

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

EMMA HOWLAND-BOLTON, SARA HABBO,
SHANNON MCEVILLY, MARIE REIMERS and
CLARISSA GRIMES

Plaintiffs,

v.

Case No. 2:21-cv-10751
Hon. Judith E. Levy

CITY OF DETROIT, a municipality
MAYOR MICHAEL DUGGAN, CHIEF JAMES CRAIG,
CMDR. DARIN SZILAGY, RODNEY CUSHINGBERRY,
UNKNOWN METROPOLITAN COMMAND OFFICERS,
UNKNOWN SRT OFFICERS AND UNKNOWN OFFICERS,
in their individual and official capacities,
Jointly and Severally,

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO 1st
AMENDED COMPLAINT AND JURY DEMAND**

Defendants City of Detroit, Mayor Michael Duggan, and Chief James Craig (collectively "Defendants")¹, by and through their attorneys, Clark Hill PLC, for their Answer and Affirmative Defenses to Plaintiffs' 1st Amended Complaint and Jury Demand, state as follows:

¹ At the time of filing this Answer, individually named Defendants Cmdr. Darin Szilagy and Rodney Cushingberry have not been properly served.

PARTIES

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph and accordingly leave Plaintiffs to their proofs.

2. Admitted.

3. Admitted.

JURISDICTION, AND VENUE

4. Admitted.

5. Defendants admit that Plaintiffs bring this action under the laws of the State of Michigan, the United States Constitution, and 42 U.S.C. 1983, but deny that they are liable to Plaintiffs for any claim asserted in this action. Defendants deny as stated any other allegation not specifically admitted.

6. Defendants admit that the events giving rise to this action occurred entirely in Wayne County, Michigan, but deny that they are liable to Plaintiffs and that Plaintiffs are entitled to the relief sought. Defendants deny as stated any other allegation not specifically admitted.

7. Defendants admit only that Plaintiffs seek more than \$75,000.00 in this lawsuit and that this Court has subject matter jurisdiction, but deny they are liable to Plaintiffs for this or any amount on any basis.

FACTUAL ALLEGATIONS

8. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph and accordingly leave Plaintiffs to their proofs.

9. Defendants deny the allegations as stated in this Paragraph as untrue.

10. Defendants deny the allegations as stated in this Paragraph as untrue.

11. Defendants admit only that Defendant Rodney Cushingberry was the ticketing officer with respect to Plaintiff Howland-Bolton. Defendants deny the remaining allegations as stated in this Paragraph as untrue.

12. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph and accordingly leave Plaintiffs to their proofs.

13. Defendants deny the allegations as stated in this Paragraph as untrue.

14. Defendants deny the allegations as stated in this Paragraph as untrue.

15. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph and accordingly leave Plaintiffs to their proofs.

16. Defendants deny the allegations as stated in this Paragraph as untrue.

17. Defendants deny the allegations as stated in this Paragraph as untrue.

18. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph and accordingly leave Plaintiffs to their proofs.

19. Defendants deny the allegations as stated in this Paragraph as untrue.

20. Defendants deny the allegations as stated in this Paragraph as untrue.

21. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph and accordingly leave Plaintiffs to their proofs.

22. Defendants deny the allegations as stated in this Paragraph as untrue.

23. Defendants deny the allegations as stated in this Paragraph as untrue.

24. Defendants admit only that Defendants advised the public they needed to be on the sidewalk. Defendants deny the remaining allegations as stated in this Paragraph as untrue.

25. This Paragraph attempts to set forth a legal conclusion, to which a response is not required. To the extent a response is required, Defendant deny as untrue any allegations as stated.

26. Defendants deny the allegations as stated in this Paragraph as untrue.

27. Defendants deny the allegations as stated in this Paragraph as untrue.

28. Defendants deny the allegations as stated in this Paragraph as untrue. By way of further answer, Plaintiff Howland-Bolton stipulated that there was probable cause for her arrest.

29. Defendants deny the allegations as stated in this Paragraph as untrue.

30. Defendants deny the allegations as stated in this Paragraph as untrue.

31. Defendants deny the allegations as stated in this Paragraph as untrue.

COUNT I
42 U.S.C. § 1983 & 1985 AGAINST INDIVIDUAL DEFENDANTS AND
UNKNOWN DEFENDANT OFFICERS

32. Defendants re-allege and incorporate, by reference, their answers and denials to Paragraphs 1 through 31, as if fully set forth herein.

33. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph and accordingly leave Plaintiffs to their proofs.

34. This Paragraph attempts to set forth a legal conclusion, to which a response is not required. To the extent a response is required, Defendants deny as untrue any allegations as stated.

