

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

RANDALL CLAY FORD,

Plaintiff,

v.

**CIVIL ACTION NO. 1:19-CV-192
JUDGE THOMAS S. KLEE**

**THE COUNTY COMMISSION OF
MARION COUNTY; JOHN BILLIE, in his
official and individual capacity; and JOHN
DOE, in his official and individual capacity,**

Defendants.

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

NOW COME the Defendants, County Commission of Marion County and John Billie (hereinafter collectively referred to at times as "Defendants"), by counsel, Tiffany R. Durst, Nathan A. Carroll, and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC without waiving any defenses, and hereby answer the Complaint [Dkt 1] filed by the Plaintiff herein, Randall Clay Ford (hereinafter "Plaintiff").

PRELIMINARY STATEMENT

Because of the nature of the allegations in the Plaintiff's Complaint and the fact that no discovery has been conducted to date in this matter, in order to preserve important legal rights and protections, Defendants set forth below certain affirmative defenses which, based upon the information set forth in the Complaint, they believe do apply or may apply to some or all of the claims raised therein. As permitted by Rule 8(d)(2) of the Federal Rules of Civil Procedure, defenses to the claims made in the Plaintiff's Complaint are being asserted alternatively and, in some instances, hypothetically. As a result, Defendants reserve the right to withdraw or modify

some or all of the affirmative defenses set forth below, in whole or in part, depending upon the nature of the discovery in this matter.

FIRST DEFENSE

Plaintiff's Complaint, or some of the allegations contained therein, fails to state a cause of action against Defendants upon which relief can be granted.

SECOND DEFENSE

To the extent that any of the following affirmative defenses are applicable based upon the evidence adduced in this matter, Defendants asserts the following defenses: contributory negligence, comparative negligence, assumption of the risk, waiver, estoppel, laches, release, res judicata, collateral estoppel, expiration of the statute of limitations, intervening and superseding cause, and any other matter constituting an avoidance or affirmative defense.

THIRD DEFENSE

To the extent applicable, Defendants assert and preserve all immunities and defenses contained within *W. Va. Code § 29-12A-1, et seq.*

FOURTH DEFENSE

To the extent applicable, Defendants raise and preserve the defenses of absolute and qualified immunity and any and all other immunities available to Defendants pursuant to common law, the United States Constitution, the United States Code, the West Virginia Constitution and the West Virginia Code.

FIFTH DEFENSE

To the extent applicable, Defendants assert and preserve the defenses of absolute and qualified immunity.

SIXTH DEFENSE

Defendants are immune from liability because they acted at all times in good faith, lawfully, and in the performance of their official duties.

SEVENTH DEFENSE

Defendants denies they acted in violation of Plaintiff's rights, and further denies they acted recklessly, willfully, unlawfully and/or intentionally.

EIGHTH DEFENSE

Defendants breached no duty at law owed to the Plaintiff.

NINTH DEFENSE

Defendants raise the defenses of lack of subject matter jurisdiction, personal jurisdiction, improper venue, insufficiency of service of process and insufficiency of process to the extent that such defenses may appear applicable following discovery.

TENTH DEFENSE

Defendants are immune from suit because their conduct was not in contravention of any clearly established Constitutional right or privilege of the Plaintiff.

ELEVENTH DEFENSE

Not being fully advised as to all the facts and circumstances surrounding the allegations in the Plaintiff's Complaint, Defendants hereby invoke and assert all affirmative defenses which may prove applicable herein, so as not to waive them, including, but not necessarily limited to, those defenses specifically set forth in Rules 8(c), 9 and 12 of the Federal Rules of Civil Procedure, including lack of jurisdiction over the subject matter, lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, duress, estoppel, failure of

consideration, fraud, illegality, laches, license, release, res judicata, statute of frauds, statute of limitations and waiver, and further reserve the right to raise such additional defenses as may appear appropriate following further discovery and factual development in this case.

