

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 19-cv-00901-WJM-NRN

MICHAELLA LYNN SURAT,

Plaintiff,

v.

RANDALL KLAMSER in his individual capacity

Defendant.

**DEFENDANT’S ANSWER, DEFENSES, AND AFFIRMATIVE DEFENSES TO
PLAINTIFF’S COMPLAINT AND JURY DEMAND (ECF No. 1)**

Defendant RANDALL KLAMSER, in his individual capacity, by and through his attorneys, Hall & Evans, L.L.C., submits the following as his answer, defenses, and affirmative defenses to Plaintiff’s Complaint and Jury Demand (ECF No. 1) (“Complaint”), as follows¹:

I. INTRODUCTION

1. Based on information and belief, the Defendant admits the allegations set forth in paragraph 1 of Plaintiff’s Complaint.

2. Based on information and belief, this Defendant admits Mr. Waltz was asked to leave Bondi Beach Bar. Furthermore, this Defendant admits Fort Collins Police Officers Randall Klamser and Garrett Pastor arrived at Bondi Beach Bar, in response to a call from one of the bar’s

¹ ECF No. 1 purports to set forth claims against both the City of Fort Collins and Fort Collins Police Officer, Randall Klamser. Pursuant to the Court’s Order on the Defendants’ Motion to Dismiss, the City of Fort Collins has been dismissed from the lawsuit (*See generally*, ECF No. 85). This answer, defenses and affirmative defenses is therefore being submitted consistent with the Court’s Order.

employees. This Defendant also admits that Randall Klamser spoke with one of the employees upon his arrival on scene. The remaining allegations set forth in paragraph 2 of Plaintiff's Complaint, are denied.

3. The allegations set forth in paragraph 3 of Plaintiff's Complaint are denied.

4. This Defendant admits that at some point during his interaction with Michaela Surat, he utilized a rowing arm bar takedown. The remaining allegations set forth in paragraph 4 of Plaintiff's Complaint are denied.

5. The allegations set forth in paragraph 5 of Plaintiff's Complaint 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 legal conclusions, and therefore no response is required. To the extent the allegations set forth in paragraph 6 of Plaintiff's Complaint are determined to be factual, this Defendant admits Plaintiff is attempting to bring this action pursuant to 42 U.S.C. § 1983 alleging a violation of her Fourth Amendment rights, but denies Plaintiff is entitled to any relief whatsoever on any such claim. The remaining allegations set forth in paragraph 6 of Plaintiff's Complaint, are denied.

II. JURISDICTION AND VENUE

7. The allegations set forth in paragraph 7 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 7 of Plaintiff's Complaint are determined to be factual, this Defendant admits Plaintiff is attempting to bring this action pursuant to 42 U.S.C. § 1983, alleging a violation of her Fourth Amendment rights, but denies Plaintiff is entitled to any

relief whatsoever on any such claim. The remaining allegations set forth in paragraph 7 of Plaintiff's Complaint, are denied.

8. The allegations set forth in paragraph 8 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 8 of Plaintiff's Complaint are determined to be factual, this Defendant denies Plaintiff is entitled to attorneys' fees. The remaining allegations set forth in paragraph 8 of Plaintiff's Complaint, are denied.

9. This Defendant admits venue is proper in the United States District Court for the District of Colorado. This Defendant further admits he was a resident of the State of Colorado at the time of the incident as alleged in Plaintiff's Complaint, but denies the remaining allegations set forth in paragraph 9 of Plaintiff's Complaint.

III. PARTIES

10. This Defendant is without sufficient knowledge or information with respect to the allegations set forth in paragraph 10 of Plaintiff's Complaint, requiring denial of same.

11. This Defendant admits the allegations set forth in paragraph 11 of Plaintiff's Complaint.

12. No response is provided for the allegations set forth in paragraph 12 of Plaintiff's Complaint, as the City of Fort Collins ("City") has been dismissed from this matter.

IV. FACTUAL ALLEGATIONS

13. Based on information and belief, this Defendant admits Plaintiff was a student at Colorado State University at the time of the incident as alleged in Plaintiff's Complaint. This

Defendant does not have sufficient knowledge or information with respect to the remaining allegations set forth in paragraph 13 of Plaintiff's Complaint, requiring denial of same.

