

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:18-cv-02645-STV

JOHN VAZQUEZ,

Plaintiff,

v.

FORREST ANDERSEN, Timnath Police Officer, in his individual capacity, and
ANDREW TOPE, Timnath Police Officer, in his individual capacity,

Defendants.

**DEFENDANT ANDREW TOPE’S ANSWER, AFFIRMATIVE DEFENSES, AND
JURY DEMAND**

Defendant Andrew Tope (“Defendant Tope”) by and through his counsel, Davis Graham
& Stubbs LLP, answers the Complaint of Plaintiff John Vazquez (“Plaintiff”), filed October 16,
2018 (“Complaint”), as follows:

I. INTRODUCTION

1. Admitted.
2. Denied.
3. Denied.
4. Denied.
5. Denied.
6. Denied.

II. JURISDICTION AND VENUE

7. Admitted.

8. Defendant Tope admits he is not currently contesting jurisdiction in this matter. Defendant Tope denies any allegations that are inconsistent with or supplemental to this admission.

9. Denied.

10. Denied.

11. Defendant Tope admits he is not currently contesting venue in this matter. Defendant Tope denies any allegations that are inconsistent with or supplemental to this admission.

III. PARTIES

12. Defendant Tope is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 12, and therefore denies the allegations.

13. Defendant Tope admits that Defendant Forrest Andersen is a natural person and at all times relevant to this Complaint was a police officer employed by the Town of Timnath, Colorado. Defendant Tope further admits that Defendant Andersen is named as a Defendant in his individual capacity. Defendant Tope denies the remaining allegations in Paragraph 13.

14. Defendant Tope admits that he is a natural person and at all times relevant to this Complaint was a police officer employed by the Town of Timnath, Colorado. Defendant Tope further admits that he is named as a Defendant in his individual capacity. Defendant Tope denies the remaining allegations in Paragraph 14.

IV. FACTUAL ALLEGATIONS

15. Defendant Tope is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 15, and therefore denies the allegations.

16. Denied.

17. Defendant Tope is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 17, and therefore denies the allegations.

18. Defendant Tope is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 18, and therefore denies the allegations.

19. Defendant Tope admits that he pulled his marked patrol car behind Plaintiff on East Harmony Road and turned on his overhead rear lights. Defendant Tope further admits that Plaintiff began yelling at him and refused to speak with him after he asked Plaintiff to do so, and as a result, he had to ask Plaintiff a second time to stop and talk with him. Defendant Tope admits that after his second request, he engaged Plaintiff on the side of East Harmony Road as part of a welfare check. Defendant Tope admits that Defendant Andersen arrived at the location where he stopped Plaintiff on East Harmony Road. Defendant Tope denies that Defendant Andersen “jumped out of his car and took over the encounter.” Defendant Tope denies any allegations that are inconsistent with or supplemental to these admissions.

20. Defendant Tope admits that he participated in a welfare check of Plaintiff, which included asking pertinent questions of Plaintiff. Defendant Tope further admits that Plaintiff was being verbally abusive. Defendant Tope is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 20, and therefore denies the allegations.

21. Defendant Tope admits that Plaintiff called Defendant Andersen a bully and that Defendant Andersen requested Plaintiff’s identification. Defendant Tope further admits that

Plaintiff was being verbally abusive and aggressive. Defendant Tope denies the remaining allegations in Paragraph 21.

22. Defendant Tope admits that Defendant Andersen placed handcuffs on Plaintiff because he was acting aggressively and erratically, and he posed a danger to himself as well as to Defendants Andersen and Tope. Defendant Tope denies the remaining allegations in Paragraph 22.

23. Denied.

24. Defendant Tope is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 24, and therefore denies the allegations.

25. Defendant Tope admits that he and Defendant Andersen walked Plaintiff to Defendant Tope's patrol car. Defendant Tope further admits that he did not intervene in Defendant Andersen's lawful, reasonable, and necessary actions. Defendant Tope denies the remaining allegations in Paragraph 25.

26. Defendant Tope admits that Defendant Andersen advised Plaintiff at some point that Timnath police do not have cameras. Defendant Tope denies the remaining allegations in Paragraph 26.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. Defendant Tope admits that Defendant Andersen placed Plaintiff in Defendant Andersen's patrol car and transported Plaintiff to Larimer County Jail. Defendant Tope denies the remaining allegations in Paragraph 33.

34. Defendant Tope is without sufficient knowledge or information to form a belief as to the truth of the allegations concerning the length or details of Plaintiff's justifiable confinement, and therefore denies the allegations. Defendant Tope denies the remaining allegations in Paragraph 34.

35. Defendant Tope is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 35, and therefore denies the allegations.

36. Denied.

37. Denied.

38. Defendant Tope is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 38, and therefore denies the allegations.

39. Denied.

40. Defendant Tope is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 40, and therefore denies the allegations.

41. Defendant Tope denies that Defendant Andersen made false allegations and averments regarding Plaintiff. Defendant Tope is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 41, and therefore denies the allegations.

42. Defendant Tope denies that his or Defendant Andersen's lawful, reasonable, and necessary actions caused Plaintiff to suffer any damages. Defendant Tope is without sufficient

knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 42, and therefore denies the allegations.

43. Defendant Tope denies that his or Defendant Andersen's lawful, reasonable, and necessary actions caused Plaintiff to suffer any damages. Defendant Tope is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 43, and therefore denies the allegations.

44. Defendant Tope denies that his or Defendant Andersen's lawful, reasonable, and necessary actions caused Plaintiff to suffer any damages. Defendant Tope is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 44, and therefore denies the allegations.

45. Defendant Tope admits that he testified in the case *People v. John S. Vazquez* on March 21, 2018 that Plaintiff was unruly and verbally abusive. Defendant Tope denies the remaining allegations in Paragraph 45.

46. Defendant Tope is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 46, and therefore denies the allegations.

47. Defendant Tope denies that Defendant Andersen lied. Defendant Tope further denies that his or Defendant Andersen's actions caused Plaintiff to suffer any damages. Defendant Tope is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 47, and therefore denies the allegations.

48. Defendant Tope denies that his or Defendant Andersen's actions caused Plaintiff to suffer any damages. Defendant Tope further denies that the Defendants engaged in unlawful

conduct. Defendant Tope is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 48, and therefore denies the allegations.

49. Defendant Tope specifically denies that he engaged in unlawful conduct, violated Plaintiff's civil rights, or caused Plaintiff any damages. Defendant Tope denies the remaining allegations in Paragraph 49.

50. Defendant Tope specifically denies that he engaged in unlawful conduct or caused Plaintiff any damages. Defendant Tope denies the remaining allegations in Paragraph 50.

51. Denied.

52. Denied.

53. Denied.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

***42 U.S.C. § 1983 – 4th Amendment Violation – False Arrest/Imprisonment
(Arrest Without Warrant or Probable Cause)
(against Defendant Andersen)***

54. Defendant Tope incorporates his responses to paragraphs 1 through 53 above as though fully set forth herein.

55. Defendant Tope admits that Defendant Andersen reasonably and justifiably placed handcuffs on Plaintiff because he was a danger to himself and to Defendants Andersen and Tope. Defendant Tope denies the remaining allegations in Paragraph 55.

56. Denied.

57. Denied.

SECOND CLAIM FOR RELIEF
42 U.S.C. § 1983 – 4th Amendment Violation – Excessive Force
(against Defendant Andersen)

58. Defendant Tope incorporates his responses to paragraphs 1 through 57 above as though fully set forth herein.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

THIRD CLAIM FOR RELIEF
42 U.S.C. § 1983 – 4th Amendment Violation – Excessive Force and Unlawful Search
(against Defendants Andersen and Tope)

63. Defendant Tope incorporates his responses to paragraphs 1 through 62 above as though fully set forth herein.

64. Denied.

65. Denied.

66. Denied.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

71. Denied.

FOURTH CLAIM FOR RELIEF
42 U.S.C. § 1983 – 4th Amendment Violation – False Arrest/Imprisonment
(Arrest Without Warrant or Probable Cause)
(against Defendants Andersen and Tope)

72. Defendant Tope incorporates his responses to paragraphs 1 through 71 above as though fully set forth herein.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. Denied.

FIFTH CLAIM FOR RELIEF
42 U.S.C. § 1983 – Violation of Fourteenth Amendment (Due Process)/
Fourth Amendment – Failure to Intervene
(against Defendant Tope)

79. Defendant Tope incorporates his responses to paragraphs 1 through 78 above as though fully set forth herein.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Denied.

85. Denied.

SIXTH CLAIM FOR RELIEF

42 U.S.C. § 1983 – Violation of Fourth Amendment – False Imprisonment
(against Defendant Andersen)

86. Defendant Tope incorporates his responses to paragraphs 1 through 85 above as though fully set forth herein.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

SEVENTH CLAIM FOR RELIEF

42 U.S.C. § 1983 – Violation of Fourth Amendment – Malicious Prosecution
(against Defendant Andersen)

91. Defendant Tope incorporates his responses to paragraphs 1 through 90 above as though fully set forth herein.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Denied.

101. Denied.

EIGHTH CLAIM FOR RELIEF
42 U.S.C. § 1983 – Violation of First Amendment –
Retaliation for Exercise of First Amendment
(against Defendant Andersen)

102. Defendant Tope incorporates his responses to paragraphs 1 through 101 above as though fully set forth herein.

103. Defendant Tope is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 103, and therefore denies the allegations.

104. Defendant Tope denies that Defendant Andersen participated in “intrusive and aggressive side-of-the road contact.” Defendant Tope is without sufficient knowledge or information to form a belief as to the truth of the remaining overly broad and vague allegations in Paragraph 104, and therefore denies them.

105. Defendant Tope is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 105, and therefore denies the allegations.

106. Denied.

107. Denied.

108. Denied.

RESPONSE TO PRAYER FOR RELIEF

Defendant Tope denies that Plaintiff is entitled to the relief requested in Plaintiff’s prayer for relief.

JURY DEMAND

Defendant Tope demands a jury trial on all issues so triable.

GENERAL DENIAL

Defendant Tope denies all allegations of the Complaint not specifically admitted herein.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

2. Plaintiff's Complaint, in whole or in part, fails because Defendant Tope is entitled to qualified immunity based on his reasonable, lawful conduct. Further, Defendant Tope's conduct did not violate law that was clearly established on the date of the incident.

3. Defendant Tope's alleged actions, if any, were made in good faith, made without malice, and performed with the reasonable belief that those actions were authorized by and in accord with existing law and authority.

4. Plaintiff's rights, privileges, and immunities secured under the Constitution, or Laws of the United States, have not been violated by any alleged action of Defendant Tope.

5. Plaintiff has suffered no damages.

6. If Plaintiff suffered any damages, they are the result of his own conduct and not that of Defendant Tope.

Dated: January 7, 2019

DAVIS GRAHAM & STUBBS LLP

/s/ Michiko Brown

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*Attorneys for Defendants
Forrest Andersen and Andrew Tope*

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of January 2019 a true and correct copy of the foregoing, **Defendant Andrew Tope's Answer, Affirmative Defenses, and Jury Demand**, was served via the Court's CM/ECF System on the following:

Sarah Schielke
The Life & Liberty Law Office LLC
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s/ Jeannette L. Iglehart

Jeannette L. Iglehart