TWELFTH DEFENSE

Defendants raise and preserve all benefits, protections, privileges, limitations, and immunities available pursuant to common law, the United States Constitution, the United States Code, the West Virginia Constitution and the West Virginia Code.

THIRTEENTH DEFENSE

Defendants specifically assert all common law, statutory and Constitutional immunities afforded under State and Federal law.

FOURTEENTH DEFENSE

Defendants have, at all times, acted within their legal rights in the conduct of all of activities and with just cause.

FIFTEENTH DEFENSE

The injuries and damages alleged by Plaintiff were caused by the misconduct of Plaintiff and are in no way attributable to any improper conduct of Defendants.

SIXTEENTH DEFENSE

Defendants deny that they engaged in any wrongful or improper conduct and, do not, by asserting affirmative defenses herein, assume the burden of proof in this case, which remains with the Plaintiff.

SEVENTEENTH DEFENSE

Defendants denies that they are liable to the Plaintiff in any amount or that Plaintiff is otherwise entitled to the recovery and/or the relief sought from Defendants in Plaintiff's Complaint.

EIGHTEENTH DEFENSE

If the Plaintiff suffered damage as alleged in the Complaint, said damage was the result of actions of the Plaintiff.

NINETEENTH DEFENSE

Defendants reserve the right to file additional cross-claims, counterclaims, or third-party complaints if the evidence warrants the filing of these claims.

TWENTIETH DEFENSE

Defendants were was not guilty of any intentional, willful, malicious or outrageous act or acts which proximately caused or contributed to the damages allegedly sustained by the Plaintiff and the Plaintiff is thereby prohibited from recovering any punitive damages from Defendants, as is alleged in Plaintiff's Complaint.

TWENTY-FIRST DEFENSE

To the extent that Plaintiff's Complaint seeks exemplary or punitive damages from Defendants, said Complaint violates Defendants' rights to due process under the Constitution of the State of West Virginia and the United States Constitution and, therefore, fails to state a cause of action upon which exemplary or punitive damages can be awarded.

TWENTY-SECOND DEFENSE

To the extent that Plaintiff's Complaint seeks exemplary or punitive damages from Defendants, said Complaint violates Defendants rights to protection from "excessive fines" as

provided in Article 3, Section 5 of the Constitution of the State of West Virginia, violates Defendants' rights to substantive due process as provided in the Constitution of the State of West Virginia and the United States Constitution, and fails to state a cause of action against Defendants supporting exemplary or punitive damages claims.

TWENTY-THIRD DEFENSE

To the extent that Plaintiff's Complaint seeks exemplary or punitive damages from Defendants, Defendants affirmatively assert that said Complaint violates Defendants' rights to equal protection under the law and is otherwise unconstitutional under the Fourteenth Amendment to the United States Constitution and Article III, Section I, and all other applicable provisions of the Constitution of the State of West Virginia.

TWENTY-FOURTH DEFENSE

To the extent that Plaintiff's Complaint seeks exemplary or punitive damages from Defendants, Defendants affirmatively assert that any award of punitive damages violates the guarantee of due process found in Article III, Section 10, and all other applicable provisions of the Constitution of the State of West Virginia because of the lack of objective guidelines on which a finder of fact might base its award, and further, that the guidelines which do exist are arbitrary and void for vagueness.

TWENTY-FIFTH DEFENSE

To the extent that Plaintiff's Complaint seeks exemplary or punitive damages from Defendants, Defendants assert that Plaintiff's Complaint either fails to allege and/or the Plaintiff cannot prove, the necessary predicates or conditions in order to establish the threshold requirements for the recovery of punitive damages.

TWENTY-SIXTH DEFENSE

Defendants reserve the right to file additional affirmative defenses if a sufficient factual basis therefor is developed through continuing investigation and discovery.

TWENTY-SEVENTH DEFENSE

And for their answer to the specific allegations set forth in Plaintiff's Complaint, Defendants state and aver as follows:

ALLEGED PRELIMINARY STATEMENT

1. Defendants incorporate herein by reference all of the affirmative defenses hereinabove set forth as if the same were herein set forth verbatim.

