

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

**Kari L. Andrews,  
Brandon C. Bennett,  
Jeremy D. Boeckel,**

**Plaintiffs,**

**v.**

**Brian R. Thole, Aaron L. Biard, Tyrone  
D. Barze Jr., Brandon P. Kitzerow, Aaron  
C. Morrison, Jeff E. Kading, Steven J.  
Laux, and City of Minneapolis;**

**Defendants.**

**Court File No: 12-CV-2877 (ADM/SER)**

**ANSWER OF DEFENDANTS  
BRIAN R. THOLE, AARON L. BIARD,  
TYRONE D. BARZE JR., BRANDON  
P. KITZEROW, AARON C.  
MORRISON, JEFF E. KADING,  
STEVEN J. LAUX, AND THE CITY  
OF MINNEAPOLIS TO PLAINTIFFS’  
FIRST AMENDED COMPLAINT**

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For their Answer to Plaintiffs’ First Amended Complaint, Defendants Brian R. Thole, Aaron L. Biard, Tyrone D. Barze Jr., Brandon P. Kitzerow, Aaron C. Morrison, Jeff E. Kading, Steven J. Laux, and the City of Minneapolis (hereinafter “Defendants”) state as follows:

Unless specifically admitted, qualified or otherwise pled below, Defendants deny each and every allegation, matter and thing in Plaintiffs’ First Amended Complaint.

Defendants:

**THE PARTIES**

1. Are without sufficient information or knowledge to form an opinion as to the truth or falsity of the allegations in Paragraph 1 of the First Amended Complaint, and they are therefore denied.

2. Are without sufficient information or knowledge to form an opinion as to the truth or falsity of the allegations in Paragraph 2 of the First Amended Complaint, and they are therefore denied.

3. Are without sufficient information or knowledge to form an opinion as to the truth or falsity of the allegations in Paragraph 3 of the First Amended Complaint, and they are therefore denied.

4. Admit that Defendants Brian R. Thole, Aaron L. Biard, Tyrone D. Barze Jr., Brandon P. Kitzerow, Aaron C. Morrison, Jeff E. Kading and Steven J. Laux are adult males who at all times relevant to the allegations set forth in the First Amended Complaint were acting under the color of state law in their capacities as law enforcement officers employed by the City of Minneapolis, Minnesota; admit that Plaintiffs seek to sue the individual Defendants in their individual capacities.

5. Admit that Defendant City of Minneapolis is a political subdivision of the State of Minnesota; admit that Minneapolis employs the individual police officers referenced in this matter; admit that the City of Minneapolis is sued directly and also on the theories of respondeat superior or vicarious liability; deny that Plaintiffs' claims have any merit; admit that Minneapolis trains and supervises Minneapolis police officers; and admit that Minneapolis has policies regarding seizures and use of force by Minneapolis police officers.

### **JURISDICTION**

6. Admit that Plaintiffs bring this action for monetary relief under 42 U.S.C. §§ 1983 and 1988 and federal and state common law; admit that this Court has jurisdiction over this matter as set forth in Paragraph 6 of the First Amended Complaint.

### **GENERAL ALLEGATIONS**

7. Admit the allegations in Paragraph 7 of the First Amended Complaint.
8. Admit the allegations in Paragraph 8 of the First Amended Complaint.
9. Admit that some of the Defendants broke down Plaintiffs' front door when they arrived.
10. Admit that Defendants wore tactical gear at all times relevant to this action; deny the remaining allegations in Paragraph 10 of the First Amended Complaint.
11. Admit the allegations in Paragraph 11 of the First Amended Complaint.
12. Deny the allegations in Paragraph 12 of the First Amended Complaint.
13. Deny the allegations in Paragraph 13 of the First Amended Complaint.
14. Are without sufficient information or knowledge to form an opinion as to the truth or falsity of the allegations in Paragraph 14 of the First Amended Complaint, and they are therefore denied.

### **The Individual Defendants Used Excessive Force on Bennett**

15. Admit that Defendants placed Bennett in flex cuffs.
16. Deny the allegations in Paragraph 16 of the First Amended Complaint.
17. Deny the allegations in Paragraph 17 of the First Amended Complaint.

