

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. 2009-CA-1008-K

CITY OF KEY WEST, FLORIDA
CITIZEN REVIEW BOARD,

Plaintiff,

v.

PABLO RODRIGUEZ,

Defendant.

ANSWER AND AFFIRMATIVE DEFENSES

PABLO RODRIGUEZ, the Defendant herein, through undersigned counsel and in accordance with *Rule 1.110, Florida Rules of Civil Procedure* and the Court's denial of his motion to dismiss, files his Answer and Affirmative Defenses to the complaint filed against him, and states:

1. In response to paragraph 1 of the complaint, **PABLO RODRIGUEZ** admits all the allegations of paragraph 1 and affirmatively states that the City of Key West, Florida, Citizen Review Board does not have subpoena power and alternatively **PABLO RODRIGUEZ** is immune from compelled testimony pursuant to the provisions of *F.S. §112.533*.

2. In response to paragraph 2 of the complaint, **PABLO RODRIGUEZ** admits that this Court has equity jurisdiction to enforce a subpoena but affirmatively states that the City of Key West, Florida, Citizen Review Board does not have subpoena power and alternatively **PABLO RODRIGUEZ** is immune from compelled testimony pursuant to the provisions of *F.S. §112.533*.

3. In response to paragraph 3 of the complaint, **PABLO RODRIGUEZ** admits the accuracy of the exhibit A attached to the complaint and denies that the City of Key West, Florida, Citizen Review Board legally amended its charter to have subpoena power.

4. In response to paragraph 4 of the complaint, **PABLO RODRIGUEZ** admits the accuracy of the exhibit A attached to the complaint and denies that the City of Key West, Florida, Citizen Review Board legally amended its charter to have subpoena power and further denies all adjectives and inferences set forth in paragraph 4 as to the "description and/or interpretation" of counsel.

5. In response to paragraph 5 of the complaint, **PABLO RODRIGUEZ** admits the accuracy of the exhibit A attached to the complaint and denies that the City of Key West, Florida, Citizen Review Board legally amended its charter to have subpoena power and has no authority to compel testimony of witnesses.

6. In response to paragraph 6 of the complaint, **PABLO RODRIGUEZ** does not have sufficient information and/or knowledge of what the Citizen Review Board is investigating and therefore denies same and demands strict proof.

7. In response to paragraph 7 of the complaint, **PABLO RODRIGUEZ** does not have sufficient information and/or knowledge of what the Citizen Review Board is investigating and therefore denies same and demands strict proof.

8. In response to paragraph 8 of the complaint, **PABLO RODRIGUEZ** does not have sufficient information and/or knowledge of what the Citizen Review Board is investigating and therefore denies same and demands strict proof. However, **PABLO RODRIGUEZ** admits that he refused to voluntarily appear before the Citizen Review Board.

9. In response to paragraph 9 of the complaint, **PABLO RODRIGUEZ** does not have sufficient information and/or knowledge of what the Citizen Review Board is investigating or its meetings or procedures and therefore denies same and demands strict proof.

10. In response to paragraph 10 of the complaint, **PABLO RODRIGUEZ** admits that he refused to appear before the Citizen Review Board pursuant to a subpoena and affirmatively states that the City of Key West, Florida, Citizen Review Board does not have subpoena power and alternatively **PABLO RODRIGUEZ** is immune from compelled testimony pursuant to the provisions of *F.S. §112.533*.

11. In response to paragraph 11 of the complaint, **PABLO RODRIGUEZ** denies the inferences, interpretations and allegations set forth by counsel and affirmatively states that the City of Key West, Florida, Citizen Review Board does not have subpoena power and alternatively **PABLO RODRIGUEZ** is immune from compelled testimony pursuant to the provisions of *F.S. §112.533* and further that counsel has misread the cited case law.

12. As and for affirmative defenses, **PABLO RODRIGUEZ**, alleges:

A. **PABLO RODRIGUEZ** is immune from compelled testimony before the Citizen Review Board pursuant to the provisions of *F.S. §112.533*.

B. The limitations time frame for any official investigation of **PABLO RODRIGUEZ** as a sworn police officer acting within the course and scope of his employment, has expired.

C. The City of Key West did not have subpoena power to legally delegate to the Citizen Review Board.

D. The Citizen Review Board does not have subpoena power.

F. The charter amendment creating the Citizen Review Board is illegal and unconstitutional as it conflicts with *F.S. §112* and the *Policemen's Bill of Rights*.

G. This is an equitable proceeding and the Citizen Review Board is without clean hands in the filing of this lawsuit.

H. The requirements for any official investigation of **PABLO RODRIGUEZ** as a sworn police officer acting within the course and scope of his employment, is solely governed by *F.S. §112* and the *Policemen's Bill of Rights*.

WHEREFORE, PABLO RODRIGUEZ, having fully responded to the complaint, moves for a judgment in his favor since there is no legal or jurisdictional basis for this Court to grant the relief the Civil Review Board requests and to grant him such other relief as may be appropriate including fees and costs.

Respectfully submitted,

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ATTORNEY FOR PABLO RODRIGUEZ

By: _____


RHEA P. GROSSMAN
Florida Bar #092640

DATED: October 5, 2009
Ft. Lauderdale, Florida

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing ANSWER AND AFFIRMATIVE DEFENSES, was furnished this 5th day of October, 2009, by U.S. Mail, postage prepaid:

ROBERT CINTRON, JR., ESQ.
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By: _____


RHEA P. GROSSMAN