

COPY

Crivello Carlson & Mentkowski_{sc.}

Attorneys at Law

710 North Plankinton Avenue
Milwaukee, Wisconsin 53203
Internet: www.milwlaw.com
E-Mail: ccm@milwlaw.com
FAX (414) 271-4438
Telephone (414) 271-7722

VIA HAND DELIVERY

January 22, 2003

Clerk to the
Honorable Dominic S. Amato
Milwaukee County Courthouse
901 N. 9th Street, Room 104
Milwaukee, Wisconsin 53233

Re: Davidian v. Corder, et al.
Case No. 02-CV-9453

Dear Clerk:

Enclosed please find the original and one copy of the Answer and Affirmative Defenses and Answer and Affirmative Defenses to Plaintiff's First Amended Verified Complaint. Please file the originals and return file stamped copies to me in the enclosed postage-paid envelope.

By copy of this letter a copy is being served upon counsel for the plaintiff.

Thank you for your attention to this matter.

Very truly yours,



RYAN G. BRAITHWAITE
RGB/gbb
Enclosures

cc: Mr. Lawrence P. Zieger

JAN 23 2003

GEOFFREY K. DAVIDIAN,

Plaintiff,

v.

Case No. 02-CV-9453

Case Code: 30106

30301

30704

STEVE CORDER,
T. MICHAEL O'MARA,
JIMMY DALE SHIPLEY and
JOHN C. DUFFY,

Defendants.

ANSWER AND AFFIRMATIVE DEFENSES

The defendants, STEVE CORDER, T. MICHAEL O'MARA, JIMMY DALE SHIPLEY and JOHN C. DUFFY, by their attorneys, CRIVELLO, CARLSON & MENTKOWSKI, S.C., submit the following answer and affirmative defenses to the plaintiff's complaint:

1. Answering ¶ 1, lack knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, therefore deny the same, putting the plaintiff specifically to their proof thereon.

2. Answering ¶ 2, admit that Steve Corder is employed as the computer systems manager for the City of Cookeville, Tennessee; admit Steve Corder works at the Cookeville Municipal Building located at 45 E. Broad Street, Cookeville, Tennessee, 38501; as further answer, deny.

3. Answering ¶ 3, lack knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, therefore deny the same, putting the plaintiff specifically to their proof thereon.

4. Answering ¶ 4, lack knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, therefore deny the same, putting the plaintiff specifically to their proof thereon.

5. Answering ¶ 5, admit that John C. Duffy resides at 1433 Whitower Drive, Knoxville, Tennessee, 37919, and has represented Jimmy Dale Shipley in a federal civil rights action as part of his law practice and employment by the Tennessee Municipal League; admit that John C. Duffy is an attorney with the law firm Watson, Hollow & Reeves, located at 800 S. Gay Street, Knoxville, Tennessee, 37929; as further answer, deny the existence of a conspiracy.

6. Answering ¶ 6, deny the existence of a conspiracy; as further answer, lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein, therefore deny the same, putting the plaintiff specifically to their proof thereon.

7. Answering ¶ 7, lack knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, therefore deny the same, putting the plaintiff specifically to their proof thereon.

8. Answering ¶ 8, deny the existence of a conspiracy; as further answer, lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein, therefore deny the same, putting the plaintiff specifically to their proof thereon.

9. Answering ¶ 9, admit the copy attached; as further answer, deny.

10. Answering ¶ 10, admit the copy attached; deny the existence of a conspiracy; as further answer, lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein, therefore deny the same, putting the plaintiff specifically to their proof thereon.

11. Answering ¶ 11, lack knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, therefore deny the same, putting the plaintiff specifically to their proof thereon.

12. Answering ¶ 12, deny that the computer identified as “Big Bird” intentionally accessed, removed, altered and destroyed computer files controlled, owned, created and under the management of Plaintiff Davidian; as further answer, lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein, therefore deny the same, putting the plaintiff specifically to their proof thereon.

13. Answering ¶ 13, deny the existence of a conspiracy; as further answer, lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein, therefore deny the same, putting the plaintiff specifically to their proof thereon.

14. Answering ¶ 14, deny the City of Cookeville engaged in a repressive campaign of speech suppression against Mr. Davidian and his website; admit Jim Shipley is the City Manager for the City of Cookeville and Steve Corder is the computer operations manager for the City of Cookeville; lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein, therefore deny the same, putting the plaintiff specifically to their proof thereon.

15. Answering ¶ 15, deny the existence of a conspiracy; as further answer, lack knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, therefore deny the same, putting the plaintiff specifically to their proof thereon.

