

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:15-CV-00166-WYD-NYW

TAMMY FISHER

Plaintiff,

v.

BRIAN KOOPMAN, Detective in the Loveland, Colorado Police Department, in his official and individual capacity;
LUKE HECKER, Chief of Loveland Police Department, in his official and individual capacity,

Defendants.

ANSWER AND JURY DEMAND

Defendants, Brian Koopman and Luke Hecker, by and through their attorneys, J. Andrew Nathan and Marni Nathan Kloster of the firm of Nathan, Bremer, Dumm and Myers, P.C., as for an Answer to Plaintiff's Complaint state and alleged as follows:

1. With reference to paragraph 1 of Plaintiff's Complaint, Defendants state that the allegations contained therein appear to be prefatory and therefore a response is unnecessary. To the extent that a response is deemed necessary, Defendants deny any allegations of wrongdoing, inappropriate or tortious conduct, or violations of the Constitution.

2. With reference to paragraph 2 of Plaintiff's Complaint, Defendants admit that Lisa Romanek advised the police that she had been warned by Plaintiff about the

investigation and the planned execution of a search warrant on the Romanek home. Defendants deny any remaining allegations contained in this paragraph.

3. With reference to paragraph 3 of Plaintiff's Complaint, Defendants admit that Plaintiff Fisher was a former police officer with the Loveland Police Department. Defendants admit that Plaintiff Fisher was not employed in that capacity at the time of the Romanek search. Defendants admit that Ms. Romanek made statements to the effect that Plaintiff warned the Romaneks a year prior when Plaintiff was employed by the Police Department. Defendants aver that Detective Koopman's report speaks for itself and deny any other allegations contained in this paragraph.

4. With reference to paragraph 4 of Plaintiff's Complaint, Defendants admit that Detective Koopman's investigation of Plaintiff was related to the investigation into the Romaneks. All other allegations in this paragraph are denied.

5. Defendants deny the allegations contained in paragraph 5 of Plaintiff's Complaint.

6. Defendants deny the allegations contained in paragraph 6 of Plaintiff's Complaint.

7. Defendants deny the allegations contained in paragraph 7 of Plaintiff's Complaint.

8. With reference to paragraph 8 of Plaintiff's Complaint, Defendants do not dispute jurisdiction given Plaintiff's attempt to plead federal claims against them.

9. With reference to paragraph 9 of Plaintiff's Complaint, Defendants do not dispute venue in the United States District Court for the District of Colorado.

Defendants admit that Detective Koopman and Chief Hecker were (and are) employed in Larimer County, Colorado, and were acting in the course and scope of their employment and under color of state law at all times relevant to this case. Defendants are currently uninformed concerning the remaining allegations contained in this paragraph and therefore, at this time, deny the same.

10. With reference to paragraph 10 of Plaintiff's Complaint, Defendants admit upon information and belief, that Plaintiff Fisher was a citizen of the United States and a resident of Larimer County, Colorado.

11. With reference to paragraph 11 of Plaintiff's Complaint, Defendants admit that Detective Brian Koopman was a citizen of the United States and a resident of the State of Colorado and he was employed by the City of Loveland as a detective with the Loveland Police Department. Defendants admit that Detective Koopman was performing traditional governmental functions of law enforcement, and was acting within the scope of his duties and employment, under color and authority of state law, and in his official capacity as a detective, during all times relevant to this case. Defendants assume that Detective Koopman is being sued in his official and individual capacity because that is the way the caption reads.

12. With reference to paragraph 12 of Plaintiff's Complaint, Defendants admit that the allegations contained in this paragraph and assume, because of the way he is named in the caption, that Chief Hecker is sued in his official and individual capacity.

13. With reference to paragraph 13 of Plaintiff's Complaint, Defendants have already admitted the allegations contained therein are duplicative and Defendants incorporate their prior answers.

