

the allegations in paragraph “5” of the Complaint.

6. Admits the truth of the allegations set forth in paragraph “6” of the Complaint.

7. Admits the truth of the allegations set forth in paragraph “7” of the Complaint, but alleges that the New Rochelle Police Department is not an entity capable of suing or being sued in a civil action, and further alleges that the individual defendants named herein are, or were, employed by the City of New Rochelle, not the New Rochelle Police Department.

8. Denies the truth of the allegations set forth in paragraph “8” of the Complaint, except admits that Officer Vaccaro was employed by the City of New Rochelle as a member of the New Rochelle Police Department and at all relevant times was acting under color of state law and within the scope of his employment and duties as a New Rochelle police officer, and respectfully refers all questions of law to the Court.

9. Denies the truth of the allegations set forth in paragraph “9” of the Complaint, except admits that Officer Matthew Velasco was employed by the City of New Rochelle as a member of the New Rochelle Police Department and at all relevant times was acting under color of state law and within the scope of his employment and duties as a New Rochelle police officer, and respectfully refers all questions of law to the Court.

10. Denies the truth of the allegations set forth in paragraph “10” of the Complaint, except admits that Officer Scott Wallach was employed by the City of New Rochelle as a member of the New Rochelle Police Department and at all relevant times was acting under color of state law and within the scope of his employment and duties as a New Rochelle police officer, and respectfully refers all questions of law to the Court.

11. Denies the truth of the allegations set forth in paragraph “11” of the Complaint, except admits that Sergeant Melvin Molina was employed by the City of New Rochelle as a

member of the New Rochelle Police Department and at all relevant times was acting under color of state law and within the scope of his employment and duties as a New Rochelle police officer, and respectfully refers all questions of law to the Court.

12. Denies the truth of the allegations set forth in paragraph “12” of the Complaint, and respectfully refers all questions of law to the Court.

13. Denies the truth of the allegations set forth in paragraph “13” of the Complaint, except admits that Joseph Schaller was formerly, and as of the date of the incident in question in this action, the Commissioner of the New Rochelle Police Department, and respectfully refers all questions of law to the Court.

14. Denies the truth of the allegations set forth in paragraph “14” of the Complaint, and respectfully refers all questions of law to the Court.

STATEMENT OF FACTS

15. Denies the truth of the allegations set forth in paragraph “15” of the Complaint, except admits that on February 15, 2021, at about 12:40 p.m., plaintiff had followed his mother’s car to a gas station in New Rochelle.

16. Denies the truth of the allegations set forth in paragraph “16” of the Complaint, except admits that defendant Vaccaro was sitting in his own vehicle, a white Acura, holding up his phone.

17. Denies the truth of the allegations set forth in paragraph “17” of the Complaint, except admits that defendant Vaccaro was dressed in civilian clothing.

18. Denies the truth of the allegations set forth in paragraph “18” of the Complaint.

19. Denies the truth of the allegations set forth in paragraph “19” of the Complaint, except admits that plaintiff charged towards defendant Vaccaro’s car.

20. Admits the truth of the allegations set forth in paragraph “20” of the Complaint.

21. Admits the truth of the allegations set forth in paragraph “21” of the Complaint, and alleges further that in following defendant Vaccaro’s car, plaintiff drove recklessly and dangerously, and violated multiple provisions of the New York Vehicle and Traffic Law, placing defendant Vaccaro and members of the public at risk.

22. Denies the truth of the allegations set forth in paragraph “22” of the Complaint, except admits that defendant Vaccaro stopped his car in the vicinity of 635 Main Street, and that plaintiff exited his own car and approached Vaccaro’s car.

23. Denies the truth of the allegations set forth in paragraph “23” of the Complaint, except admits that Officer Matthew Velasco arrived in a marked police vehicle in police uniform and lawfully attempted to move plaintiff away from defendant Vaccaro’s automobile.

24. Denies the truth of the allegations set forth in paragraph “24” of the Complaint.

25. Denies the truth of the allegations in paragraph “25” of the Complaint, except admits that plaintiff was acting in a disorderly manner, and further alleges that while plaintiff was repeatedly failed to comply with lawful orders given by Officer Velasco, defendant Vaccaro, who verbally identified himself as an off-duty police officer, approached to provide assistance to Officer Velasco.

26. Denies the truth of the allegations set forth in paragraph “26” of the Complaint.

27. Denies the truth of the allegations set forth in paragraph “27” of the Complaint.

28. Denies the truth of the allegations set forth in paragraph “28” of the Complaint, except admits that at a certain point in time, defendant Scott Wallach and defendant Melvin Molina, both members of the New Rochelle Police Department, arrived at the scene.

29. Denies the truth of the allegations set forth in paragraph “29” of the Complaint.

30. Denies the truth of the allegations set forth in paragraph “30” of the Complaint.

31. Denies the truth of the allegations set forth in paragraph “31” of the Complaint, except admits that defendant Wallach pointed a Taser at plaintiff while giving him lawful orders to get down on the ground, and further alleges that pointing a Taser at plaintiff was a reasonable and necessary use of force in the circumstances.

32. Denies the truth of the allegations set forth in paragraph “32” of the Complaint, except admits that given plaintiff’s failure to comply with the lawful police order to get on the ground, defendant Vaccaro appropriately provided assistance to Officer Velasco in bringing plaintiff into custody by employing the minimum amount of force reasonable and necessary in the circumstances.

33. Denies the truth of the allegations set forth in paragraph “33” of the Complaint, and further alleges that defendant Vaccaro’s use of force was reasonable and necessary in the circumstances.

