

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

Civil Action No. 19-cv-02848

KIMBERLY CHANCELLOR,

Plaintiff,

v.

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

Defendants.

**DEFENDANT CITY OF FORT COLLINS' ANSWER, DEFENSES, AND
AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT AND JURY DEMAND
(ECF No. 1)**

Defendant CITY OF FORT COLLINS, a municipality, ("City"), by and through its attorneys, Hall & Evans, L.L.C., submits the following as its answer, defenses, and affirmative defenses to Plaintiff's Complaint and Jury Demand (ECF No. 1), as follows:

INTRODUCTION

1. The City admits that on October 6, 2017, the Plaintiff was driving a vehicle. The City is without sufficient knowledge or information with respect to the remaining allegations set forth in paragraph 1 of Plaintiff's Complaint, requiring denial of same.

2. The City admits that on October 6, 2017, Fort Collins Police Officer Stephan Sparacio was driving a motorcycle and that he followed Plaintiff into an apartment complex. The City also admits Stephen Sparacio attempted to speak with the Plaintiff. The City is without

sufficient knowledge or information with respect to the remaining allegations set forth in paragraph 2, thereby requiring denial of same.

3. Based on information and belief, the City admits Defendant Sparacio identified himself as a Fort Collins Police Officer, and that he informed Plaintiff she was under arrest. The City is without sufficient knowledge or information with respect to the remaining allegations set forth in paragraph 3, thereby requiring denial of same.

4. The City admits Defendant Sparacio grabbed Plaintiff's arm and at some point showed her a police badge. The City also admits Defendant Sparacio asked Plaintiff for her driver's license, but is without sufficient knowledge or information with respect to the remaining allegations set forth in paragraph 4 of Plaintiff's Complaint.

5. The City is without sufficient knowledge or information with respect to what the Plaintiff looked for in her purse, and therefore said allegations are denied. The remaining allegations set forth in paragraph 5 of Plaintiff's Complaint are conclusory and therefore no response is required. To the extent said allegations are determined to be factual, the City is without sufficient knowledge or information, requiring denial of same.

6. The allegation set forth in paragraph 6 of Plaintiff's Complaint are conclusory, and therefore no response is necessary. To the extent the allegations in paragraph 6 are determined to be factual, said allegations are denied.

7. The allegations set forth in paragraph 7 of Plaintiff's Complaint are conclusory, and therefore no response is necessary. To the extent the allegations in paragraph 7 are determined to be factual, said allegations are denied.

8. The allegations set forth in paragraph 8 of Plaintiff's Complaint purport to set forth a legal conclusion while at the same time are conclusory in nature, and therefore no response is required. To the extent the allegations in paragraph 8 of Plaintiff's Complaint are determined to be factual, said allegations are denied.

II. JURISDICTION AND VENUE

9. The City admits the Court has jurisdiction to hear the issues in this matter, but deny the remaining allegations set forth in paragraph 9 of Plaintiff's Complaint.

10. The allegations set forth in paragraph 10 of Plaintiff's Complaint purport to set forth a legal conclusion while at the same time are conclusory in nature, and therefore no response is required. To the extent the allegations in paragraph 10 of Plaintiff's Complaint are determined to be factual, said allegations are denied.

11. The City admits the proper venue for this matter, is the District Court of Colorado. The remaining allegations are denied.

III. PARTIES

12. The City is without sufficient knowledge or information with respect to the allegations set forth in paragraph 12 of Plaintiff's Complaint, thereby requiring denial of same.

13. Based on information and belief, the City admits Defendant Stephen Sparacio was a citizen of the United States and a resident of the State of Colorado. The City is without sufficient knowledge or information with respect to the remaining allegations set forth in paragraph 13 of Plaintiff's Complaint, requiring denial of same.

14. The City admits it is a Colorado municipal corporation. The remaining allegations set forth in paragraph 14 of Plaintiff's Complaint purport to set forth a legal conclusion to which

no response is necessary. To the extent the remaining allegations are determined to be factual, said allegations are denied.