14. With reference to paragraph 14 of Plaintiff's Complaint, Defendants admit that Plaintiff Fisher was employed with the City of Loveland, that her employment began in approximately 1997 as a Community Service Officer, that in approximately 2000 she became a police officer and that she resigned her position with the City of Loveland Police Department in 2012. Defendants admit that Plaintiff is and was married to Jeff Fisher, a former Sergeant with the Loveland Police Department. Defendants admit that Chief Luke Hecker was the Loveland Police Department Chief during all times relevant to this case. Any remaining allegations are denied.

15. With reference to paragraph 15 of Plaintiff's Complaint, Defendants admit that in or about April, 2013, the Loveland Police Department executed a search warrant on the home of Stan and Lisa Romanek for the crime of sexual exploitation of a child (child pornography). Defendants admit that, upon information and belief, Plaintiff had responded to the Romanek's home on a harassment call that was unrelated to the Romanek search warrant. Defendants admit that other Loveland Police Officers also responded to the Romanek home. Defendants are uninformed concerning the details of Plaintiff Fisher's relationship with Lisa Romanek and therefore deny all remaining allegations in this paragraph.

16. With reference to paragraph 16 of Plaintiff's Complaint, Defendants are currently uninformed and therefore, at this time, deny the same.

17. With reference to paragraph 17 of Plaintiff's Complaint, Defendants admit that during the execution of a search warrant on the Romanek house, Lisa Romanek commented to Loveland Police Officer Paul Arreola, and other law enforcement present, that the Romaneks were friends with Loveland Police Sgt. Jeff Fisher and his wife, Tammy Fisher, and that Tammy Fisher had warned her of the child pornography investigation and the impending search, or words to that effect. Defendants admit that Detective Koopman was a part of the Romanek investigation and indicated to Plaintiff that Lisa Romanek advised police that Plaintiff had warned Lisa Romanek of the current investigation and search and that Lisa Romanek had stated that Plaintiff had advised Lisa Romanek a year ago of the investigation while Plaintiff was still a member of the Loveland Police Department. Any additional allegations contained in this paragraph are denied.

18. With reference to paragraph 18 of Plaintiff's Complaint, Defendants admit that Detective Koopman made these comments during a meeting with Plaintiff at the Fisher home when only Plaintiff and her children were present. The remaining allegations of this paragraph are denied.

19. With reference to paragraph 19 of Plaintiff's Complaint, Defendants admit that during the investigation into Plaintiff Fisher by Detective Koopman, an internal police department investigation was conducted concerning Mr. Fisher. Defendants admit that during the investigation it was discovered that Stan Romanek's computer had files erased by a hard drive cleaner called C Cleaner. Defendants admit that then Loveland Police Sgt. Scott Highland had installed on the Fisher computer, sometime

prior to the investigation, the same C Cleaner program. Defendants admit that C Cleaner is a free computer download and can be accessed and downloaded via the Internet. Defendants admit that the internal investigation of Mr. Fisher was closed, that Mr. Fisher was not disciplined and that Mr. Fisher was not promoted to a lieutenant's position. Any remaining allegations in this paragraph are denied.

20. With reference to paragraph 20 of Plaintiff's Complaint, Defendants admit that pursuant to his investigation, Detective Koopman submitted sworn affidavits for both the arrest of Mr. Romanek and the search of his residence. Defendants admit that Detective Koopman, at the request of an Assistant District Attorney at Larimer County, provided information to determine whether charges would be filed against Plaintiff. The District Attorney declined to file charges stating that while "the people believed Tammy Fisher committed a crime under C.R.S. 18-8-405, especially in light of LPD Code of Conflict §26.1.46. However, under C.R.S. 16-5-401, the statute of limitations on this crime ran in January, 2013. But for the limitations, the people would have filed a case." Any remaining allegations contained in this paragraph are denied.

21. Defendants deny the allegations contained in paragraph 21 of Plaintiff's Complaint.

22. With reference to paragraph 22 of Plaintiff's Complaint, Defendants admit that Chief Hecker exercises control over his department personnel charged with investigation and protecting against criminal activity. Any remaining allegations in this paragraph are denied.

