

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 18-cv-03112-RBJ-STV

SEAN SLATTON,

Plaintiff

v.

CITY OF FORT COLLINS, A MUNICIPALITY,

Defendant.

**DEFENDANT’S ANSWER, DEFENSES, AND AFFIRMATIVE DEFENSES TO
PLAINTIFF’S FOURTH AMENDED COMPLAINT AND JURY DEMAND (ECF 94)**

Defendant, City of Fort Collins, by and through its attorneys, Hall & Evans, L.L.C., submits the following as the answer, defenses, and affirmative defenses to Plaintiff’s Fourth Amended Complaint and Jury Demand (ECF 94) (“Complaint”):

INTRODUCTION

1. Based on information and belief, this Defendant admits Mr. Slatton was attending an event in Fort Collins with his girlfriend, and he was told to leave the premises by two City of Fort Collins Police Officers. The remaining allegations set forth in paragraph 1, of Plaintiff’s Complaint, are denied.

2. This Defendant admits Mr. Slatton left the building, and was subsequently struck with a baton by Officer Hopkins. This Defendant further admits Mr. Slatton was sprayed with OC

spray, by Officer Hopkins. The remaining allegations set forth in paragraph 2 of Plaintiff's Complaint, are denied.

3. This Defendant admits Mr. Slatton fled the scene and was apprehended thereafter. The remaining allegations set forth in paragraph 3 of Plaintiff's Complaint, are denied.

4. The allegations set forth in paragraph 4 of Plaintiff's Complaint are conclusory and therefore no response is required. To the extent the allegations set forth in paragraph 4 of Plaintiff's Complaint are determined to be factual, said allegations are denied.

5. The allegations set forth in paragraph 5 of Plaintiff's Complaint are conclusory and therefore no response is required. To the extent the allegations set forth in paragraph 5 of Plaintiff's Complaint are determined to be factual, said allegations are denied.

6. The allegations set forth in paragraph 6 of Plaintiff's Complaint are conclusory while at the same time purport to set forth a legal conclusion to which no response is required. To the extent the allegations set forth in paragraph 6 of Plaintiff's Complaint are determined to be factual, said allegations are denied.

PARTIES

7. Based on information and belief, this Defendant admits the allegations set forth in paragraph 7 of Plaintiff's Complaint.

8. This Defendant admits it is a municipality and a municipal corporation, and that Fort Collins Police Services is a department within said municipality. The remaining allegations set forth in paragraph 8 of Plaintiff's Complaint are denied.

9. The allegations set forth in paragraph 9 of Plaintiff's Complaint are conclusory while at the same time purport to set forth a legal conclusion to which no response is required. To

the extent the allegations in paragraph 9 of Plaintiff's Complaint are determined to be factual, this Defendant admits Todd Hopkins was a resident of the State of Colorado, but lacks sufficient knowledge of information as to the remaining allegations requiring denial of same.

10. The allegations set forth in paragraph 10 of Plaintiff's Complaint are conclusory while at the same time purport to set forth a legal conclusion to which no response is required. To the extent the allegations in paragraph 10 of Plaintiff's Complaint are determined to be factual, this Defendant admits Brandon Barnes was a resident of the State of Colorado, but lacks sufficient knowledge of information as to the remaining allegations requiring denial of same.

11. This Defendant admits that at all times Chief Hutto was a resident of the State of Colorado, but denies he personally participated in any of the actions identified in Plaintiff's Complaint. The remaining allegations set forth in paragraph 11 of Plaintiff's Complaint, if any, are also denied.

12. This Defendant admits the allegations set forth in paragraph 12 of Plaintiff's Complaint.

JURISDICTION AND VENUE

13. The allegations set forth in paragraph 13 of Plaintiff's Complaint are conclusory while at the same time purport to set forth legal conclusions to which no response is required. To the extent the allegations set forth in paragraph 13 of Plaintiff's Complaint are determined to be factual, this Defendant admits this Court has original jurisdiction over a matter which presents a proper federal question. The remaining allegations set forth in paragraph 13 of Plaintiff's Complaint, are denied.