14. This Defendant is without sufficient knowledge or information with respect to the allegations set forth in paragraph 14 of Plaintiff's Complaint, requiring denial of same.

15. This Defendant admits that at on the day of the incident as alleged in Plaintiff's Complaint, Plaintiff was at the Bondi Beach Bar, located in Fort Collins, Colorado. This Defendant is without sufficient knowledge or information with respect to the remaining allegations set forth in paragraph 15 of Plaintiff's Complaint, requiring denial of same.

16. Based on information and belief, this Defendant admits the allegations set forth in paragraph 16 of Plaintiff's Complaint.

17. This Defendant admits that he arrived at the Bondi Beach Bar with Fort Collins Police Officer Garrett Pastor, at approximately 11:23 p.m., on April 6, 2017, and at that time, Michaela Surat was located behind a railing on what can be described as a patio area of the bar. This Defendant further admits he began speaking to Cory Esslinger while Officer Pastor stood outside the bar. The remaining allegations set forth in paragraph 17 of Plaintiff's Complaint, are denied.

18. This Defendant admits that while he was speaking with Mr. Esslinger, Ms. Surat left the patio area and proceeded to bump into both Mr. Esslinger and Officer Klamser. This Defendant further admits Plaintiff grabbed the arm of Mr. Waltz and attempted to "take him away" from the scene, while Mr. Waltz was being questioned. Furthermore, this Defendant admits Officer Klamser stated that Mr. Waltz was not "free to go" and additionally instructed Plaintiff

that she could “keep walking”. The remaining allegations set forth in paragraph 18 of Plaintiff’s Complaint, are denied.

19. The allegations set forth in paragraph 19 of Plaintiff’s Complaint are denied.

20. The allegations set forth in paragraph 20 of Plaintiff’s Complaint, are denied.

21. This Defendant admits Plaintiff said, “you don’t need to fucking touch me” and attempted multiple times to free herself from Officer Klamser’s grasp. The remaining allegations set forth in paragraph 21 of Plaintiff’s Complaint, are denied.

22. This Defendant admits that during the arrest of Plaintiff, Officer Klamser pulled the arm he had control of, behind her back. The remaining allegations set forth in paragraph 22 of Plaintiff’s Complaint, are denied.

23. This Defendant admits Officer Klamser directed Plaintiff to put her hand on top of her head and that she was under arrest. This Defendant further admits that during the arrest, Plaintiff continued to ask why Officer Klamser was touching her while at the same time Officer Klamser indicated she was under arrest. The remaining allegations set forth in paragraph 23 of Plaintiff’s Complaint if any, are denied.

24. The allegations set forth in paragraph 24 of Plaintiff’s Complaint, are denied.

25. The Defendant admits he informed Plaintiff that “I don’t want to throw you to the ground.” The remaining allegations set forth in paragraph 25 of Plaintiff’s Complaint, are denied.

26. The allegations set forth in paragraph 26 of Plaintiff’s Complaint, are denied.

27. This Defendant admits that at some point during his interaction with Michaela Surat, he utilized a rowing arm bar takedown as Ms. Surat was failing to comply with lawful orders. The remaining allegations set forth in paragraph 27 of Plaintiff’s Complaint are denied.

28. The allegations set forth in paragraph 28 of Plaintiff's Complaint, are denied.

29. The allegations set forth in paragraph 29 are denied.

30. The allegations set forth in paragraph 30 of Plaintiff's Complaint are conclusory, and therefore 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. The allegations set forth in paragraph 31 of Plaintiff's Complaint, are denied.

32. This Defendant admits Plaintiff's dress rose above her hips and exposed her buttocks, during the arrest. The remaining allegations set forth in paragraph 32 of Plaintiff's Complaint, are denied.

33. This Defendant admits Plaintiff was lifted off her feet and that force was necessarily applied. This Defendant also admits an attempt was made to fix Ms. Surat's dress. The remaining allegations set forth in paragraph 33 of Plaintiff's Complaint, are denied.

