

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

KIMBERLY HURRELL-HARRING, JAMES
ADAMS, JOSEPH BIGGS, RICKY LEE GLOVER,
RICHARD LOVE, JACAUELINE WINBRONE,
LANE LYZELLE, TOSHA STEELE, BRUCE
WASHINGTON, SHAWN CHASE, JEMAR
JOHNSON, ROBERT TOMBERELLI, CHRISTOPHER
YAW, LUTHER WOODROW OF BOOKER, JR.,
EDWARD KAMINSKI, JOY METZLER, VICTOR
TURNER, CANDACE BROOKINS, RANDY
HABSHI and RONALD McINTYRE, on behalf
of themselves and all others similarly situated,

Plaintiffs

vs.

THE STATE OF NEW YORK, GOVERNOR
DAVID PATERSON, in his official capacity,
THE COUNTY OF ONONDAGA, NEW YORK,
THE COUNTY OF ONTAIOR, NEW YORK,
THE COUNTY OF SCHUYLER, NEW YORK,
THE COUNTY OF SUFFOLK, NEW YORK
and THE COUNTY OF WASHINGTON, NEW
YORK,

Defendants.

**ANSWER TO SECOND
AMENDED CLASS
ACTION COMPLAINT**

Index No. 8866-07

Defendant, County of Onondaga, by its attorney, Gordon J. Cuffy, County Attorney, Michael
P. McCarthy, of counsel, as and for an Answer to Plaintiffs' Second Amended Class Action
Complaint, alleges and shows to the Court as follows:

1. **ADMITS** the allegations contained in paragraphs 36, 37, 246 and 247 of the
Complaint.
2. **DENIES** the allegations contained in paragraphs 291, 308, 309, 310, 325, 343, 344,
374, 382, 415, 417 and 419 of the Complaint.

3. **LACKS SUFFICIENT INFORMATION TO FORM A BELIEF** as to the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 38, 39, 40, 41, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 120, 121, 122, 123, 124, 125, 127, 128, 129, 130, 131, 132, 133, 134, 136, 137, 138, 139, 140, 141, 142, 144, 145, 146, 147, 148, 149, 150, 151, 153, 154, 155, 156, 157, 158, 159, 160, 162, 163, 164, 165, 166, 167, 168, 170, 171, 172, 173, 174, 175, 176, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 203, 204, 205, 206, 207, 209, 210, 211, 212, 213, 214, 215, 216, 217, 219, 220, 221, 222, 223, 224, 225, 227, 228, 229, 230, 231, 232, 233, 235, 236, 237, 238, 239, 240, 242, 243, 244, 245, 248, 249, 250, 251, 253, 254, 256, 257, 260, 261, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 292, 293, 294, 295, 296, 297, 298, 299, 301, 302, 303, 304, 305, 306, 307, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 375, 376, 377, 378, 379, 380, 381, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405 and 413 of the Complaint and therefore **DENIES**.

4. **ADMITS** so much of paragraph 36(a) that alleges that Governor David Paterson is the Governor of the State of New York and is responsible for enforcing the Sixth and Fourteenth Amendments of the U.S. Constitution as they apply to the provision of public defense services within

New York State and **LACK SUFFICIENT INFORMATION TO FORM A BELIEF** as to the remaining allegations of said paragraph.

5. The allegations contained in paragraphs 42 and 43 of the complaint characterize the legal action being brought and purport to invoke the jurisdiction of the Court pursuant to the enumerated statutes and, as such, this answering defendants makes no answer save to demand strict proof thereof and to deny and conduct giving rise to any cause of action thereunder.

6. **DENIES** so much of paragraph 52 that alleges that the representation provided to Mrs. Hurrell-Harring is illustrative of the pattern of representation provided to the indigent defendants in the County and **LACK SUFFICIENT INFORMATION TO FORM A BELIEF** as to the remaining allegations of said paragraph.

7. **DENIES** so much of paragraph 68 that alleges that the representation provided to Mr. Adams is illustrative of the pattern of representation provided to the indigent defendants in the County and **LACK SUFFICIENT INFORMATION TO FORM A BELIEF** as to the remaining allegations of said paragraph.

8. **DENIES** so much of paragraph 81 that alleges that the representation provided to Mr. Briggs is illustrative of the pattern of representation provided to the indigent defendants in the County and **LACK SUFFICIENT INFORMATION TO FORM A BELIEF** as to the remaining allegations of said paragraph.

9. **DENIES** so much of paragraph 96 that alleges that the representation provided to Mr. Glover is illustrative of the pattern of representation provided to the indigent defendants in the County and **LACK SUFFICIENT INFORMATION TO FORM A BELIEF** as to the remaining allegations of said paragraph.