14. The allegations set forth in paragraph 14 of Plaintiff's Complaint are conclusory while at the same time purport to set forth a legal conclusion to which no response is required. To the extent the allegations set forth in paragraph 14 of Plaintiff's Complaint are determined to be factual, this Defendant admits this Court has jurisdiction under 42 U.S.C. § 1983, but denies Plaintiff is entitled to attorneys' fees or any relief thereunder. The remaining allegations set forth in paragraph 14 of Plaintiff's Complaint, if any, are denied.

15. The allegations set forth in paragraph 15 of Plaintiff's Complaint are conclusory while at the same time purport to set forth a legal conclusion to which no response is required. To the extent the allegations set forth in paragraph 15 of Plaintiff's Complaint are determined to be factual, this Defendant denies Plaintiff is entitled to recovery of any attorneys' fees. The remaining allegations set forth in paragraph 15 of Plaintiff's Complaint, are denied.

16. This Defendant admits venue is proper in the United States District Court for the District of Colorado, but denies the remaining allegations set forth in paragraph 16 of Plaintiff's Complaint.

FACTUAL ALLEGATIONS

17. This Defendant admits that on December 3, 2016, Plaintiff was attending an event with his girlfriend, in the City of Fort Collins. The remaining allegations set forth in paragraph 17 of Plaintiff's Complaint are denied.

18. This Defendant admits Hopkins and Barnes were working off-duty and in uniform, but deny the remaining allegations set forth in paragraph 18 of Plaintiff's Complaint.

19. This Defendant is without sufficient knowledge or information regarding the allegations set forth in paragraph 19 of Plaintiff's Complaint, requiring denial of same.

20. This Defendant admits Mr. Slatton was told to leave the premises, but is without sufficient knowledge or information regarding the remaining allegations set forth in paragraph 20 of Plaintiff's Complaint, requiring denial of same.

21. Based on information and belief, this Defendant admits the allegations set forth in paragraph 21 of Plaintiff's Complaint.

22. Based on information and belief, this Defendant denies the allegations set forth in paragraph 22 of Plaintiff's Complaint.

23. Based on information and belief, this Defendant admits Officers Hopkins and Barnes followed Mr. Slatton through the building. The remaining allegations set forth in paragraph 23 of Plaintiff's Complaint, are denied.

24. This Defendant is without sufficient knowledge or information regarding the allegations set forth in paragraph 24 of Plaintiff's Complaint, requiring denial of same.

25. This Defendant admits Mr. Slatton and Officer Hopkins had a conversation, but deny knowledge of the exact substance of said conversation. Therefore, the remaining allegations set forth in paragraph 25 of Plaintiff's Complaint are denied.

26. This Defendant admits Officer Hopkins asked to see Mr. Slatton's identification, but deny the remaining allegations set forth in paragraph 26 of Plaintiff's Complaint.

27. The allegations set forth in paragraph 27 of Plaintiff's Complaint, are denied.

28. This Defendant admits Mr. Slatton and Officer Hopkins had a conversation, but denies knowledge of the exact substance of said conversation. Therefore, the remaining allegations set forth in paragraph 28 of Plaintiff's Complaint are denied.

29. Based on information and belief, this Defendant admits Officer Hopkins asked to see Mr. Slatton's identification. The remaining allegations are denied.

30. The allegations set forth in paragraph 30 of Plaintiff's Complaint are conclusory while at the same time purport to set forth a legal conclusion to which no response is required. To the extent the allegations set forth in paragraph 30 of Plaintiff's Complaint are determined to be factual, said allegations are denied.

31. This Defendant is without sufficient knowledge or information regarding the allegations set forth in paragraph 31 of Plaintiff's Complaint, requiring denial of same.

32. The allegations set forth in paragraph 32 of Plaintiff's Complaint are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 32 of Plaintiff's Complaint are determined to be factual, this Defendant is without sufficient knowledge or information regarding said allegations, requiring denial of same.

