

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 2015-cv-891-RPM

MICHAEL YOUNG,

Plaintiff,

v.

CITY OF LOVELAND,
CHRISTOPHER BROWN and
DEREK STEPHENS

Defendants.

DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT

Defendants, **CITY OF LOVELAND, CHRISTOPHER BROWN, and DEREK STEPHENS**, by their attorneys, **ERIC M. ZIPORIN** and **DJ GOLDFARB**, of the law firm of **SENER GOLDFARB & RICE, LLC**, and pursuant to F.R.C.P. 8, 12, and 15, hereby submit the following Answer to Plaintiff's Amended Complaint [Dkt. #21].

ANSWER

1. Defendants admit the allegations in paragraphs 24, 27, 30, 48, 49, 67, 86, 89, 93, and 94 of Plaintiff's Amended Complaint.

2. Defendants deny the allegations in paragraphs 3, 6, 18, 21, 25, 29, 34, 36, 38, 43, 45, 57, 59, 65, 69, 70, 71, 72, 73, 74, 77, 78, 79, 80, 81, 82, 83, 84, 85, 88, 91, 95, 99, 102, 104, 105, 106, 107, 108, 109, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 144, 145, 146, 147, 148, 149, 150, 151, 153, 154, 155,

156, 160, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, and 177 of Plaintiff's Amended Complaint.

3. Defendants are without sufficient information and knowledge to form a belief as to the veracity of the allegations in paragraphs 11, 17, 19, 20, 26, 37, 42, 51, 52, 75, 76, 98, 152, and 161 of Plaintiff's Amended Complaint and, as a result, they are denied.

4. With respect to the allegations in paragraph 1 of Plaintiff's Amended Complaint, Defendants admit Plaintiff has filed a lawsuit against them asserting claims for excessive force and other constitutional violations. Defendants are without sufficient information to form a belief as to the veracity of the remaining allegation in this paragraph and, as a result, it is denied.

5. With respect to the allegations in paragraph 2 of Plaintiff's Amended Complaint, Defendants admit that Stephens and Brown arrested Plaintiff in Albertson's parking lot on April 25, 2014. Defendants are without sufficient information to form a belief as to the veracity of the remaining allegations in this paragraph and, as a result, they are denied.

6. Paragraphs 4 and 5 of Plaintiff's Amended Complaint identify the categories of claims Plaintiff asserts against Defendants without any factual allegations. Defendants deny they used excessive force in connection with Plaintiff's arrest or violated any of his other constitutional rights.

7. With respect to the allegations in paragraph 7 of Plaintiff's Amended Complaint, Defendants admit that Stephens and Brown were acting in the course and

scope of their employment as City of Loveland police officers and under the Colorado state law at all times related to Plaintiff's claims. Defendants deny the remaining allegations in this paragraph.

8. Defendants do not contest jurisdiction, venue, or notice under C.R.S. § 24-10-109 as outlined in paragraphs 8, 9, and 10 of Plaintiff's Amended Complaint. Defendants again note, however, that Plaintiff's Amended Complaint does not assert any specific claims for any state tort violations.

9. With respect to the allegations in paragraph 12 of Plaintiff's Amended Complaint, Defendants admit the City of Loveland is a municipal corporation under the laws of the State of Colorado and further admit that F.R.C.P. 4(j)(2) governs matters related to service of a complaint on a municipality. Defendants deny the remaining allegations in this paragraph.

10. With respect to the allegations in paragraphs 13, 14, 119, 140, 157, and 159 of Plaintiff's Amended Complaint, Defendants admit that Stephens and Browns were employed by the City of Loveland as police officers and under the color of law at all times relevant to the incident which forms the basis for Plaintiff's Amended Complaint. Defendants further admit that F.R.C.P. 4(e) governs matters related to the service of a complaint on an individual. Defendants deny the remaining allegations in these paragraphs.

11. With respect to the allegations in paragraph 15 of Plaintiff's Amended Complaint, Defendants admit that officers from the City of Loveland Police Department

performed a welfare check at 1322 Harder Place, Loveland, Colorado 80537 on April 17, 2014. Defendants deny the remaining allegations in this paragraph.

