

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

22-cv-03935 (KMK)

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MALIK FOGG,

Plaintiff,

-against-

**ANSWER**

THE CITY OF NEW ROCHELLE, NEW  
ROCHELLE POLICE DEPARTMENT,  
JOSEPH SCHALLER, Individually and as  
Former Commissioner of the New Rochelle  
Police Department, MICHAEL VACCARO,  
Individually and as a Police Officer, MATTHEW  
VELASCO, Individually and as a Police Officer,  
SCOTT WALLACH, individually and as a  
Police Officer, MELVIN MOLINA, Individually  
And as a Police Officer,

Defendants.

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Defendants, City of New Rochelle, s/h/a The City of New Rochelle and the New Rochelle Police Department, Joseph Schaller, Matthew Velasco, Scott Wallach and Melvin Molina, by their attorneys, MURTAGH, COSSU, VENDITTI & CASTRO-BLANCO, LLP, as an answer to the complaint filed May 14, 2022 state:

1. Answering defendants aver that the allegations of paragraphs 1, 2 and 3 of the complaint consist of legal conclusions as to which they need not plead responsively and, otherwise, deny the allegations of said paragraphs.

2. Answering defendants aver that they need not plead responsively to the allegations of paragraph 4 of the complaint which is merely a jury demand.

3. Answering defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the complaint.

4. Answering defendants admit the allegations of paragraph 6 of the complaint.

5. Answering defendants admit that the New Rochelle Police Department is a department of the City of New Rochelle and that the individual answering defendants were employees of the City of New Rochelle and aver that, to the extent that the allegations of paragraph 7 of the complaint consist of plaintiff's characterization of the New Rochelle Police Department, they need not plead responsively to such self-serving characterization.

6. Answering defendants admit that defendants Vaccaro, Velasco, Wallach and Molina were employees of the City of New Rochelle, aver that they need not plead responsively to the allegations of paragraphs 8, 9, 10 and 11 of the complaint to the extent that same consist of legal conclusions and, otherwise, deny the allegations of said paragraphs.

7. Answering defendants deny the allegations of paragraph 12 of the complaint.

8. Answering defendants admit that defendant Schaller was an employee of the City of New Rochelle, aver that they need not plead responsively to the allegations of paragraph 13 of the complaint to the extent that same consist of legal conclusions and, otherwise, deny the allegations of said paragraph.

9. Answering defendants deny the allegations of paragraph 14 of the complaint.

10. Answering defendants deny the allegations of paragraph 15 of the complaint.

11. Answering defendants deny knowledge of what the plaintiff "observed" as alleged in paragraph 16 and, otherwise, deny knowledge or information sufficient to form a belief as to the truth of the allegations of said.

12. Answering defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17 of the complaint.

13. Answering defendants deny knowledge of what the plaintiff “concerned” about as alleged in paragraph 18 and, otherwise, deny knowledge or information sufficient to form a belief as to the truth of the allegations of said.

14. Answering defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 19, 20, 21 and 22 of the complaint.

15. Answering defendants deny the allegations of paragraphs 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33 of the complaint.

16. Answering defendants deny the allegations of paragraph 34 of the complaint.

17. Answering defendants aver that the charges against plaintiff as a result of the events of the date in question are a matter of public record and refer to such records for their content and, otherwise, deny the allegations of paragraph 35 of the complaint.

18. Answering defendants refer to the alleged notice of claim filed by the plaintiff for its content and legal impost, if any and, otherwise, admit the allegations of paragraph 36 of the complaint.

19. Answering defendants deny the allegations of paragraphs 37 and 38 of the complaint.

20. As to the allegations of paragraph 39, answering defendants repeat and reallege each and every response set forth above as if more fully set forth herein.

21. As to the allegations of paragraph 40, answering defendants aver that to the extent the allegations of said paragraph consist of mere legal conclusions, they need not plead responsively to same and, otherwise, deny the allegations of said paragraph.

22. Answering defendant deny the allegations of paragraphs 41, 42, 43, 44, 45 and 46 of the complaint.

23. As to the allegations of paragraph 47, answering defendants repeat and reallege each and every response set forth above as if more fully set forth herein.

