 98.

99. Defendants deny the allegations of Paragraph 99.

100. Defendants deny the allegations of Paragraph 100.

101. Defendants deny the allegations of Paragraph 101.

WHEREFORE, having answered the allegations of Count VII of Plaintiffs' Complaint, Defendants pray that the same be dismissed, allowing them to go hence with

their costs herein, and for such further relief as the Court deems just and proper in the premises.

COUNT VIII

COME NOW Defendants, by and through their attorneys, and for their Answer to the allegations of Count VIII, state to the Court as follows:

102. In response to the allegations of Paragraph 102, Defendants incorporate their answers to Paragraphs 1 through 101 as though fully set forth herein.

103. Defendants deny the allegations of Paragraph 103.

104. Defendants deny the allegations of Paragraph 104.

105. Defendants deny the allegations of Paragraph 105.

106. Defendants deny the allegations of Paragraph 106.

107. Defendants deny the allegations of Paragraph 107.

108. Defendants deny the allegations of Paragraph 108.

109. Defendants deny the allegations of Paragraph 109.

110. Defendants deny the allegations of Paragraph 110.

WHEREFORE, having answered the allegations of Count VIII of Plaintiffs' Complaint, Defendants pray that the same be dismissed, allowing them to go hence with their costs herein, and for such further relief as the Court deems just and proper in the premises.

COUNT IX

COME NOW Defendants, by and through their attorneys, and for their Answer to the allegations of Count IX, state to the Court as follows:

111. In response to the allegations of Paragraph 111, Defendants incorporate their answers to Paragraphs 1 through 110 as though fully set forth herein.

112. Defendants deny the allegations of Paragraph 112.

113. Defendants deny the allegations of Paragraph 113.

114. Defendants deny the allegations of Paragraph 114.

115. Defendants deny the allegations of Paragraph 115.

116. Defendants deny the allegations of Paragraph 116.

WHEREFORE, having answered the allegations of Count IX of Plaintiffs' Complaint, Defendants pray that the same be dismissed, allowing them to go hence with their costs herein, and for such further relief as the Court deems just and proper in the premises.

COUNT X

COME NOW Defendants, by and through their attorneys, and for their Answer to the allegations of Count X, state to the Court as follows:

117. In response to the allegations of Paragraph 117, Defendants incorporate their answers to Paragraphs 1 through 116 as though fully set forth herein.

118. Defendants deny the allegations of Paragraph 118.

119. Defendants deny the allegations of Paragraph 119.

120. Defendants deny the allegations of Paragraph 120.

121. Defendants deny the allegations of Paragraph 121.

122. Defendants deny the allegations of Paragraph 122.

WHEREFORE, having answered the allegations of Count X of Plaintiffs' Complaint, Defendants pray that the same be dismissed, allowing them to go hence with their costs herein, and for such further relief as the Court deems just and proper in the premises.

COUNT XI

COME NOW Defendants, by and through their attorneys, and for their Answer to the allegations of Count XI, state to the Court as follows:

123. In response to the allegations of Paragraph 123, Defendants incorporate their answers to Paragraphs 1 through 122 as though fully set forth herein.

124. Defendants deny the allegations of Paragraph 124.

125. Defendants deny the allegations of Paragraph 125.

126. Defendants deny the allegations of Paragraph 126.

127. Defendants deny the allegations of Paragraph 127.

128. Defendants deny the allegations of Paragraph 128.

129. Defendants deny the allegations of Paragraph 129.

130. Defendants deny the allegations of Paragraph 130.

131. Defendants deny the allegations of Paragraph 131.

WHEREFORE, having answered the allegations of Count XI of Plaintiffs' Complaint, Defendants pray that the same be dismissed, allowing them to go hence with their costs herein, and for such further relief as the Court deems just and proper in the premises.

COUNT XII

COME NOW Defendants, by and through their attorneys, and for their Answer to the allegations of Count XII, state to the Court as follows:

132. In response to the allegations of Paragraph 132, Defendants incorporate their answers to Paragraphs 1 through 131 as though fully set forth herein.

133. Defendants deny the allegations of Paragraph 133.

134. Defendants deny the allegations of Paragraph 134.

135. Defendants deny the allegations of Paragraph 135.

136. Defendants deny the allegations of Paragraph 136.

137. Defendants deny the allegations of Paragraph 137.

138. Defendants deny the allegations of Paragraph 138.

139. Defendants deny the allegations of Paragraph 139.

WHEREFORE, having answered the allegations of Count XII of Plaintiffs' Complaint, Defendants pray that the same be dismissed, allowing them to go hence with their costs herein, and for such further relief as the Court deems just and proper in the premises.

