

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT HUNTINGTON**

**A.E., and E.W.,**

**Plaintiffs,**

**v.**

**Civil Action No.: 3:17-cv-01885**

**JOSHUA NIELD; CITY OF HUNTINGTON,  
WEST VIRGINIA; and, JOHN DOES 1-7,  
INDIVIDUALS,**

**Defendants.**

**ANSWER BY DEFENDANT, JOSHUA NIELD, TO PLAINTIFFS' AMENDED  
COMPLAINT**

COMES NOW the Defendant, Joshua Nield (hereinafter "Defendant"), by counsel, Steven K. Nord, Ryan Q. Ashworth, and Offutt Nord Burchett, PLLC and answers the Amended Complaint (ECF Doc. 22) of the Plaintiffs as follows:

**FIRST DEFENSE**

The Amended Complaint fails to state a claim upon which relief can be granted against this Defendant and, therefore, the Amended Complaint should be dismissed.

**SECOND DEFENSE**

Defendant is immune from the allegations contained in the Amended Complaint pursuant to the provisions of West Virginia Code §29-12A-5, The Governmental Tort Claims and Insurance Reform Act.

**THIRD DEFENSE**

Defendant alleges that the Plaintiffs were guilty of fault or negligence equal to or

greater than the negligence of this Defendant, if any, and, therefore, the action of the Plaintiffs is barred by the doctrine of comparative negligence.

#### **FOURTH DEFENSE**

Defendant alleges that the Plaintiffs assumed the risk of the damages and injuries of which they complain and, therefore, the action of the Plaintiffs is barred by the doctrine of assumption of risk.

#### **FIFTH DEFENSE**

The Amended Complaint of the Plaintiffs is barred by the operation of the applicable statute of limitations.

#### **SIXTH DEFENSE**

West Virginia law does not permit recovery of punitive damages on a case based solely on breach of contract, negligence, carelessness or recklessness. Therefore, Plaintiffs' demand for punitive damages should be stricken as a matter of law.

#### **SEVENTH DEFENSE**

The Plaintiffs' claims for punitive damages violates the Constitutional right of due process of Defendant pursuant to the West Virginia Constitution and the United States Constitution in that it creates an unnecessary and undue risk of an improper verdict on the issues of liability, on the measure of damages, and on the measure of punitive damages.

### **EIGHTH DEFENSE**

The Plaintiffs' claims for punitive damages against the Defendant violate the Constitutional right of procedural due process and constitutes an excessive fine. Therefore, Plaintiffs' claims for punitive damages are unconstitutional and barred by the Fifth, Eighth and Fourteenth Amendments of the United States Constitution and Article 3, Section 5 of the Constitution of the State of West Virginia.

### **NINTH DEFENSE**

The Amended Complaint of the Plaintiffs should be dismissed for failure of the Plaintiffs to properly identify the real parties in interest to this case.

### **TENTH DEFENSE**

The claims against Officer Joshua Nield should be dismissed on the basis of his qualified immunity to the allegations of the Plaintiffs.

### **ELEVENTH DEFENSE**

Defendant reserves the right to supplement his Answer with any additional affirmative defenses which may be determined appropriate.

### **TWELFTH DEFENSE**

Defendant denies the any and all allegations contained in the Plaintiffs' introduction and demands strict proof thereof.

### **Jurisdiction and Venue**

1. The allegations contained in Paragraph 1 of the Amended Complaint

contain legal conclusions to which no response is required. To the extent a response is deemed necessary, Defendant denies the allegations contained in Paragraph 1 of the Amended Complaint and demands strict proof thereof.

2. The allegations contained in Paragraph 2 of the Amended Complaint contain legal conclusions to which no response is required. To the extent a response is deemed necessary, Defendant denies the allegations contained in Paragraph 2 of the Amended Complaint and demands strict proof thereof.

3. The allegations contained in Paragraph 3 of the Amended Complaint contain legal conclusions to which no response is required. To the extent a response is deemed necessary, Defendant denies the allegations contained in Paragraph 3 of the Amended Complaint and demands strict proof thereof.

#### **Parties**

4. Defendant is without sufficient information upon which to form a belief as to the truth of the allegations contained in Paragraph 4 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

5. Defendant is without sufficient information upon which to form a belief as to the truth of the allegations contained in Paragraph 5 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

6. Defendant admits that he was previously employed as a police officer for the Huntington Police Department, but denies that he is still employed with the Huntington Police Department, that he was working as a City of Huntington Police Officer at the time of the incidents alleged herein, and further denies any

and all remaining allegations contained in Paragraph 6 of the Amended Complaint and demands strict proof thereof.

7. Defendant denies that he was working as a police officer employed by the City of Huntington at the time of the alleged incidents, but admits the remaining allegations contained in Paragraph 7 of the Amended Complaint.

8. Defendant is without sufficient information upon which to form a belief as to the truth of the allegations contained in Paragraph 8 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

### **Factual Allegations**

9. Defendant admits the allegations contained in Paragraph 9 of the Amended Complaint.

10. Defendant denies that he was an on duty Huntington Police Department Officer and is without sufficient information upon which to form a belief as to the truth of the allegations contained in Paragraph 10 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

11. Defendant denies the allegations contained in Paragraph 11 of the Amended Complaint and demands strict proof thereof.