23. With reference to paragraph 23 of Plaintiff's Complaint, Defendants admit that Chief Hecker is the policy maker of the Loveland Police Department for police policies. Any remaining allegations in this paragraph are denied.

24. Defendants deny the allegations contained in paragraph 24 of Plaintiff's Complaint.

25. With reference to paragraph 25 of Plaintiff's Complaint, Defendants deny the relevance of Detective Koopman's status as a Defendant in another civil action brought by Plaintiff's attorney in the District of Colorado. The remaining allegations contained in this paragraph are denied.

26. With reference to paragraph 26 of Plaintiff's Complaint, Defendants admit that it is likely that Chief Hecker commended Detective Koopman's work and affirmed his support for Detective Koopman and his confidence in Detective Koopman's work, or words to that effect. Defendants are currently uninformed as to the actual statements which Plaintiff alleges Chief Hecker made, particularly the quoted statement. All remaining allegations of this paragraph not admitted are denied.

27. With reference to paragraph 27 of Plaintiff's Complaint, Defendants admit that Detective Koopman may have discussed Plaintiff's case with other Loveland police employees. Defendants are currently uninformed concerning the contents of a discussion with an unnamed Loveland Police employee and therefore deny those allegations. Defendants deny all other allegations contained in this paragraph.

28. Defendants deny the allegations contained in paragraph 28 of Plaintiff's Complaint.

29. With reference to paragraph 29 of Plaintiff's Complaint, Defendants are uninformed what an unnamed police official may have stated to unidentified people and deny all allegations contained in this paragraph.

30. With reference to paragraph 30 of Plaintiff's Complaint, Defendants are uninformed concerning what an unnamed police official might have stated to unidentified persons and therefore deny all allegations contained in this paragraph.

31. With reference to paragraph 31 of Plaintiff's Complaint, Defendants incorporate by reference their answers to the allegations of the Plaintiff's Complaint incorporated in this paragraph.

32. See response to duplicative allegations in this Complaint.

33. With reference to paragraph 33 of Plaintiff's Complaint, Defendants aver that 42 U.S.C. §1983 speaks for itself.

34. With reference to paragraph 34 of Plaintiff's Complaint, Defendants admit that Plaintiff had constitutionally protected rights against malicious prosecution, but deny the violation of any such rights and further aver that the rights identified by Plaintiff in this claim for relief are incorrectly and/or not fully described.

35. Defendants deny the allegations contained in paragraph 35 of Plaintiff's Complaint.

36. Defendants deny the allegations contained in paragraph 36 of Plaintiff's Complaint.

37. Defendants deny the allegations contained in paragraph 37 of Plaintiff's Complaint.

38. Defendants deny the allegations contained in paragraph 38 of Plaintiff's Complaint.

39. Defendants deny the allegations contained in paragraph 39 of Plaintiff's Complaint.

40. Defendants deny the allegations contained in paragraph 40 of Plaintiff's Complaint.

41. Defendants deny the allegations contained in paragraph 41 of Plaintiff's Complaint.

42. Defendants deny the allegations contained in paragraph 42 of Plaintiff's Complaint.

43. With reference to paragraph 43 of Plaintiff's Complaint, Defendants incorporate by reference their answers to the allegations of the Plaintiff's Complaint incorporated in this paragraph.

44. With reference to paragraph 44 of Plaintiff's Complaint, Defendants admit that Chief Hecker was the policy maker for the Loveland Police Department, that his policies represent the official policy of the Loveland Police Department and that he established policies. Any remaining allegations contained in this paragraph are denied.