33. The allegations set forth in paragraph 33 of Plaintiff's Complaint are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 33 of Plaintiff's Complaint are determined to be factual, this Defendant is without sufficient knowledge or information regarding said allegations, requiring denial of same.

34. The allegations set forth in paragraph 34 of Plaintiff's Complaint are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 34 of Plaintiff's Complaint are determined to be factual, this Defendant is without sufficient knowledge or information regarding said allegations, requiring denial of same.

35. The allegations set forth in paragraph 35 of Plaintiff's Complaint are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 35 of

Plaintiff's Complaint are determined to be factual, this Defendant is without sufficient knowledge or information regarding said allegations, requiring denial of same.

36. The allegations set forth in paragraph 36 of Plaintiff's Complaint are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 36 of Plaintiff's Complaint are determined to be factual, this Defendant is without sufficient knowledge or information regarding said allegations, requiring denial of same.

37. The allegations set forth in paragraph 37 of Plaintiff's Complaint are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 37 of Plaintiff's Complaint are determined to be factual, this Defendant is without sufficient knowledge or information regarding said allegations, requiring denial of same.

38. The allegations set forth in paragraph 38 of Plaintiff's Complaint are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 38 of Plaintiff's Complaint are determined to be factual, this Defendant is without sufficient knowledge or information regarding said allegations, requiring denial of same.

39. The allegations set forth in paragraph 39 of Plaintiff's Complaint are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 39 of Plaintiff's Complaint are determined to be factual, this Defendant is without sufficient knowledge or information regarding said allegations, requiring denial of same.

40. The allegations set forth in paragraph 40 of Plaintiff's Complaint are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 40 of Plaintiff's Complaint are determined to be factual, this Defendant is without sufficient knowledge or information regarding said allegations, requiring denial of same.

41. The allegations set forth in paragraph 41 of Plaintiff's Complaint are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 41 of Plaintiff's Complaint are determined to be factual, this Defendant is without sufficient knowledge or information regarding said allegations, requiring denial of same.

42. The allegations set forth in paragraph 42 of Plaintiff's Complaint are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 42 of Plaintiff's Complaint are determined to be factual, this Defendant is without sufficient knowledge or information regarding said allegations, requiring denial of same.

43. The allegations set forth in paragraph 43 of Plaintiff's Complaint are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 43 of Plaintiff's Complaint are determined to be factual, said allegations are denied.

44. The allegations set forth in paragraph 44 of Plaintiff's Complaint are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 44 of Plaintiff's Complaint are determined to be factual, this Defendant is without sufficient knowledge or information regarding said allegations, requiring denial of same.

45. Based on information and belief, this Defendant admits the allegations set forth in paragraph 45 of Plaintiff's Complaint.

46. The allegations set forth in paragraph 46 of Plaintiff's Complaint are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 46 of Plaintiff's Complaint are determined to be factual, this Defendant is without sufficient knowledge or information regarding said allegations, requiring denial of same.

47. The allegations set forth in paragraph 47 of Plaintiff's Complaint are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 47 of Plaintiff's Complaint are determined to be factual, this Defendant is without sufficient knowledge or information regarding said allegations, requiring denial of same.

48. This Defendant is without sufficient knowledge or information regarding the allegations set forth in paragraph 48 of Plaintiff's Complaint, requiring denial of same.

49. This Defendant is without sufficient knowledge or information regarding the allegations set forth in paragraph 49 of Plaintiff's Complaint, requiring denial of same.

50. The allegations set forth in paragraph 50 of Plaintiff's Complaint, are denied.

51. The allegations set forth in paragraph 51 of Plaintiff's Complaint are conclusory and therefore no response is required. To the extent the allegations set forth in paragraph 51 of Plaintiff's Complaint are determined to be factual, this Defendant is without sufficient knowledge or information of said allegations, requiring denial of same.

