

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SEPTIMUS SCOTT,

Plaintiff,

v.

THE CITY OF ROCHESTER, a municipal entity,
POLICE OFFICER JEFFREY KESTER, IBM # 2230,
POLICE OFFICER DESTINY DETERVILLE, IBM
2224, LIEUTENANT NASER ZENELOVIC, and
Police Officers “JOHN DOES 1-10” (names and
number of whom are unknown at present), and other
unidentified members of the Rochester Police
Department,

ANSWER TO THE AMENDED
COMPLAINT BY DEFENDANTS
KESTER, DETERVILLE and
ZENELOVIC

Case No. 17-cv-6359

Jury Trial Demanded

Defendants.

Defendants Kester, Deterville and Zenelovic, by their attorney Timothy R. Curtin,
Corporation Counsel, Patrick Beath, Esq., of Counsel, answer the Amended Complaint as follows:

1. Admit the allegations contained in paragraphs 17, 18, 19, 58, 85, 128, 134 and 255 of the Amended Complaint.
2. Deny the allegations contained in paragraphs 1, 3, 5, 6, 7, 8, 9, 10, 23, 24, 26, 33, 34, 36, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, 55, 56, 57, 59, 63, 68, 69, 70, 71, 73, 74, 80, 81, 82, 83, 84, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 130, 131, 132,¹ 135,² 137, 138, 139, 140, 142, 143, 144, 145, 146, 147, 148, 150, 151, 152, 153, 154, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 173, 175, 176, 177, 178, 180, 320,³ 182, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204,

¹ Paragraph 132 makes reference to a Plaintiff Mr. Barrett. Insofar as this paragraph refers to a “Mr. Barrett,” defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning Mr. Barrett.

² Paragraph 135 also makes reference to a Plaintiff Mr. Barrett. Defendants lack knowledge or information sufficient to form a belief as to the truth of any allegations concerning Mr. Barrett.

³ A paragraph numbered “320” appears between paragraphs 180 and 181 in the Amended Complaint.

205, 206, 207, 208, 209, 210, 212, 213, 214, 215, 216, 217, 218, 220, 221, 222, 224, 225, 227, 229, 230, 231, 232, 233, 234, 235, 236, 237, 239, 240, 241, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 256, 257, 261, 264, 267, 268, 270, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 304, 295,⁴ 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325,⁵ 326,⁶ 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 340, 341, 342, 343, 344, 345, 346, 347, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361 and 362 of the Amended Complaint

3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2, 16, 21, 22, 27, 28, 29, 30, 31, 32, 60, 61, 62, 64, 65, 66, 67, 75, 76, 77, 78, 79, 101, 102, 103, 104, 129, 133, 174, 192, 211, 219, 223, 226, 228, 238, 258, 259, 260, 262, 263, 265, 266, 269, 271, 346, 348, 349, 350 and 351 of the Amended Complaint.

4. Deny the allegations contained in paragraphs 11, 12, 13, 14, 15, 20, 116, 127, 136, 141, 149, 155, 172, 179, 181, 303 and 339 of the Amended Complaint, except admit that plaintiff purports to proceed as stated therein.

5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first unnumbered paragraph of the Amended Complaint following the heading "PRELIMINARY STATEMENT", except admit that the quoted language therein appears in the publication cited.

6. Deny the allegations set forth in paragraph 4 of the Amended Complaint, except admit that plaintiff was stopped by police.

⁴ A second paragraph 295 appears in the Amended Complaint between paragraphs 304 and 305.

⁵ Paragraph 325, which includes names of defendants who do not appear on the caption or otherwise throughout the Amended Complaint, appears to have drawn wholesale from another pleading unrelated to the instant matter.

⁶ Paragraph 326, which includes names of defendants who do not appear on the caption or otherwise throughout the Amended Complaint, appears to have drawn wholesale from another pleading unrelated to the instant matter.

7. Deny the allegations set forth in paragraph 25 of the Amended Complaint, except admit that plaintiff's purported Notice of Claim has not been paid, settled or adjusted.

8. Deny the allegations set forth in paragraph 35 of the Amended Complaint, except admit that plaintiff was pulled over for driving the wrong direction on Shuart Street.

9. Deny the allegations set forth in paragraph 37 of the Amended Complaint, except admit that Lt. Zenelovic asked plaintiff out of his vehicle and walked him to the rear of an RPD vehicle.

10. Deny the allegations set forth in paragraph 38 of the Amended Complaint, except admit that Officer Deterville spoke with plaintiff.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 39 of the Amended Complaint.

12. Deny the allegations set forth in paragraph 41 of the Amended Complaint, except admit that Mr. Scott took field sobriety tests.

13. Deny the allegations set forth in paragraph 52 of the Amended Complaint, except admit that plaintiff was handcuffed.

14. Deny the allegations set forth in paragraph 72 of the Amended Complaint, except admit that plaintiff was transported to jail.

15. Paragraph 183 of the Amended Complaint sets forth conclusions of law, rather than averments of fact, to which no response is required.

FIRST AFFIRMATIVE DEFENSE

16. The Amended Complaint fails to state a claim for relief.

SECOND AFFIRMATIVE DEFENSE

17. Any use of force by defendants was objectively reasonable and justified under New York State and Federal Law.

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