16. Answering ¶ 16, lack knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, therefore deny the same, putting the plaintiff specifically to their proof thereon.

17. Answering ¶ 17, deny the existence of a conspiracy; as further answer, lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein, therefore deny the same, putting the plaintiff specifically to their proof thereon.

18. Answering ¶ 18, deny the existence of a conspiracy; deny intent to substitute altered files to benefit Jim Shipley at trial; as further answer, lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein, therefore deny the same, putting the plaintiff specifically to their proof thereon.

19. Answering ¶ 19, lack knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, therefore deny the same, putting the plaintiff specifically to their proof thereon.

20. Answering ¶ 20, deny Shipley's attorneys were behind the actions alleged to constitute hacking into Davidian's website; deny Davidian's website was hacked; as further answer, lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein, therefore deny the same, putting the plaintiff specifically to their proof thereon.

21. Answering ¶ 21, deny the existence of a conspiracy; as further answer, lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein, therefore deny the same, putting the plaintiff specifically to their proof thereon.

22. Answering ¶ 22, lack knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, therefore deny the same, putting the plaintiff specifically to their proof thereon.

23. Answering ¶ 23, lack knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, therefore deny the same, putting the plaintiff specifically to their proof thereon.

24. Answering ¶ 24, deny the existence of a conspiracy; as further answer, lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein, therefore deny the same, putting the plaintiff specifically to their proof thereon.

25. Answering ¶ 25, repeat, re-allege and incorporate herein by reference all allegations, averments, denials and affirmative defenses contained within the text of this responsive pleading.

26. Answering ¶ 26, deny.

27. Answering ¶ 27, repeat, re-allege and incorporate herein by reference all allegations, averments, denials and affirmative defenses contained within the text of this responsive pleading.

28. Answering ¶ 28, deny.

29. Answering ¶ 29, repeat, re-allege and incorporate herein by reference all allegations, averments, denials and affirmative defenses contained within the text of this responsive pleading.

30. Answering ¶ 30, deny.

31. Answering ¶ 31, deny.

32. Answering ¶ 32, repeat, re-allege and incorporate herein by reference all allegations, averments, denials and affirmative defenses contained within the text of this responsive pleading.

33. Answering ¶ 33, deny.

AFFIRMATIVE DEFENSES

34. As and for affirmative defenses to the plaintiffs' complaint, the answering defendant submits the following:

- a. the plaintiff's complaint contains claims which fail to state a claim upon which relief may be granted;
- b. the plaintiff may have failed to properly and timely serve the defendants such that this court lacks jurisdiction over them;
- c. the injuries and damages of the plaintiff, if any, were caused by the actions or omissions of the plaintiff and/or persons other than the answering defendants;
- d. the plaintiff has failed to mitigate his damages;
- e. the plaintiff's complaint, seeking a specific amount of money, is in violation of § 802.02(1)(m) Wis. Stats.;
- f. these defendants are immune from suit under the doctrines of judicial, quasi-judicial, legislative and quasi-legislative immunity;
- g. all of the acts of these answering defendants were in good faith and not motivated by malice or the intent to harm;
- h. these answering defendants are protected from suit by immunities including qualified immunity;

- i. the plaintiff's claims are subject to the limitations and immunities in Wis. Stats., Sec. 893.80; further, this section specifically bars the recovery of punitive damages against these answering defendants;
- j. the plaintiff has failed to comply with the notice provisions contained within Wis. Stat. Sec. 893.80, as regards claims against each of these answering defendants;
- k. the plaintiff's injuries or damages, if any, were not caused by a governmental policy or practice of these answering defendants;
- l. No joint and several liability exists for the claims raised by the plaintiffs;
- m. the plaintiff's claims are barred by the doctrines of laches, waiver and estoppel; and
- n. the plaintiff's claims are barred by the doctrine of claim preclusion.

WHEREFORE, the defendants respectfully request judgment as follows:

- a. for a dismissal of the plaintiff's complaint upon its merits;
- b. for the costs and disbursements of this action; and
- c. for such other relief as this court deems just and equitable.

Dated this 22nd day of January, 2003.

CRIVELLO, CARLSON & MENTKOWSKI, S.C.
Attorneys for defendants

BY:



RAYMOND J. POLLEN

State Bar No.: 1000036

RYAN G. BRAITHWAITE

State Bar No.: 1037232

POST OFFICE ADDRESS:

710 N. Plankinton Avenue
Milwaukee, Wisconsin 53203
(414) 271-7722