34. This Defendant admits that while Plaintiff was escorted to a police car, she was crying and asking people for help, and at one point dropped to the ground. Further, this Defendant admits that at some point, a stranger was allowed to adjust Plaintiff's dress. The remaining allegations set forth in paragraph 34 of Plaintiff's Complaint, are denied.

35. This Defendant admits other Fort Collins Police Officers arrived on scene, when Ms. Surat was seated in a police vehicle. This Defendant further admits Plaintiff spoke with other Fort Collins Police Officers. The remaining allegations set forth in paragraph 35 of Plaintiff's Complaint, are denied.

36. The allegations set forth in paragraph 36 of Plaintiff's Complaint are denied.

37. This Defendant admits the allegations set forth in paragraph 37 of Plaintiff's Complaint.

38. Based on information and belief, this Defendant admits the allegations set forth in paragraph 38 of Plaintiff's Complaint.

39. This Defendant is without sufficient knowledge or information with respect to the allegations set forth in paragraph 39 of Plaintiff's Complaint, requiring denial of same.

40. This Defendant is without sufficient knowledge or information with respect to the allegations set forth in paragraph 40 of Plaintiff's Complaint, requiring denial of same.

41. This Defendant is without sufficient knowledge or information with respect to the allegations set forth in paragraph 41 of Plaintiff's Complaint, requiring denial of same.

42. This Defendant is without sufficient knowledge or information with respect to the allegations set forth in paragraph 42 of Plaintiff's Complaint, requiring denial of same.

43. This Defendant is without sufficient knowledge or information with respect to the allegations set forth in paragraph 43 of Plaintiff's Complaint, requiring denial of same.

44. This Defendant is without sufficient knowledge or information with respect to the allegations set forth in paragraph 44 of Plaintiff's Complaint, requiring denial of same.

45. This Defendant is without sufficient knowledge or information with respect to the allegations set forth in paragraph 45 of Plaintiff's Complaint, requiring denial of same.

46. The allegations set forth in paragraph 46 of Plaintiff's Complaint pertain to the City, who is no longer a party. Therefore, no response is provided. To the extent the allegations in paragraph 46 of Plaintiff's Complaint are determined to be applicable to this Defendant, said allegations are denied.

47. The allegations set forth in paragraph 47 of Plaintiff's Complaint pertain to the City, who is no longer a party. Therefore, no response is provided. To the extent the allegations in paragraph 47 of Plaintiff's Complaint are determined to be applicable to this Defendant, said allegations are denied.

48. This Defendant admits that Kate Kimble indicated Officer Klamser used a standard arrest control technique, but deny the remaining allegations set forth in paragraph 48 of Plaintiff's Complaint.

49. The allegations set forth in paragraph 49 of Plaintiff's Complaint pertain to the City, who is no longer a party. Therefore, no response is provided. To the extent the allegations in paragraph 49 of Plaintiff's Complaint are determined to be applicable to this Defendant, said allegations are denied.

50. The allegations set forth in paragraph 50 of Plaintiff's Complaint appear to pertain to the City, who is no longer a party. Therefore, no response is provided. To the extent the allegations in paragraph 50 of Plaintiff's Complaint are determined to be applicable to this Defendant, said allegations are denied.

51. The allegations set forth in paragraph 51 of Plaintiff's Complaint appear to pertain to the City, who is no longer a party. Therefore, no response is provided. To the extent the allegations in paragraph 51 of Plaintiff's Complaint are determined to be applicable to this Defendant, said allegations are denied.

52. The allegations set forth in paragraph 52 of Plaintiff's Complaint appear to pertain to the City, who is no longer a party. Therefore, no response is provided. To the extent the

allegations in paragraph 52 of Plaintiff's Complaint are determined to be applicable to this Defendant, said allegations are denied.

53. The allegations set forth in paragraph 53 of Plaintiff's Complaint pertain to the City, who is no longer a party. Therefore, no response is provided. To the extent the allegations in paragraph 53 of Plaintiff's Complaint are determined to be applicable to this Defendant, said allegations are denied.

54. The allegations set forth in paragraph 54 of Plaintiff's Complaint pertain to the City, who is no longer a party. Therefore, no response is provided. To the extent the allegations in paragraph 54 of Plaintiff's Complaint are determined to be applicable to this Defendant, said allegations are denied.

