

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Derryl M. Jenkins,

Plaintiff,

Court File No.: 10-CV-00279 JNE/JJK

v.

JOINT ANSWER OF DEFENDANTS

**Richard Walker, George Warzinik,
Michael Honeycutt, John Trangsrud,
Shawn Powell, Christopher Tuma,
and Scott Dahlquist, all in their
individual capacity as officers of the
Minneapolis Police Department, and
the City of Minneapolis,**

**JURY TRIAL DEMANDED UNDER
F.R.C.P. 38(b)**

Defendants.

Defendants, for their Joint Answers to Plaintiff's Complaint hereby state and allege as follows:

Except as admitted, or otherwise pled herein, Defendants deny each and every allegation, matter and thing in Plaintiff's Complaint and put Plaintiff to his strict proof thereof.

1. As to the allegations of paragraph 1 of the Complaint, Defendants state that the paragraph is not susceptible of responsive pleading. To the extent that it implies liability of any Defendant it is denied. Defendants admit that Plaintiff purports to state a claim for money damages against the individual Defendants and against the City of Minneapolis but deny that Plaintiff has stated a claim upon which relief can be granted.

2. Defendants admit the allegations of paragraph 2 of the Complaint.

3. Defendants deny the allegations of paragraph 3 of the Complaint.

4. Upon information and belief, Defendants admit the allegations of paragraph 4 of the Complaint.

5. Defendants admit the allegations of paragraph 5 of the Complaint.

6. Defendants admit the allegations of paragraph 6 of the Complaint.

7. Defendants admit the allegations of paragraph 7 of the Complaint.

8. Defendants admit the allegations of paragraph 8 of the Complaint.

9. Defendants admit the allegations of paragraph 9 of the Complaint.

10. Defendants admit the allegations of paragraph 10 of the Complaint.

11. Defendants admit the allegations of paragraph 11 of the Complaint.

12. Defendants admit the allegations of paragraph 12 of the Complaint.

13. As to the allegations of paragraph 13 of the Complaint, Defendants admit that Jenkins was driving a vehicle in the early morning hours of February 19, 2009, but are without knowledge or information sufficient to form a belief as to the remaining allegations of the paragraph.

14. As to the allegations of paragraph 14 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to which specific allegations are “disputed by Jenkins” but admit the remaining allegations of the paragraph.

15. As to the allegations of paragraph 15 of the Complaint, Defendants admit that Walker initiated a traffic stop and that Jenkins pulled his car over and that at some time during the stop he was on his cell phone and that some audio was captured by cell

phone. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of the paragraph.

16. Defendants admit the allegations of paragraph 16 of the Complaint.

17. Defendants admit the allegations of paragraph 17 of the Complaint.

18. Defendants deny the allegations of paragraph 18 of the Complaint.

19. Defendants admit the allegations of paragraph 19 of the Complaint.

20. As to the allegations of paragraph 20 of the Complaint, Defendants deny that Jenkins indicated that he had to get a license from his pocket and are without knowledge or information sufficient to form a belief as to the remaining allegations of the paragraph.

21. As to the allegations of paragraph 21 of the Complaint, Defendants admit that Walker took the cell phone and put it on top of the car. Defendants state that the allegations of paragraph 21 of the Complaint are misleading in failing to fully describe the incident.

22. As to the allegations of paragraph 22 of the Complaint, Defendants admit that Plaintiff got out of his vehicle and that Walker told him to stay in the car and that Walker eventually grabbed Jenkins and pulled his sweater over his head and the two began wrestling. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 22 of the Complaint.

23. Defendants deny the allegations of paragraph 23 of the Complaint.

24. Defendants admit the allegations of paragraph 24 of the Complaint.

25. Defendants deny the allegations of paragraph 25 of the Complaint.

26. Defendants deny the allegations of paragraph 26 of the Complaint.

27. Defendants admit the allegations of paragraph 27 of the Complaint.

28. As to the allegations of paragraph 28 of the Complaint, Defendants admit that Walker held Jenkins to the ground and that other officers arrived, but deny the remaining allegations of the paragraph.

29. As to the allegations of paragraph 29 of the Complaint, Defendants state that Officer Tuma's report speaks for itself. Defendants deny the remaining allegations of paragraph 29 of the Complaint.

30. As to the allegations of paragraph 30 of the Complaint, Defendants state that Officer Powell's report speaks for itself. Defendants deny the remaining allegations of paragraph 30 of the Complaint.

