

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
C.A. NO. 2012-1607-C

KEVIN MESSIER, SPECIAL PERSONAL	)
REPRESENTATIVE OF THE ESTATE OF	)
JOSHUA MESSIER,	)
Plaintiff,	)
	)
v.	)
	)
DANIEL KERR, GEORGE BILLADEAU,	)
TIMOTHY SOARES, CLIFFORD FOSTER,	)
JAMES BAKER, DEREK HOWARD,	)
JOHN RAPOSO, CHRISTOPHER REGO,	)
RAYMOND THIBAUT, BRIDGEWATER	)
STATE HOSPITAL, and COMMONWEALTH	)
OF MASSACHUSETTS,	)
Defendants.	)

2012 AUG 27 AM 11:04  
 HONORABLE JUSTICE  
 CLERK/REGISTRAR

**ANSWER AND JURY DEMAND OF DEFENDANTS**  
**COMMONWEALTH OF MASSACHUSETTS, BRIDGEWATER STATE**  
**HOSPITAL, GEORGE BILLADEAU, TIMOTHY SOARES, CLIFFORD**  
**FOSTER, JAMES BAKER, DEREK HOWARD, JOHN RAPOSO,**  
**CHRISTOPHER REGO, AND RAYMOND THIBAUT**

Now come Defendants Commonwealth of Massachusetts, Bridgewater State Hospital, George Billadeau, Timothy Soares, Clifford Foster, James Baker (sic), Derek Howard, John Raposo, Christopher Rego, and Raymond Thibault (collectively “Commonwealth Defendants”) and respond to Plaintiff’s Complaint by corresponding numbered paragraphs and asserts the following affirmative defenses and jury claim.

1. This paragraph requires no response as the Complaint speaks for itself. To the extent that the allegations in this paragraph may be construed as alleging liability against the Commonwealth Defendants, the allegations are denied.

2. The Commonwealth Defendants admit the allegations set forth in the first sentence in this paragraph. The Commonwealth Defendants deny the allegations set forth in the second sentence in this paragraph. The Commonwealth Defendants admit that Joshua Messier was placed in four-point restraints, but are without sufficient information to admit or deny the remaining allegations set forth in the third sentence of this paragraph. The Commonwealth Defendants admit the allegations set forth in the fourth sentence in this paragraph. The Commonwealth Defendants deny the allegations set forth in the fifth sentence in this paragraph. The Commonwealth Defendants admit the allegations set forth in the sixth sentence in this paragraph. The Commonwealth Defendants are without sufficient information to admit or deny the allegations set forth in the seventh sentence of this paragraph. The Commonwealth Defendants deny the allegations set forth in the eighth sentence in this paragraph. The Commonwealth Defendants deny the allegations set forth in the final sentence in this paragraph to the extent that the allegations are contrary to the referenced findings of the Office of the Chief Medical Examiner.
3. This paragraph calls for a conclusion of law to which no response is required from the Commonwealth Defendants. To the extent that a response is required, the Commonwealth Defendants deny the allegations set forth in this paragraph.
4. This paragraph calls for a conclusion of law to which no response is required from the Commonwealth Defendants.
5. The Commonwealth Defendants are without sufficient information to admit or deny the allegations set forth in this paragraph.

6. The Commonwealth Defendants are without sufficient information to admit or deny the allegations set forth in this paragraph.
7. The Commonwealth Defendants admit that Daniel Kerr was a correctional officer at Bridgewater State Hospital (“BSH”) and acting within the scope of his employment. The allegation that Daniel Kerr was acting under color of law calls for a conclusion of law to which no response is required from the Commonwealth Defendants. The remaining allegations set forth in this paragraph require no response as the Complaint speaks for itself.
8. The Commonwealth Defendants admit that George Billadeau was a correctional officer at BSH and acting within the scope of his employment. The allegation that George Billadeau was acting under color of law calls for a conclusion of law to which no response is required from the Commonwealth Defendants. The remaining allegations set forth in this paragraph require no response as the Complaint speaks for itself.
9. The Commonwealth Defendants admit that Timothy Soares was a correctional officer at BSH and acting within the scope of his employment. The allegation that Timothy Soares was acting under color of law calls for a conclusion of law to which no response is required from the Commonwealth Defendants. The remaining allegations set forth in this paragraph require no response as the Complaint speaks for itself.
10. The Commonwealth Defendants admit that Clifford Foster was a correctional officer at BSH and acting within the scope of his employment. The allegation that Clifford Foster was acting under color of law calls for a conclusion of law to

which no response is required from the Commonwealth Defendants. The remaining allegations set forth in this paragraph require no response as the Complaint speaks for itself.

11. The Commonwealth Defendants admit that James Baker (sic) was a correctional officer at BSH and acting within the scope of his employment. The allegation that James Baker (sic) was acting under color of law calls for a conclusion of law to which no response is required from the Commonwealth Defendants. The remaining allegations set forth in this paragraph require no response as the Complaint speaks for itself.

