

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 2015-cv-891

MICHAEL YOUNG,

Plaintiff,

v.

CITY OF LOVELAND,
CHRISTOPHER BROWN and
DEREK STEPHENS

Defendants.

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

Defendants, **CITY OF LOVELAND, CHRISTOPHER BROWN and DEREK STEPHENS**, by their attorneys, **ERIC M. ZIPORIN and DJ GOLDFARB**, of the law firm of **SENTER GOLDFARB & RICE, LLC**, and pursuant to F.R.C.P. 8, 12, and 15, hereby submit the following Answer to Plaintiff's Complaint [Dkt. # 1].

ANSWER

1. Defendants admit the allegations in paragraphs 15, 16, 20, 32, 49, 52, 56, and 57 of Plaintiff's Complaint.
2. Defendants deny the allegations in paragraphs 3, 6, 25, 30, 34, 35, 36, 37, 40, 41, 42, 43, 44, 45, 46, 47, 48, 51, 62, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 81, 82, 83, 91, 92, 93, 94, 95, 96, 97, 98, 100, 101, 102, 103, 110, 111, 112, 113, 114, 115, 116,

117, 118, 119, 120, 122, 123, 124, 125, 126, 127, 128, 129, 130, 133, and 134 of Plaintiff's Complaint.

3. Defendants are without sufficient information and knowledge to form a belief as to the veracity of the allegations in paragraphs 11, 18, 22, 38, 39, 54, 57, 58, 61, 80, and 99 of Plaintiff's Complaint and, as a result, they are denied.

4. With respect to the allegations in paragraph 1 of Plaintiff's 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 Complaint, Defendants admit that Stephens and Brown arrested Plaintiff in the 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 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, violated any of his other constitutional rights, or committed any state tort violations during the course of his arrest.

7. With respect to the allegations in paragraph 7 of Plaintiff's 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 color of 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 Complaint.

9. With respect to the allegations in paragraph 12 of Plaintiff's 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.

10. With respect to the allegations in paragraphs 13, 14, 66, 87, and 104 of Plaintiff's Complaint, Defendants admit that Stephens and Brown were employed by the City of Loveland as police officers and under the color of state law at all times relevant to the incident which forms to basis for Plaintiff's Complaint. Defendants further admit F.R.C.P. 4(e) governs matters related to service of a complaint on an individual.

11. With respect to the allegations in paragraph 17 of Plaintiff's Complaint, Det. Patrick Musselman's report related to Plaintiff's April 25, 2014 arrest indicates that Plaintiff called 911 at approximately 1634 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.

12. With respect to the allegations contained in paragraph 19 of Plaintiff's Complaint, Defendants admit that Plaintiff and Alice Young spoke with Det. Musselman during the evening of April 25, 2014. Defendants admit that Det. 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.

13. With respect to the allegations in paragraph 21 of Plaintiff's Complaint, Defendants admit that Det. Musselman spoke with Ms. Young. She informed Det. Musselman that she would attempt to make arrangements for Plaintiff to go to the police department. Defendants deny the remaining allegations in this paragraph.

14. With respect to the allegations in paragraph 23 of Plaintiff's 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.

15. With respect to the allegations contained in paragraph 24 of Plaintiff's Complaint, Defendants admit Brown and Stephens conducted a high risk traffic stop once the car Plaintiff was riding in failed to stop. 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.

16. With respect to the allegations in paragraphs 26 and 50 of Plaintiff's Complaint, Brown and Stephens' reports speak for themselves. To the extent these allegations are inconsistent with the police reports, they are denied.

17. With respect to the allegations in paragraph 27 of Plaintiff's 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 comments

concerning any disabilities when they were issuing such instructions. Defendants deny the remaining allegations in this paragraph.

18. With respect to the allegations in paragraph 28 of Plaintiff's Complaint, Defendants admit Ms. Young attempted to exit the vehicle and that the officers ordered her to remain in the Volkswagen. Defendants deny the remaining allegations in this paragraph.

19. With respect to the allegations in paragraph 29 of Plaintiff's Complaint, Defendants admit Plaintiff told Brown and Stephens to "fuck off" before he turned around. Defendants further admit Brown and Stephen issued several orders to Plaintiff to turn around. Defendants deny the remaining allegations in this paragraph.

20. With respect to the allegation in paragraph 31 of Plaintiff's Complaint, Defendants admit Stephens handcuffed Plaintiff after Plaintiff complied with orders to turn around.

21. With respect to the allegations in paragraph 33 of Plaintiff's Complaint, Defendants admit that Stephens' search of Plaintiff revealed that he was unarmed. Defendants deny the remaining allegations in this paragraph.

22. With respect to the allegations in paragraph 53 of Plaintiff's 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.

23. With respect to the allegations in paragraph 55 of Plaintiff's Complaint, Defendants admit that Brown assisted Young 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.

24. With respect to the allegations contained in paragraph 59 of Plaintiff's 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.

25. With respect to the allegations in paragraph 60 of the Complaint, Defendants admit the District Attorney dismissed the criminal charges against Plaintiff related to his arrest. However, the SWAT team located several swords at Plaintiff's 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.

26. With respect to the allegations in paragraphs 64, 85, and 106, Defendants admit that Plaintiff has accurately quoted text from 42 U.S.C. § 1983.

27. With respect to the allegations in paragraphs 65, 86, and 107, 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.

28. Paragraphs 67, 68, 69, 88, 89, 90, 108, and 109 contain only legal argument. Defendants deny they used excessive force in connection with Plaintiff's arrest or that they arrested Plaintiff in retaliation for any statements he made during the course of his arrest. 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.

29. With respect to the allegations in paragraph 132 of Plaintiff's Complaint, Defendants admit they arrested Plaintiff on April 24, 2014. The remaining allegation is a legal conclusion concerning the duty Defendants owed to Plaintiff once he was under arrest and thus no response is necessary.

30. Defendants hereby incorporate their responses to the paragraphs that Plaintiff realleges in his Complaint at paragraphs 63, 84, 105, 121, 131, and the unnumbered paragraph immediately below the heading for Plaintiff's Fifth Claim for Relief on page 18 of the Complaint.

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

DEFENSES

1. Plaintiff's 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 claim.

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, preexisted his contact with any of the individual Defendants on April 25, 2014.

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

10. Plaintiff's state tort claims are barred and/or limited by the provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

11. Plaintiff's state tort claims may be barred by the applicable statute of limitations.

12. 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 Complaint, Defendants respectfully request the Court grant relief as follows:

A. Dismissing Plaintiff's Complaint with prejudice;

- B. Entering judgment in favor of Defendants and against Plaintiff for their attorney fees;
- C. Entering judgment in favor of Defendants and against Plaintiff for their costs; and
- D. Such other and further 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,

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of June, 2015, I electronically filed a true and exact copy of the above and foregoing **DEFENDANTS' ANSWER TO PLAINTIFF'S 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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