2. With respect to the alleged Preliminary Statement contained within Plaintiff's Complaint, Defendants specifically deny any allegation of "unreasonable use of excessive, deadly force." Defendants further deny any allegation that "members of the Marion County Sheriff's Department utilized unreasonable excessive, deadly force[]" in "four separate incidents[.]" Defendants further deny any allegation that Defendant John Billie (hereinafter "Defendant Billie") "acted unreasonably when he utilized excessive, deadly force by shooting [Plaintiff] through his driver's side window – striking him in the back twice – in direct violation of the Marion County Sheriff's Department's Use of Force Policy." Any remaining allegations contained with the alleged Preliminary Statement are hereby denied.

ALLEGED JURISDICTION AND VENUE

3. Paragraphs 1, 2 and 3 of Plaintiff's Complaint contain no factual allegations or assertions against Defendants and, therefore, no response to the same by Defendants is required. To the extent that a response by Defendants to Paragraphs 1, 2 and 3 of Plaintiff's Complaint is deemed to be required, Defendants would state the allegations contained therein are statements of

law to which no response by Defendants is required. To the extent that Paragraphs 1, 2, and 3 of Plaintiff's Complaint can be construed as implying or suggesting any wrongful or improper conduct on the part of Defendants, or any employee or agent thereof, in any manner whatsoever, Defendants deny the same and, therefore, demand strict proof thereof.

ALLEGED PARTIES

4. Upon information and belief and subject to confirmation of the same through discovery, Defendants admit the allegations contained within Paragraph 4 of Plaintiff's Complaint.

5. Defendants admit the allegations contained within Paragraph 5 of Plaintiff's Complaint.

6. With respect to the allegations contained within Paragraph 6 of Plaintiff's Complaint, Defendants admit that the Marion County Sheriff's Department (hereinafter "MCSD") is a law enforcement agency within the State of West Virginia, operated in Marion County, West Virginia and was/is overseen by the Marion County Commission (hereinafter the "Commission"). As to the allegation contained within Paragraph 6 of Plaintiff's Complaint, specifically that the Commission "employs the other Defendants in this case[,]” Defendants admit that Defendant Billie is employed through the Commission; however, as to any alleged John Doe Defendant, Defendants are presently without sufficient information or knowledge to form a belief as to the truth of the allegations given that Plaintiff has failed to provide any identifying characteristics for any alleged John Doe Defendant.

7. Defendants admits the allegations contained in Paragraph 7 of Plaintiff's Complaint.

8. Defendants are presently without sufficient information or knowledge to form a belief as to the truth of the allegations contained within Paragraph 8 of Plaintiff's Complaint and, therefore, deny the same and demand strict proof thereof.

9. The allegations contained within Paragraph 9 of Plaintiff's Complaint are statements of law to which no response by Defendants is required. To the extent that Paragraph 10 of Plaintiff's Complaint can be construed as implying or suggesting any wrongful or improper conduct on the part of Defendants, or any employee or agent thereof, in any manner whatsoever, Defendants deny the allegations contained within Paragraph 9 of Plaintiff's Complaint and, therefore, demand strict proof thereof.

10. The allegations contained within Paragraph 10 of Plaintiff's Complaint are statements of law to which no response by Defendants is required. To the extent that Paragraph 10 of Plaintiff's Complaint can be construed as implying or suggesting any wrongful or improper conduct on the part of Defendants, or any employee or agent thereof, in any manner whatsoever, Defendants specifically any alleged violation of any law, statute, and/or regulation of the State of West Virginia.

ALLEGED FACTS

The Marion County Sheriff's Department

11. The allegations contained within Paragraph 11 of Plaintiff's Complaint contain no factual assertions against the Defendants and, therefore, no response by the Defendants is required.