52. The allegations set forth in paragraph 52 of Plaintiff's Complaint, are denied.

53. The allegations set forth in paragraph 53 of Plaintiff's Complaint, are denied.

54. The allegations set forth in paragraph 54 of Plaintiff's Complaint, are denied.

55. The allegations set forth in paragraph 55 of Plaintiff's Complaint, are denied.

56. The allegations set forth in paragraph 56 of Plaintiff's Complaint, are denied.

57. The allegations set forth in paragraph 57 of Plaintiff's Complaint, are denied.

58. The allegations set forth in paragraph 58 of Plaintiff's Complaint, are denied.

59. The allegations set forth in paragraph 59 of Plaintiff's Complaint, are denied.

60. The allegations set forth in paragraph 60 of Plaintiff's Complaint, are denied.

61. The allegations set forth in paragraph 61 of Plaintiff's Complaint, are denied.
62. The allegations set forth in paragraph 62 of Plaintiff's Complaint, are denied.
63. The allegations set forth in paragraph 63 of Plaintiff's Complaint, are denied.
64. The allegations set forth in paragraph 64 of Plaintiff's Complaint, are denied.
65. The allegations set forth in paragraph 65 of Plaintiff's Complaint, are denied.
66. The allegations set forth in paragraph 66 of Plaintiff's Complaint, are denied.
67. The allegations set forth in paragraph 67 of Plaintiff's Complaint, are denied.
68. The allegations set forth in paragraph 68 of Plaintiff's Complaint, are denied.
69. The allegations set forth in paragraph 69 of Plaintiff's Complaint, are denied.
70. The allegations set forth in paragraph 70 of Plaintiff's Complaint, are denied.
71. The allegations set forth in paragraph 71 of Plaintiff's Complaint, are denied.
72. The allegations set forth in paragraph 72 of Plaintiff's Complaint, are denied.
73. The allegations set forth in paragraph 73 of Plaintiff's Complaint, are denied.
74. The allegations set forth in paragraph 74 of Plaintiff's Complaint, are denied.
75. The allegations set forth in paragraph 75 of Plaintiff's Complaint, are denied.
76. The allegations set forth in paragraph 76 of Plaintiff's Complaint, are denied.
77. The allegations set forth in paragraph 77 of Plaintiff's Complaint, are denied.
78. The allegations set forth in paragraph 78 of Plaintiff's Complaint, are denied.
79. The allegations set forth in paragraph 79 of Plaintiff's Complaint, are denied.
80. The allegations set forth in paragraph 80 of Plaintiff's Complaint, are denied.
81. The allegations set forth in paragraph 81 of Plaintiff's Complaint, are denied.
82. The allegations set forth in paragraph 82 of Plaintiff's Complaint, are denied.

STATEMENT OF CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

**42 U.S.C. § 1983 – Fourth Amendment Violation – Unlawful Seizure
(Against Defendant Hopkins and Defendant Barnes)**

83. This Defendant incorporates by reference those responses to paragraph 1 to 82 of Plaintiff's Complaint as though fully set forth herein.

84-100. Paragraphs 84 to 100 of Plaintiff's Complaint are not directed at the City and furthermore have been dismissed by the Court (*See* ECF 114), therefore no response is provided. To the extent the allegations set forth in paragraphs 84 to 100 are determined to apply to the City, said allegations are denied.

SECOND CLAIM FOR RELIEF

42 U.S.C. § 1983 – Fourth Amendment Excessive Force

101. This Defendant hereby incorporates by reference those responses to paragraphs 1 to 100 of Plaintiff's Complaint, as though fully set forth herein.

102. The allegations set forth in paragraph 102 of Plaintiff's Complaint purport to set forth a legal conclusion to which no response is required. To the extent the allegations set forth in paragraph 102 of Plaintiff's Complaint are determined to be factual, this Defendant is without sufficient knowledge or information regarding said allegations, requiring denial of same.

103. This Defendant admits Mr. Slatton has rights provided by the Fourth Amendment. The remaining allegations set forth in paragraph 103 of Plaintiff's Complaint, are denied.

104. The allegations set forth in paragraph 104 of Plaintiff's Complaint purport to set forth a legal conclusion to which no response is required. To the extent the allegations set forth in paragraph 104 of Plaintiff's Complaint are determined to be factual, this Defendant is without sufficient knowledge regarding said allegations, requiring denial of same.

