

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:19-CV-02848-LTB

KIMBERLY CHANCELLOR

Plaintiff,

v.

CITY OF FORT COLLINS, a municipality and
STEVEN SPARACIO, in his individual capacity,

Defendants.

ANSWER AND JURY DEMAND

Defendant, Stephan Sparacio, by and through his attorneys at Nathan Dumm & Mayer P.C. appearing separately from the City, hereby responds to Plaintiff's complaint as follows:

1. With reference to the allegations contained in paragraph 1 of Plaintiff's complaint, this Defendant admits that an interaction occurred on October 6, 2017. This Defendant is currently uninformed as to the remaining allegations and therefore, at this time, denies the same.

2. With reference to the allegations contained in paragraph 2 of Plaintiff's complaint, this Defendant is either currently uninformed or outright denies the allegations contained in this paragraph.

3. With reference to the allegations contained in paragraph 3 of Plaintiff's complaint, this Defendant admits that Plaintiff did not comply with verbal commands from this Defendant and that Plaintiff attempted to flee, despite this Defendant identifying himself as a police officer, showing her his badge and police identification and Plaintiff acknowledging this

Defendant was a police officer. This Defendant denies any remaining allegations contained in this paragraph.

4. With reference to the allegations contained in paragraph 4 of Plaintiff's complaint, this Defendant admits that he showed Plaintiff his badge and police identification and directed her to provide her license and registration. All remaining allegations contained in this paragraph are denied.

5. With reference to the allegations contained in paragraph 5 of Plaintiff's complaint, this Defendant admits that Plaintiff attempted to flee from this Defendant. This Defendant denies all remaining allegations contained in this paragraph.

6. With reference to the allegations contained in paragraph 6 of Plaintiff's complaint, this Defendant admits that a physical interaction between he and the Plaintiff occurred and that as a result the Plaintiff ended up on the ground. Any remaining allegations contained in this paragraph are denied.

7. This Defendant denies the allegations contained in paragraph 7 of Plaintiff's complaint.

8. With reference to the allegations contained in paragraph 8 of Plaintiff's complaint, this Defendant avers that the alleged claims are identified in the complaint, although this Defendant denies the veracity or merit of the claims.

9. With reference to the allegations contained in paragraph 9 of Plaintiff's complaint, this Defendant avers the statutes cited speak for themselves and this Defendant denies any allegations inconsistent with the plain language of those statutes.

10. With reference to the allegations contained in paragraph 10 of Plaintiff's complaint, this Defendant avers that the statute cited speaks for itself and this Defendant denies any allegations inconsistent with the plain language of the statute. Further, this Defendant does not dispute jurisdiction of the Court assuming a cognizable federal claim can be established, but does deny that Plaintiff should be entitled to her attorney's fees.

11. With reference to the allegations contained in paragraph 11 of Plaintiff's complaint, this Defendant avers that the statute cited speaks for itself and this Defendant denies any allegations inconsistent with the plain language of the statute. That said, this Defendant is not disputing venue.

12. With reference to the allegations contained in paragraph 12 of Plaintiff's complaint, this Defendant is currently uninformed and therefore, at this time, denies the same.

13. With reference to the allegations contained in paragraph 13 of Plaintiff's complaint, this Defendant admits that he is a citizen of the United States and a resident of the State of Colorado. This Defendant also admits that during his contact with Plaintiff on October 6, 2017, he was acting within the scope of his job duties with the City of Fort Collins and under state law in his capacity as a police officer.

14. With reference to the allegations contained in paragraph 14 of Plaintiff's complaint, this Defendant admits that the City of Fort Collins is a municipal corporation and legal entity.

15. With reference to the allegations contained in paragraph 15 of Plaintiff's complaint, this Defendant is currently uninformed and therefore, at this time, denies the same.

16. With reference to the allegations contained in paragraph 16 of Plaintiff's complaint, this Defendant is currently uninformed and therefore, at this time, denies the same.