12. With respect to the allegations contained within Paragraph 12 of Plaintiff's Complaint, Defendants admit the existence of the news article referenced in said Paragraph, but would further state that the news article speaks for itself and is not subject to any self-serving legal

or factual interpretations by Plaintiff. To the extent that a further response to Paragraph 12 of Plaintiff's Complaint is required, Defendants deny the allegation that the Commission "owned hundreds of thousands of dollars in military grade vehicles and/or equipment."

13. With respect to the allegations contained within Paragraph 13 of Plaintiff's Complaint, Defendants admit the existence of the August 12, 2017 Freedom of Information Act Request (hereinafter "FOIA") and Response referenced in said Paragraph, but would further state that the FOIA Request and Response speak for themselves and are not subject to any self-serving legal or factual interpretations by Plaintiff.

14. With respect to the allegations contained within Paragraph 14 of Plaintiff's Complaint, Defendants admit the existence of the August 11, 2017 FOIA Request and Response referenced in said Paragraph, but would further state that the FOIA Request and Response speak for themselves and are not subject to any self-serving legal or factual interpretations by Plaintiff.

15. With respect to the allegations contained within Paragraph 15 of Plaintiff's Complaint, Defendants admit that the MCSD was involved in three (3) officer-involved shootings, as alleged in said Paragraph. However, one of the incidents referenced in Paragraph 15 involved a situation where a member of another law enforcement agency, not MCSD, shot an individual resulting in his death. To the extent that Paragraph 15 of Plaintiff's Complaint can be construed as implying or suggesting any wrongful or improper conduct on the part of Defendants, or any employee or agent thereof, in any manner whatsoever, Defendants deny the allegations contained within Paragraph 15 of Plaintiff's Complaint and, therefore, demand strict proof thereof. To the extent that Paragraph 15 of Plaintiff's Complaint refers to a shooting involving the City of Fairmont Police Department, the Defendants would state that said allegation contains no factual

assertions against the Defendants and, therefore, no response by the Defendants is required. Any remaining allegations contained within Paragraph 15 of Plaintiff's Complaint are hereby denied.

16. With respect to the allegations contained within Paragraph 16 of Plaintiff's Complaint, Defendants admit that one individual, Philip Rhoades, was killed as a result of an August 2, 2017 shooting; however, Defendants affirmatively deny that the shooting was the result of any alleged unreasonable excessive use of force. For further response to the allegations contained within Paragraph 16 of Plaintiff's Complaint, Defendants would state that one of the incidents referenced in Paragraph 16 involved a situation where a member of another law enforcement agency, not MCS D, shot an individual resulting in his death. With further respect to the allegations contained within Paragraph 16 of Plaintiff's Complaint, Defendants admit that Plaintiff was the subject of a shooting incident involving the MCS D; however, Defendants specifically deny that the said shooting was the result of any alleged unreasonable excessive use of force. With respect to any allegations in regard to the medical condition of Plaintiff, Defendants are presently without sufficient information or knowledge to form a belief as to the truth of the said allegations. Any remaining allegations contained within Paragraph 16 of Plaintiff's Complaint are hereby denied.

17. Defendants affirmatively deny the allegations contained within Paragraphs 17, 18, and 19 of Plaintiff's Complaint and, therefore, demand strict proof thereof.

The Marion County Sheriff's Department Use of Force Policy

18. With respect to the allegations contained within Paragraphs 20, 21, 22 (including all subparts thereto), and 23 of Plaintiff's Complaint, Defendants would state that the MCS D Use of Force Policy referenced in said Paragraphs speaks for itself and is not subject to any self-serving legal or factual interpretations by Plaintiff. To the extent that Paragraphs 20, 21,

22 (including all subparts thereto), and 23 of Plaintiff's Complaint can be construed as asserting or otherwise implying any violation of the MCS D's use of Force Policy, the same is hereby affirmatively denied.

Randall Clay Ford

19. Defendants are presently without sufficient knowledge or information to form a belief as to the truth of the allegations contained within Paragraph 24 of Plaintiff's Complaint.

