

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 17-cv-00884-CMA-STV

CHAYCE AARON ANDERSON,

Plaintiff,

v.

JASON SHUTTERS (In their (sic) Individual Capacity only)),

Defendant.

**DEFENDANT'S ANSWER, DEFENSES AND AFFIRMATIVE DEFENSES TO
PLAINTIFF'S SECOND AMENDED COMPLAINT (ECF No. 61)**

Defendant, Jason Shutters, through his attorneys, Hall & Evans, LLC, submits the following as his answer, defenses and affirmative defenses to Plaintiff's Second Amended Complaint, (ECF No. 61):

I. INTRODUCTION/PREFACE

To the extent the section of Plaintiff's Second Amended Complaint, entitled "Introduction/Preface" (ECF No. 61 at 2 to 14) purports to set forth factual allegations, said allegations are denied.

A. PARTIES

To the extent the section of Plaintiff's Second Amended Complaint, entitled "Parties" (ECF No. 61 at 15) purports to set forth factual allegations, said allegations are denied. As for paragraph 3 under the section entitled "Parties", Defendant Shutters sets

forth he is employed as a Detective with the Fort Collins Police Department (“FCPD”), and at all pertinent times herein, was acting with the scope of his employment and authority.

B. JURISDICTION

Defendant Shutters admits jurisdiction is proper in this Court, but denies any other aspect of jurisdiction, including Plaintiff’s right to recover attorneys’ fees and/or costs.

C. NATURE OF THE CASE

To the extent the section of Plaintiff’s Second Amended Complaint entitled “Nature of the Case” (ECF No. 61 at 16 to 20) purports to set forth factual allegations, said allegations are denied.

D. CAUSE OF ACTION

1. The purported claim set forth in Plaintiff’s Second Amended Complaint, entitled, “Claim One” (ECF No. 61 at 21-22), was dismissed by the Court (see ECF No. 93), and therefore no response is required. To the extent any allegations or claims set forth in “Claim One”, of the Second Amended Complaint survived dismissal, said allegations are denied.

2. The purported claim set forth in Plaintiff’s Second Amended Complaint, entitled “Claim Two” (ECF No. 61 at 23-24), was dismissed by the Court (see ECF no. 93), to the extent said claim attempts to set forth allegations pertaining to an unreasonable search and seizure. Therefore, as to those allegations, if any, no response is required. To the extent any such allegations or claims set forth in “Claim Two” in the Second

Amended Complaint, related to unreasonable search and seizure” survived dismissal, said allegations are denied.

As to the allegations in “Claim Two” pertaining to “excessive force” in the “application of handcuffs” (ECF No. 61 at 23-24), this Defendant denies any such allegations.

3. The purported claim set forth in Plaintiff’s Second Amended Complaint entitled “Claim Three” (ECF No. 61 at 25-27), was dismissed by the Court (see ECF No. 93), therefore, no response is required. To the extent any allegations or claims set forth in “Claim Three” of the Second Amended Complaint survived dismissal, said allegations are denied.

4. The purported claim set forth in Plaintiff’s Second Amended Complaint entitled “Claim Four” (ECF No. 61 at 28), does not purport to set forth allegations against this Defendant, and therefore no response is required. Furthermore, “Claim Four” was dismissed by the Court, thereby further abrogating any obligation to provide a response. To the extent any allegations or claims set forth in “Claim Four” of the Second Amended Complaint survived dismissal and is directed at this Defendant, said allegations are denied.

5. The purported claim set forth in Plaintiff’s Second Amended Complaint entitled “Claim Five” (ECF No. 61 at 29), was dismissed by the Court (see ECF No. 93), therefore no response is required. To the extent any allegations or claims set forth in Claim Five of the Second Amended Complaint survived dismissal, said allegations are denied.