17. With reference to the allegations contained in paragraph 17 of Plaintiff's complaint, this Defendant is currently uninformed and therefore, at this time, denies the same.

18. With reference to the allegations contained in paragraph 18 of Plaintiff's complaint, this Defendant is currently uninformed and therefore, at this time, denies the same.

19. With reference to the allegations contained in paragraph 19 of Plaintiff's complaint, this Defendant is currently uninformed and therefore, at this time, denies the same.

20. With reference to the allegations contained in paragraph 20 of Plaintiff's complaint, this Defendant admits to having communicated with Plaintiff when she exited her car. Any remaining allegations contained in this paragraph are denied.

21. With reference to the allegations contained in paragraph 21 of Plaintiff's complaint, this Defendant admits that Plaintiff fled from this Defendant and denies all remaining allegations contained in this paragraph.

22. With reference to the allegations contained in paragraph 22 of Plaintiff's complaint, this Defendant denies the timeline or alleged location of the allegations, but admits that this Defendant did advise Plaintiff during their interaction of his role as a police officer, showed his badge and police identification and did communicate that Plaintiff was under arrest. Any remaining allegations contained in this paragraph are denied.

23. With reference to the allegations contained in paragraph 23 of Plaintiff's complaint, this Defendant admits that on October 6, 2017, he was a police officer with the City of Fort Collins and denies the remaining allegations contained in this paragraph.

24. With reference to the allegations contained in paragraph 24 of Plaintiff's complaint, this Defendant admits that he advised Plaintiff he was a police officer, showed her his badge and police identification and also discussed charges with her. This Defendant denies the remaining allegations contained in this paragraph.

25. With reference to the allegations contained in paragraph 25 of Plaintiff's complaint, this Defendant admits that during the interaction with Plaintiff this Defendant advised he needed to see Plaintiff's identification and this Defendant walked with Plaintiff to where her alleged identification was in her vehicle.

26. With reference to the allegations contained in paragraph 26 of Plaintiff's complaint, this Defendant admits that he advised Plaintiff of the need for her to show her license and registration. This Defendant denies all remaining allegations contained in this paragraph.

27. With reference to the allegations contained in paragraph 27 of Plaintiff's complaint, this Defendant admits that Plaintiff attempted to flee from this Defendant and denies all remaining allegations contained in this paragraph.

28. This Defendant denies the allegations contained in paragraph 28 of Plaintiff's complaint.

29. With reference to the allegations contained in paragraph 29 of Plaintiff's complaint, this Defendant admits that Plaintiff attempted to flee from this Defendant, but denies all remaining allegations contained in this paragraph.

30. With reference to the allegations contained in paragraph 30 of Plaintiff's complaint, this Defendant admits that a physical interaction between he and the Plaintiff

occurred and that as a result the Plaintiff ended up on the ground. Any remaining allegations contained in this paragraph are denied.

31. With reference to the allegations contained in paragraph 31 of Plaintiff's complaint, this Defendant admits that a physical interaction between he and the Plaintiff occurred and that as a result the Plaintiff ended up on the ground. Any remaining allegations contained in this paragraph are denied.

32. With reference to the allegations contained in paragraph 32 of Plaintiff's complaint, this Defendant admits that at one point during the interaction with Plaintiff, the Plaintiff's phone was removed from her hand so she could be handcuffed. Any remaining allegations are denied.

33. With reference to the allegations contained in paragraph 33 of Plaintiff's complaint, this Defendant is currently uninformed and therefore, at this time, denies the same.

34. With reference to the allegations contained in paragraph 34 of Plaintiff's complaint, this Defendant admits that during the interaction with Plaintiff a third party security officer came over, was shown this Defendant's badge and police identification and assisted this Defendant with handcuffs. Any remaining allegations are denied.

35. With reference to the allegations contained in paragraph 35 of Plaintiff's complaint, this Defendant admits that for a period of time Plaintiff was handcuffed.

36. With reference to the allegations contained in paragraph 36 of Plaintiff's complaint, this Defendant admits that other City of Fort Collins police officers arrived on scene in uniform.