20. Defendants are presently without sufficient knowledge or information to form a belief as to the truth of the allegations contained within Paragraph 25 of Plaintiff's Complaint and, therefore, deny the same.

21. Defendants are presently without sufficient knowledge or information to form a belief as to the truth of the allegations contained within Paragraph 26 of Plaintiff's Complaint.

22. Defendants are presently without sufficient knowledge or information to form a belief as to the truth of the allegations contained within Paragraphs 27 and 28 of Plaintiff's Complaint. To the extent that Paragraphs 27 and 28 of Plaintiff's Complaint can be construed as implying or suggesting any wrongful or improper conduct on the part of Defendants, or any employee or agent thereof, in any manner whatsoever, Defendants deny the allegations contained within Paragraphs 27 and 28 of Plaintiff's Complaint and, therefore, demand strict proof thereof.

Alleged October 17, 2017 — The Shooting

23. The allegations contained within Paragraphs 29, 30, and 31 of Plaintiff's Complaint contain no factual assertions against the Defendants and, therefore, no response by the Defendants is required. However, to the extent that a response by the Defendants to Paragraph 29,

30, and 31 of Plaintiff's Complaint is deemed to be required, upon information and belief, Defendants admit the allegations contained within Paragraph 29, 30, and 31 of Plaintiff's Complaint.

24. The allegations contained within Paragraphs 32 of Plaintiff's Complaint contain no factual assertions against the Defendants and, therefore, no response by the Defendants is required. However, to the extent that a response by the Defendants to Paragraph 32 of Plaintiff's Complaint is deemed to be required, upon information and belief, Defendants admit that Officer Wesley Wheeler (hereinafter "Officer Wheeler") thought that Plaintiff was driving to Shinnston, West Virginia. Defendants further admit that Officer Wheeler coordinated his pursuit of Plaintiff with the MCSO.

25. Defendants admit the allegations contained within Paragraphs 33 of Plaintiff's Complaint.

26. Defendants admit the allegations contained within Paragraphs 34 and 35 of Plaintiff's Complaint. To the extent that Paragraphs 34 and 35 of Plaintiff's Complaint can be construed as implying or suggesting any wrongful or improper conduct on the part of Defendants, or any employee or agent thereof, in any manner whatsoever, Defendants deny the allegations contained within Paragraphs 34 and 35 of Plaintiff's Complaint and, therefore, demand strict proof thereof.

27. Defendants admit the allegations contained within Paragraph 36 of Plaintiff's Complaint.

28. Defendants affirmatively deny the allegations contained within Paragraphs 37, 38, 39, 40, 41, and 42 of Plaintiff's Complaint and, therefore, demand strict proof thereof.

29. With respect to the allegations contained within Paragraph 43 of Plaintiff's Complaint, Defendants admit that radio traffic contains an individual stating "move, move, move". Any remaining allegations contained within Paragraph 43 of Plaintiff's Complaint are hereby denied.

30. With respect to the allegations contained within Paragraph 44 of Plaintiff's Complaint, Defendants would state that Defendant Billie moved from his position to avoid being struck by Plaintiff's vehicle. To the extent that Paragraph 44 of Plaintiff's Complaint can be construed as implying or suggesting any wrongful or improper conduct on the part of Defendants, or any employee or agent thereof, in any manner whatsoever, Defendants deny the allegations contained within Paragraphs 44 of Plaintiff's Complaint and, therefore, demand strict proof thereof.

31. Defendants deny the allegations contained within Paragraph 45 of Plaintiff's Complaint and, therefore, demand strict proof thereof.

32. With respect to the allegations contained within Paragraph 46 of Plaintiff's Complaint, Defendants would state that Defendant Billie discharged his weapon twice at Plaintiff's vehicle based on the exigent circumstances that Plaintiff almost struck Defendant Billie with his vehicle. To the extent that Paragraph 46 of Plaintiff's Complaint can be construed as asserting or otherwise implying any violation of the MCSD's use of Force Policy on October 17, 2017, the same is hereby affirmatively denied. Defendants further deny that Plaintiff was struck in the back as a result of the shooting. Any remaining allegations contained within Paragraph 46 of Plaintiff's Complaint are hereby denied.