31. As to the allegations of paragraph 31 of the Complaint, Defendants state that Officer Trangsrud's report speaks for itself. Defendants deny the remaining allegations of paragraph 31 of the Complaint.

32. As to the allegations of paragraph 32 of the Complaint, Defendants state that Officer Honeycutt's report speaks for itself. Defendants deny the remaining allegations of paragraph 32 of the Complaint.

33. As to the allegations of paragraph 33 of the Complaint, Defendants state that Officer Warzinik's report speaks for itself. Defendants deny the remaining allegations of paragraph 33 of the Complaint.

34. As to the allegations of paragraph 34 of the Complaint, Defendants state that Officer Dahlquist's report speaks for itself. Defendants deny the remaining allegations of paragraph 34 of the Complaint.

35. As to the allegations of paragraph 35 of the Complaint, Defendants admit that the officers ultimately were able to handcuff Plaintiff. Defendants deny the remaining allegations of paragraph 35 of the Complaint.

36. As to the allegations of paragraph 36 of the Complaint, Defendants state that the reports, the videotapes and the photographs speak for themselves. Defendants deny the remaining allegations of the Complaint.

37. Defendants deny the allegations of paragraph 37 of the Complaint.

38. As to the allegations of paragraph 38 of the Complaint, Defendants admit that Sergeant Pickhardt arrived at the scene, reviewed video footage and filed a report. Defendants state that the report speaks for itself. Defendants deny the remaining allegations of paragraph 38 of the Complaint.

39. As to the allegations of paragraph 39 of the Complaint, Defendants state that Sergeant Wagner's report speaks for itself. Defendants admit the remaining allegations of paragraph 39 of the Complaint.

40. Defendants admit the allegations of paragraph 40 of the Complaint.

41. Upon information and belief Defendants admit the allegations of paragraph 41 of the Complaint.

42. Upon information and belief Defendants admit the allegations of paragraph 42 of the Complaint.

43. Upon information and beliefs Defendants admit the allegations of paragraph 43 of the Complaint.

44. As to the allegations of paragraph 44 of the Complaint, Defendants admit that officers exchanged emails or text messages that included the phrase “A good fight”, but deny the remaining allegations of the paragraph.

45. Defendants deny the allegations of paragraph 45 of the Complaint.

46. Defendants deny the allegations of paragraph 46 of the Complaint.

47. Defendants deny the allegations of paragraph 47 of the Complaint.

48. Defendants admit the allegations of paragraph 48 of the Complaint.

49. Defendants admit the allegations of paragraph 49 of the Complaint.

50. Defendants deny the allegations of paragraph 50 of the Complaint.

51. Defendants deny the allegations of paragraph 51 of the Complaint.

52. Defendants deny the allegations of paragraph 52 of the Complaint.

53. Defendants deny the allegations of paragraph 53 of the Complaint.

54. As to the allegations of paragraph 54 of the Complaint, Defendants admit that the officers were armed and that they saw no weapon on Jenkins. Defendants deny the remaining allegations of paragraph 54 of the Complaint.

55. Upon information and belief, Defendants admit the allegations of paragraph 55 of the Complaint.

56. Upon information and belief, Defendants admit the allegations of paragraph 56 of the Complaint.

57. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 57 of the Complaint relating to medical expenses. Defendants deny the remaining allegations of the paragraph.

58. Upon information and belief, Defendants admit that Plaintiff has received professional treatment for mental and emotional injury since the incident, but deny liability therefore.

59. As to the allegations of paragraph 59, Defendants admit that the memorandum attached to the Complaint as Exhibit A is a true and accurate copy of a memorandum and state that the memorandum speaks for itself. Defendants deny the remaining allegations of paragraph 59 of the Complaint.

60. Defendants deny the allegations of paragraph 60 of the Complaint.

61. As to the allegations of paragraph 61 of the Complaint, Defendants admit that the City began an investigation after the video became public. Defendants deny the remaining allegations of paragraph 61 of the Complaint.

62. Defendants deny the allegations of paragraph 62 of the Complaint.

63. Defendants deny the allegations of paragraph 63 of the Complaint.

64. Paragraph 64 of the Complaint is not susceptible of responsive pleading.

65. As to the allegations of paragraph 65 of the Complaint, Defendants restate their foregoing answers to the respective paragraphs.