35. This Paragraph attempts to set forth a legal conclusion, to which a response is not required. To the extent a response is required, Defendants deny as untrue any allegations as stated.

Wherefore, Defendants request that the Court dismiss with prejudice Count I of Plaintiff's Complaint in its entirety.

COUNT II
MUNICIPAL LIABILITY AGAINST DEFENDANT
CITY OF DETROIT UNDER 42 U.S.C. § 1983

36. Defendants re-allege and incorporate, by reference, their answers and denials to Paragraphs 1 through 35, as if fully set forth herein.

37. This Paragraph attempts to set forth a legal conclusion, to which a response is not required. To the extent a response is required, Defendants deny as untrue any allegations as stated.

38. Defendants deny the allegations as stated in this Paragraph as untrue.

39. This Paragraph attempts to set forth a legal conclusion, to which a response is not required. To the extent a response is required, Defendants deny as untrue any allegations as stated.

Wherefore, Defendants request that the Court dismiss with prejudice Count II of Plaintiff's Complaint in its entirety.

COUNT III
LIABILITY UNDER STATE LAW AGAINST INDIVIDUAL
DEFENDANTS AND UNKNOWN DEFENDANT OFFICERS

40. Defendants re-allege and incorporate, by reference, their answers and denials to Paragraphs 1 through 39, as if fully set forth herein.

41. Paragraph 41 contains allegations relating to Plaintiff's claims for "liability under state law" under Count III of the Complaint, over which the Court has declined to exercise supplemental jurisdiction and dismissed without prejudice. As such, no response is required.

42. Paragraph 42 contains allegations relating to Plaintiff's claims for "liability under state law" under Count III of the Complaint, over which the Court has declined to exercise supplemental jurisdiction and dismissed without prejudice. As such, no response is required.

43. Paragraph 43 contains allegations relating to Plaintiff's claims for "liability under state law" under Count III of the Complaint, over which the Court has declined to exercise supplemental jurisdiction and dismissed without prejudice. As such, no response is required.

44. Paragraph 44 contains allegations relating to Plaintiff's claims for "liability under state law" under Count III of the Complaint, over which the Court has declined to exercise supplemental jurisdiction and dismissed without prejudice. As such, no response is required.

45. Paragraph 45 contains allegations relating to Plaintiff's claims for "liability under state law" under Count III of the Complaint, over which the Court has declined to exercise supplemental jurisdiction and dismissed without prejudice. As such, no response is required.

46. Paragraph 46 contains allegations relating to Plaintiff's claims for "liability under state law" under Count III of the Complaint, over which the Court has declined to exercise supplemental jurisdiction and dismissed without prejudice. As such, no response is required.

47. Paragraph 47 contains allegations relating to Plaintiff's claims for "liability under state law" under Count III of the Complaint, over which the Court has declined to exercise supplemental jurisdiction and dismissed without prejudice . As such, no response is required.

48. Paragraph 48 contains allegations relating to Plaintiff's claims for "liability under state law" under Count III of the Complaint, over which the Court has declined to exercise supplemental jurisdiction and dismissed without prejudice. As such, no response is required.

49. Paragraph 49 contains allegations relating to Plaintiff's claims for "liability under state law" under Count III of the Complaint, over which the Court has declined to exercise supplemental jurisdiction and dismissed without prejudice. As such, no response is required.

Wherefore, the Court has declined to exercise supplemental jurisdiction over Plaintiff's claims for "liability under state law" under Count III of the Complaint and the Claim has been dismissed without prejudice. As such, no response is required.

COUNT IV
GROSS NEGLIGENCE UNDER STATE LAW

50. Defendants re-allege and incorporate, by reference, their answers and denials to Paragraphs 1 through 49, as if fully set forth in this Paragraph.

51. Paragraph 51 contains allegations relating to Plaintiff's claims for "gross negligence" under Count IV of the Complaint, over which the Court has declined to exercise supplemental jurisdiction and dismissed without prejudice. As such, no response is required.

52. Paragraph 52 contains allegations relating to Plaintiff's claims for "gross negligence" under Count IV of the Complaint, over which the Court has declined to exercise supplemental jurisdiction and dismissed without prejudice. As such, no response is required.

53. Paragraph 53 contains allegations relating to Plaintiff's claims for "gross negligence" under Count IV of the Complaint, over which the Court has declined to exercise supplemental jurisdiction and dismissed without prejudice. As such, no response is required.

54. Paragraph 54 contains allegations relating to Plaintiff's claims for "gross negligence" under Count IV of the Complaint, over which the Court has declined to exercise supplemental jurisdiction and dismissed without prejudice. As such, no response is required.