37. With reference to the allegations contained in paragraph 37 of Plaintiff's complaint, this Defendant admits that the handcuffs on Plaintiff were removed.

38. With reference to the allegations contained in paragraph 38 of Plaintiff's complaint, this Defendant admits that Plaintiff was issued a citation for careless driving and obstructing a police officer and that Plaintiff pled guilty to careless driving.

39. With reference to the allegations contained in paragraph 39 of Plaintiff's complaint, this Defendant is currently uninformed and therefore, at this time, denies the same.

40. With reference to the allegations contained in paragraph 40 of Plaintiff's complaint, this Defendant is either uninformed or outright denies the allegations contained therein.

41. With reference to the allegations contained in paragraph 41 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant denies the allegations.

42. With reference to the allegations contained in paragraph 42 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant is either uninformed or outright denies the allegations contained therein.

43. With reference to the allegations contained in paragraph 43 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant is either uninformed or outright denies the allegations contained therein.

44. With reference to the allegations contained in paragraph 44 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant is either uninformed or outright denies the allegations contained therein.

45. With reference to the allegations contained in paragraph 45 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant is either uninformed or outright denies the allegations contained therein.

46. With reference to the allegations contained in paragraph 46 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant is either uninformed or outright denies the allegations contained therein.

47. With reference to the allegations contained in paragraph 47 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant is either uninformed or outright denies the allegations contained therein.

48. With reference to the allegations contained in paragraph 48 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant is either uninformed or outright denies the allegations contained therein.

49. With reference to the allegations contained in paragraph 49 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant nonetheless denies the allegations contained therein.

50. With reference to the allegations contained in paragraph 50 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant nonetheless denies the allegations contained therein.

51. With reference to the allegations contained in paragraph 51 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant nonetheless denies the allegations contained therein.

52. With reference to the allegations contained in paragraph 52 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant nonetheless denies the allegations contained therein.

53. With reference to the allegations contained in paragraph 53 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant nonetheless denies the allegations contained therein.

54. With reference to the allegations contained in paragraph 54 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant nonetheless denies the allegations contained therein.

55. With reference to the allegations contained in paragraph 55 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant nonetheless denies the allegations contained therein.

56. With reference to the allegations contained in paragraph 56 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant nonetheless denies the allegations contained therein.

57. With reference to the allegations contained in paragraph 57 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant nonetheless denies the allegations contained therein.

58. With reference to the allegations contained in paragraph 58 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant nonetheless denies the allegations contained therein.

59. With reference to the allegations contained in paragraph 59 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant nonetheless denies the allegations contained therein.

60. With reference to the allegations contained in paragraph 60 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant nonetheless denies the allegations contained therein.

61. With reference to the allegations contained in paragraph 61 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant nonetheless denies the allegations contained therein.

62. With reference to the allegations contained in paragraph 62 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant nonetheless denies the allegations contained therein.

63. With reference to the allegations contained in paragraph 63 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant nonetheless denies the allegations contained therein.

64. With reference to the allegations contained in paragraph 64 of Plaintiff's complaint, while the allegations contained in this paragraph are not directed against this Defendant, this Defendant nonetheless denies the allegations contained therein.

65. With reference to the allegations contained in paragraph 65 of Plaintiff's complaint, this Defendant hereby incorporates all responses to the allegations incorporated therein.

66. With reference to the allegations contained in paragraph 66 of Plaintiff's complaint, this Defendant admits that during his interaction with Plaintiff on October 6, 2017, he was acting under color of state law and in his capacity as a City of Fort Collins police officer.

67. With reference to the allegations contained in paragraph 67 of Plaintiff's complaint, this Defendant avers that the Fourth Amendment to the United States Constitution speaks for itself and denies all remaining allegations contained in this paragraph.

