

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:09-cv-02802-REB- MEH

JEREMY C. MYERS,

Plaintiff,

v.

BRIAN KOOPMAN, in his individual capacity,

Defendant.

DEFENDANT'S ANSWER TO AMENDED COMPLAINT AND JURY DEMAND

DEFENDANT Brian Koopman ("Defendant"), by and through his attorneys, the Loveland City Attorney's Office and Wick & Trautwein, LLC, hereby answers Plaintiff's Amended Complaint as follows¹:

1. Defendant admits Paragraphs 7, 9, 21, 27, 31 and 39.
2. Defendant denies Paragraphs 5, 14, 15, 16, 19, 33, 34, 35, 36, 37, 38, 40, 41 and 42.
3. Defendant is without sufficient knowledge to form a belief concerning the truth or falsity of Paragraphs 8, 20, 22, 23 and 26, and therefore deny the same.
4. An answer to Paragraph 10 from Defendant is not necessary inasmuch as claims against Defendant City of Loveland were dismissed in their entirety by Order (Docket #140) entered on June 17, 2011. Notwithstanding the foregoing response,

¹ The Order Concerning Defendants' Motion to Dismiss (CM-ECF Document 140) dismisses Defendant City of Loveland and dismisses the substantive due process claim under the Fourteenth Amendment against the remaining Defendant Koopman.

Defendant admits that the City of Loveland is a municipality, a participant in the LCDTF, and is, in a general sense, responsible for the supervision, training, official policies, customs, and actual practices of its agents in the police department, through the Chief of Police of Loveland, but denies any implication or assertion that the City of Loveland has any municipal liability for allegations set forth in the Amended Complaint.

5. As to Paragraph 1, Defendant admits that on September 6, 2007, members of the Larimer County Drug Task Force (LCDTF) executed a search warrant for a suspected methamphetamine lab at 1101 North Madison Avenue, Loveland, Colorado. Defendant denies the remainder of the allegations in Paragraph 1.

6. As to Paragraph 2, Defendant admits that he performed an investigation of the activities of Jeremy Myers, including surveillance and inspection of the subject property, and that he relied upon information from a previously reliable confidential informant whose identity is currently protected pursuant to court order. Defendant denies the remainder of the allegations in Paragraph 2.

7. As to Paragraph 3, Defendant admits that he swore out an affidavit for the Court in order to obtain a no-knock search warrant, and that evidence gathered during the search field tested presumptively positive for amphetamine. Defendant denies the remainder of the allegations in Paragraph 3.

8. As to Paragraph 4, Defendant admits that field tests were performed on evidence seized during the September 7, 2007 search at 1101 North Madison Avenue, Loveland, Colorado, and that field testing results were presumptive positive for amphetamine. Defendant further admits that confirmation testing of the evidence seized was completed by the Colorado Bureau of Investigation and such analysis did not

identify a controlled substance. Defendant denies the remaining allegations of Paragraph 4.

9. As to Paragraph 6, Defendant admits that a federal question and federal jurisdiction exist, but denies that a cause of action exists under 42 U.S.C. § 1983, and therefore denies that attorney fees and costs are awardable to Plaintiff in this action pursuant to 42 U.S.C. § 1988.

10. As to Paragraph 11, Defendant admits that on September 5, 2007, he completed a sworn affidavit seeking a no-knock search warrant for 1101 North Madison Avenue, Loveland, Colorado; and that the Larimer County and Loveland SWAT teams were used to assist in executing the search warrant. Defendant denies the remaining allegations of Paragraph 11.

11. As to Paragraph 12, Defendant admits that prior to September 5, 2007, he, in coordination with the LCDTF, had video surveillance equipment installed to monitor the Premises, and that the first camera was installed sometime around the end of May 2007, and the second was installed sometime around mid-August 2007.

12. As to Paragraph 13, the allegations are denied as stated. It is admitted, however, that the video surveillance gave Defendant the opportunity to monitor some of the activities and vehicles on the Premises. Defendant denies the remaining allegations of Paragraph 13.

13. As to Paragraph 17, Defendant admits that the no-knock search warrant was executed on September 6, 2007. Defendant denies the remaining allegations of Paragraph 17.

14. As to Paragraph 18, Defendant denies the first two sentences of the allegations, but admits the third sentence of the allegations.

15. As to Paragraph 24, Defendant admits that after the search was completed, he submitted a sworn affidavit in support of a warrantless arrest of Mr. Myers, and that Mr. Myers appeared at the Loveland Police Department on Friday, September 7, 2007. Defendant is without sufficient information to form a belief concerning the truth or falsity of the allegation that Plaintiff Myers had prearranged with a bondsman to post bond, and therefore denies the same. Defendant denies the remaining allegations of Paragraph 24.

16. As to Paragraph 25, Defendant admits that when he was notified of Mr. Myers' unannounced arrival at the Loveland Police Department, Defendant Koopman informed the officer on duty that Mr. Myers could not post bond as Koopman was filing additional charges and that Mr. Myers should be taken into custody. Defendant denies the remaining allegations of Paragraph 25.

17. As to Paragraph 28, Defendant admits that items seized during the search were subsequently analyzed by the Colorado Bureau of Investigation and tested negative for the presence of controlled substances. Defendant is without knowledge as to the truth of the remaining allegations, and therefore denies the same. Defendant denies that he ever testified maliciously or falsely.

18. Defendant incorporates by reference his preceding responses as though fully set forth herein, in response to Paragraph 29.

19. As to Paragraph 30, the same is denied as stated. However, it is admitted, that Defendant Koopman acted under color of state law.

20. As to Paragraph 32, the same states a legal conclusion and does not require a response from this Defendant. To the extent a response is required, Defendant denies that Plaintiff has a constitutionally protected right to be secure in his person against malicious prosecution under the substantive due process provisions of the Fourteenth Amendment, and the Court has so ruled. Defendant further denies that Plaintiff has a constitutionally protected right to be secure in his person against malicious prosecution under the Fourth Amendment and the procedural due process provisions of the Fourteenth Amendment.

21. Defendant denies each and every allegation of the Amended Complaint not expressly admitted hereinabove.

AFFIRMATIVE DEFENSES

22. Plaintiff has failed to state a claim upon which relief can be granted.
23. Plaintiff has failed to mitigate his damages, if any.
24. Defendant is protected by official and/or absolute and/or qualified immunity.
25. Plaintiff's claims are barred by applicable statutes of limitation.
26. Plaintiff's injuries and damages, if any, were proximately caused by the negligence or fault of a third party over whom Defendant neither had actual control nor right to control.
27. The alleged wrongful acts of Defendant were not the cause of the injuries or damages of the Plaintiff.

WHEREFORE, having fully answered, Defendant requests the complaint be dismissed with prejudice, Plaintiff taking nothing thereunder, and Defendant have his costs and attorneys' fees, and any further relief that the Court deems proper.

JURY DEMAND

Defendant, by and through his attorneys, hereby demands a trial by jury on all issues triable.

DATED this 8th day of March, 2012.

WICK & TRAUTWEIN, LLC

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CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2012, I electronically filed the foregoing DEFENDANT'S ANSWER TO AMENDED COMPLAINT with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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