45. Defendants deny the allegations contained in paragraph 45 of Plaintiff's Complaint.

46. Defendants deny the allegations contained in paragraph 46 of Plaintiff's Complaint.

47. Defendants deny the allegations contained in paragraph 47 of Plaintiff's Complaint.

48. Defendants deny the allegations contained in paragraph 48 of Plaintiff's Complaint.

49. With reference to paragraph 49 of Plaintiff's Complaint, Defendants admit that Chief Hecker is, as the Police Chief, generally familiar with the methods of investigation employed by Detective Koopman. Defendants admit that Chief Hecker was Detective Koopman's ultimate supervisor. Defendants admit that Chief Hecker is aware that Plaintiff's attorney in this case has made other allegations against Detective Koopman in another case. Defendants deny that such fact is relevant to this case and further deny all other allegations in this paragraph.

50. Defendants deny the allegations contained in paragraph 50 of Plaintiff's Complaint.

51. With reference to paragraph 51 of Plaintiff's Complaint, Defendants incorporate by reference their answers to the allegations of the Plaintiff's Complaint incorporated in this paragraph.

52. Defendants deny the allegations contained in paragraph 52 of Plaintiff's Complaint.

53. Defendants deny the allegations contained in paragraph 53 of Plaintiff's Complaint.

54. Defendants deny the allegations contained in paragraph 54 of Plaintiff's Complaint.

55. Defendants deny the allegations contained in paragraph 55 of Plaintiff's Complaint.

56 Defendants deny the allegations contained in paragraph 56 of Plaintiff's Complaint.

57 With reference to paragraph 57 of Plaintiff's Complaint, Defendants incorporate by reference their answers to the allegations of the Plaintiff's Complaint incorporated in this paragraph.

58. Defendants deny the allegations contained in paragraph 58 of Plaintiff's Complaint.

59. Defendants deny the allegations contained in paragraph 59 of Plaintiff's Complaint.

60. Defendants deny the allegations contained in paragraph 60 of Plaintiff's Complaint.

61. Defendants deny the allegations contained in paragraph 61 of Plaintiff's Complaint.

62. Defendants deny the allegations contained in paragraph 62 of Plaintiff's Complaint.

64. With reference to paragraph 64 of Plaintiff's Complaint, Defendants incorporate by reference their answers to the allegations of the Plaintiff's Complaint incorporated in this paragraph.

65. With reference to paragraph 65 of Plaintiff's Complaint, Defendants are currently uninformed as to Plaintiff's employment and the nature of that employment.

Defendants deny the existence of any "false criminal investigation." Defendants deny all other allegations contained in this paragraph.

66. Defendants deny the allegations contained in paragraph 66 of Plaintiff's Complaint.

67. Defendants deny the allegations contained in paragraph 67 of Plaintiff's Complaint.

68. Defendants deny the allegations contained in paragraph 68 of Plaintiff's Complaint.

69. Defendants deny the allegations contained in paragraph 69 of Plaintiff's Complaint.

70. Defendants deny the allegations contained in paragraph 70 of Plaintiff's Complaint.

71. Defendants deny the allegations contained in paragraph 71 of Plaintiff's Complaint.

72. With reference to paragraph 72 of Plaintiff's Complaint, Defendants incorporate by reference their answers to the allegations of the Plaintiff's Complaint incorporated in this paragraph.

73. Defendants deny the allegations contained in paragraph 73 of Plaintiff's Complaint.

74. Defendants deny the allegations contained in paragraph 74 of Plaintiff's Complaint.

75. Defendants deny the allegations contained in paragraph 75 of Plaintiff's Complaint.

76. With reference to paragraph 76 of Plaintiff's Complaint, Defendants incorporate by reference their answers to the allegations of the Plaintiff's Complaint incorporated in this paragraph.

77. With reference to paragraph 77 of Plaintiff's Complaint, Defendants admit that Detective Koopman may have discussed with police employees working on the investigation with him that he had inquired of the Larimer County Assistant District Attorneys whether Plaintiff had committed a crime. Defendants also admit that Detective Koopman responded briefly to a request from a County employee. The remaining allegations of this paragraph are denied.