66. As to the allegations of paragraph 66 of the Complaint, Defendants admit that the individual officers were acting under color of law at all times relevant to the Complaint. Defendants deny the remaining allegations of paragraph 66 of the Complaint.

67. Defendants deny the allegations of paragraph 67 of the Complaint.

68. Defendants deny the allegations of paragraph 68 of the Complaint.

69. As to the allegations of paragraph 69 of the Complaint, Defendants admit that punitive damages under federal law are not subject to the pleading standard set forth in Minn. Stat. § 549.209, but deny that punitive damages are applicable in this case.

70. Defendants deny the allegations of paragraph 70 of the Complaint.

71. As to the allegations of paragraph 71 of the Complaint, Defendants restate their foregoing answers to the respective paragraphs.

72. Defendants deny the allegations of paragraph 72 of the Complaint.

73. Defendants deny the allegations of paragraph 73 of the Complaint.

74. Defendants deny the allegations of paragraph 74 of the Complaint.

75. Defendants deny the allegations of paragraph 75 of the Complaint.

76. Defendants deny the allegations of paragraph 76 of the Complaint.

77. Defendants deny the allegations of paragraph 77 of the Complaint.

78. Defendants deny the allegations of paragraph 78 of the Complaint.

AFFIRMATIVE DEFENSES

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

2. The individual Defendants allege affirmatively that they have qualified immunity from any liability in this action.

3. Defendants allege affirmatively they have discretionary immunity and are immune from any liability in this action.

4. Defendants have statutory immunity from any liability in this action.

5. Defendants have immunity in this action under the doctrine of official immunity and vicarious official immunity.

6. Defendants allege affirmatively that the use of force, if any, was privileged under the common law and/or under Minnesota Statutes, including §609.06.

7. Defendants allege affirmatively that Plaintiff's damages, if any, were caused, contributed to, or brought about by Plaintiff's unlawful and illegal acts and/or the unlawful and illegal acts of those over whom these Answering Defendants exercise no right of control.

8. Service of process has not been effected on all named Defendants.

9. Defendants specifically deny that Plaintiff has any right to attorney's fees in this action.

10. Defendants allege affirmatively that Plaintiff has failed to take reasonable action to avoid or mitigate the alleged detriment or damages.

11. Defendant City of Minneapolis affirmatively alleges that the City of Minneapolis is a municipality, and therefore said Defendant is immune from liability for claims pursuant to 42 U.S.C. §1983, which are based upon the concept of *respondeat superior*.

12. Defendant City of Minneapolis alleges affirmatively that it is a municipality and therefore is immune from liability for punitive damages.

13. These Answering Defendants allege affirmatively that liability is limited by Minn. Stat. §§ 466.02, 466.04 and 549.023.

14. Defendants allege affirmatively that Plaintiff is not entitled to punitive damages.

15. Plaintiff has failed to properly make individual capacity claims.

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

- a. Dismissing the Plaintiff's Complaint on its merits and with prejudice.
- b. Awarding these Answering Defendants all of their costs and disbursements as allowed by law, including reasonable attorney's fees.
- c. For such other relief as this Court deems just and equitable

Dated: March 4, 2010

SUSAN L. SEGAL

City Attorney

By

s/James A. Moore

JAMES A. MOORE

Assistant City Attorney

Attorney Reg. No. 16883X

TRACEY N. FUSSY

Assistant City Attorney

Attorney Reg. No. 0311807

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**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Derryl M. Jenkins,

Plaintiff,

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CERTIFICATE OF SERVICE

**Richard Walker, George Warzinik,
Michael Honeycutt, John Trangsrud,
Shawn Powell, Christopher Tuma, and
Scott Dahlquist, all in their individual
capacity as officers of the Minneapolis
Police Department, and the City of
Minneapolis,**

Defendants.

I hereby certify that on March 4, 2010, I caused the following documents:

1. Joint Answer Defendants

to be electronically filed with the Clerk of Court through ECF, and that ECF will send an e-notice of the electronic filing to the following:

Paul J. Edlund, Esq.

Robert Bennett, Esq.

I further certify that I caused a copy of the foregoing documents and the notice of electronic filing to be mailed by first class mail, postage paid, to the following non-ECF participants:

N/A

Dated: March 4, 2010

SUSAN L. SEGAL

City Attorney

By

s/James A. Moore

JAMES A. MOORE

Assistant City Attorney

Attorney Reg. No. 16883X

TRACEY N. FUSSY

Assistant City Attorney

Attorney Reg. No. 0311807

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