105. The allegations set forth in paragraph 105 of Plaintiff's Complaint purport to set forth a legal conclusion, to which no response is required. To the extent the allegations set forth in paragraph 105 of Plaintiff's Complaint are determined to be factual, said allegations are denied.

106. This Defendant denies the allegations set forth in paragraph 106 of Plaintiff's Complaint.

107. This Defendant admits Officer Hopkins did not have a warrant at the time of his interaction with Mr. Slatton. This Defendant denies the remaining allegations set forth in paragraph 107 of Plaintiff's Complaint.

108. This Defendant denies the allegations set forth in paragraph 108 of Plaintiff's Complaint.

109. This Defendant denies the allegations set forth in paragraph 109 of Plaintiff's Complaint, to the extent they apply to the City. The City is without sufficient knowledge or information with respect to Hopkins' belief, requiring denial of the remaining allegations set forth in paragraph 109 of Plaintiff's Complaint.

110. The allegations set forth in paragraph 110 of Plaintiff's Complaint are denied.

111. The allegations set forth in paragraph 111 of Plaintiff's Complaint are denied.

112. The allegations set forth in paragraph 112 of Plaintiff's Complaint are denied.

113. The allegations set forth in paragraph 113 of Plaintiff's Complaint, are denied.

114. The allegations set forth in paragraph 114 of Plaintiff's Complaint, are denied.

115. The allegations set forth in paragraph 115 of Plaintiff's Complaint, are denied.

116. The allegations set forth in paragraph 116 of Plaintiff's Complaint, are denied.

117. This Defendant is without sufficient knowledge or information with respect to the allegations set forth in paragraph 117 of Plaintiff's Complaint, requiring denial of same.

118. This Defendant is without sufficient knowledge or information with respect to the allegations set forth in paragraph 118 of Plaintiff's Complaint, requiring denial of same.

119. The allegations set forth in paragraph 119 of Plaintiff's Complaint, are denied.

120. The allegations set forth in paragraph 120 of Plaintiff's Complaint, are denied.

THIRD CLAIM FOR RELIEF
42 U.S.C. § 1983 Fourteenth Amendment Violation – Excessive Force
(Against Defendant Hopkins, Hutto, and Fort Collins)

121. This Defendant incorporates by reference those responses to paragraphs 1 to 120 of Plaintiff's Complaint, as though fully set forth herein.

122. The allegations set forth in paragraph 122 of Plaintiff's Complaint purport to set forth a legal conclusion to which no response is required. To the extent the allegations set forth in paragraph 122 of Plaintiff's Complaint are determined to be factual, this Defendant lacks sufficient knowledge or information regarding said allegations, requiring denial of same.

123. The allegations set forth in paragraph 123 of Plaintiff's Complaint purport to set forth a legal conclusion to which no response is required. To the extent the allegations set forth in paragraph 123 of Plaintiff's Complaint are determined to be factual, this Defendant is without sufficient knowledge or information regarding said allegations, requiring denial of same.

124. This Defendant is without sufficient knowledge or information regarding the allegations set forth in paragraph 124 of Plaintiff's Complaint, requiring denial of same.

125. The allegations set forth in paragraph 125 of Plaintiff's Complaint, are denied.

126. The allegations set forth in paragraph 126 of Plaintiff's Complaint, are denied.

127. The allegations set forth in paragraph 127 of Plaintiff's Complaint, are denied.

128. The allegations set forth in paragraph 128 of Plaintiff's Complaint are denied.

129. This Defendant is without sufficient knowledge or information regarding the allegations set forth in paragraph 129 of Plaintiff's Complaint, requiring denial of same.

130. This Defendant is without sufficient knowledge or information regarding the allegations set forth in paragraph 130 of Plaintiff's Complaint, requiring denial of same.

131. This Defendant is without sufficient knowledge or information regarding the allegations set forth in paragraph 131 of Plaintiff's Complaint, requiring denial of same.

