

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

JESUS GONZALEZ

Plaintiff,

Case No. 09CV0384

v.

VILLAGE OF WEST MILWAUKEE,
CHARLES DONOVAN,
PATRICK KRAFCHICK,
CITY OF CHILTON, and
MICHAEL YOUNG,

Defendants.

**ANSWER AND AFFIRMATIVE DEFENSES OF
VILLAGE OF WEST MILWAUKEE, CHARLES DONOVAN,
PATRICK KRAFCHICK, CITY OF CHILTON AND MICHAEL YOUNG**

Village of West Milwaukee, Charles Donovan, Patrick Krafcheck, City of Chilton, and Michael Young, by their attorneys, Crivello Carlson, S.C., submit their Answer and Affirmative Defenses as follows:

1. Answering ¶ 1, deny and affirmatively allege that the Plaintiff's constitutional and statutory rights were not violated or infringed upon by these answering defendants.
2. Answering ¶ 2, admit that this Court has federal question and civil rights jurisdiction, but deny that the Plaintiff's rights were violated or infringed upon by these answering defendants; as further answer, deny.
3. Answering ¶ 3, admit that events occurred within the Eastern District of Wisconsin; as further answer, deny.

4. Answering ¶ 4, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same putting the Plaintiff specifically to his proof thereon.

5. Answering ¶ 5, admit that the Village of West Milwaukee is a municipal entity organized and existing pursuant to Wisconsin Law.

6. Answering ¶ 6, admit that Charles Donovan is an officer with the West Milwaukee Police Department who was acting within the course and scope of his authority and consistent with the laws of the State of Wisconsin and the U. S. Constitution.

7. Answering ¶ 7, admit that Patrick Krafcheck is an officer with the West Milwaukee Police Department who was acting within the course and scope of his authority and consistent with the laws of the State of Wisconsin and the U. S. Constitution.

8. Answering ¶ 8, admit that the City of Chilton is a municipal entity organized and existing pursuant to Wisconsin Law.

9. Answering ¶ 9, admit that Michael Young is an officer with the City of Chilton Police Department who was acting within the course and scope of his authority and consistent with the laws of the State of Wisconsin and the U. S. Constitution.

10. Answering ¶ 10, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same putting the Plaintiff specifically to his proof thereon.

11. Answering ¶ 11, deny that Plaintiff's description is either complete or correct.

12. Answering ¶ 12, deny that Plaintiff's description is either complete or correct.

13. Answering ¶ 13, deny that Plaintiff's description is either complete or correct.

14. Answering ¶ 14, deny that Plaintiff's description is either complete or correct.

15. Answering ¶ 15, deny that Plaintiff's description is either complete or correct.

16. Answering ¶ 16, deny that Plaintiff's description is either complete or correct.

17. Answering ¶ 17, deny that Plaintiff's description is either complete or correct.

18. Answering ¶ 18, deny that Plaintiff's description is either complete or correct.

19. Answering ¶ 19, deny that Plaintiff's description is either complete or correct.

20. Answering ¶ 20, deny that Plaintiff's description is either complete or correct.

21. Answering ¶ 21, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same putting the Plaintiff specifically to his proof thereon.

22. Answering ¶ 22, deny that Plaintiff's description is either complete or correct.

23. Answering ¶ 23, deny that Plaintiff's description is either complete or correct.

24. Answering ¶ 24, deny that Plaintiff's description is either complete or correct.

25. Answering ¶ 25, deny that Plaintiff's description is either complete or correct.

26. Answering ¶ 26, deny that Plaintiff's description is either complete or correct.

27. Answering ¶ 27, deny.

28. Answering ¶ 28, deny.

29. Answering ¶ 29, deny.

30. Answering ¶ 30, deny.

31. Answering ¶ 31, deny.

32. Answering ¶ 32, deny that Plaintiff's rights were violated or infringed upon by these answering Defendants; as further answer deny.

33. Answering ¶ 33, deny that Plaintiff's rights were violated or infringed upon by these answering Defendants; as further answer deny.

34. Answering ¶ 34, deny that Plaintiff's rights were violated or infringed upon by these answering Defendants; as further answer deny.

35. Answering ¶ 35, deny that Plaintiff's rights were violated or infringed upon by these answering Defendants; as further answer deny.

36. Answering ¶ 36, deny that Plaintiff's rights were violated or infringed upon by these answering Defendants; as further answer deny.

37. Answering ¶ 37, deny that Plaintiff's rights were violated or infringed upon by these answering Defendants; as further answer deny.

38. Answering ¶ 38, deny that Plaintiff's rights were violated or infringed upon by these answering Defendants; as further answer deny.

39. Answering ¶ 39, deny that Plaintiff's rights were violated or infringed upon by these answering Defendants; as further answer deny.

AFFIRMATIVE DEFENSES

As and for affirmative defenses, Village of West Milwaukee, Charles Donovan, Patrick Krafcheck, City of Chilton, and Michael Young submit the following:

- a. the injuries and damaged sustained by the Plaintiff, if any, were caused in whole or in part by his own acts or omissions and his failure to mitigate;
- b. these answering defendants are protected from suit by immunities including qualified and absolute immunity;
- c. the plaintiff has failed to exhaust avenues for relief available in forums other than a United States Federal District Court;
- d. plaintiff's complaint contains claims which fail to state a claim upon which relief may be granted as against these answering defendants;

- e. these answering defendants are immune from suit under the doctrines of judicial, quasi-judicial, legislative and quasi-legislative immunity;
- f. plaintiff may lack standing to pursue some or all of the claims or requested relief;
- g. plaintiff's claims for declaratory relief present no justiciable controversy and fail to meet the prerequisites of Wis. Stat. § 806.04(11) or 28 U.S.C § 2201-2202; and
- h. to the extent plaintiff pursues state law claims they are subject to the prerequisites, limitations and immunities contained in Wis. Stat. § 893.80.

WHEREFORE, Village of West Milwaukee, Charles Donovan, Patrick Krafcheck, City of Chilton, and Michael Young respectfully requests judgment as follows:

- a. for a dismissal of the plaintiff's complaint upon its merits;
- b. for the costs and disbursements of this action;
- c. for reasonable, actual attorneys fees pursuant to 42 U.S.C. § 1988; and
- d. for such other relief as this court deems just and equitable.

WE RESPECTFULLY REQUEST A TRIAL BY JURY

Dated this 4th day of May, 2009.

BY: s/ Remzy D. Bitar
RAYMOND J. POLLEN
State Bar No.: 1000036
REMZY D. BITAR
State Bar No.: 1038340
Attorneys for Village of West Milwaukee, Charles
Donovan, Patrick Krafcheck, City of Chilton, and
Michael Young
CRIVELLO CARLSON, S.C.
710 North Plankinton Avenue
Milwaukee, Wisconsin 53203
Telephone: 414-271-7722
Fax: 414-271-4438
E-mail: rpollen@crivellocarlson.com
rbitar@crivellocarlson.com