68. This Defendant denies the allegations contained in paragraph 68 of Plaintiff's complaint.

69. This Defendant denies the allegations contained in paragraph 69 of Plaintiff's complaint.

70. This Defendant denies the allegations contained in paragraph 70 of Plaintiff's complaint.

71. This Defendant denies the allegations contained in paragraph 71 of Plaintiff's complaint.

72. This Defendant denies the allegations contained in paragraph 72 of Plaintiff's complaint.

73. This Defendant denies the allegations contained in paragraph 73 of Plaintiff's complaint.

74. With reference to the allegations contained in paragraph 74 of Plaintiff's complaint, while these allegations are not directed at this Defendant, this Defendant nonetheless denies the allegations contained therein.

75. With reference to the allegations contained in paragraph 75 of Plaintiff's complaint, while these allegations are not directed at this Defendant, this Defendant nonetheless denies the allegations contained therein.

76. With reference to the allegations contained in paragraph 76 of Plaintiff's complaint, while these allegations are not directed at this Defendant, this Defendant nonetheless denies the allegations contained therein.

77. With reference to the allegations contained in paragraph 77 of Plaintiff's complaint, while these allegations are not directed at this Defendant, this Defendant avers that the applicable law speaks for itself, but denies the existence of a valid cause of action.

78. With reference to the allegations contained in paragraph 78 of Plaintiff's complaint, any duties and/or responsibilities of police officers that could be applicable to this claim are grounded in the applicable law. This Defendant denies all remaining allegations contained in this paragraph.

79. With reference to the allegations contained in paragraph 79 of Plaintiff's complaint, while these allegations are not directed at this Defendant, this Defendant nonetheless denies the allegations contained therein.

80. With reference to the allegations contained in paragraph 80 of Plaintiff's complaint, while these allegations are not directed at this Defendant, this Defendant nonetheless denies the allegations contained therein.

81. This Defendant denies all remaining allegations not heretofore specifically admitted.

AFFIRMATIVE DEFENSES

1. All or a portion of Plaintiff's claims may not state a cause of action upon which relief can be granted against this Defendant.

2. This Defendant is entitled to qualified immunity from suit.

3. Some or all of Plaintiff's claims are barred by the U.S. Supreme Court's holding in *Heck v. Humphrey*, 512 U.S. 477 (1994).

4. Some or all of Plaintiff's claims may be barred by judicial estoppel.

5. Plaintiff may have failed to mitigate her damages, if any, as required by law.

6. The damages alleged to have been sustained by the Plaintiff, if any, were caused by Plaintiff's acts and conduct, not by reason of any tortious or unconstitutional conduct of Defendant.

7. This Defendant asserts the privilege of self-defense.

8. This Defendant may be entitled to attorney's fees in the defense of this matter under the 42 U.S.C. §1988.

9. This Defendant's actions may not have been the proximate cause of the Plaintiff's claimed injuries and damages.

10. Any acts or omissions of this Defendant were privileged under the privilege of law enforcement to use reasonable force to prevent an escape.

11. All of the actions taken by this Defendant was in good faith and was reasonable under the circumstances.

12. Plaintiff's alleged damages may have been caused by a pre-existing medical or physical condition of the Plaintiff.

RESERVATION AND INCORPORATION OF OTHER DEFENSES

This Defendant reserves the right to assert any other defenses which may be disclosed as discovery and investigation are accomplished and hereby request leave of Court to amend this Answer, if necessary, at a later date. This Defendant also incorporates all defenses alleged by any other defendant, to the extent applicable.

WHEREFORE, having fully answered Plaintiff's Complaint, this Defendant prays the same be dismissed and denied and that this Defendant has judgment for his costs, his reasonable attorney fees, and such other and further relief as the Court may deem proper.

THIS DEFENDANT REQUESTS A TRIAL BY JURY OF ALL ISSUES CONTAINED HEREIN WHICH ARE SO TRIABLE.

Respectfully submitted this 9th day of December, 2019.

/s/ Marni Nathan Kloster
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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of December, 2019, I electronically filed the foregoing **ANSWER AND JURY DEMAND** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following at their e-mail addresses:.

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