6. The purported claim set forth in Plaintiff's Second Amended Complaint entitled "Claim Six" (ECF No. 61 at 30), does not purport to set forth allegations against this Defendant, and therefore no response is required. To any extent the allegations set forth in "Claim Six" of the Second Amended Complaint survived dismissal, and is directed at this Defendant, said allegations are denied.

G. REQUEST FOR RELIEF

This Defendant denies each and every request for relief, including but not limited to any claim for declaratory, punitive, compensatory, monetary, injunctive, or equitable relief, set forth in Plaintiff's Second Amended Complaint.

GENERAL DENIAL

This Defendant denies each and every allegation set forth in Plaintiff's Second Amended Complaint, not otherwise admitted.

DEFENSES AND AFFIRMATIVE DEFENSES

1. The Second Amended Complaint fails to state a claim on which relief may be granted.
2. Plaintiff is not entitled to any relief being sought or claimed in the Complaint under any of the legal theories asserted therein.
3. To any extent, the Court concludes this Defendant acted under color of state law with respect to Plaintiff, this Defendant is entitled to absolute immunity, qualified immunity, or both such immunities, as well as common law and statutory immunities, with respect to some or all of Plaintiff's claim against him.

4. Plaintiff's claim against this Defendant, or some of them, are barred, in whole or in part, by the failure of personal participation on the part of Defendant.

5. On information and belief, Plaintiff failed to mitigate his damages, if any.

6. 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 or omission of or by this Defendant, nor proximately caused by or related to any act or omission of this Defendant.

7. All or part of Plaintiff's claim never achieved the level of any constitutional violation sufficient to state a claim under 42 U.S.C. § 1983.

8. At all times pertinent herein, this Defendant acted in accordance with all common law, statutory and constitutional obligations, and without any intent to cause Plaintiff harm. This Defendant also lacked the requisite intent to establish any claim against Plaintiff in this matter. The claim of the Plaintiff also fails to establish any basis for concluding that this Defendant acted or failed to act in a willful and wanton manner. This Defendant also possess or possessed a reasonable good faith belief in the lawfulness of all his conduct.

9. 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.

10. 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 of control.

11. To any extent, any action or inaction on the part of this Defendant was in any way involved in any detention of the Plaintiff by anyone, any action or inaction by this Defendant was privileged under applicable law, including the privilege of police officers to use reasonable physical force to affect an arrest, keep a subject in custody, and defend themselves and others.

12. In all respects, this Defendant behaved in accordance with applicable legal authority in all actions or inactions associated with Plaintiff, negating any claim of liability asserted by Plaintiff against him.

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

14. This Defendant never breached any obligation or responsibility to anyone associated with any property or liberty interest of any party in relation to this matter.

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

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

17. Plaintiff's claim is barred pursuant to the Colorado Governmental Immunity Act.

18. Any claim for punitive or exemplary damages against any individual Defendant in any individual capacity is barred, limited, reduced, or in the alternative, unconstitutional and in violation of the rights of such individual Defendant under the Due

Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

19. Plaintiff's injuries, if any, are *de minimus* and therefore do not constitute a violation of his Constitutional rights.

20. This Defendant reserve their right to assert other or additional defenses and affirmative defenses as may become known in the course of these proceedings.

WHEREFORE, after answering all allegations of Plaintiff's Complaint that require a response, Defendant Jason Shutters requests the Court enter an Order dismissing all elements of the remaining claim against him in complete and total fashion, awarding him costs and attorneys' fees, and ordering such other and further relief as to the Court appears proper.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Jason Shutters hereby demands a trial by jury on all issues so triable.

DATED this 27th day of June 2018.

Respectfully submitted,

s/ Mark S. Ratner

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on this 27th day of June 2018, I served via email the foregoing **DEFENDANT'S ANSWER, DEFENSES AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S SECOND AMENDED COMPLAINT (ECF No. 61)** to the following:

LI. Rhyddid Watkins, Esq.
Travis S. Jordan, Esq.
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s/ Rochelle Gurule
Legal Assistant to Mark S. Ratner, Esq.
Of Hall & Evans, LLC