132. The allegations set forth in paragraph 132 of Plaintiff's Complaint, are denied.

133. The allegations set forth in paragraph 133 of Plaintiff's Complaint, are denied.

134. The allegations set forth in paragraph 134 of Plaintiff's Complaint, are denied.

135. The allegations set forth in paragraph 135 of Plaintiff's Complaint, are denied.

136. The allegations set forth in paragraph 136 of Plaintiff's Complaint, are denied.

137. The allegations set forth in paragraph 137 of Plaintiff's Complaint, are denied.

138. This Defendant is without sufficient knowledge or information regarding the allegations set forth in paragraph 138 of Plaintiff's Complaint, requiring denial of same.

139. This Defendant is without sufficient knowledge or information regarding the allegations set forth in paragraph 139 of Plaintiff's Complaint, requiring denial of same.

140. This Defendant is without sufficient knowledge or information regarding the allegations set forth in paragraph 140 of Plaintiff's Complaint, requiring denial of same.

141. This Defendant denies the allegations set forth in paragraph 141 of Plaintiff's Complaint.

142. This Defendant denies the allegations set forth in paragraph 142 of Plaintiff's Complaint.

PRAYER FOR RELIEF

143. This Defendant denies Plaintiff is entitled to any relief whatsoever

144. This Defendant denies any allegations after the Prayer For Relief

GENERAL DENIAL

145. This Defendant denies each and every allegations not specifically denied herein.

DEMAND FOR JURY TRIAL

The City of Fort Collins demands a trial by jury of all claims in this matter.

Affirmative Defenses

1. Plaintiff's Complaint fails to state a claim upon which relief may be granted.
2. Plaintiff is not entitled to any relief being sought or claimed in the Complaint under any legal theories asserted therein.
3. On information and belief, Plaintiff failed to mitigate his damages, if any.
4. On information and belief, some or all of Plaintiff's injuries and damages, if any, were either pre-existing or not aggravated by any action omission of or by this Defendant, nor proximately caused by or related to any act or omission of this Defendant.
5. All or part of Plaintiff's claims never achieved the level of any constitutional violation sufficient to state a claim under 42 U.S.C. § 1983. In addition, no claim pursuant to 42 U.S.C. § 1983 may be grounded in any theory of *respondeat superior* or vicarious liability respecting this Defendant.

6. Plaintiff's injuries and damages, if any, in whole or in part, were proximately caused by his own acts or omissions, either in combination with one another or independent of one another.

7. Plaintiff's injuries and damages, if any, were proximately caused by the acts or omissions of third parties over whom this Defendant possessed no ability to control or right to control.

8. Plaintiff's claim is barred in whole or in part by the doctrines of consent, estoppel, and waiver.

9. Plaintiff cannot satisfy all or some of the perquisites to a grant of injunctive or declaratory relief in this matter. Any request for injunctive or declaratory relief is moot.

10. Defendant is not liable for any punitive damages pursuant to state or federal law and no Defendant could become liable for any such damages.

11. There is no custom, practice, policy, or procedure in place which is a proximate cause of Plaintiff's alleged Constitutional violations.

12. This Defendant reserves its right to assert other or additional defenses and affirmative defenses as may become known in the course of proceedings.

WHEREFORE, after answering all the allegations in Plaintiff's Complaint that require a response, the City of Fort Collins requests the Court enter an Order dismissing all elements of all claims against it in complete and total fashion, awarding it costs and attorneys' fees, and ordering such other relief as the Court deems just.

Respectfully submitted this 20th day of August 2020.

/s/ Mark S. Ratner

Mark S. Ratner

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**ATTORNEYS FOR DEFENDANT THE
CITY OF FORT COLLINS**

CERTIFICATE OF SERVICE (CM/ECF)

I HEREBY CERTIFY that on the 20th day of August 2020, I electronically filed the foregoing **DEFENDANT'S ANSWER, DEFENSES, AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S FOURTH AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF system and 18mailed a copy to the following:

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Hellen Oh, Esq.
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ATTORNEYS FOR PLAINTIFF

s/ Cindy Blanton, Legal Assistant
at Hall & Evans, L.L.C.