IV. FACTUAL ALLEGATIONS

15. Based on information and belief, the City admits Plaintiff is 27 years old and at the time of the incident set forth in her Complaint, she resided in Fort Collins, Colorado. The City is without sufficient knowledge or information with respect to the remaining allegations set forth in paragraph 15 of Plaintiff's Complaint, thereby requiring denial of same.

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

17. The City is without sufficient knowledge or information with respect to the allegations set forth in paragraph 17 of the Plaintiff's Complaint, requiring denial of same.

18. The City admits that on October 6, 2017, Fort Collins Police Officer Stephan Sparacio was driving a motorcycle and that he followed Plaintiff into an apartment complex. The City is without sufficient knowledge or information with respect to the remaining allegations set forth in paragraph 18, thereby requiring denial of same.

19. The City is without sufficient knowledge or information with respect to the allegations set forth in paragraph 19 of Plaintiff's Complaint, requiring denial of same.

20. Based on information and belief, the City admits Defendant Sparacio told Plaintiff to stop. The remaining allegations set forth in paragraph 20 of Plaintiff's Complaint, are denied.

21. The City admits the Plaintiff walked away from Defendant Sparacio, but is without sufficient knowledge or information with respect to the remaining allegations set forth in paragraph 21 of Plaintiff's Complaint, requiring denial of same.

22. Based on information and belief, the City admits Defendant Sparacio told the Plaintiff he was a police officer and that she was under arrest. The City does not have sufficient knowledge or information with respect to the remaining allegations set forth in paragraph 22 of Plaintiff's Complaint, requiring denial of same.

23. The allegations set forth in paragraph 23 of Plaintiff's Complaint are conclusory, to which no response is required. To the extent the allegations in paragraph 23 of Plaintiff's Complaint are determined to be factual, said allegations are denied.

24. The City admits Defendant Sparacio grabbed Plaintiff's arm and at some point showed her a police badge. Furthermore, the City admits Defendant Sparacio asked Plaintiff for her license, but is without sufficient knowledge or information with respect to the remaining allegations set forth in paragraph 24 of Plaintiff's Complaint.

25. The City is without sufficient knowledge or information with respect to the allegations set forth in paragraph 25 of Plaintiff's Complaint.

26. The City is without sufficient knowledge or information with respect to the allegations set forth in paragraph 26 of Plaintiff's Complaint, requiring denial of same.

27. The City admits the Plaintiff placed her purse on the ground and crouched down. The City is without sufficient knowledge or information with respect to the remaining allegations set forth in paragraph 27 of Plaintiff's Complaint, requiring denial of same.

28. The allegations set forth in paragraph 28 are denied.

29. The City is without sufficient knowledge or information with respect to the allegations set forth in paragraph 29 of Plaintiff's Complaint, requiring denial of same.

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 are determined to be factual, said allegations are denied.

31. The allegations set forth in paragraph 31 of Plaintiff's Complaint are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 31 are determined to be factual, said allegations are denied.

32. The City is without sufficient knowledge or information with respect to the allegations set forth in paragraph 32 of Plaintiff's Complaint, thereby requiring denial of same.

33. Based on information and belief, the City admits 911 was called. The City is without sufficient knowledge or information with respect to the remaining allegations set forth in paragraph 33 of Plaintiff's Complaint, requiring denial of same.

34. Based on information and belief, the City admits Defendant Sparacio asked a security guard to use his handcuffs. The City is without sufficient knowledge or information regarding the remaining allegations set forth in paragraph 34 of Plaintiff's Complaint, requiring denial of same.

35. The City admits Defendant Sparacio handcuffed Plaintiff and that she remained on the ground after said handcuffing.

36. The City admits the allegations set forth in paragraph 36 of Plaintiff's Complaint.

37. The City admits the handcuffs were removed, but is without sufficient knowledge or information with respect to the remaining allegations set forth in paragraph 37 of Plaintiff's Complaint, requiring denial of same.