55. Paragraph 55 contains allegations relating to Plaintiff's claims for "gross negligence" under Count IV of the Complaint, over which the Court has declined to exercise supplemental jurisdiction and dismissed without prejudice. As such, no response is required.

Wherefore, the Court has declined to exercise supplemental jurisdiction over Plaintiff's claims for "gross negligence" under Count IV of the Complaint and the claim has been dismissed without prejudice. As such, no response is required.

COUNT V
FALSE ARREST AND FALSE IMPRISONMENT AGAINST INDIVIDUAL
DEFENDANTS AND OTHER UNKNOWN DEFENDANT OFFICERS

56. Defendants re-allege and incorporate, by reference, their answers and denials to Paragraphs 1 through 55, as if fully set forth in this Paragraph.

57. This Paragraph attempts to set forth a legal conclusion, to which a response is not required. To the extent a response is required, Defendants deny as untrue any allegations as stated.

58. Defendants deny the allegations as stated in this Paragraph as untrue.

59. Defendants deny the allegations as stated in this Paragraph as untrue.

60. Defendants deny the allegations as stated in this Paragraph as untrue.

61. Defendants deny the allegations as stated in this Paragraph as untrue.

62. This Paragraph attempts to set forth a legal conclusion, to which a response is not required. To the extent a response is required, Defendants deny as untrue any allegations as stated.

63. This Paragraph attempts to set forth a legal conclusion, to which a response is not required. To the extent a response is required, Defendants deny as untrue any allegations as stated.

64. This Paragraph attempts to set forth a legal conclusion, to which a response is not required. To the extent a response is required, Defendants deny as untrue any allegations as stated.

Wherefore, Defendants request that the Court dismiss with prejudice Count V of Plaintiff's Complaint in its entirety.

COUNT VI
MALICIOUS PROSECUTION AGAINST INDIVIDUAL DEFENDANTS

65. Defendants re-allege and incorporate, by reference, their answers and denials to Paragraphs 1 through 64, as if fully set forth herein.

66. Admitted.

67. This Paragraph attempts to set forth a legal conclusion, to which a response is not required. To the extent a response is required, Defendants deny as untrue any allegations as stated.

68. Defendants deny the allegations as stated in this Paragraph as untrue.

69. Defendants deny the allegations as stated in this Paragraph as untrue.

70. Defendants admit that all charges against Plaintiff were dropped. Defendants deny as untrue any remaining allegations as stated.

71. This Paragraph attempts to set forth a legal conclusion, to which a response is not required. To the extent a response is required, Defendants deny as untrue any allegations as stated.

Wherefore, Defendants request that this Court dismiss with prejudice Count VI of Plaintiff's Complaint in its entirety.

COUNT VII
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST
INDIVIDUAL DEFENDANTS AND UNKNOWN DEFENDANT OFFICERS

72. Defendants re-allege and incorporate, by reference, their answers and denials to Paragraphs 1 through 71, as if fully set forth herein.

73. Paragraph 73 contains allegations relating to Plaintiff's claims for "intentional infliction of emotional distress" under Count VII of the Complaint, over which the Court has declined to exercise supplemental jurisdiction and dismissed without prejudice. As such, no response is required.

74. Paragraph 74 contains allegations relating to Plaintiff's claims for "intentional infliction of emotional distress" under Count VII of the Complaint, over which the Court has declined to exercise supplemental jurisdiction and dismissed without prejudice. As such, no response is required.

75. Paragraph 75 contains allegations relating to Plaintiff's claims for "intentional infliction of emotional distress" under Count VII of the Complaint, over which the Court has declined to exercise supplemental jurisdiction and dismissed without prejudice. As such, no response is required.

Wherefore, the Court has declined to exercise supplemental jurisdiction over Count VII of Plaintiff's Complaint relating to Plaintiff's claims for "intentional infliction of emotional distress" and dismissed the Claim without prejudice.

WHEREFORE, Defendants respectfully requests that this Honorable Court dismiss Plaintiffs' Amended Complaint in its entirety, with prejudice, and award Defendants their costs and attorney fees and any other equitable relief deemed just and appropriate.

**DEFENDANTS' AFFIRMATIVE DEFENSES
TO PLAINTIFFS' 1ST AMENDED COMPLAINT**

Defendants City of Detroit, Mayor Michael Duggan, and Chief James Craig (collectively "Defendants")², by and through their attorneys, Clark Hill PLC, state for their Affirmative Defenses to Plaintiffs' Complaint, as follows:

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

² At the time of filing this Answer, individually named Defendants Cmdr. Darin Szilagy and Rodney Cushingberry have not been properly served.