78. With reference to paragraph 78 of Plaintiff's Complaint, Defendants are currently uninformed about what unidentified people might have understood, reasonably or otherwise, and therefore deny the allegations contained in this paragraph.

79. With reference to paragraph 79 of Plaintiff's Complaint, Defendants are currently uninformed about what unidentified people might have understood, reasonably or otherwise, and therefore deny the allegations contained in this paragraph.

80. Defendants deny the allegations contained in paragraph 80 of Plaintiff's Complaint.

81. Defendants deny the allegations contained in paragraph 81 of Plaintiff's Complaint.

82. With reference to paragraph 82 of Plaintiff's Complaint, Defendants incorporate by reference their answers to the allegations of the Plaintiff's Complaint incorporated in this paragraph.

83. With reference to paragraph 83 of Plaintiff's Complaint, Defendants admit that Chief Hecker had the responsibility to hire, retain, ultimately supervise and discharge police employees. The remaining allegations of this paragraph are denied.

84. Defendants deny the allegations contained in paragraph 84 of Plaintiff's Complaint.

85. With reference to paragraph 85 of Plaintiff's Complaint, Defendants deny that Chief Hecker had the legal duty identified in this paragraph, but admit that Chief Hecker attempted to hire competent, honest and qualified employees.

86. Defendants deny the allegations contained in paragraph 86 of Plaintiff's Complaint.

87. Defendants deny the allegations contained in paragraph 87 of Plaintiff's Complaint.

88. Defendants deny the allegations contained in paragraph 88 of Plaintiff's Complaint.

89. With reference to paragraph 89 of Plaintiff's Complaint, Defendants incorporate by reference their answers to the allegations of the Plaintiff's Complaint incorporated in this paragraph.

90. With reference to paragraph 90 of Plaintiff's Complaint, Defendants admit that Chief Hecker had a duty to ultimately supervise Detective Koopman in the

performance of his police duties. The remaining allegations of this paragraph are denied.

91. Defendants deny the allegations contained in paragraph 91 of Plaintiff's Complaint.

92. Defendants deny the allegations contained in paragraph 92 of Plaintiff's Complaint.

93. With reference to paragraph 93 of Plaintiff's Complaint, Defendants incorporate by reference their answers to the allegations of the Plaintiff's Complaint incorporated in this paragraph.

94. Defendants deny the allegations contained in paragraph 94 of Plaintiff's Complaint.

95. With reference to paragraph 95 of Plaintiff's Complaint, Defendants deny that Chief Hecker had the specific legal duty described in this paragraph, but aver that Chief Hecker attempted to retain competent, qualified and trained employees.

96. Defendants deny the allegations contained in paragraph 96 of Plaintiff's Complaint.

97. Defendants deny the allegations contained in paragraph 97 of Plaintiff's Complaint.

98. Defendants deny the allegations contained in paragraph 98 of Plaintiff's Complaint.

99. Defendants deny the allegations contained in paragraph 99 of Plaintiff's Complaint.

100. With reference to paragraph 100 of Plaintiff's Complaint, Defendants incorporate by reference their answers to the allegations of the Plaintiff's Complaint incorporated in this paragraph.

101. With reference to paragraph 101 of Plaintiff's Complaint, Defendants admit the allegations contained in this paragraph.

102. With reference to paragraph 102 of Plaintiff's Complaint, Defendants admit the allegations contained in this paragraph.

103. With reference to paragraph 103 of Plaintiff's Complaint, Defendants admit the allegations contained in this paragraph.

104. With reference to paragraph 104 of Plaintiff's Complaint, Defendants admit that Chief Hecker had a right, as ultimate supervisor, to control the manner of work performed by Detective Koopman. Any remaining allegations as to Chief Hecker's legal duty as ultimate supervisor are denied.

105. With reference to paragraph 105 of Plaintiff's Complaint, Defendants are uninformed as to Chief Hecker's responsibility for unidentified and unspecified acts or omissions of Detective Koopman, and Defendant therefore deny the allegations contained in this paragraph as stated.

