

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF THE TRIAL COURT

Hampden, ss

Palmer District Court  
Civil Action No: 11-

BRIAN JOHNSON  
Plaintiff

v.

PETER FREI  
Defendant

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**DEFENDANT'S SUBSTITUTED**  
**ANSWER, AFFIRMATIVE DEFENSES,**  
**COUNTERCLAIMS AND JURY DEMAND**

The defendant ANSWERS as follows:

1. The defendant admits the allegations of paragraph one of the Complaint.
  2. The defendant admits the allegations of paragraph two of the Complaint. Admitted.
  3. The defendant is without sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph three the Complaint.
  4. The defendant is without sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph four of the Complaint.
  5. The defendant is without sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph five of the Complaint.
  6. The defendant denies the allegations of paragraph six of the Complaint.
  7. The defendant denies the allegations of paragraph seven of the Complaint.
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## **AFFIRMATIVE DEFENSES**

### **FIRST DEFENSE**

This action was not commenced within the time required by laws made and provided therefor.

### **SECOND DEFENSE**

The complaint fails to set forth a claim upon which relief can be granted.

### **THIRD DEFENSE**

The complaint should be dismissed for improper and inadequate service of process.

### **FOURTH DEFENSE**

Plaintiff is not an aggrieved person as defined by G.L. c. 272 § 99Q. A civil remedy

### **FIFTH DEFENSE**

Having voluntarily made a statement in a public place in the presence of multiple witnesses and the public at large, Plaintiff lacked any reasonable expectation of privacy and therefore had neither suffered nor is able to prove damages as a matter of law.

### **SIXTH DEFENSE**

Being in a public place and having knowingly and voluntarily shouted vulgar statements, profanities and threats toward the Plaintiff in the presence of witnesses and members of the public, Plaintiff is neither an aggrieved person within the meaning of G.L. c. 272 § 99Q nor had any reasonable expectation of privacy to his statements and actions.

### **SEVENTH DEFENSE**

Being in a public place and having knowingly and voluntarily shouted vulgar statements, profanities and threats toward the Plaintiff in the presence of witnesses and members of the public, Plaintiff forfeited whatever standing or rights he may have had, if any, to pursue an action as an aggrieved person pursuant to G.L. c. 272 § 99Q.

### **EIGHTH DEFENSE**

If Plaintiff suffered any damages, Plaintiff has failed to mitigate its alleged damages in whole or in part.

### **NINTH DEFENSE**

There is no proximate causation between any alleged act, error or omission of the defendant and any damages alleged by the plaintiff.

### **TENTH DEFENSE**

.Being in a public place and having knowingly and voluntarily shouted vulgar statements, profanities and threats toward the Plaintiff in the presence of witnesses and members of the public, the complaint should be dismissed based upon the doctrine of equitable estoppel.

### **ELEVENTH DEFENSE**

The injuries or damages alleged were caused in whole or in part by the plaintiff's own negligent, wilful and intentional conduct.

### **TWELFTH DEFENSE**

The contributory negligence of the plaintiff was greater than the negligence of the defendant, if any, wherefore, the plaintiff cannot recover.

### **THIRTEENTH DEFENSE**

The negligence of the plaintiff contributed in some degree to the plaintiff's alleged damages, wherefore, the damages, if any, awarded the plaintiff should be diminished and reduced in proportion thereto.

### **FOURTEENTH DEFENSE**

The acts or omissions to act, as alleged in the Complaint, were conducted in self defense and based upon the necessity created by the Plaintiff.

### **FIFTEENTH DEFENSE**

Injuries and damages suffered by the Plaintiff, if any, were due to the act or neglect of another, which constitutes an intervening, superceding cause, wherefore the defendant is not liable.

### **SIXTEENTH DEFENSE**

Plaintiff's claims are barred by the doctrines of waiver, estoppel and laches.

### **SEVENTEENTH DEFENSE**

G.L. c. 272 § 99 is unconstitutional on its face.

### **EIGHTEENTH DEFENSE**

As applied to the facts of this case the statute is unconstitutional in that it deprives the defendant of the ability to protect himself from false allegations and from threats of physical harm.