10. **DENIES** so much of paragraph 107 that alleges that the representation provided to Mr. Love is illustrative of the pattern of representation provided to the indigent defendants in the County and **LACK SUFFICIENT INFORMATION TO FORM A BELIEF** as to the remaining allegations of said paragraph.

11. **DENIES** so much of paragraph 119 that alleges that the representation provided to Mrs. Winbrone is illustrative of the pattern of representation provided to the indigent defendants in the County and **LACK SUFFICIENT INFORMATION TO FORM A BELIEF** as to the remaining allegations of said paragraph.

12. **DENIES** so much of paragraph 126 that alleges that the representation provided to Mr. Loyzelle is illustrative of the pattern of representation provided to the indigent defendants in the County and **LACK SUFFICIENT INFORMATION TO FORM A BELIEF** as to the remaining allegations of said paragraph.

13. **DENIES** so much of paragraph 135 that alleges that the representation provided to Ms. Steele is illustrative of the pattern of representation provided to the indigent defendants in the County and **LACK SUFFICIENT INFORMATION TO FORM A BELIEF** as to the remaining allegations of said paragraph.

14. **DENIES** so much of paragraph 143 that alleges that the representation provided to Mr. Washington is illustrative of the pattern of representation provided to the indigent defendants in the County and **LACK SUFFICIENT INFORMATION TO FORM A BELIEF** as to the remaining allegations of said paragraph.

15. **DENIES** so much of paragraph 152 that alleges that the representation provided to Mr. Chase is illustrative of the pattern of representation provided to the indigent defendants in the

County and **LACK SUFFICIENT INFORMATION TO FORM A BELIEF** as to the remaining allegations of said paragraph.

16. **DENIES** so much of paragraph 161 that alleges that the representation provided to Ms. Johnson is illustrative of the pattern of representation provided to the indigent defendants in the County and **LACK SUFFICIENT INFORMATION TO FORM A BELIEF** as to the remaining allegations of said paragraph.

17. **DENIES** so much of paragraph 169 that alleges that the representation provided to Mr. Tomberelli is illustrative of the pattern of representation provided to the indigent defendants in the County and **LACK SUFFICIENT INFORMATION TO FORM A BELIEF** as to the remaining allegations of said paragraph.

18. **DENIES** so much of paragraph 177 that alleges that the representation provided to Mrs. Hurrell-Harring is illustrative of the pattern of representation provided to the indigent defendants in the County and **LACK SUFFICIENT INFORMATION TO FORM A BELIEF** as to the remaining allegations of said paragraph.

19. **DENIES** so much of paragraph 191 that alleges that the representation provided to Mr. Booker is illustrative of the pattern of representation provided to the indigent defendants in the County and **LACK SUFFICIENT INFORMATION TO FORM A BELIEF** as to the remaining allegations of said paragraph.

20. **DENIES** so much of paragraph 202 that alleges that the representation provided to Mr. Kaminski is illustrative of the pattern of representation provided to the indigent defendants in the County and **LACK SUFFICIENT INFORMATION TO FORM A BELIEF** as to the remaining allegations of said paragraph.

21. **DENIES** so much of paragraph 208 that alleges that the representation provided to Ms. Metzler is illustrative of the pattern of representation provided to the indigent defendants in the County and **LACK SUFFICIENT INFORMATION TO FORM A BELIEF** as to the remaining allegations of said paragraph.

22. **DENIES** so much of paragraph 218 that alleges that the representation provided to Mr. Turner is illustrative of the pattern of representation provided to the indigent defendants in the County and **LACK SUFFICIENT INFORMATION TO FORM A BELIEF** as to the remaining allegations of said paragraph.

23. **DENIES** so much of paragraph 226 that alleges that the representation provided to Mr. Brookins is illustrative of the pattern of representation provided to the indigent defendants in the County and **LACK SUFFICIENT INFORMATION TO FORM A BELIEF** as to the remaining allegations of said paragraph.

24. **DENIES** so much of paragraph 234 that alleges that the representation provided to Mr. Habshi is illustrative of the pattern of representation provided to the indigent defendants in the County and **LACK SUFFICIENT INFORMATION TO FORM A BELIEF** as to the remaining allegations of said paragraph.

25. **DENIES** so much of paragraph 241 that alleges that the representation provided to Mr. McIntyre is illustrative of the pattern of representation provided to the indigent defendants in the County and **LACK SUFFICIENT INFORMATION TO FORM A BELIEF** as to the remaining allegations of said paragraph.

26. **LACK SUFFICIENT INFORMATION TO FORM A BELIEF** as to the allegations of paragraph 258 that alleges that Counties often provide inaccurate or incomplete

information in their annual reports and **DENIES** the remaining allegations of said paragraph.

27. **DENIES** knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 252, 406, 407, 408, 409, 410, 411 and 412 and refers all questions of law to the Court.