106. Defendants deny the allegations contained in paragraph 106 of Plaintiff's Complaint.

107. Defendants deny the allegations contained in paragraph 107 of Plaintiff's Complaint.

108. With reference to paragraph 108 of Plaintiff's Complaint, Defendants incorporate by reference their answers to the allegations of the Plaintiff's Complaint incorporated in this paragraph.

109. With reference to paragraph 109 of Plaintiff's Complaint, Defendants admit the allegations contained in this paragraph.

110. With reference to paragraph 110 of Plaintiff's Complaint, Defendants admit that Chief Hecker was the Chief of Police of the Loveland Police Department, that he had ultimate supervisory control over his subordinates and that, to the extent practical, he monitored his subordinates' activities. Any remaining allegations contained herein are denied.

111. With reference to paragraph 111 of Plaintiff's Complaint, Defendants admit the allegations contained in this paragraph.

112. With reference to paragraph 112 of Plaintiff's Complaint, Defendants admit that Chief Hecker had a right, as ultimate supervisor, to control the manner of work performed by Detective Koopman. Any remaining allegations as to Chief Hecker's legal duty as ultimate supervisor are denied.

113. With reference to paragraph 113 of Plaintiff's Complaint, Defendants admit that Chief Hecker had a right, as ultimate supervisor, to control the manner of work performed by Detective Koopman. Any remaining allegations as to Chief Hecker's legal duty as ultimate supervisor are denied.

114. Defendants deny the allegations contained in paragraph 114 of Plaintiff's Complaint.

115. Defendants deny the allegations contained in paragraph 115 of Plaintiff's Complaint.

116. Defendants deny each and every other allegation contained in Plaintiff's Complaint not heretofore specifically admitted.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Some or all of Plaintiff's claims fail to state a claim upon which relief can be granted against Defendants.

SECOND AFFIRMATIVE DEFENSE

Defendants, sued in their individual capacity, are entitled to qualified immunity.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims based upon state law are barred and/or governed by the Colorado Governmental Immunity Act, C.R.S. §24-101, et seq.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff may lack standing to make some or all of her claims.

FIFTH AFFIRMATIVE DEFENSE

To the extent applicable, Defendants acted with probable cause and/or articulable, reasonable suspicion, as applicable

SIXTH AFFIRMATIVE DEFENSE

Defendants acted on the advice of a prosecuting attorney.

SEVENTH AFFIRMATIVE DEFENSE

Defendants exercised their legal rights in a permissible manner.

EIGHTH AFFIRMATIVE DEFENSE

Any statements made by Defendants were true or substantially true.

NINTH AFFIRMATIVE DEFENSE

Statements made by Defendants are protected by various privileges including, but not limited to, common interest, communication to persons who may act in the public interest, and communications by a police officer required or permitted in the performance of his official duties.

TENTH AFFIRMATIVE DEFENSE

To the extent that common law negligence claims are being made against one or both Defendants, the Defendants assert the defenses of comparative negligence and/or assumption of the risk pursuant to statute.

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

Defendants exercised their rights under the First Amendment

THIRTEENTH AFFIRMATIVE DEFENSE

Some of Plaintiff's claims may be barred by the applicable statute of limitations.

RESERVATION OF OTHER DEFENSES

The Defendants reserve 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.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray the same be dismissed and denied and that Defendants have judgment for their costs, their reasonable attorney fees, and such other and further relief as the Court may deem proper.

DEFENDANTS REQUEST A TRIAL BY JURY OF ALL ISSUES CONTAINED
HEREIN WHICH ARE SO TRIABLE.

Respectfully submitted this ____ day of February, 2015.

s/

J. Andrew Nathan
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CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on DATE HERE, I mailed, postage paid, via US Mail the foregoing **DOCUMENT TITLE HERE** to the following, a courtesy copy was also emailed:

ATTORNEY INFORMATION HERE

s/ A. Elise Herding

A. Elise Herding, Paralegal