33. Defendants are presently without sufficient knowledge or information to form a belief as to the truth of the allegations contained within Paragraph 47 of Plaintiff's Complaint and, therefore, deny the same.

34. The allegations contained within Paragraphs 48 and 49 of Plaintiff's Complaint contain no factual assertions against the Defendants and, therefore, no response by the Defendants is required. To the extent that Paragraphs 48 and 49 of Plaintiff's Complaint can be construed as asserting or otherwise implying any violation of the MCSD's use of Force Policy on October 17, 2017, the same is hereby affirmatively denied.

35. Defendants are presently without sufficient knowledge or information to form a belief as to the truth of the allegations contained within Paragraph 50 of Plaintiff's Complaint, specifically that Plaintiff "immediately became paralyzed" and, therefore, Defendants deny the same. For their further answer to the allegations contained within Paragraph 50 of Plaintiff's Complaint, Defendants would assert that Officer Wheeler noted that as he approached the vehicle following the shooting and Plaintiff crashing his vehicle into a culvert, Plaintiff was still trying to drive the vehicle.

36. Defendants are presently without sufficient knowledge or information to form a belief as to the truth of the allegations contained within Paragraph 51 of Plaintiff's Complaint, specifically that Plaintiff was "paralyzed" and, therefore, Defendants deny the same. For their further answer to the allegations contained within Paragraph 51 of Plaintiff's Complaint, Defendants would assert that Officer Wheeler noted that as he approached the vehicle following the shooting and Plaintiff crashing his vehicle into a culvert, Plaintiff was still trying to drive the vehicle.

37. Defendants are presently without sufficient knowledge or information to form a belief as to the truth of the allegations contained within Paragraph 52 and 53 of Plaintiff's Complaint and, therefore, deny the same.

38. Defendants affirmatively deny the allegations contained within Paragraph 54 of Plaintiff's Complaint and, therefore, demand strict proof thereof.

39. With respect to the allegations contained within Paragraph 55 of Plaintiff's Complaint, Defendants would state that the MCSD Use of Force Policy referenced in said Paragraph speaks for itself and is not subject to any self-serving legal or factual interpretations by Plaintiff. To the extent that Paragraph 55 of Plaintiff's Complaint can be construed as asserting or otherwise implying any violation of the MCSD's use of Force Policy, the same is hereby affirmatively denied.

40. Defendants affirmatively deny the allegations contained within Paragraph 56 of Plaintiff's Complaint and, therefore, demand strict proof thereof.

41. With respect to the allegations contained within Paragraph 57 of Plaintiff's Complaint, Defendants affirmatively assert that there was no violation of the MCSD's Use of Force Policy on October 17, 2017. Moreover, Defendants specifically assert that exigent circumstances existed as contemplated by the MCSC's Use of Force Policy. To the extent that Paragraph 57 of Plaintiff's Complaint can be construed as implying or suggesting any wrongful or improper conduct on the part of Defendants, or any employee or agent thereof, in any manner whatsoever, Defendants deny the same and, therefore, demand strict proof thereof.

42. Defendants affirmatively deny the allegations contained within Paragraph 58 of Plaintiff's Complaint and, therefore, demand strict proof thereof.

