

Eric Sanders

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Sent: Tuesday, September 06, 2011 9:43 AM
To: CourtMail@nysd.uscourts.gov
Subject: Activity in Case 1:11-cv-04127-BSJ -THK Camarena v. The City of New York et al Answer to Complaint

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U.S. District Court

Southern District of New York

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Case Name: Camarena v. The City of New York et al

Case Number: 1:11-cv-04127-BSJ -THK

Filer: The City of New York

Document Number: 5

Docket Text:

ANSWER to [1] Complaint,,,,,. Document filed by The City of New York.(Canfield, Donna)

1:11-cv-04127-BSJ -THK Notice has been electronically mailed to:

Donna Anne Canfield dcanfiel@law.nyc.gov

Eric Sanders esanders@jlgoldbergpc.com, esanders@thesandersfirmpc.com

1:11-cv-04127-BSJ -THK Notice has been delivered by other means to:

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18811aa4c6195a0cff10552f321bfd849e221d294f0dc53240e1c5a2a78]]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

RANCE CAMARENA,

Plaintiff,

-against-

**ANSWER TO
COMPLAINT**

THE CITY OF NEW YORK; STEPHEN CAPASSO, as Deputy Inspector, Former Commanding Officer, Police Service Area No. 5; GEORGE MISFUD, as Captain, Former Special Operations Lieutenant and Acting Integrity Control Officer, Police Service Area No. 5; GEORGE HELLMER; as Sergeant, Police Service Area No. 5; DONALD CUSACK, as Captain, as Commanding Officer, Housing Bureau Investigations Unit; and DARYL MILLER, as Lieutenant, Housing Bureau Investigations Unit, each being sued individually and in his official capacity as an employee of Defendant THE CITY OF NEW YORK,

11 CV 4127 (BSJ)

Defendants.

-----X

Defendant, The City of New York, ("City defendant"), by their attorney, **MICHAEL A. CARDOZO**, Corporation Counsel of the City of New York, as and for their answer to the Complaint, respectfully allege as follows¹:

1. Denies the allegations set forth in the first unnumbered paragraph of the Complaint except admit that plaintiff purports to set forth a basis for the action.
2. Denies the allegations set forth in Paragraph "1" of the Complaint except admit that plaintiff purports to invoke the jurisdiction of the Court as stated therein.
3. Denies the allegations set in Paragraph "1.a." of the Complaint except admit that plaintiff purports to invoke the jurisdiction of the Court as stated therein.

¹ Upon information and belief, the individually-named defendants have not been served.

4. Denies the allegations set in Paragraph "1.b." of the Complaint except admit that plaintiff purports to invoke the jurisdiction of the Court as stated therein.

5. Denies the allegations set in Paragraph "2" of the Complaint except admit that plaintiff purports to invoke the jurisdiction of the Court as stated therein.

6. Denies the allegations set in Paragraph "3" of the Complaint except admit that plaintiff purports to invoke the jurisdiction of the Court as stated therein.

7. Denies the allegations set in Paragraph "4" of the Complaint.

8. Paragraph "5" of the Complaint sets forth legal conclusions to which no response is required. To the extent this paragraph is found to interpose allegations of fact, City Defendant denies those allegations.

9. Denies knowledge or information sufficient to form a belief as to the truth of where plaintiff is a resident as set forth in Paragraph "6" of the Complaint except admit that plaintiff is a male over twenty-one (21) years of age and that the City of New York ("City") is a municipal corporation organized and existing under the Constitution and laws of the State of New York, and that the City of New York, specifically, the New York City Police Department ("NYPD") is plaintiff's employer.

10. Denies the allegations set forth in Paragraph "7" of the Complaint, except admit that the City of New York ("City") is a municipal corporation organized and existing under the Constitution and laws of the State of New York.

11. Denies the allegations set forth in Paragraph "8" of the Complaint except admit that plaintiff purports to proceed as stated therein.

12. Denies the allegations set forth in Paragraph "9" of the Complaint except admit that plaintiff self-identifies as a Black Hispanic male and that plaintiff is an employee of the NYPD.

13. Denies the allegations set forth in Paragraph "10" of the Complaint except admit that plaintiff was appointed as a Probationary Police Officer.

14. Denies the allegations set forth in Paragraph "11" of the Complaint except admit that plaintiff was appointed as a Probationary Sergeant.

15. Denies the allegations set forth in Paragraph "12" of the Complaint except admit that plaintiff was assigned to the Basic Management Operations Course ("BMOCS").