12. Defendant is without sufficient information upon which to form a belief as to the truth of the allegations contained in Paragraph 12 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

13. Defendant denies the allegations contained in Paragraph 13 of the

Amended Complaint and demands strict proof thereof.

14. Defendant denies the allegations contained in Paragraph 14 of the Amended Complaint and demands strict proof thereof.

15. Defendant denies the allegations contained in Paragraph 15 of the Amended Complaint and demands strict proof thereof.

16. Defendant denies the allegations contained in Paragraph 16 of the Amended Complaint and demands strict proof thereof.

17. Defendant denies the allegations contained in Paragraph 17 of the Amended Complaint and demands strict proof thereof.

18. Defendant denies the allegations contained in Paragraph 18 of the Amended Complaint and demands strict proof thereof.

19. Defendant admits that the Plaintiffs were passengers in his vehicle and is without sufficient information upon which to form a belief as to the truth of the allegations contained in Paragraph 19 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

20. Defendant admits that the Plaintiffs were passengers in his vehicle and is without sufficient information upon which to form a belief as to the truth of the allegations contained in Paragraph 20 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

21. Defendant admits that the Plaintiffs were passengers in his vehicle and is without sufficient information upon which to form a belief as to the truth of the allegations contained in Paragraph 21 of the Amended Complaint and,

therefore, denies the same and demands strict proof thereof.

22. Defendant denies the allegations contained in Paragraph 22 of the Amended Complaint and demands strict proof thereof.

23. Defendant admits that the Plaintiffs were passengers in his vehicle and is without sufficient information upon which to form a belief as to the truth of the allegations contained in Paragraph 23 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

24. Defendant denies the allegations contained in Paragraph 24 of the Amended Complaint and demands strict proof thereof.

25. Defendant denies the allegations contained in Paragraph 25 of the Amended Complaint and demands strict proof thereof.

26. Defendant is without sufficient information upon which to form a belief as to the truth of the allegations contained in Paragraph 26 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

27. Defendant is without sufficient information upon which to form a belief as to the truth of the allegations contained in Paragraph 27 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

28. Defendant is without sufficient information upon which to form a belief as to the truth of the allegations contained in Paragraph 28 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

29. Defendant admits he spoke with Plaintiff at Rotary Park, but is without sufficient information upon which to form a belief as to the truth of the

remaining allegations contained in Paragraph 29 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

30. Defendant admits that he spoke with Plaintiff at Rotary Park, but is without sufficient information upon which to form a belief as to the truth of the remaining allegations contained in Paragraph 30 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

**For A First Cause of Action Against Defendants City of Huntington and John Does 1-7 (Negligence/Gross Negligence/Failure to Train and Supervise)**

31. Defendant realleges and incorporates his answers to Paragraphs 1 through 30 as if fully restated herein in answering Paragraph 31 of the Amended Complaint.

32. Defendant denies the allegations contained in Paragraph 32 of the Amended Complaint and demands strict proof thereof.

33. Defendant denies the allegations contained in Paragraph 33 of the Amended Complaint, including subsections (a) through (s), and demands strict proof thereof.

34. Defendant denies the allegations contained in Paragraph 34 of the Amended Complaint and demands strict proof thereof.

**For A Second Cause of Action Against Defendant Nield (Violation of Federal Civil 42 U.S.C. 1983 – Due Process Clause – 14<sup>th</sup> Amendment**

35. Defendant realleges and incorporates his answers to Paragraphs 1 through 34 as if fully restated herein in answering Paragraph 35 of the Amended Complaint.



36. Defendant denies the allegations contained in Paragraph 36 of the Amended Complaint and demands strict proof thereof.

37. Defendant denies the allegations contained in Paragraph 37 of the Amended Complaint and demands strict proof thereof.

38. Defendant denies the allegations contained in Paragraph 38 of the Amended Complaint and demands strict proof thereof.

39. Defendant denies the allegations contained in Paragraph 39 of the Amended Complaint and demands strict proof thereof.

**For A Third Cause of Action Against City of Huntington and John Does 1-7  
(Violation of Federal Civil 42 U.S.C. 1983 – Supervisory Liability)**

40. Defendant realleges and incorporates his answers to Paragraphs 1 through 39 as if fully restated herein in answering Paragraph 40 of the Amended Complaint.

41. Defendant denies the allegations contained in Paragraph 41 of the Amended Complaint and demands strict proof thereof.

42. Defendant denies the allegations contained in Paragraph 42 of the Amended Complaint and demands strict proof thereof.

43. Defendant is without sufficient information upon which to form a belief as to the truth of the allegations contained in the Paragraph 43 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

44. Defendant denies the allegations contained in Paragraph 44 of the Amended Complaint and demands strict proof thereof.

45. Defendant denies the allegations contained in Paragraph 45 of the Amended Complaint and demands strict proof thereof.

46. Defendant denies the allegations contained in Paragraph 46 of the Amended Complaint and demands strict proof thereof.