### **NINETEENTH DEFENSE**

The defendant hereby give notice he intends to rely upon other and further defenses as may become available or apparent during the discovery proceedings and, thereby, reserves the right to amend this Answer to assert any such defenses

WHEREFORE, the complaint should be dismissed; sanctions be levied against the plaintiff for filing a frivolous suit not supported by facts or law in bad faith; and that damages be awarded to the defendant together with the costs of defending against the complaint, including applicable interest, reasonable attorney fees and such other costs and expense permitted by law.

### **COUNTER CLAIMS**

**By way of counter claim against the plaintiff, the defendant avers the following:**

1. On February 19, 2011, the defendant-in-counter-claim, hereinafter referred to as Brian Johnson, did wilfully place in fear of immediate harm and thereby did assault the plaintiff in counter claim, hereinafter referred to as Peter Frei.
2. On February 19, 2011, Brian Johnson in joint concert with others, did assault and beat Peter Frei.
3. On February 19, 2011, Brian Johnson made knowingly, false, wilful and malicious, public statements about Peter Frei.

4. On February 19, 2011, Brian Johnson, knowingly, wilfully, maliciously, publically and falsely accused Peter Frei, of committing a criminal offense.
5. On February 19, 2011, at Holland, Massachusetts, Brian Johnson knowingly, wilfully, and maliciously made materially false and untrue reports to a member of the police department of the Town of Holland, Massachusetts, wherein he falsely accused Peter Frei of having committed a criminal offense, namely, Defendant in counter claim told the police he felt threatened by the plaintiff in counter claim and that plaintiff in counter claim threatened to kill him.
6. On or about July 28, 2011, Holland Police officer Jeffrey Forcier, testified under oath in a legal proceeding in a public court room and in the presence of one or members of the public, namely in the Palmer District Court, Palmer, Massachusetts.
7. During said testimony Officer Forcier, testified under oath to the effect that Brian Johnson reported to him in his capacity as a police officer that during an incident that occurred in Holland, Massachusetts on/about February 19, 2011, Brian Johnson felt threatened by said Peter Frei and that said Peter Frei had threatened to kill him.
8. Brian Johnson was present in the court room during the testimony of Officer Forcier described in the previous paragraph and failed to correct or retract the statement.
9. Brian Johnson knew or had reason to know Officer Forcier would write up an incident report wherein the knowingly false, malicious and untrue accusations made by Brian Johnson to Officer Forcier would be set forth therein in writing and then made available to others.
10. As the direct and proximate result of Brian Johnson's negligent and/or intentional conduct Peter Frei suffered emotional distress and physical injury.

#### **COUNT I - ASSAULT**

11. Plaintiff in counter claim restates the factual allegations set forth in paragraphs 1 - 10 of his counterclaims.
12. Without justification or excuse, said Brian Johnson did assault Peter Frei.

#### **COUNT II - ASSAULT AND BATTERY**

13. Plaintiff in counter claim restates the factual allegations set forth in paragraphs 1 - 10 of his counterclaims.

14. Without justification or excuse, said Brian Johnson did assault and beat Peter Frei.

### **COUNT III - DEFAMATION, LIBEL AND SLANDER**

15. Plaintiff in counter claim restates the factual allegations set forth in paragraphs 1 - 14 of his counterclaims.
16. Brian Johnson published one or more false and defamatory, slanderous, and libelous statements of and concerning Peter Frei, which Brian Johnson knew to be false, thereby causing Peter Frei injury or economic harm.

### **COUNT IV - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

15. Plaintiff in counter claim restates the factual allegations set forth in paragraphs 1 - 16 of his counterclaims.
16. Brian Johnson either intended to inflict emotional distress upon Peter Frei or knew or should have known emotional distress was likely to result from his conduct.
17. Brian Johnson's conduct was extreme and outrageous, beyond all possible bounds of decency and was utterly intolerable in a civilized society.
18. As the direct and proximate result of Brian Johnson's conduct, Peter Frei suffered stress, private and public embarrassment, humiliation and emotional distress.
19. The emotional distress suffered by Peter Frei was severe and of a nature that no reasonable person could be expected to endure it.