16. Denies the allegations set forth in Paragraph "13" of the Complaint except admit that plaintiff was assigned to Police Service Area No. 5.

17. Denies the allegations set forth in Paragraph "14" of the Complaint except admit that Captain Misdfud informed Deputy Inspector Capasso that plaintiff had submitted a request for overtime that he did not earn.

18. Denies the allegations set forth in Paragraph "15" of the Complaint except admit that Captain Misdfud investigated plaintiff's prior requests for overtime.

19. Denies the allegations set forth in Paragraph "16" of the Complaint.

20. Denies the allegations set forth in Paragraph "17" of the Complaint.

21. Denies the allegations set forth in Paragraph "18" of the Complaint.

22. Denies the allegations set forth in Paragraph "19" of the Complaint except admit that plaintiff was issued Command Disciplines.

23. Denies the allegations set forth in Paragraph "20" of the Complaint except admit that plaintiff was placed on "Modified Assignment," and that Lt. Miller self-identifies as an African-American male and that Captain Cusack is a Caucasian male.

24. Denies the allegations set forth in Paragraph "21" of the Complaint.

25. Denies the allegations set forth in Paragraph "22" of the Complaint except admit that plaintiff was served with disciplinary charges on or about June 27, 2008.

26. Denies the allegations set forth in Paragraph "23" of Complaint except admit that plaintiff was demoted to Police Officer.

27. Denies the allegations set forth in Paragraph "24" of the Complaint except admit the Department Trial against plaintiff commenced on March 8, 2010.

28. Denies the allegations set forth in Paragraph "25" of the Complaint except admit the Department Trial against plaintiff concluded on March 9, 2010.

29. Denies the allegations set forth in Paragraph "26" of the Complaint except admit that the Trial Commissioner recommended that plaintiff be dismissed from the NYPD but that plaintiff's dismissal be held in abeyance for one year during which time plaintiff remains on the force in the discretion of the Police Commissioner and plaintiff may be terminated at any time without further hearings.

30. Denies the allegations set forth in Paragraph "27" of the Complaint except admit that it was recommended that plaintiff forfeit 30 vacation days.

31. Denies the allegations set forth in Paragraph "28" of the Complaint except admit that Police Commissioner Raymond W. Kelly accepted and approved the Trial Commissioner's recommendations.

32. Denies the allegations set forth in Paragraph “29” of the Complaint except admit that plaintiff is currently on “Modified Duty.”

33. Denies the allegations set forth in Paragraph “30” of the Complaint.

34. Denies the allegations set forth in Paragraph “31” of the Complaint.

35. Denies the allegations set forth in Paragraph “32” of the Complaint.

36. Denies the allegations set forth in Paragraph “33” of the Complaint.

37. Denies the allegations set forth in Paragraph “34” of the Complaint.

38. Denies the allegations set forth in Paragraph “35” of the Complaint.

39. Denies the allegations set forth in Paragraph “36” of the Complaint.

40. Denies the allegations set forth in Paragraph “37” of the Complaint.

41. Denies the allegations set forth in Paragraph “38” of the Complaint.

42. In response to Paragraph “39” of the Complaint, City defendant repeats and re-alleges its responses to Paragraphs “1” through “38” of the Complaint as if fully set forth herein.

43. Denies the allegations set forth in Paragraph “39” of the Complaint.

44. Denies the allegations set forth in Paragraph “40” of the Complaint.

45. Denies the allegations set forth in Paragraph “41” of the Complaint.

46. Denies the allegations set forth in Paragraph “42” of the Complaint.

47. Denies the allegations set forth in Paragraph “43” of the Complaint.

48. In response to Paragraph “44” of the Complaint, City defendant repeats and re-alleges its responses to Paragraphs “1” through “43” of the Complaint as if fully set forth herein.

49. Denies the allegations set forth in Paragraph “45” of the Complaint.

50. Denies the allegations set forth in Paragraph "46" of the Complaint.

51. Denies the allegations set forth in Paragraph "47" of the Complaint.

52. Denies the allegations set forth in Paragraph "48" of the Complaint.

53. Denies the allegations set forth in Paragraph "49" of the Complaint.

54. In response to Paragraph "50" of the Complaint, City defendant repeats and re-alleges its responses to Paragraphs "1" through "49" of the Complaint as if fully set forth herein.