COUNT XIII

COME NOW Defendants, by and through their attorneys, and for their Answer to the allegations of Count XIII, state to the Court as follows:

140. In response to the allegations of Paragraph 140, Defendants incorporate their answers to Paragraphs 1 through 139 as though fully set forth herein.

141. Defendants deny the allegations of Paragraph 141.

142. Defendants deny the allegations of Paragraph 142.

143. Defendants deny the allegations of Paragraph 143.

144. Defendants deny the allegations of Paragraph 144.

145. Defendants deny the allegations of Paragraph 145.

146. Defendants deny the allegations of Paragraph 146.

147. Defendants deny the allegations of Paragraph 147.

148. Defendants deny the allegations of Paragraph 148.

WHEREFORE, having answered the allegations of Count XIII of Plaintiffs' Complaint, Defendants pray that the same be dismissed, allowing them to go hence with their costs herein, and for such further relief as the Court deems just and proper in the premises.

COUNT XIV

COME NOW Defendants, by and through their attorneys, and for their Answer to the allegations of Count XIV, state to the Court as follows:

149. In response to the allegations of Paragraph 149, Defendants incorporate their answers to Paragraphs 1 through 148 as though fully set forth herein.

150. Defendants deny the allegations of Paragraph 150.

151. Defendants deny the allegations of Paragraph 151.

152. Defendants deny the allegations of Paragraph 152.

153. Defendants deny the allegations of Paragraph 153.

154. Defendants deny the allegations of Paragraph 154.

WHEREFORE, having answered the allegations of Count XIV of Plaintiffs' Complaint, Defendants pray that the same be dismissed, allowing them to go hence with their costs herein, and for such further relief as the Court deems just and proper in the premises.

COUNT XV

COME NOW Defendants, by and through their attorneys, and for their Answer to the allegations of Count XV, state to the Court as follows:

155. In response to the allegations of Paragraph 155, Defendants incorporate their answers to Paragraphs 1 through 154 as though fully set forth herein.

156. Defendants deny the allegations of Paragraph 156.

157. Defendants deny the allegations of Paragraph 157.

158. Defendants deny the allegations of Paragraph 158.

159. Defendants deny the allegations of Paragraph 159.

WHEREFORE, having answered the allegations of Count XV of Plaintiffs' Complaint, Defendants pray that the same be dismissed, allowing them to go hence with their costs herein, and for such further relief as the Court deems just and proper in the premises.

COUNT XVI

COME NOW Defendants, by and through their attorneys, and for their Answer to the allegations of Count XVI, state to the Court as follows:

160. In response to the allegations of Paragraph 160, Defendants incorporate their answers to Paragraphs 1 through 159 as though fully set forth herein.

161. Defendants deny the allegations of Paragraph 161.

162. Defendants deny the allegations of Paragraph 162.

163. Defendants deny the allegations of Paragraph 163.

164. Defendants deny the allegations of Paragraph 164.

165. Defendants deny the allegations of Paragraph 165.

166. Defendants deny the allegations of Paragraph 166.

167. Defendants deny the allegations of Paragraph 167.

WHEREFORE, having answered the allegations of Count XVI of Plaintiffs' Complaint, Defendants pray that the same be dismissed, allowing them to go hence with their costs herein, and for such further relief as the Court deems just and proper in the premises.

COUNT XVII

COME NOW Defendants, by and through their attorneys, and for their Answer to the allegations of Count XVII, state to the Court as follows:

168. In response to the allegations of Paragraph 168, Defendants incorporate their answers to Paragraphs 1 through 167 as though fully set forth herein.

169. Defendants deny the allegations of Paragraph 169.

170. Defendants deny the allegations of Paragraph 170.

171. Defendants deny the allegations of Paragraph 171

WHEREFORE, having answered the allegations of Count XVII of Plaintiffs' Complaint, Defendants pray that the same be dismissed, allowing them to go hence with their costs herein, and for such further relief as the Court deems just and proper in the premises.

COUNT XVIII

COME NOW Defendants, by and through their attorneys, and for their Answer to the allegations of Count XVIII, state to the Court as follows:

172. In response to the allegations of Paragraph 172, Defendants incorporate their answers to Paragraphs 1 through 171 as though fully set forth herein.

173. Defendants deny the allegations of Paragraph 173.

174. Defendants deny the allegations of Paragraph 174.

175. Defendants deny the allegations of Paragraph 175.

WHEREFORE, having answered the allegations of Count XVIII of Plaintiffs' Complaint, Defendants pray that the same be dismissed, allowing them to go hence with their costs herein, and for such further relief as the Court deems just and proper in the premises.