12. With respect to the allegations in paragraph 16 of Plaintiff's Amended Complaint, Defendants admit that Kathryn Woodard contacted the City of Loveland Police Department on April 17, 2014 to request that officers perform a welfare check at 1322 Harder Place, Loveland, Colorado 80537. Defendants are without sufficient information to form a belief as to the veracity of the remaining allegations in this paragraph and, as a result, they are denied.

13. With respect to the allegations in paragraph 22 of Plaintiff's Amended Complaint, Defendants admit that City of Loveland Police Officers Aaron Stanek and Sue Sauter retreated to a cover position after Sauter observed Plaintiff holding a small black semi-automatic handgun in his hand. Defendants deny the remaining allegations in this paragraph.

14. With respect to the allegations in paragraph 23 of Plaintiff's Amended Complaint, Stanek and Sauter's reports speak for themselves.

15. With respect to the allegations in paragraph 28 of Plaintiff's Amended Complaint, Defendants admit that the SWAT team put the home at 1322 Harder Place, Loveland, Colorado 80537 under surveillance. Defendants deny the remaining allegations in this paragraph.

16. With respect to the allegations in paragraph 31 of Plaintiff's Amended Complaint, Defendants admit that a SWAT team was used to execute the search

warrant. Defendants are without sufficient information to form a belief as to the veracity of the remaining allegation in this paragraph and, as a result, it is denied.

17. With respect to the allegations in paragraph 32 of Plaintiff's Amended Complaint, Defendants admit that at the time the SWAT team executed the search warrant, Plaintiff was not in the home. Defendants further admit that they were unaware if anyone else was in the home immediately prior to the execution of the search warrant. Defendants deny that they "knew" Plaintiff was not in the home.

18. With respect to the allegations in paragraph 33 of Plaintiff's Amended Complaint, Defendants admit that after they entered the home and performed a sweep of the premises, no one was inside the house.

19. With respect to the allegations in paragraph 35 of Plaintiff's Amended Complaint, Defendants admit that the SWAT team used a handheld breaching tool to hit the handle area of the front door in order to enter the home and execute the search warrant.

20. With respect to the allegations in paragraph 39 of Plaintiff's Amended Complaint, Defendants admit that the SWAT team executed a search warrant at the home. Defendants deny the remaining allegations in this paragraph.

21. With respect to the allegations in paragraph 40 of Plaintiff's Amended Complaint, Defendants admit the SWAT team did not locate any firearms in the home. Defendants are without sufficient information to form a belief as to the veracity of the remaining allegation in this paragraph and, as a result, it is denied.

22. With respect to the allegations in paragraph 41 of Plaintiff's Amended Complaint, Defendants admit investigators located several large knives and swords in the home. Defendants are without sufficient information to form a belief as to the veracity of the remaining allegations in this paragraph and, as a result, they are denied.

23. With respect to the allegations in paragraph 44 of Plaintiff's Amended Complaint, Detective Patrick Musselman's report related to Plaintiff's April 25, 2014 arrest indicates that Plaintiff called 911 at approximately 16:34 hours to report a burglary at his home. Defendants admit the SWAT team executed a search warrant at the home earlier that day. Defendants are without sufficient information to form a belief as to the veracity of the remaining allegation in this paragraph and, as a result, it is denied.

24. With respect to the allegations contained in paragraph 46 of Plaintiff's Amended Complaint, Defendants admit that Plaintiff and Alice Young spoke with Detective Musselman during the evening of April 25, 2014. Defendants admit that Detective Musselman explained to Ms. Young how Plaintiff could turn himself into the police on the arrest warrant. Defendants deny the remaining allegations in this paragraph.

25. With respect to the allegations in paragraph 47 of Plaintiff's Amended Complaint, Defendants deny that Brown and Stephens sole responsibility was to surveil Plaintiff. Defendants admit the remaining allegations in this paragraph.