55. Denies the allegations set forth in Paragraph "51" of the Complaint.

56. Denies the allegations set forth in Paragraph "52" of the Complaint.

57. Denies the allegations set forth in Paragraph "53" of the Complaint.

58. Denies the allegations set forth in Paragraph "54" of the Complaint.

59. Denies the allegations set forth in Paragraph "55" of the Complaint.

60. In response to Paragraph "56" of the Complaint, City defendant repeats and re-alleges its responses to Paragraphs "1" through "55" of the Complaint as if fully set forth herein.

61. Paragraph "57" of the Complaint sets forth a legal conclusion to which no response is required. To the extent this paragraph is found to interpose allegations of fact, City Defendant denies those allegations.

62. Denies the allegations set forth in Paragraph "58" of the Complaint.

63. Denies the allegations set forth in Paragraph "59" of the Complaint.

64. Denies the allegations set forth in Paragraph "60" of the Complaint.

65. In response to Paragraph "61" of the Complaint, City defendant repeats and re-alleges its responses to Paragraphs "1" through "60" of the Complaint as if fully set forth herein.

66. Paragraph "62" of the Complaint sets forth a legal conclusion to which no response is required. To the extent this paragraph is found to interpose allegations of fact, City Defendant denies those allegations.

67. Denies the allegations set forth in Paragraph "63" of the Complaint.

68. Denies the allegations set forth in Paragraph "64" of the Complaint.

69. Denies the allegations set forth in Paragraph "65" of the Complaint.

70. Denies the allegations set forth in Paragraph "66" of the Complaint.

AS AND FOR A FIRST DEFENSE

71. The Complaint fails to state any claim against the City defendant upon which relief may be granted.

AS AND FOR A SECOND DEFENSE

72. Plaintiff's claims may be barred in whole or in part by the applicable statute of limitations.

AS AND FOR A THIRD DEFENSE

73. The Complaint may be barred in whole or in part by the doctrine of collateral estoppel.

AS AND FOR A FOURTH DEFENSE

74. The Complaint may be barred in whole or in part by the doctrine of res judicata.

AS AND FOR A FIFTH DEFENSE

75. The Complaint's request for punitive damages is barred, in whole or in part, because punitive damages are not available against a government or a governmental subdivision.

AS AND FOR A SIXTH DEFENSE

73. At all times relevant to the acts alleged in the Complaint, City defendant's conduct was reasonable, proper, lawful, constitutional, made in good faith for nondiscriminatory, non-retaliatory, legitimate, business reasons, and without malice and/or without willful intent to violate any applicable law, rule or regulation.

AS AND FOR A SEVENTH DEFENSE

74. Any damages sustained by plaintiff were caused by plaintiff's own negligent or culpable conduct.

CONCLUSION

WHEREFORE, City defendant respectfully requests that the Complaint be dismissed in its entirety, that the court enter judgment for City defendant, and that City defendant be granted costs, fees, and disbursements together with such other and further relief as the Court deems just and proper.

Dated: New York, New York
September 5, 2011

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for City Defendant
100 Church Street, Room 2-124
New York, N.Y. 10007-2601
212-788-8703

By: ECF /s/
Donna A. Canfield
Assistant Corporation Counsel
dcanfiel@law.nyc.gov

To: Eric Sanders, Esq.
The Sanders Firm, P.C.
1140 Avenue of the Americas, 9th Floor
New York, NY 10036

11 CV 4127 (BSJ)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RANCE CAMARENA,

Plaintiff,

-against-

THE CITY OF NEW YORK; STEPHEN CAPASSO, as Deputy Inspector, Former Commanding fficer, Police Service Area No. 5; GEORGE MISFUD, as Captain, Former Special Operations Lieutenant and Acting Integrity Control Officer, Police Service Area No. 5; GEORGE HELLMER; as Sergeant, Police Service Area No. 5; DONALD CUSACK, as Captain, As Commanding Officer, Housing Bureau Investigations Unit; and DARYL MILLER, as Lieutenant, Housing Bureau Investigations Unit, each being sued individually and in his official capacity as an employee of Defendant THE CITY OF NEW YORK,

Defendants.

ANSWER TO COMPLAINT

MICHAEL A. CARDOZO

Corporation Counsel of the City of New York
Attorney for City Defendant
100 Church Street, Room 2-124
New York, New York 10007-2601

Of Counsel: Donna A. Canfield
Tel.: 212-788-8703

LM No.: 2011-020836

Service of which is hereby acknowledged:

....., N.Y. Dated:

Signed:

Print Name:

Attorney for: