

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. 11-3 3223 CA 25

SILVIO MEMBRENO and
FLORIDA ASSOCIATION OF
VENDORS, INC.,

Plaintiffs,

v.

THE CITY OF HIALEAH, FLORIDA,

Defendants.

**DEFENDANT CITY OF HIALEAH'S ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFF'S AMENDED COMPLAINT**

COMES NOW Defendant City of Hialeah, by and through its undersigned attorneys, and hereby files this its Answer and Affirmative Defenses to Plaintiff's Amended Complaint as follows:

1. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 1 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

2. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 2 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

3. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 3 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

4. The City admits the allegations contained in paragraph 4 of the Complaint.
5. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 5 of the Complaint, and therefore denies those allegations and demands strict proof thereof.
6. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 6 of the Complaint, and therefore denies those allegations and demands strict proof thereof.
7. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 7 of the Complaint, and therefore denies those allegations and demands strict proof thereof.
8. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 8 of the Complaint and demands strict proof thereof.
9. The City admits the allegations contained in paragraph 9 of the Complaint.
10. The City admits the allegations contained in paragraph 10 of the Complaint
11. The City states that paragraph 11 of the Complaint is a legal conclusion to which no response is required.
12. The City states that paragraph 12 of the Complaint is a legal conclusion to which no response is required.
13. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 13 of the Complaint and demands strict proof thereof.
14. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 14 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

15. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 15 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

16. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 16 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

17. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 17 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

18. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 18 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

19. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 19 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

20. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 20 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

21. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 21 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

22. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 22 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

23. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 23 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

24. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 24 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

25. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 25 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

26. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 26 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

27. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 27 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

28. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 28 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

29. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 29 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

30. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 30 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

31. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 31 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

32. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 32 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

33. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 33 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

34. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 34 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

35. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 35 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

36. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 36 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

37. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 37 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

38. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 38 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

39. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 39 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

40. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 40 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

41. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 41 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

42. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 42 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

43. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 43 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

44. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 44 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

45. The City admits the allegations contained in paragraph 45 of the Complaint.

46. The City states that the Ordinances speak for themselves.

47. The City admits that the 300-foot proximity restriction as well as other provisions of the Ordinance repealed and/or amended on January 8, 2013. The City denies the remainder of the allegations contained in paragraph 47 of the Complaint and demands strict proof thereof.

48. The City denies the allegations contained in paragraph 48 of the Complaint and demands strict proof thereof.

49. The City states that the Ordinance speaks for itself.

50. The City denies the allegations contained in paragraph 50 of the Complaint and demands strict proof thereof.

51. The City states that the Ordinance speaks for itself.

52. The City states that the Ordinance speaks for itself.

53. The City denies the allegations contained in paragraph 53 of the Complaint and demands strict proof thereof.

54. The City states that the Ordinance speaks for itself.

55. The City states that the Ordinance speaks for itself.

56. The City states that Hialeah's Zoning Code speaks for itself.

57. The City states that the Ordinance speaks for itself. The City denies the remainder of the allegations contained in paragraph 57 of the Complaint and demands strict proof thereof.

58. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 58 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

59. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 59 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

60. The City denies the allegations contained in paragraph 60 of the Complaint and demands strict proof thereof.

61. The City denies the allegations contained in paragraph 61 of the Complaint and demands strict proof thereof.

62. The City denies the allegations contained in paragraph 62 of the Complaint and demands strict proof thereof.

63. The City states that paragraph 63 of the Complaint is a legal conclusion to which no response is required.

64. The City denies the allegations contained in paragraph 64 of the Complaint and demands strict proof thereof.

65. The City denies the allegations contained in paragraph 65 of the Complaint and demands strict proof thereof.

66. The City denies the allegations contained in paragraph 66 of the Complaint and demands strict proof thereof.

67. The City denies the allegations contained in paragraph 67 of the Complaint and demands strict proof thereof.

68. The City denies the allegations contained in paragraph 68 of the Complaint and demands strict proof thereof.

69. The City states that the Ordinances speaks for itself.

70. The City states that the Ordinances speaks for itself.

71. The City states that the Ordinances speaks for itself.

72. The City states that the Ordinances speaks for itself.

73. The City denies the allegations contained in paragraph 73 of the Complaint and demands strict proof thereof.

74. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 74 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

75. The City denies the allegations contained in paragraph 75 of the Complaint and demands strict proof thereof.

76. The City states that the Statute speaks for itself.

77. The City states that paragraph 77 is a legal conclusion to which no response is required.

78. The City admits the allegations contained in paragraph 78 of the Complaint.

79. The City denies the allegations contained in paragraph 79 of the Complaint and demands strict proof thereof.

80. The City denies the allegations contained in paragraph 80 of the Complaint and demands strict proof thereof.

81. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 81 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

82. The City denies the allegations contained in paragraph 82 of the Complaint and demands strict proof thereof.

83. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 83 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

84. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 84 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

85. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 85 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

86. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 86 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

87. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 87 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

88. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 88 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

89. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 89 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

90. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 90 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

91. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 91 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

92. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 92 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

93. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 93 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

94. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 94 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

95. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 95 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

96. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 96 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

97. The City denies the allegations contained in paragraph 97 of the Complaint and demands strict proof thereof.

98. The City denies the allegations contained in paragraph 98 of the Complaint and demands strict proof thereof.

99. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 99 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

100. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 100 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

101. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 101 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

102. The City denies the allegations contained in paragraph 102 of the Complaint and demands strict proof thereof.

103. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 103 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

104. The City denies the allegations contained in paragraph 104 of the Complaint and demands strict proof thereof.

105. The City denies the allegations contained in paragraph 105 of the Complaint and demands strict proof thereof.

106. The City denies the allegations contained in paragraph 106 of the Complaint and demands strict proof thereof.

107. The City denies the allegations contained in paragraph 107 of the Complaint and demands strict proof thereof.

108. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 108 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

109. The City denies the allegations contained in paragraph 109 of the Complaint and demands strict proof thereof.

110. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 110 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

111. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 111 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

112. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 112 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

113. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 113 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

114. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 114 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

115. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 115 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

116. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 116 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

117. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 117 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

118. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 118 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

119. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 119 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

120. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 120 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

121. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 121 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

122. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 122 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

123. The City denies the allegations contained in paragraph 123 of the Complaint and demands strict proof thereof.

124. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 124 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

125. The City admits the existence of a log. The City is without sufficient knowledge to form a belief as to the remainder of the allegations contained in paragraph 125 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

126. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 126 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

127. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 127 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

128. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 128 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

129. The City states the Application speaks for itself. The City is without sufficient knowledge to form a belief as to the remainder allegations contained in paragraph 129 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

130. The City denies the allegations contained in paragraph 130 of the Complaint and demands strict proof thereof.

131. The City admits that City police have instructed people not to vend on state roads in the City. The City is without sufficient knowledge to form a belief as to the remainder of the allegations contained in paragraph 131 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

132. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 132 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

133. The City denies the allegations contained in paragraph 133 of the Complaint and demands strict proof thereof.

134. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 134 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

135. The City denies the allegations contained in paragraph 135 of the Complaint and demands strict proof thereof.

136. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 136 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

137. The City denies the allegations contained in paragraph 137 of the Complaint and demands strict proof thereof.

138. The City denies the allegations contained in paragraph 138 of the Complaint and demands strict proof thereof.

139. The City denies the allegations contained in paragraph 139 of the Complaint and demands strict proof thereof.

140. The City denies the allegations contained in paragraph 140 of the Complaint and demands strict proof thereof.

141. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 141 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

142. The City denies the allegations contained in paragraph 142 of the Complaint and demands strict proof thereof.

143. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 143 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

144. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 144 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

145. The City is without sufficient knowledge to form a belief as to the allegations contained in paragraph 145 of the Complaint, and therefore denies those allegations and demands strict proof thereof.

146. The City incorporates Paragraphs 1 through 145 by reference.

147. The City states that the Constitution speaks for itself.

148. The City states that the allegations in paragraph 148 of the Complaint call for legal conclusions to which no response is required.

149. The City denies the allegations contained in paragraph 149 of the Complaint and demands strict proof thereof.

150. The City denies the allegations contained in paragraph 150 of the Complaint and demands strict proof thereof.

151. The City denies the allegations contained in paragraph 151 of the Complaint and demands strict proof thereof.

152. The City denies the allegations contained in paragraph 152 of the Complaint and demands strict proof thereof.

153. The City denies the allegations contained in paragraph 153 of the Complaint and demands strict proof thereof.

154. The City denies the allegations contained in paragraph 154 of the Complaint and demands strict proof thereof.

155. The City states that the Constitution speaks for itself.

156. The City denies the allegations contained in paragraph 156 of the Complaint and demands strict proof thereof.

157. The City denies the allegations contained in paragraph 157 of the Complaint and demands strict proof thereof.

158. The City denies the allegations contained in paragraph 158 of the Complaint and demands strict proof thereof.

159. The City incorporates Paragraphs 1 through 145 by reference.

160. The City denies the allegations contained in paragraph 160 of the Complaint and demands strict proof thereof.

161. The City denies the allegations contained in paragraph 161 of the Complaint and demands strict proof thereof.

162. The City incorporates Paragraphs 1 through 145 by reference.

163. The City denies the allegations contained in paragraph 163 of the Complaint and demands strict proof thereof.

164. The City denies the allegations contained in paragraph 164 of the Complaint and demands strict proof thereof.

165. The City denies the allegations contained in paragraph 165 of the Complaint and demands strict proof thereof.

All allegations not specifically admitted herein are hereby denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' claims fail to state a cause of action as Plaintiffs have no right to declaratory relief or injunctive relief and otherwise fail to state any cause of action against this Defendant upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims fail against the City as the City has not issued any tickets, citations or fines or made any arrests under the referenced ordinance sections. The City has properly enforced the applicable Miami-Dade County and State of Florida regulations pertaining to vendors.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs lack standing to bring this action because they do not have a legally cognizable interest in the outcome of the case and do not have the requisite special injury necessary to confer standing.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claim for attorneys' fees should be stricken as there is no basis in law for such recovery against this Defendant.

Respectfully submitted,

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By: /s/Jennifer Glasser

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Jennifer Glasser, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served electronically this 23rd day of May, 2013 upon: **Claudia Murray, Esq.**, Institute for Justice, Florida Chapter, 999 Brickell Avenue, Suite 720, Miami, FL 33131.

/s/Jennifer Glasser

Attorney