38. The City admits Plaintiff was issued a citation for careless driving and obstructing a police officer, and then she was allowed to leave. Furthermore, based on information and belief, Plaintiff pled guilty to the careless driving charge. The City is without sufficient knowledge or information with respect to the remaining allegations set forth in paragraph 38 and footnote 1 of Plaintiff's Complaint, requiring denial of same.

39. The City is without sufficient knowledge or information regarding the allegations set forth in paragraph 39 of Plaintiff's Complaint, requiring denial of same.

40. The City is without sufficient knowledge or information regarding the allegations set forth in paragraph 40 of Plaintiff's Complaint, requiring denial of same.

41. The allegations set forth in paragraph 41 of Plaintiff's Complaint are denied.

42. The allegations set forth in paragraph 42 of Plaintiff's Complaint, are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 42 of Plaintiff's Complaint are determined to be factual, said allegations are denied.

43. The City admits a claim was filed by Dakota McGrath and said claim was settled. The remaining allegations set forth in paragraph 43 of Plaintiff's Complaint, are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 43 of Plaintiff's Complaint are determined to be factual, said allegations are denied.

44. The City admits Enan Joe Heneghan filed a claim against the City of Fort Collins, and said claim was resolved. The remaining allegations set forth in paragraph 44 of Plaintiff's

Complaint, are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 44 of Plaintiff's Complaint are determined to be factual, said allegations are denied.

45. The allegations set forth in paragraph 45 of Plaintiff's Complaint, are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 45 of Plaintiff's Complaint are determined to be factual, said allegations are denied.

46. The allegations set forth in paragraph 46 of Plaintiff's Complaint, are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 46 of Plaintiff's Complaint are determined to be factual, said allegations are denied.

47. The City admits Kate Kimble stated the officer used "standard arrest control" in the arrest of Michella Surat. The remaining allegations set forth in paragraph 47 of Plaintiff's Complaint, are conclusory, and therefore no response is required. To the extent the remaining allegations set forth in paragraph 47 of Plaintiff's Complaint are determined to be factual, said allegations are denied.

48. The allegations set forth in paragraph 48 of Plaintiff's Complaint, are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 48 of Plaintiff's Complaint are determined to be factual, said allegations are denied.

49. The allegations set forth in paragraph 49 of Plaintiff's Complaint, are denied.

50. The allegations set forth in paragraph 50 of Plaintiff's Complaint, are denied.

51. The allegations set forth in paragraph 51 of Plaintiff's Complaint, are denied.

52. The allegations set forth in paragraph 52 of Plaintiff's Complaint, are denied.

53. The allegations set forth in paragraph 53 are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 53 are determined to be factual, said allegations are denied.

54. The allegations set forth in paragraph 54 of Plaintiff's Complaint, are denied.

55. The allegations set forth in paragraph 55 of Plaintiff's Complaint, are denied.

56. The allegations set forth in paragraph 56 of Plaintiff's Complaint, are denied.

57. The allegations set forth in paragraph 57 of Plaintiff's Complaint, are denied.

58. The allegations set forth in paragraph 58 of Plaintiff's Complaint, are denied.

59. The allegations set forth in paragraph 59 of Plaintiff's Complaint, are denied.

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

61. The allegations set forth in paragraph 61 of Plaintiff's Complaint, are denied.

62. The allegations set forth in paragraph 62 of Plaintiff's Complaint, are denied.

63. The allegations set forth in paragraph 63 of Plaintiff's Complaint, are denied.

64. The allegations as they pertain to the City only, are denied. The remaining allegations are denied as the City lacks sufficient knowledge or information respecting said allegations, requiring denial of same.

V. STATEMENT OF CLAIM FOR RELIEF

FIRST CLAIM FOR RELIEF

42 U.S.C. § 1983

**Fourth & Fourteenth Amendment Violation – Excessive Force
(Against All Defendants)**

65. The Defendant City hereby incorporates by reference those responses to paragraphs 1 to 64 of Plaintiff's Complaint, as though fully set forth herein.

66. The City is without sufficient knowledge or information with respect to the allegations set forth in paragraph 66 of Plaintiff's Complaint, requiring denial of same.