18. Are without sufficient information or knowledge to form an opinion as to the truth or falsity of the allegations in Paragraph 18 of the First Amended Complaint, and they are therefore denied.

19. Are without sufficient information or knowledge to form an opinion as to the truth or falsity of the allegations in Paragraph 19 of the First Amended Complaint, and they are therefore denied.

**The Individual Defendants Used Excessive Force on Boeckel**

20. Deny the allegations in Paragraph 20 of the First Amended Complaint.

21. Are without sufficient information or knowledge to form an opinion as to the truth or falsity of the allegations in Paragraph 21 of the First Amended Complaint, and they are therefore denied.

22. Deny the allegations in Paragraph 22 of the First Amended Complaint.

23. Deny the allegations in Paragraph 23 of the First Amended Complaint.

24. Are without sufficient information or knowledge to form an opinion as to the truth or falsity of the allegations in Paragraph 24 of the First Amended Complaint, and they are therefore denied; specifically deny that Defendants threw Plaintiff Boeckel to the floor.

25. Deny the allegations in Paragraph 25 of the First Amended Complaint.

26. Deny the allegations in Paragraph 26 of the First Amended Complaint.

27. Deny the allegations in Paragraph 27 of the First Amended Complaint.

28. Deny the allegations in Paragraph 28 of the First Amended Complaint.

29. Deny the allegations in Paragraph 29 of the First Amended Complaint.

30. Are without sufficient information or knowledge to form an opinion as to the truth or falsity of the allegations in Paragraph 30 of the First Amended Complaint, and they are therefore denied.

31. Are without sufficient information or knowledge to form an opinion as to the truth or falsity of the allegations in Paragraph 31 of the First Amended Complaint, and they are therefore denied.

32. Are without sufficient information or knowledge to form an opinion as to the truth or falsity of the allegations in Paragraph 32 of the First Amended Complaint, and they are therefore denied.

**The Individual Defendants Caused Andrews to Experience Emotional Distress**

33. Admit that Defendants placed Andrews in flex cuffs while they were executing the search warrant.

34. Deny the allegations in Paragraph 34 of the First Amended Complaint.

35. Deny the allegations in Paragraph 35 of the First Amended Complaint.

36. Deny the allegations in Paragraph 36 of the First Amended Complaint.

37. Are without sufficient information or knowledge to form an opinion as to the truth or falsity of the allegations in Paragraph 37 of the First Amended Complaint, and they are therefore denied.

38. Are without sufficient information or knowledge to form an opinion as to the truth or falsity of the allegations in Paragraph 38 of the First Amended Complaint, and they are therefore denied.

39. Are without sufficient information or knowledge to form an opinion as to the truth or falsity of the allegations in Paragraph 39 of the First Amended Complaint, and they are therefore denied.

40. Are without sufficient information or knowledge to form an opinion as to the truth or falsity of the allegations in Paragraph 40 of the First Amended Complaint, and they are therefore denied.

**COUNT I**  
**(Bennett and Boeckel)**  
**DEPRIVATION OF CIVIL RIGHTS IN VIOLATION OF 42 U.S.C. § 1983 AND**  
**THE FOURTH AND FOURTEENTH AMENDMENTS—EXCESSIVE FORCE**

41. State that the allegations in Paragraph 41 of the First Amended Complaint are not susceptible of responsive pleading; to the extent that they allege or imply illegal or unlawful conduct on the behalf of Defendants, they are denied.

42. Deny the allegations in Paragraph 42 of the First Amended Complaint.

43. Deny the allegations in Paragraph 43 of the First Amended Complaint.

44. Deny the allegations in Paragraph 44 of the First Amended Complaint.

45. Deny the allegations in Paragraph 45 of the First Amended Complaint.

46. Deny the allegations in Paragraph 46 of the First Amended Complaint.

47. Deny the allegations in Paragraph 47 of the First Amended Complaint.

**COUNT II**  
**(Bennett and Boeckel)**  
**BATTERY**

48. State that the allegations in Paragraph 48 of the First Amended Complaint

are not susceptible of responsive pleading; to the extent that they allege or imply illegal or unlawful conduct on the behalf of Defendants, they are denied.