26. With respect to the allegations in paragraph 50 of Plaintiff's Amended Complaint, Defendants admit that Detective Musselman spoke with Ms. Young. She

informed Detective Musselman that she would attempt to make arrangements for Plaintiff to go to the police department. Defendants deny the remaining allegations in this paragraph.

27. With respect to the allegations in paragraph 53 of Plaintiff's Amended Complaint, Defendants admit that Stephens, Brown, and other police officers followed Plaintiff and Ms. Young to the Albertson's parking lot on Eisenhower Boulevard. Defendants are without sufficient information to form a belief as to the veracity of the remaining allegations in this paragraph and, as a result, they are denied.

28. With respect to the allegations contained in paragraphs 54, 55, and 56 of Plaintiff's Amended Complaint, Defendants admit that Stephens and Brown conducted a high risk traffic stop once the car Plaintiff was riding in failed to stop. Defendants deny that they both pointed their firearms at Plaintiff and that either Stephens or Brown pointed a firearm at Ms. Young. Defendants are without sufficient information to form a belief as to the veracity of the remaining allegations in these paragraphs and, as a result, they are denied.

29. With respect to the allegations in paragraphs 58 and 87 of Plaintiff's Amended Complaint, Brown and Stephens' reports speak for themselves. To the extent these allegations are inconsistent with the police reports, they are denied.

30. With respect to the allegations in paragraphs 60 and 61 of Plaintiff's Amended Complaint, Defendants admit they made several verbal commands to Plaintiff to both exit the car and turn around and raise his hands. Defendants deny Plaintiff

made any comment concerning any disabilities when they were issuing such instructions. Defendants deny the remaining allegations in these paragraphs.

31. With respect to the allegations in paragraph 62 of Plaintiff's Amended Complaint, Defendants admit Ms. Young attempted to exit the vehicle and the officers ordered her to remain in the Volkswagen. Defendants deny the remaining allegations in this paragraph.

32. With respect to the allegations in paragraph 63 of Plaintiff's Amended Complaint, Defendants admit that Brown and Stephens ordered Ms. Young to remain in Volkswagen. Defendants deny the remaining allegations in this paragraph.

33. With respect to the allegations in paragraph 64 of Plaintiff's Amended Complaint, Defendants admit Plaintiff told Brown and Stephens to "fuck off" before he turned around. Defendants further admit Brown and Stephens issued several orders to Plaintiff to turn around. Defendants deny the remaining allegations in this paragraph.

34. With respect to the allegations in paragraph 66 of Plaintiff's Amended Complaint, Defendants admit Stephens handcuffed Plaintiff after Plaintiff complied with orders to turn around. Defendants deny the remaining allegations in this paragraph.

35. With respect to the allegations in paragraph 68 of Plaintiff's Amended Complaint, Defendants admit that Stephens' search of Plaintiff revealed that he was unarmed. Defendants deny the remaining allegations in this paragraph.

36. With respect to the allegations in paragraph 90 of Plaintiff's Amended Complaint, Defendants admit that Brown and Stephens did not apologize to Plaintiff for using force during the course of the arrest and "wrecking his house" since they did not

use any force and did not perform any acts which damaged the home. Defendants deny all allegations of force Plaintiff details in this paragraph.

37. With respect to the allegations in paragraph 92 of Plaintiff's Amended Complaint, Defendants admit that Brown assisted Plaintiff out of the vehicle. Defendants are without sufficient information to form a belief as to the veracity of the remaining allegations in this paragraph and, as a result, they are denied.

38. With respect to the allegations contained in paragraph 96 of Plaintiff's Amended Complaint, Defendants admit Plaintiff filed a citizen's complaint concerning his arrest. Defendants further admit the internal investigation found no wrongdoing on behalf of Brown and Stephens. Defendants are without sufficient information to form a belief as to the veracity of the remaining allegations in this paragraph and, as a result, it is denied.

39. With respect to the allegations in paragraph 97 of Plaintiff's Amended Complaint, Defendants admit the District Attorney dismissed the criminal charges against Plaintiff related to his arrest. However, the SWAT team located several swords at the home when they executed the search warrant. Defendants are without sufficient information to form a belief as to the veracity of the remaining allegations in this paragraph and, as a result, they are denied.