34. Admits the truth of the allegations set forth in paragraph “34” of the Complaint.

35. Admits the truth of the allegations set forth in paragraph “35” of the Complaint, except alleges that plaintiff was charged with a violation of Section 1128A of the Vehicle and Traffic Law (moved from lane unsafely), not with a violation of Section 1128B of the Vehicle and Traffic Law.

36. Admits the truth of the allegations set forth in paragraph “36” of the Complaint.

37. Denies the truth of the allegations set forth in paragraph “37” of the Complaint.

38. Denies the truth of the allegations set forth in paragraph “38” of the Complaint.

AS AND FOR A RESPONSE TO THE FIRST CAUSE OF ACTION

39. Repeats and realleges each response to paragraphs 1 through 38 above as if set

forth in full herein.

40. Denies the truth of the allegations set forth in paragraph “40” of the Complaint, except admits that defendant Vaccaro was acting under color of state law and within the scope of his employment as a member of the New Rochelle Police Department, and respectfully refers all questions of law to the Court.

41. Denies the truth of the allegations set forth in paragraph “41” of the Complaint.

42. Denies the truth of the allegations set forth in paragraph “42” of the Complaint.

43. Denies the truth of the allegations set forth in paragraph “43” of the Complaint.

44. Denies the truth of the allegations set forth in paragraph “44” of the Complaint.

45. Denies the truth of the allegations set forth in paragraph “45” of the Complaint.

46. Denies the truth of the allegations set forth in paragraph “46” of the Complaint.

AS AND FOR A RESPONSE TO THE SECOND CAUSE OF ACTION

47. Repeats and realleges each response to paragraphs 1 through 46 above as if set forth in full herein.

48. Denies the truth of the allegations set forth in paragraph “48” of the Complaint, except admits that on February 15, 2021, defendant Schaller was the Commissioner of the New Rochelle Police Department, and respectfully refers all questions of law to the Court.

49. Denies the truth of the allegations set forth in paragraph “49” of the Complaint.

50. Denies the truth of the allegations set forth in paragraph “50” of the Complaint.

51. Denies the truth of the allegations set forth in paragraph “51” of the Complaint.

52. Denies the truth of the allegations set forth in paragraph “52” of the Complaint.

53. Denies the truth of the allegations set forth in paragraph “53” of the Complaint, and respectfully refers all questions of law to the Court.

54. Denies the truth of the allegations set forth in paragraph “54” of the Complaint, and respectfully refers all questions of law to the Court.

55. Denies the truth of the allegations set forth in paragraph “55” of the Complaint.

56. Denies the truth of the allegations set forth in paragraph “56” of the Complaint.

57. Denies the truth of the allegations set forth in paragraph “57” of the Complaint.

58. Denies the truth of the allegations set forth in paragraph “58” of the Complaint.

AS AND FOR A RESPONSE TO THE THIRD CAUSE OF ACTION

59. Repeats and realleges each response to paragraphs 1 through 58 above as if set forth in full herein.

60. Denies the truth of the allegations set forth in paragraph “60” of the Complaint, and further alleges that any force employed by defendant Vaccaro was reasonable and necessary in the circumstances.

61. Denies the truth of the allegations set forth in paragraph “61” of the Complaint, and further alleges that any force employed by defendant Vaccaro was reasonable and necessary in the circumstances.

62. Denies the truth of the allegations set forth in paragraph “62” of the Complaint.

63. Denies the truth of the allegations set forth in paragraph “63” of the Complaint.

64. Denies the truth of the allegations set forth in paragraph “64” of the Complaint, and further alleges that any force employed by defendant Vaccaro was reasonable and necessary in the circumstances.

AFFIRMATIVE DEFENSES

As and for a First Affirmative Defense

65. The Complaint fails to state a claim upon which relief may be granted as against

defendant Vaccaro.

As and for a Second Affirmative Defense

66. To the extent defendant Vaccaro used force against plaintiff, the amount of force employed was objectively reasonable under the circumstances.

As and for a Third Affirmative Defense

67. Defendant Vaccaro is entitled to qualified immunity.

As and for a Fourth Affirmative Defense

68. Any injuries alleged to have been sustained by Plaintiff resulted from the culpable or negligent conduct of plaintiff and were not the proximate result of any act of defendant Vaccaro or any of the other individual defendants.

As and for a Fifth Affirmative Defense

69. Defendant Vaccaro has not violated any rights, privileges or immunities of Plaintiff under the Constitution or laws of the United States, the State of New York, or any political subdivisions thereof.

As and for a Sixth Affirmative Defense

70. There was probable cause or arguable probable cause for plaintiff's arrest, detention, and/or prosecution.

As and for a Seventh Affirmative Defense

71. The liability of defendant Vaccaro, if any, to plaintiff is limited to his equitable share to be determined in accordance with the relative culpability of all parties contributing to the alleged losses sustained.

WHEREFORE, Defendant Michael Vaccaro demands judgment:

1. Dismissing the Complaint in its entirety and with prejudice as against defendant

Michael Vaccaro;

2. Awarding defendant Michael Vaccaro the costs, disbursements, expenses and reasonable attorney's fees incurred in defending this action and such other relief as this Court may deem just and proper; and
3. Such other, different or further relief as the Court in its discretion may deem just and proper.

Dated: White Plains, New York
September 9, 2022

Respectfully submitted,

THE QUINN LAW FIRM, PLLC
Attorneys for Michael Vaccaro



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To: All Counsel (by ECF)