43. With respect to the allegations contained within Paragraph 59 of Plaintiff's Complaint, Defendants admit that the MCSD was involved in three (3) officer-involved shootings, as alleged in said Paragraph. However, one of the incidents referenced in Paragraph 59 involved a situation where a member of another law enforcement agency, not MCSD, shot an individual resulting in his death. To the extent that Paragraph 59 of Plaintiff's Complaint can be construed as implying or suggesting any wrongful or improper conduct on the part of Defendants, or any employee or agent thereof, in any manner whatsoever, Defendants deny the allegations contained within Paragraph 15 of Plaintiff's Complaint and, therefore, demand strict proof thereof. To the extent that Paragraph 59 of Plaintiff's Complaint refers to a shooting involving the City of Fairmont Police Department, the Defendants would state that said allegation contains no factual assertions against the Defendants and, therefore, no response by the Defendants is required. Any remaining allegations contained within Paragraph 59 of Plaintiff's Complaint are hereby denied.

COUNT I
42 U.S.C. § 1983 – Alleged Excessive Use of Force

44. With respect to the allegations contained within Paragraph 60 of Plaintiff's Complaint, Defendants reassert their responses as set forth in numbered Paragraphs 1 through 59 as if the same were fully set forth herein verbatim.

45. Defendants affirmatively deny the allegations contained within Paragraphs 61, 62, 63, 64, 65, 66, 67, 68, 69, and 70 of Plaintiff's Complaint and, therefore, demand strict proof thereof.

COUNT II

42 § 1983 – Alleged *Monell* Liability – County Commission of Marion County

46. With respect to the allegations contained within Paragraph 71 of Plaintiff's Complaint, Defendants reassert their responses as set forth in numbered Paragraphs 1 through 71 [sic] as if the same were fully set forth herein verbatim.

45. Defendants admit the allegations contained within Paragraph 72 of Plaintiff's Complaint.

46. The allegations contained within Paragraph 73 of Plaintiff's Complaint are statements of law to which no response by Defendants is required. To the extent that Paragraph 73 of Plaintiff's Complaint can be construed as implying or suggesting any wrongful or improper conduct on the part of Defendants, or any employee or agent thereof, in any manner whatsoever, Defendants specifically any alleged violation of any law, statute, and/or regulation of the State of West Virginia.

47. Defendants affirmatively deny the allegations contained within Paragraphs 74, 75, 76, 77, 78, 79, 80, 81, 82 and 83 of Plaintiff's Complaint and, therefore, demand strict proof thereof.

48. With respect to the allegations contained within Paragraphs 82 and 83, Defendants admit that the warrant for attempted murder on a police officer was filed by Deputy Eric Parker based on the information provided by then Deputy Corey Love and, further, that the other warrants filed against Phillip Jontz Rhoades were filed by Deputy Matthew Love. To the extent that Paragraphs 82 and 83 of Plaintiff's Complaint can be construed as implying or suggesting any wrongful or improper conduct on the part of Defendants, or any employee or agent thereof, in any manner whatsoever, Defendants specifically any alleged violation of any law, statute, and/or regulation of the State of West Virginia.

49. With respect to the allegations contained within Paragraph 84 of Plaintiff's Complaint, Defendant would state that the deposition testimony of Corey Love referenced in said Paragraph speaks for itself and is not subject to any self-serving legal or factual interpretations by Plaintiff. To the extent that Paragraph 84 of Plaintiff's Complaint can be construed as implying or suggesting any wrongful or improper conduct on the part of Defendants, or any employee or agent thereof, in any manner whatsoever, Defendants deny the same and, therefore, demand strict proof thereof.

50. With respect to the allegations contained within Paragraph 85 of Plaintiff's Complaint, Defendants would state that Deputy David Forsyth's actions on August 2, 2017 were in compliance with the MCSD's Use of Force Policy inasmuch as Phillip Jontz Rhoades was driving the stolen Jeep directly at Deputy David Forsyth. To the extent that Paragraph 85 of Plaintiff's Complaint can be construed as implying or suggesting any wrongful or improper conduct on the part of Defendants, or any employee or agent thereof, in any manner whatsoever, Defendants deny the same and, therefore, demand strict proof thereof.