40. With respect to the allegations in paragraph 101 of Plaintiff's Amended Complaint, Defendants admit that the City of Loveland acted under color of law at all times. Defendants deny the remaining claims in this paragraph.

41. With respect to the allegations contained in paragraph 103 of Plaintiff's Amended Complaint, Defendants admit that officers submitted a search warrant and affidavit to a district court judge. Defendants further admit that the district court judge authorized the search of the home and that a SWAT team executed the search warrant.

42. Paragraphs 110, 111, 112, 113, 114, 115, 120, 121, 122, 141, 142, 143, 163, and 164 contain only legal argument. Defendants deny they used excessive force in connection with the execution of the search warrant at the home. Further, the City denies it developed and/or maintained any policies, procedures, customs, or practices with deliberate indifference toward any citizen's constitutional rights. To the extent any further response is necessary to any of the allegations in these paragraphs, Defendants deny same.

43. With respect to the unnumbered paragraphs which follow paragraphs 116, 138, and 161 of Plaintiff's Amended Complaint, Defendants admit that Plaintiff has accurately quoted text from 42 U.S.C. § 1983.

44. With respect to the allegations in paragraphs 117, 139, and 162 of Plaintiff's Amended Complaint, Defendants do not have sufficient information to answer whether Plaintiff is a citizen of the United States. The remaining allegations in these paragraphs are legal conclusions and thus do not require a response.

45. With respect to the allegation in paragraph 118 of Plaintiff's Amended Complaint, this allegation is a legal conclusion and thus does not require a response.

46. Defendants hereby incorporate their responses to the paragraphs that Plaintiff re-alleges in his Amended Complaint in paragraphs 100, 116, 138, and 158.

47. Defendants deny all allegations not otherwise expressly admitted herein.

DEFENSES

1. Plaintiff's Amended Complaint fails, at least in part, to state a claim upon which relief can be granted against one or more of the Defendants.

2. Defendants' conduct was proper and they exercised their legal rights in a permissible manner.

3. The individual Defendants are qualifiedly immune from Plaintiff's claims.

4. Defendants' conduct was lawful and protected by legal privileges, both common law and statutory.

5. Defendants' conduct was not reckless and callously indifferent toward Plaintiff so as to justify an award of punitive damages.

6. Plaintiff's alleged damages, if any, were caused by Plaintiff's acts and conduct, not by reason of any tortious or unconstitutional conduct of Defendants.

7. Plaintiff's alleged damages, if any, are not to the extent and nature as alleged by Plaintiff.

8. Plaintiff's alleged damages, if any, pre-existed his contact with any of the individual defendants on April 25, 2014.

9. Plaintiff has failed to reasonably mitigate his alleged damages.

10. Defendant's actions were justified and taken pursuant to legal privilege.

11. Defendants' actions were not recklessly or intentionally directed toward chilling any of Plaintiff's protected First Amendment Rights.

12. Defendants' actions were not substantially motivated as a response to any speech rights exercised by Plaintiff at any time.

13. Plaintiff's speech was not a matter of public concern.

14. Defendants reserve the right to add such additional defenses as become apparent upon disclosure and discovery.

REQUESTS FOR RELIEF

WHEREFORE, having fully answered Plaintiff's Amended Complaint, Defendants respectfully request the Court:

- A. Dismiss Plaintiff's Amended Complaint with prejudice;
- B. Enter judgment in favor of Defendants and against Plaintiff for their attorney fees; and
- C. Enter judgment in favor of Defendants and against Plaintiff for their costs; and such other and for the relief as the Court deems just and proper.

JURY DEMAND

PURSUANT TO F.R.C.P. 38, DEFENDANTS HEREBY DEMAND THAT THIS CASE BE TRIED TO A JURY.

Respectfully submitted,

By _____ s/ Eric M. Ziporin

Eric M. Ziporin

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By _____ s/ DJ Goldfarb

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of September, 2015, I electronically filed a true and exact copy of the above and foregoing **DEFENDANT'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses:

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s/ Wanda J. Toney

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