### **COUNT V - NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

20. Plaintiff in counter claim restates the factual allegations set forth in paragraphs 1 - 19 of his counterclaims.
21. As the direct and proximate result of Brian Johnson's conduct, Peter Frei suffered stress, private and public embarrassment, humiliation and emotional distress and physical illness and injury.

## **COUNT VI - ABUSE OF PROCESS & OBSTRUCTION OF JUSTICE**

22. Plaintiff in counter claim restates the factual allegations set forth in paragraphs 1 - 21 of his counterclaims.
23. Brian Johnson knew he knowingly, intentionally, wilfully and maliciously lied, defamed, falsely accused and falsely reported Peter Frei of having committed a criminal offense to a police officer investigating the incident that occurred in Holland, Massachusetts on or about February 19, 2011.
24. Brian Johnson knew or reasonably should have known Officer Forcier write down and record the false statements he made in an official police report prepared in the ordinary course of police business.
25. Brian Johnson knew or should have known that if called upon to testify in a judicial proceeding regarding the events of the February 19, 2011 incident, Officer Forcier would restate said false statements and false report of a crime.
26. On or about July 28, 2011, Officer Forcier in fact did testify under oath in a judicial proceeding in the Palmer District Court and did recount, repeat and state the false accusations made by Brian Johnson in a public court room.
25. Brian Johnson knowingly and intentionally failed to retract, clarify or correct said false accusations and false statements.
26. Brian Johnson did thereby victimize Officer Forcier who was himself unaware of the falsity of the Brian Johnson's accusations, did knowingly, wilfully and intentionally cause Officer Forcier to provide materially false and perjurious testimony in a judicial proceeding and did thereby suborn the perjury of Officer Forcier and did obstruct justice.
27. Fully aware of the above and knowing he had neither suffered nor is able to prove damages, Brian Johnson filed the instant law suit, caused legal process to be served upon Peter Frei for an ulterior or illegitimate purpose, including but not limited to a coercive effort to silence and deter Peter Frei from availing himself of his legal right to seek redress and to hold Brian Johnson accountable for his actions .
28. As the direct and proximate result of Brian Johnson's conduct, Peter Frei suffered economic loss, incurred legal fees, suffered emotional distress, physical injury, damage to his reputation and feelings, and other damages.

**COUNT VII - VIOLATION OF MASSACHUSETTS CIVIL RIGHTS ACT**  
**G.L. c. 12 §§ 11h and 11i**

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29. Plaintiff in counter claim restates the factual allegations set forth in paragraphs 1 - 28 of his counterclaims.
30. By said threats, intimidation or coercion, Brian John interfered with or attempted to interfere with the exercise and enjoyment of rights secured to Peter Frei by the Constitution or laws of either the United States or of the Commonwealth.
31. As the direct and proximate result of Brian Johnson's conduct, Peter Frei suffered economic loss, incurred legal fees, suffered emotional distress, physical injury, damage to his reputation and feelings, and other damages.

WHEREFORE, Peter Frei respectfully demands that judgment be entered in his favor and against that of the Brian Johnson; that Brian John be ordered to pay suitable damages, costs, interest, and - where applicable - punitive damages and reasonable attorney fees incurred in the defense of this action; and be ordered to pay and provide such other relief deemed appropriate and just by the Court.

**JURY DEMAND**

Plaintiff-in-counter-claim hereby requests trial by jury on all counts so triable.

Respectfully submitted by,  
Peter Frei as Defendant and as  
Plaintiff in counter claim

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Peter Frei, pro se  
101 Maybrook Road  
Holland, MA 01521  
(413) 245-4660

August 30, 2011

**Certificate of Service**

I certify a copy of the foregoing document was served by mailing a copy hereof, by first class mail, postage pre-paid, upon the attorney for the Plaintiff, namely, Tani E. Saperstein, c/o Saperstein & Saperstein, P.C., 1350 Main Street, 12<sup>th</sup> Floor, Springfield, MA 01103, this \_\_\_\_ day of August, 2011.

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Peter Frei