12. The Commonwealth Defendants admit that Derek Howard was a correctional officer at BSH and acting within the scope of his employment. The allegation that Derek Howard was acting under color of law calls for a conclusion of law to which no response is required from the Commonwealth Defendants. The remaining allegations set forth in this paragraph require no response as the Complaint speaks for itself.

13. The Commonwealth Defendants admit that John Raposo was a correctional officer at BSH and acting within the scope of his employment. The allegation that John Raposo was acting under color of law calls for a conclusion of law to which no response is required from the Commonwealth Defendants. The remaining allegations set forth in this paragraph require no response as the Complaint speaks for itself.

14. The Commonwealth Defendants admit that Christopher Rego was a correctional officer at BSH and acting within the scope of his employment. The allegation

that Christopher Rego was acting under color of law calls for a conclusion of law to which no response is required from the Commonwealth Defendants. The remaining allegations set forth in this paragraph require no response as the Complaint speaks for itself.

15. The Commonwealth Defendants admit that Raymond Thibault was a correctional officer at BSH and acting within the scope of his employment. The allegation that Raymond Thibault was acting under color of law calls for a conclusion of law to which no response is required from the Commonwealth Defendants. The remaining allegations set forth in this paragraph require no response as the Complaint speaks for itself.

16. The Commonwealth Defendants admit that BSH is a facility under the direction and control of the Commonwealth of Massachusetts Department of Correction. The Commonwealth Defendants deny the allegations set forth in the second sentence in this paragraph. The allegation that BSH acts under color of law calls for a conclusion of law to which no response is required from the Commonwealth Defendants. The Commonwealth Defendants admit the remaining allegations set forth in this paragraph.

17. Admitted.

18. The Commonwealth Defendants are without sufficient information to admit or deny the allegation that Joshua Messier left the visiting room around 7:55 pm on May 4, 2009. The Commonwealth Defendants deny that the patient visiting room is located in the B-building of BSH.

19. The Commonwealth Defendants deny the allegation that Joshua Messier exited the visiting room around 9:09 pm, but admit that Joshua Messier left the visiting room and entered the staff break room where Joshua Messier struck Correctional Officer Christopher Rego with a resulting struggle. The Commonwealth Defendants admit that Joshua Messier was transferred to the ITU in restraints, but deny the remaining allegations set forth in this paragraph.
20. Denied.
21. Denied.
22. Denied.
23. The Commonwealth Defendants deny the allegation that Joshua Messier's vital signs were checked around 9:23 pm, but admit that Joshua Messier's vital signs were checked and no blood pressure or heart rate could be found.
24. The Commonwealth Defendants admit that a "Code 99" was called and CPR was started.
25. Denied
26. The Commonwealth Defendants admit that Bridgewater Fire Department arrived around 9:38 pm.
27. The Commonwealth Defendants admit that Joshua Messier did not have a pulse, respirations and blood pressure when Bridgewater Fire Department arrived, but deny the remaining allegations set forth in this paragraph.
28. The Commonwealth Defendants admit that at approximately 10:00 pm, Joshua Messier was transferred to Brockton Hospital.
29. Admitted.

30. The Commonwealth Defendants deny the allegations set forth in this paragraph to the extent that the allegations are contrary to the referenced findings of the Office of the Chief Medical Examiner.
31. The Commonwealth Defendants admit receiving the February 9, 2010 presentment letter on February 10, 2010.
32. The Commonwealth Defendants repeat their responses to ¶¶ 1 through 31 and incorporates them herein.
33. The Commonwealth Defendants deny the allegations set forth in this paragraph and subparts.
34. The Commonwealth Defendants repeat their responses to ¶¶ 1 through 33 and incorporates them herein.
35. Denied.
36. Denied.
37. The Commonwealth Defendants repeat their responses to ¶¶ 1 through 36 and incorporates them herein.
38. This paragraph requires no response as the Complaint speaks for itself as to the capacity the Commonwealth Defendants are sued.
39. Denied.
40. The Commonwealth Defendants repeat their responses to ¶¶ 1 through 39 and incorporates them herein.
41. Denied.
42. Denied.

43. The Commonwealth Defendants repeat their responses to ¶¶ 1 through 42 and incorporates them herein.
44. Denied.
45. Denied.
46. The Commonwealth Defendants repeat their responses to ¶¶ 1 through 45 and incorporates them herein.
47. Denied.
48. Denied.
49. Denied.
50. Denied.
51. The Commonwealth Defendants repeat their responses to ¶¶ 1 through 49 and incorporates them herein.
52. This paragraph calls for a conclusion of law to which no response is required from the Commonwealth Defendants. To the extent that a response is required, the Commonwealth Defendants deny the allegations set forth in this paragraph to the extent that they are contrary to applicable law.
53. Denied.
54. This paragraph calls for a conclusion of law to which no response is required from the Commonwealth Defendants. To the extent that a response is required, the Commonwealth Defendants deny the allegations set forth in this paragraph to the extent that they are contrary to applicable law.
55. Denied.