49. Deny the allegations in Paragraph 49 of the First Amended Complaint.

50. Deny the allegations in Paragraph 50 of the First Amended Complaint.

**COUNT III**  
**(All Plaintiffs)**  
**INFLECTION OF EMOTIONAL DISTRESS**

51. State that the allegations in Paragraph 51 of the First Amended Complaint are not susceptible of responsive pleading; to the extent that they allege or imply illegal or unlawful conduct on the behalf of Defendants, they are denied.

52. Deny the allegations in Paragraph 52 of the First Amended Complaint.

53. Deny the allegations in Paragraph 53 of the First Amended Complaint.

54. Deny the allegations in Paragraph 54 of the First Amended Complaint.

55. Deny the allegations in Paragraph 55 of the First Amended Complaint.

**COUNT IV**  
**(Bennett and Boeckel)**  
**CIVIL CONSPIRACY TO VIOLATE CIVIL RIGHTS**

56. State that the allegations in Paragraph 56 of the First Amended Complaint are not susceptible of responsive pleading; to the extent that they allege or imply illegal or unlawful conduct on the behalf of Defendants, they are denied.

57. Deny the allegations in Paragraph 57 of the First Amended Complaint.

58. Deny the allegations in Paragraph 58 of the First Amended Complaint.

59. Deny the allegations in Paragraph 59 of the First Amended Complaint.

**JURY DEMAND**

60. Admit that Plaintiffs demand a jury trial; deny that Plaintiffs' claims have any merit.

**REQUEST FOR RELIEF**

Deny that Plaintiffs are entitled to any of the relief demanded.

**DEFENSES**

1. The First Amended Complaint fails to state a claim upon which relief can be granted.

2. At all times material to the First Amended Complaint, Defendants were governmental officials performing discretionary functions in the scope of their official duties and acting in objective good faith, with a reasonable basis to believe that the actions taken, if any, were lawful and justified, such that they have qualified immunity from liability in this action.

3. The use of force, if any, was privileged under the common law and/or under Minnesota Statutes, including Minn. Stat. § 609.06.

4. Plaintiffs' damages, if any, were caused, contributed to, or brought about by Plaintiffs' unlawful and illegal acts and/or the unlawful and illegal acts of those over whom Defendants exercise no right of control.

5. Any liability is limited by Minn. Stat. § 466.04.

6. Defendants deny that Plaintiffs have any right to attorneys' fees in this action.

7. The City of Minneapolis is immune from liability for punitive damages.



8. Plaintiffs have failed to take reasonable action to avoid or mitigate the alleged detriment or damages.

9. The City of Minneapolis is a municipality, and therefore is immune from liability for claims pursuant to 42 U.S.C. § 1983, which are based on the concept of *respondeat superior*.

10. Defendants allege that Plaintiffs are not entitled to punitive damages.

11. Defendants' actions were justified by Plaintiffs' actions.

12. Defendants allege that they are immune from liability in this action under the provisions of Minn. Stat. § 466.03, subd. 5.

13. Defendants allege that they are immune from liability in this action under the provisions of Minn. Stat. § 466.03, subd. 6.

14. Defendants allege that the acts upon which the First Amended Complaint is made were privileged, were based upon probable cause to believe that Plaintiffs had committed a criminal offense, were commanded or authorized by law, and were done in a reasonable and lawful manner under the circumstances, such that Defendants are immune from liability in this action.

15. Defendants allege that they have immunity in this action under the doctrine of official immunity and vicarious official immunity.

**WHEREFORE**, Defendants pray for an Order of this Court as follows:

- a. Dismissing Plaintiffs' First Amended Complaint on its merits and with prejudice.

- b. Awarding Defendants all costs and disbursements as allowed by law, including reasonable attorneys' fees.
- c. For such other relief as this Court deems just and equitable.

Dated: January 31, 2013

SUSAN L. SEGAL  
City Attorney  
By

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