67. The allegations set forth in paragraph 67 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 67 are determined to be factual, the City is without sufficient knowledge or information, requiring denial of same.

68. The allegations set forth in paragraph 68 of Plaintiff's Complaint are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 68 of Plaintiff's Complaint are determined to be factual, the City is without sufficient knowledge or information, requiring denial of same.

69. The allegations set forth in paragraph 69 of Plaintiff's Complaint are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 69 are determined to be factual, said allegations are denied.

70. The allegations set forth in paragraph 70 of Plaintiff's Complaint are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 70 are determined to be factual, said allegations are denied.

71. The allegations set forth in paragraph 71 of Plaintiff's Complaint are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 71 are determined to be factual, said allegations are denied.

72. The allegations set forth in paragraph 72 of Plaintiff's Complaint are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 72 are determined to be factual, said allegations are denied.

73. The allegations set forth in paragraph 73 of Plaintiff's Complaint are conclusory, and therefore no response is required. To the extent the allegations set forth in paragraph 73 are determined to be factual, said allegations are denied.

74. The allegations set forth in paragraph 74 are denied.

75. The allegations set forth in paragraph 75 are denied.

76. The allegations set forth in paragraph 76 are denied.

77. The City admits only to those obligations imposed by law. The remaining allegations set forth in paragraph 77 of Plaintiff's Complaint, are denied.

78. The allegations set forth in paragraph 78 of Plaintiff's Complaint, are denied.

79. The allegations set forth in paragraph 79 of Plaintiff's Complaint, are denied.

80. The allegations set forth in paragraph 80 of Plaintiff's Complaint are denied.

81. The City denies those allegations set forth after the word "WHEREFORE", on page 14 of Plaintiff's Complaint.

82. The City denies the Plaintiff is entitled to any relief whatsoever.

GENERAL DENIAL

83. The City denies each and every allegation set forth in Plaintiff's Complaint, not specifically admitted herein.

DEMAND FOR JURY TRIAL

The City 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 Defendants 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 these Defendants possessed no ability to control or right to control.

9. Some or all of the claims attempted by Plaintiff is duplicative of one another and cannot be the basis for any duplicative recovery.

10. The Plaintiff lacks standing to assert some or all of the claims asserted in the Complaint. Plaintiff cannot recover respecting any constitutional violation pursuant to 42 U.S.C. § 1983 that Plaintiff did not personally suffer.

11. Plaintiff does not allege and cannot establish through proof that any custom, practice, or policy of the City of Fort Collins caused or contributed to any alleged injuries or damages asserted by Plaintiff, if any.

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

13. 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.

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

15. 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.

16. No Defendant is liable for any punitive damages pursuant to state or federal law and no Defendant could become liable for any such damages.

17. Some or all of Plaintiff's claim is barred, limited or controlled by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq.

18. 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, the City requests the Court enter an Order dismissing all elements of all claims against it in complete and total fashion, awarding it costs and attorneys' fees, and ordering such other relief as the Court deems just.

Respectfully submitted this 12th day of December 2019.

/s/ Mark S. Ratner

Christina S. Gunn, Esq.

Mark S. Ratner, Esq.

Aaron J. Thompson, Esq.

Hall & Evans, L.L.C.

1001 17th Street, Suite 300

Denver, CO 80202

Telephone: (303) 628-3300

Facsimile: (303) 628-3368

gunnc@hallevans.com

ratnerm@hallevans.com

thompsona@hallevans.com

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE (CM/ECF)

I HEREBY CERTIFY that on December 12, 2019, I electronically filed the foregoing **ANSWER, DEFENSES, AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT AND JURY DEMAND** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

David Lane
dlane@kln-law.com
Attorney for Plaintiff

/s/ Annah Hillary, Legal Assistant to _____
Mark S. Ratner
Hall & Evans, L.L.C.
1001 17th Street, Suite 300
Denver, CO 80202
Phone: 303-628-3300
Fax: 303-628-3368
ratnerm@hallevans.com
**ATTORNEY FOR
DEFENDANTS**