24. As to the allegations of paragraph 48, answering defendants aver that to the extent the allegations of said paragraph consist of mere legal conclusions, they need not plead responsively to same and, otherwise, deny the allegations of said paragraph.

25. Answering defendant deny the allegations of paragraphs 49, 50, 51 and 52 of the complaint.

26. Answering defendants deny the allegations of paragraph 53 of the complaint.

27. Answering defendants deny the allegations of paragraph 54 of the complaint.

28. Answering defendants deny the allegations of paragraphs 55, 56, 57 and 58 of the complaint.

29. As to the allegations of paragraph 59, answering defendants repeat and reallege each and every response set forth above as if more fully set forth herein.

30. Answering defendants deny the allegations of paragraphs 60, 61, 62, 63 and 64 of the complaint.

#### **FIRST AFFIRMATIVE DEFENSE**

31. Upon the information and belief, plaintiff's economic loss, if any, was or will be replaced or indemnified, in whole or in part, from collateral sources, and the answering defendants are entitled to have this Honorable Court consider the same in determining such special damages.

#### **SECOND AFFIRMATIVE DEFENSE**

32. Whatever injuries plaintiff may have sustained at the time and place alleged in the Complaint were caused in whole or in part were contributed to by the culpable and want of care on

the part of the plaintiff and without any negligence or fault or want of care on the part of the answering defendants.

**THIRD AFFIRMATIVE DEFENSE**

33. The plaintiff failed and/or refused to take reasonable steps to avoid, minimize and/or mitigate their injuries and/or damages.

**FOURTH AFFIRMATIVE DEFENSE**

34. The plaintiff has failed to allege any basis and no basis exists in fact for the award of punitive damages in this case.

**FIFTH AFFIRMATIVE DEFENSE**

35. At all times relevant hereto answering defendants acted in good faith and took appropriate action in the discharge of their official duties.

**SIXTH AFFIRMATIVE DEFENSE**

36. Answering defendants at all relevant times acted in accordance with all laws, rules and regulations and pursuant to their statutory authority.

**SEVENTH AFFIRMATIVE DEFENSE**

37. The answering defendants' actions are privileged and are neither susceptible, nor vulnerable, to legal action by this plaintiff pursuant to the doctrines of absolute immunity and qualified immunity.

**EIGHTH AFFIRMATIVE DEFENSE**

38. Joseph Schaller, Matthew Velasco, Scott Wallach and Melvin Molina, to the extent they are sued in their individual capacities, are entitled to qualified immunity since at all times they acted in good faith in the discharge of their job duties and their conduct did not violate any clearly established constitutional or statutory rights which a reasonable person would have known.

**NINTH AFFIRMATIVE DEFENSE**

39. Any conduct which is alleged by plaintiff is de minimis and as such the allegations fail to establish a claim under 42 U.S.C. § 1983.

**TENTH AFFIRMATIVE DEFENSE**

40. Any harm which allegedly came to plaintiff was a direct and proximate result of plaintiff's own actions.

**ELEVENTH AFFIRMATIVE DEFENSE**

41. Any force used by the defendants was reasonable, lawful and/or authorized under the circumstances.

**TWELFTH AFFIRMATIVE DEFENSE**

42. Answering defendants had probable cause to arrest plaintiff.

**THIRTEENTH AFFIRMATIVE DEFENSE**

43. The answering defendants reserve their rights to assert any and all additional defenses as may be revealed by further investigation and discovery.

**REQUEST FOR ATTORNEYS' FEES AND COSTS**

44. Plaintiff's action is frivolous and plaintiff and/or their attorneys should have been aware that the action was frivolous at the time it was filed. Accordingly, pursuant to Rule 11 of the Federal Rules of Civil Procedure, the answering defendant is entitled to receive reasonable attorneys' fees and costs incurred in this action.

**WHEREFORE**, answering defendants request an order dismissing the complaint in its entirety and granting to them such other and further relief as to the Court seems just and proper.

Dated: White Plains, NY  
September 8, 2022

MURTAGH, COSSU, VENDITTI &  
CASTRO-BLANCO, LLP

By: \_\_\_\_\_

John M. Murtagh (JM5815)

Attorneys for defendants City of New  
Rochelle, New Rochelle Police Department,

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