55. The allegations set forth in paragraph 55 of Plaintiff's Complaint pertain to the City, who is no longer a party. Therefore, no response is provided. To the extent the allegations in paragraph 55 of Plaintiff's Complaint are determined to be applicable to this Defendant, said allegations are denied.

56. The allegations set forth in paragraph 56 of Plaintiff's Complaint pertain to the City, who is no longer a party. Therefore, no response is provided. To the extent the allegations in paragraph 56 of Plaintiff's Complaint are determined to be applicable to this Defendant, said allegations are denied.

57. The allegations set forth in paragraph 57 of Plaintiff's Complaint pertain to the City, who is no longer a party. Therefore, no response is provided. To the extent the allegations in paragraph 57 of Plaintiff's Complaint are determined to be applicable to this Defendant, said allegations are denied.

58. The allegations set forth in paragraph 58 of Plaintiff's Complaint pertain to the City, who is no longer a party. Therefore, no response is provided. To the extent the allegations in paragraph 58 of Plaintiff's Complaint are determined to be applicable to this Defendant, said allegations are denied.

V. STATEMENT OF CLAIMS FOR RELIEF
FIRST CLAIM FOR RELIEF
42 U.S.C. § 1983
Fourth & Fourteenth Amendment Violation – Excessive Force
(Against Defendant Klamser)

59. This Defendant restates his responses to the allegations set forth in paragraph 1 to 58 of Plaintiff's Complaint, as though fully set forth herein.

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

61. The allegations set forth in paragraph 61 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 61 of Plaintiff's Complaint are determined to be factual, this Defendant admits Plaintiff has rights pursuant to the Fourth Amendment of the United States Constitution, but denies any such rights were violated.

62. The allegations set forth in paragraph 62 of Plaintiff's Complaint are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 62 of Plaintiff's Complaint are determined to be factual, this Defendant is without sufficient knowledge or information of said allegations, requiring denial of same.

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.

SECOND CLAIM FOR RELIEF
42 U.S.C. § 1983 – Unconstitutional Policies, Customs, and Practices
(Against Defendant City of Fort Collins)

67. This Defendant restates his responses to paragraphs 1 to 66 of Plaintiff's Complaint, as though fully set forth herein.

68. to 74. Paragraphs 68 to 74 of Plaintiff's Complaint, purport to set forth a claim against the City of Fort Collins. These claims have been dismissed and do not pertain to this Defendant, therefore no response is required. To the extent the allegations set forth in paragraphs 68 to 74 are determined to apply to this Defendant, said allegations are denied.

VI. PRAYER FOR RELIEF

75. Officer Klamser denies each and every allegation set forth after the word "WHEREFORE" on page 13 of Plaintiff's Complaint.

76. Officer Klamser denies Plaintiff is entitled to any relief whatsoever.

GENERAL DENIAL

77. Officer Klamser denies each and every allegation set forth in Plaintiff's Complaint, not specifically admitted herein.

DEMAND FOR JURY TRIAL

Officer Klamser 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 her 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. 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 it in this matter. The claims of the Plaintiff also fail to establish any basis for concluding that this Defendant acted or failed to act in a willful and wanton manner.
7. Plaintiff's injuries and damages, if any, in whole or in part, were proximately caused by their own acts or omissions, either in combination with one another or independent of one another.

8. 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.

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

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

11. At all times pertinent herein, this Defendant acted in accordance with all legal obligations.

12. 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.

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

14. Plaintiff's claims are precluded as a result of her convictions for resisting arrest and obstruction of justice, including the notion she was attempting to injure and/or inflict bodily harm on Officer Klamser as a result of his arrest, and that Officer Klamser first attempted to use a lesser amount of force to effectuate the arrest.

15. Officer Klamser is entitled to qualified immunity.

16. 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, Officer Randall Klamser requests the Court enter an Order dismissing all elements of all claims against him in complete and total fashion, awarding him costs and attorneys' fees, and ordering such other relief as the Court deems just.

Respectfully submitted this 9th day of March 2020.

/s/ Mark S. Ratner

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE (CM/ECF)

I HEREBY CERTIFY that on the 19th day February 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system and U.S. Mail as follows:

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