56. This paragraph calls for a conclusion of law to which no response is required from the Commonwealth Defendants. To the extent that a response is required, the Commonwealth Defendants deny the allegations set forth in this paragraph to the extent that they are contrary to applicable law.

57. Denied.

58. Denied.

59. The Commonwealth Defendants repeat their responses to ¶¶ 1 through 58 and incorporates them herein.

60. This paragraph calls for a conclusion of law to which no response is required from the Commonwealth Defendants. To the extent that a response is required, the Commonwealth Defendants deny the allegations set forth in this paragraph to the extent that they are contrary to applicable law.

61. Denied.

62. Denied.

63. The Commonwealth Defendants repeat their responses to ¶¶ 1 through 62 and incorporates them herein.

64. Denied.

65. Denied.

66. The Commonwealth Defendants repeat their responses to ¶¶ 1 through 65 and incorporates them herein.

67. Denied.

68. Denied.

69. The Commonwealth Defendants repeat their responses to ¶¶ 1 through 68 and incorporates them herein.

70. Denied.

71. Admitted.

72. Denied.

73. The Commonwealth Defendants repeat their responses to ¶¶ 1 through 72 and incorporates them herein.

74. Denied.

75. Admitted.

76. Denied.

77. The Commonwealth Defendants repeat their responses to ¶¶ 1 through 76 and incorporates them herein.

78. Admitted.

79. Denied.

80. The Commonwealth Defendants repeat their responses to ¶¶ 1 through 79 and incorporates them herein.

81. Denied.

82. The Commonwealth Defendants repeat their responses to ¶¶ 1 through 81 and incorporates them herein.

83. Denied.

#### **AFFIRMATIVE DEFENSES**

1. Plaintiff failed to satisfy the presentment of claim requirements as to any fact(s) and/or claim(s) not identified in the alleged letter of presentment.

2. Plaintiff's claims are barred since they are based upon an act or omission of a public employee when such employee was exercising due care in the execution of a statute or regulation of a public employer under G.L. c. 258, sec 10(a).
3. Plaintiff's claims are barred since they are based upon the exercise to perform a discretionary function or duty on the part of a public employer or public employee under G.L. c. 258, sec 10(b).
4. The acts or omissions complained of are based upon an act or failure to act to prevent or diminish the harmful consequences of a condition or situation, including the violent or tortuous conduct of a third person, which is not originally caused by the public employer or any other person action on behalf of the public employer and the Commonwealth Defendants cannot be held liable under the provisions of G.L. c. 258, sec. 10(j).
5. Individually named defendants are immune under the provisions of G.L. c. 258, sec. 2.
6. Plaintiff's claims were the result of the acts or omissions of a third party or parties for whose conduct the Commonwealth Defendants are not legally responsible.
7. Interest, costs and attorney fees are not recoverable against the Commonwealth Defendants.
8. Any claim against the Commonwealth or its entities based on an intentional tort is barred by the provisions of G.L. c. 258, §10(c).
9. Individually named defendants are entitled to qualified immunity barring plaintiff's claims.

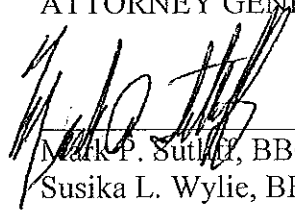
10. The Commonwealth Defendants intend to rely on any additional defenses that become available or known through discovery and hereby reserves the right to amend its Answer and to assert any such defense(s) by appropriate motion.

**JURY DEMAND**

Defendants Commonwealth of Massachusetts, Bridgewater State Hospital, George Billadeau, Timothy Soares, Clifford Foster, James Baker (sic), Derek Howard, John Raposo, Christopher Rego, and Raymond Thibault demand a trial by jury as to all issues, claims, and affirmative defenses.

Respectfully submitted,  
COMMONWEALTH OF MASSACHUSETTS,  
BRIDGEWATER STATE HOSPITAL,  
GEORGE BILLADEAU, TIMOTHY SOARES,  
CLIFFORD FOSTER, JAMES BAKER,  
DEREK HOWARD, JOHN RAPOSO,  
CHRISTOPHER REGO, and RAYMOND  
THIBAULT,  
By their Attorneys,

MARTHA COAKLEY  
ATTORNEY GENERAL



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August 21, 2012

**CERTIFICATE OF SERVICE**

I, Mark P. Sutliff, Assistant Attorney General, hereby certify that I have this day, August 21, 2012, served the foregoing **Answer** upon counsel of record for the plaintiff by mailing a copy, first class, postage prepaid to:

Andrew C. Meyer, Jr., Esq.  
Benjamin R. Novotny, Esq.  
LUBIN & MEYER, P.C.  
100 City Hall Plaza  
Boston, MA 02108



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Mark P. Sutliff  
Assistant Attorney General