51. With respect to the allegations contained within Paragraph 86 of Plaintiff's Complaint, Defendants would state that Deputy Corey Love was the only other individual present during the August 2, 2017 shooting incident with Phillip Jontz Rhoades, other than Deputy David Forsyth and the said Phillip Jontz Rhoades. Insofar as Paragraph 86 of Plaintiff's Complaint attempts to refer to "fate", Defendants cannot provide a response to the same as said assertion is simply an opinion of Plaintiff's counsel and not an assertion of fact. To the extent that Paragraph 86 of Plaintiff's Complaint can be construed as implying or suggesting any wrongful or improper conduct on the part of Defendants, or any employee or agent thereof, in any manner whatsoever, Defendants deny the same and, therefore, demand strict proof thereof.

52. Defendants affirmatively deny the allegations contained within Paragraphs 87 and 88 of Plaintiff's Complaint and, therefore, demand strict proof thereof.

53. With respect to the allegations contained within Paragraph 89 of Plaintiff's Complaint, Defendants would state that the West Virginia State Police's Report of Criminal Investigation states that the stolen vehicle being driven by Phillip Jontz Rhoades was "running and appeared to be in gear". Insofar as Paragraph 89 of Plaintiff's Complaint asserts that the stolen vehicle being driven by Phillip Jontz Rhoades on August 2, 2017 was "actually in neutral" when he was shot, Defendants affirmatively deny the same and, therefore, demand strict proof thereof.

54. Defendants affirmatively deny the allegations contained within Paragraphs 90, 91, and 92 of Plaintiff's Complaint and, therefore, demand strict proof thereof.

COUNT III
Alleged Intentional Infliction of Emotional Distress

55. With respect to the allegations contained within Paragraph 93 of Plaintiff's Complaint, Defendants reassert their responses as set forth in numbered Paragraphs 1 through 93 [sic] as if the same were fully set forth herein verbatim.

56. Defendants affirmatively deny the allegations contained within Paragraphs 94, 95, 96, 97, 98, and 99 of Plaintiff's Complaint and, therefore, demand strict proof thereof.

57. Defendants affirmatively deny the allegations contained in the "WHEREFORE" clause of Plaintiff's Complaint, including subparagraphs (a) through (f), and, therefore, demand strict proof thereof.

58. Defendants specifically deny that they are liable to the Plaintiff for any alleged injuries and/or damages.

59. All allegations contained in Plaintiff's Complaint not specifically admitted herein are hereby denied.

Jury Demand

Defendants respectfully demand a trial by Jury on all issues so triable.

Prayer For Relief

WHEREFORE, the Defendants, County Commission of Marion County and John Billie, having fully answered Plaintiff's Complaint, pray that Plaintiff's Complaint be dismissed and held for naught; that the Plaintiff recover nothing from the Defendants, County Commission of Marion County and John Billie; that the Defendants, County Commission of Marion County and John Billie, recover their costs, expenses of suit and a reasonable attorney's fee made necessary in defending this Complaint; and, for such other and further relief, whether legal or equitable in character, as to which the Defendants, County Commission of Marion County and John Billie, may be entitled.

Dated this 17th day of December, 2019.

Defendants, By Counsel:

/s/ Tiffany R. Durst

Tiffany R. Durst, WV State Bar No. 7441
Nathan A. Carroll, WV State Bar No. 12526

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

RANDALL CLAY FORD,

Plaintiff,

v.

**CIVIL ACTION NO. 1:19-CV-192
JUDGE THOMAS S. KLEE**

**THE COUNTY COMMISSION OF
MARION COUNTY; JOHN BILLIE, in his
official and individual capacity; and JOHN
DOE, in his official and individual capacity,**

Defendants.

CERTIFICATE OF SERVICE

The undersigned, counsel of record for Defendants, the County Commission of Marion County and John Billie, does hereby certify on this 17th day of December, 2019, that a true copy of the foregoing “**DEFENDANTS’ ANSWER TO PLAINTIFF’S COMPLAINT**” was served upon opposing counsel by uploading same to the Court’s CM/ECF Electronic Filing system, which will notify the following parties of such filing:

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/s/ Tiffany R. Durst

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