GENERAL DENIAL

Defendants deny all allegations not expressly admitted herein.

AFFIRMATIVE DEFENSES

COME NOW Defendants, by and through their attorneys, and for their Affirmative Defenses applicable to all Counts of Plaintiffs' Complaint state to the Court as follows:

1. Plaintiff's Complaint fails to state a cause of action upon which relief may be granted or a Judgment sustained.
2. Defendants were justified to use any force because they reasonably believed that such use of force was necessary because they reasonably believed that there was a significant threat to Defendants or others.
3. All acts of Defendants were for the purpose of carrying out their official duties and/or in defense of aggressive acts and Defendants used only that force necessary to protect themselves or other law enforcement officers.
4. The actions of Defendants were in self defense or in defense of others.

5. Any actions taken by Defendants were discretionary in nature and made in good faith and Defendants are protected from liability by the doctrine of qualified immunity.

6. Defendants acted reasonably under the circumstances and their conduct was justified and/or privileged.

7. Any injuries or damages to Plaintiffs (which Defendants deny) were de minimis and do not implicate the deprivation of a constitutional right and are insufficient to support the claims set forth in Plaintiffs' Complaint.

8. Any alleged injuries or damages to Plaintiffs (which Defendants deny) were solely and proximately caused by Plaintiff Jonathan Whitworth's own conduct.

9. Plaintiffs Jonathan Whitworth and Brittany Whitworth, by their own conduct, consented to any acts of Defendants.

10. Plaintiff Jonathan Whitworth was guilty of intentional conduct or negligence which caused or contributed to cause the events alleged in Plaintiffs' Complaint, including any alleged injury resulting to Plaintiffs, in that Plaintiff Jonathan Whitworth: a) violently or aggressively resisted arrest; b) failed to appropriately respond to and/or obey verbal directives of law enforcement officers; and c) assumed the risk of injury when he knowingly engaged in his conduct.

11. All pendant state law claims alleged, if any, are barred for the reason that Defendants are entitled to official immunity because they were performing discretionary duties as duly appointed law enforcement officers.

12. In the event the trier of fact finds fault against Defendants, Defendants request the trier of fact to determine the percentage of fault of all parties, including, but not limited to, Plaintiff Jonathan Whitworth.

13. Plaintiff Jonathan Whitworth is estopped from asserting the claims set forth in his Complaint by the illegality of his conduct and actions.

14. Plaintiff Jonathan Whitworth's guilt bars his causes of action.

15. Plaintiff Jonathan Whitworth's provocation bars his causes of action.

16. Plaintiffs' claims are barred by the applicable statute of limitations.

17. Plaintiffs are not entitled to an award of punitive damages against Defendants in their official capacity, pursuant to the 11th Amendment of the United States Constitution and the Missouri Sovereign Immunity Statute, Section 537.600, RSMo.

18. Plaintiffs' claims are barred to the extent that they seek money damages under 42 U.S.C. Section 1983 against Defendants upon the theory of respondent superior.

19. Plaintiffs have failed to exhaust all available administrative remedies before bringing this action.

20. Any conduct of Defendants was reasonable in that Plaintiff Jonathan Whitworth was actively resisting arrest and/or attempting to evade by flight.

21. Defendants deny that punitive damages are submissible or appropriate, but further state that any award of punitive damages shall be limited by Section 510.265.1, RSMo.

22. To the extent Plaintiffs seek punitive damages against Defendants, Defendants state: the substantive and procedural laws of the State of Missouri concerning the assessment and imposition of punitive damages are violative of the Fourteenth Amendment to the United States Constitution, in that unlimited jury and/or judicial discretion in the fixing of punitive damages invites extreme results which are unacceptable under the due process clause of the Fourteenth Amendment of the United States Constitution. Under Missouri law, no reasonable constraints on the exercise of the jury's discretion in awarding punitive damages are furnished by jury instructions (or otherwise), in that the jury is not directed to consider relative factors in quantifying the amount of punitive damages that may be awarded. The absence of directives to the jury to consider relative factors allows impermissible and unconstitutional vagueness and ambiguity in the jury instruction, deliberation and verdict. This vagueness and ambiguity in turn threaten to deprive this defendant of its property without due process of law.

23. To the extent Plaintiffs seek recovery of punitive damages, the imposition of such punitive damages under the facts of this case would be violative of the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and in violation of Sections 2, 10, 15, 21 and 22(a) of Article I of the Constitution of the State of Missouri. Specifically, defendants state that the substantive laws of the State of Missouri concerning the assessment and imposition of punitive damages are unconstitutionally vague and arbitrary; that punitive damages alleged in this case are excessive punishment; and that punitive damages are impermissible under the Fourteenth Amendment to the

United States Constitution in that they constitute a fundamental denial of due process of law.