47. Defendant denies the allegations contained in Paragraph 47 of the Amended Complaint and demands strict proof thereof.

**For A Fourth Case of Action Against Defendant City of Huntington and  
Defendant Nield (Assault and Battery)**

48. Defendant realleges and incorporates his answers to Paragraphs 1 through 47 as if fully restated herein in answering Paragraph 48 of the Amended Complaint.

49. Defendant denies the allegations contained in Paragraph 49 of the Amended Complaint and demands strict proof thereof.

50. Defendant denies the allegations contained in Paragraph 50 of the Amended Complaint and demands strict proof thereof.

51. Defendant denies the allegations contained in Paragraph 51 of the Amended Complaint and demands strict proof thereof.

52. Defendant denies the allegations contained in Paragraph 52 of the Amended Complaint and demands strict proof thereof.

53. Defendant denies the allegations contained in Paragraph 53 of the Amended Complaint and demands strict proof thereof.

**For A Fifth Cause of Action Against Defendant City of Huntington and  
Defendant John Does 1-7 (Negligent Supervision)**

54. Defendant realleges and incorporates his answers to Paragraphs 1 through 53 as if fully restated herein in answering Paragraph 54 of the Amended Complaint.

55. Defendant admits he was employed by the City of Huntington as a police officer during the time of the alleged incident in the Amended Complaint, but was not on duty at the time in question, and denies any and all remaining allegations contained in Paragraph 55 of the Amended Complaint and demands strict proof thereof.

56. Defendant denies the allegations contained in Paragraph 56 of the Amended Complaint and demands strict proof thereof.

57. Defendant denies the allegations contained in Paragraph 57 of the Amended Complaint and demands strict proof thereof.

58. Defendant denies the allegations contained in Paragraph 58 of the Amended Complaint and demands strict proof thereof.

59. Defendant denies the allegations contained in Paragraph 59 of the Amended Complaint and demands strict proof thereof.

60. Defendant denies the allegations contained in Paragraph 60 of the Amended Complaint and demands strict proof thereof.

61. Defendant denies the allegations contained in Paragraph 61 of the Amended Complaint and demands strict proof thereof.

62. Defendant denies the allegations contained in Paragraph 62 of the Amended Complaint and demands strict proof thereof.

**For A Sixth Cause of Action Against Defendant Nield (False  
Arrest/Imprisonment)**

63. Defendant realleges and incorporates his answers to Paragraphs 1 through 62 as if fully restated herein in answering Paragraph 63 of the Amended Complaint.

64. Defendant denies the allegations contained in Paragraph 64 of the Amended Complaint and demands strict proof thereof.

65. Defendant denies the allegations contained in Paragraph 65 of the Amended Complaint and demands strict proof thereof.

66. Defendant denies the allegations contained in Paragraph 66 of the Amended Complaint and demands strict proof thereof.

67. Defendant denies the allegations contained in Paragraph 67 of the Amended Complaint and demands strict proof thereof.

68. Defendant specifically denies any contention that is made in the Plaintiffs' "Wherefore" clause, including subsections (1) through (10). He further denies the entitlement of the Plaintiffs to any of the relief requested in the Amended Complaint.

69. Except as specifically admitted herein, the Defendant, Joshua Nield, denies each and every allegation contained in the Amended Complaint.

**WHEREFORE**, the Defendant, Joshua Nield, respectfully requests that the Amended Complaint of the Plaintiffs be dismissed and that he recover his costs of action, including attorney's fees.

**DEFENDANT DEMANDS A TRIAL BY JURY**

**JOSHUA NIELD**

**BY COUNSEL**

/s/ Steven K. Nord

Steven K. Nord, Esquire (WV Bar #2748)

Ryan Q. Ashworth, Esquire (WV Bar #10451)

**OFFUTT NORD BURCHETT, PLLC**

949 Third Avenue, Suite 300

Post Office Box 2868

Huntington, West Virginia 25728-2868

Telephone: 304-529-2868

Facsimile: 304-529-2999

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT HUNTINGTON

A.E., and E.W.,

Plaintiffs,

v.

Civil Action No.: 3:17-cv-01885

JOSHUA NIELD; CITY OF HUNTINGTON,  
WEST VIRGINIA; and, JOHN DOES 1-7,  
INDIVIDUALS,

Defendants.

CERTIFICATE OF SERVICE

The undersigned, counsel for the Defendant, Joshua Nield, certifies that the foregoing ***“Answer By Defendant, Joshua Nield, to Plaintiffs’ Amended Complaint,”*** was served upon counsel of record, via electronic filing this 24th day of August, 2017:

Timothy L. Eves, Esquire  
Eves Law Firm, PLLC  
5348 US Route 60 East  
Huntington, WV 25705  
*Counsel for Plaintiffs*

Lee Murray Hall, Esquire  
Nathanial A. Kuratomi, Esquire  
Jenkins Fenstermaker, PLLC  
PO Box 2688  
Huntington, WV 25726-2688  
*Counsel for Defendant, City of Huntington*

/s/ Steven K. Nord

Steven K. Nord, Esquire (WV Bar #2748)