2. Plaintiffs, collectively, have been misjoined in this case, as Plaintiffs cannot establish that their claims arise out of the same transaction, occurrence, or series of transactions or occurrences or that they share a common question of law or fact.

3. Plaintiffs' claims are barred by the application of qualified immunity, absolute immunity, or other immunity provided by federal law and state law.

4. One or more of Plaintiffs' claims is barred as Plaintiffs have failed to exhaust available judicial and administrative remedies.

5. Plaintiffs have suffered no irreparable harm and have a complete and adequate remedy at law for money damages, if any, and therefore Plaintiffs are not entitled to injunctive relief.

6. The acts upon which Plaintiffs' Complaint is based were based upon reasonable suspicion, probable cause, Plaintiffs' consent, or other proper legal standard to believe that Plaintiffs were subject to lawful seizure, 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.

7. The alleged use of force, if any, was privileged and reasonable under the common law, federal law, and statute statutes.

8. The actions of Defendants with respect to the Plaintiffs were taken in good faith and in response to the legitimate safety requirements of the situation and

not motivated by the Plaintiffs' alleged exercise of First Amendment rights. Defendants had justification for any of the actions complained of in Plaintiffs' Complaint.

9. The acts upon which Plaintiffs' Complaint were made were privileged, in that the acts were necessary to secure important governmental and public interests relative to public safety and welfare, there was a need for prompt action because of exigent circumstances, and Defendants attempted to minimize any risk of wrongful, erroneous or unnecessary deprivation of life, liberty, property, or any constitutional rights.

10. Defendants had justification for any of the actions complained of in Plaintiffs' Complaint.

11. Defendants' actions were justified by Plaintiffs' actions, or the actions of others over whom the Defendants had no control.

12. Individual Defendants acted in self-defense.

13. Plaintiffs' injuries or damages, if any, were caused, contributed to, or brought about by Plaintiffs' own intentional, negligent, unlawful, unreasonable, and/or illegal acts or the acts of others over whom Defendants exercise no right or dominion or control for whose actions Defendants are not legally responsible.

14. To the extent that Plaintiffs seek to impose liability based upon municipal or official capacity claims, Plaintiffs have failed to allege any facts in

support of a custom, policy, practice, or procedure which resulted in any constitutional violation claim by Plaintiffs.

15. Defendant City of Detroit alleges that the City of Detroit through its policy-making officials, has no historical policy of deliberate indifference to unlawful arrest, excessive force, curtailing First Amendment rights, First Amendment retaliation, or deprivation of due process by Detroit Police Department officers and that all training and policies fulfill or exceed constitutional requirements.

16. Except as to the amount of damages, there is no genuine issue of material fact and Defendants are entitled to judgment as a matter of law.

17. Plaintiffs failed to mitigate their damages, if any.

18. Plaintiffs assumed the risk of injury from their acts and omissions.

19. Plaintiffs are not entitled to punitive or exemplary damages for claims brought pursuant to 42 U.S.C. §1983 which are premised upon the official liability of any defendant.

20. Defendant City of Detroit is a municipality and therefore is not liable for punitive damages, if any, under applicable law.

21. Defendant City of Detroit is not vicariously liable for the acts of any individual defendants or liable for the acts of individual defendants pursuant to 42 U.S.C. §1983 under theories of derivative liability such as respondeat superior.

22. Plaintiffs' claims, including any claims for damages, are barred by Plaintiffs' own conduct, misrepresentations and/or malfeasance.

23. Some or all of Plaintiffs' allegations constitute misrepresentations to the Court in violation of Fed. R. Civ. P. 11.

24. Plaintiffs have initiated suit without first performing a reasonable investigation in order to determine whether there is plausible factual support for the allegations made; therefore, Defendants request that this Court tax reasonable and actual attorney's fees and costs as sanctions.

25. Defendants do not waive any of the affirmative defenses delineated in the court rules and expressly reserve their right to assert any of these defenses to the extent further factual investigation discloses their applicability.

26. Defendants reserve the right to add any additional affirmative defenses that may become known to them during the course of discovery or otherwise.

Dated: May 26, 2021

Respectfully submitted,

s/ Reginald M. Turner

CLARK HILL PLC

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*On behalf of Defendants City of Detroit,
Mayor Michael Duggan, and Chief James
Criag*

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2021, I electronically filed the foregoing paper using the Court's ECF system, which will send notification of such filing to all counsel of record.

s/Jacki L. Barnes _____

Jacki L. Barnes