28. **AFFIRMATIVELY STATE** that the documents referred to in paragraphs 255, 259, 262, 273, 274, 275 and 393 of the Complaint reference a document which speaks for itself and that all questions of law are and will be referred to the Court.

29. With respect to paragraph 414, this answering Defendant **REPEATS AND REALLEGES** its responses to paragraphs 1 through 413.

30. With respect to paragraph 416, this answering Defendant **REPEATS AND REALLEGES** its responses to paragraphs 1 through 415.

31. With respect to paragraph 418, this answering Defendant **REPEATS AND REALLEGES** its responses to paragraphs 1 through 417.

32. **DENIES** each and every other allegation contained herein which has not been specifically admitted, denied or otherwise controverted.

33. **DENIES** that the Notice of Claim was served within the statutory period prescribed by law and **DENIES** that said Notice of Claim was served upon the proper party, and further **DENIES** that the purported written Notice of Claim was served or filed in accordance with Section 50-e of the General Municipal Law or Section 52 of the County Law in such cases made and provided, and that any writings served or caused to be served purporting to be a Notice did not comply in form or substance with the provisions of the statutes in such case made and provided.

**FOR A FIRST AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES AS FOLLOWS:**

34. Defendant, County of Onondaga, is afforded statutory and common law immunity as to the allegations contained in Plaintiffs' Complaint.

**FOR A SECOND AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES AS FOLLOWS:**

35. Plaintiffs failed to perform conditions precedent to the initiation of this suit.

**FOR A THIRD AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES AS FOLLOWS:**

36. The pleadings are insufficient and are not in the form prescribed, and, therefore, do not state a cause of action.

**FOR A FOURTH AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES AS FOLLOWS:**

37. The Complaint fails to state a claim upon which relief may be granted.

**FOR A FIFTH AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES AS FOLLOWS:**

38. The allegations of Plaintiffs' Complaint are barred by the appropriate statute of limitations.

**FOR A SIXTH AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES AS FOLLOWS:**

39. Defendant acted reasonably and in good faith.

**FOR A SEVENTH AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES AS FOLLOWS:**

40. The Plaintiffs have failed to exhaust available administrative remedies for the satisfaction of this claim.

**FOR AN EIGHTH AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES AS FOLLOWS:**

41. Upon information and belief, this answering Defendant is immune from the allegations and claims which make up Plaintiff's complaint in that the acts and omissions complained of are discretionary and governmental in nature rather than ministerial.

**FOR A NINTH AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES AS FOLLOWS:**

42. The claims presented by the plaintiffs are non-justiciable political questions.

**FOR A TENTH AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES AS FOLLOWS:**

43. The relief sought by the Plaintiffs would violate Constitutional separation of powers.

**FOR AN ELEVENTH AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES AS FOLLOWS:**

44. That no policy, statement, ordinance, regulation or decision officially adopted and/or promulgated by defendants or otherwise ratified by defendants authorized a deprivation of Plaintiffs' constitutional rights.

**FOR A TWELFTH AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES AS FOLLOWS:**

45. That no custom or usage adopted, followed, endorsed or ratified by defendants authorized a deprivation of Plaintiffs' constitutional rights.

**FOR A THIRTEENTH AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES AS FOLLOWS:**

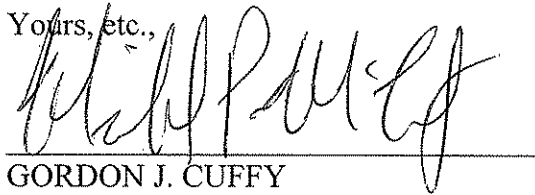
46. That this Court lacks subject matter jurisdiction.

WHEREFORE, the Defendant, County of Onondaga, demands judgment (a) dismissing the Complaint, or, in the alternative, (b) diminishing the damages recoverable in such proportion as the

culpable conduct of the Plaintiffs or third persons bear to the culpable conduct of this Defendant, or (c) in the event of a judgment in favor of the Plaintiffs herein against this Answering Defendant, that the ultimate rights of the Defendants as between themselves be determined in this action and that this Answering Defendant have judgment over and against the Defendants, the State of New York, Governor David Paterson, the County of Ontario, the County of Schuyler, the County of Suffolk and the County of Washington, for any sum which may be recovered herein by the Plaintiff against this Answering Defendant, together with reasonable counsel fees and costs incurred in this action, and for such other and further relief as is just and proper.

Dated: October 24, 2008

Yours, etc.,

A handwritten signature in dark ink, appearing to read "Gordon J. Cuffy", written over a horizontal line.

GORDON J. CUFFY

COUNTY ATTORNEY

Michael P. McCarthy, of counsel

Attorneys for Defendant

County of Onondaga

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