24. To the extent the Plaintiffs seek recovery of punitive damages, the request for imposition of punitive damages against these defendants is highly penal in nature, therefore triggering the protection of the aforesaid sections of the United States Constitution and the Constitution of the State of Missouri. Accordingly, the evidentiary burden of proof that Plaintiffs must satisfy and fulfill as a condition precedent to the award of punitive damages should be that of “proof beyond a reasonable doubt.”

25. Plaintiffs’ claims are barred by the doctrine of sovereign immunity.

26. Plaintiffs’ claims are barred by the public duty and official immunity doctrines.

27. Pursuant to Section 542.291, RSMo., Defendants were entitled to rely on the warrant.

28. Pursuant to Section 273.033, RSMo., Defendants were in reasonable apprehension of imminent harmful contact, and/or were acting to prevent such imminent harmful contact against another person, which is an absolute defense, and Defendants request their attorneys’ fees in defending this action.

29. Plaintiff Jonathan Whitworth and Brittany Whitworth’s claims are barred by the Assumption of Risks Doctrine.

30. Any arrest and/or detainment was justified.

31. There were reasonable grounds for any restraint and/or arrest.

32. Plaintiffs lack standing to assert constitutional violations because they did not own or possess the property they allege was wrongfully searched (which Defendants deny) and in such further respects as will become known through the course of discovery.

33. Any liability to Plaintiffs, which Defendants affirmatively deny, is limited pursuant to Section 537.610 RSMo.

WHEREFORE, having answered the allegations of Plaintiffs' Complaint, Defendants pray that the same be dismissed, allowing them to go hence with their costs herein, for their reasonable attorneys' fees, Court costs, and reasonable expenses incurred by them, and for such further relief as the Court deems just and proper in the premises.

COUNTERCLAIM AGAINST PLAINTIFFS
JONATHAN WHITWORTH AND BRITTANY WHITWORTH

COME NOW Defendants, by and through their attorneys, and for their Counterclaim against Plaintiffs Jonathan Whitworth and Brittany Whitworth state to the Court as follows:

COUNT I

COME NOW Defendants, by and through their attorneys, and for their Counterclaim against Plaintiff Jonathan Whitworth state to the Court as follows:

1. Defendants deny that they are liable to Plaintiffs, but state in the alternative that if Judgment is entered against Defendants (which Defendants deny), Plaintiffs' alleged injuries and damages were caused, or contributed to be caused, by the fault or negligence of Plaintiff Jonathan Whitworth, and Defendants are entitled to contribution

on the claims of Plaintiffs P.W. and Brittany Whitworth from Plaintiff Jonathan Whitworth as a result of Plaintiff Jonathan Whitworth's negligence. Specifically, Plaintiff Jonathan Whitworth was negligent for his own assumption of the risk, the illegality of his conduct, and in such further respects as will become better known through the course of discovery.

WHEREFORE, Defendants pray for this Court's Order dismissing Plaintiffs' Complaint, or, in the alternative, that if Judgment is entered against Defendants, which they deny, that they have Judgment against Plaintiff Jonathan Whitworth in proportion to the negligence of Plaintiff Jonathan Whitworth, for their reasonable attorneys' fees, Court costs, and reasonable expenses incurred by them, and for such further relief as the Court deems just and proper in the premises.

COUNT II

COME NOW Defendants, by and through their attorneys, and for their Counterclaim against Plaintiffs Jonathan Whitworth and Brittany Whitworth state to the Court as follows:

1. Defendants were in reasonable apprehension of imminent harmful contact and/or were acting to prevent such imminent harmful contact against themselves and/or others.
2. Pursuant to Section 273.033.3, RSMo., Defendants are entitled to their attorneys' fees, Court costs, and all reasonable expenses incurred by them in defense of this civil action.

WHEREFORE, Defendants pray for this Court's Order dismissing Plaintiffs' Complaint, or, in the alternative, that if Judgment is entered against Defendants, which they deny, that they have Judgment against Plaintiff Jonathan Whitworth in proportion to the negligence of Plaintiff Jonathan Whitworth, for their reasonable attorneys' fees, Court costs, and reasonable expenses incurred by them, and for such further relief as the Court deems just and proper in the premises.

Respectfully Submitted,

SCHREIMANN, RACKERS,
FRANCKA AND BLUNT, L.L.C.

/s/ Chris P. Rackers

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2010, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all attorneys of record.

/s/ Christopher P. Rackers