

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 19-cv-03466-KLM

H.N. ex rel A.N., a minor,

Plaintiff,

v.

CITY AND COUNTY OF BROOMFIELD;
NICHOLAS WEIMAN;
RICHARD NORTON,

Defendants.

ANSWER

Defendants, **CITY AND COUNTY OF BROOMFIELD, NICHOLAS WEIMAN**, and **RICHARD NORTON**, by their attorney, **ERIC M. ZIPORIN**, of the law firm of **SGR, LLC**, and pursuant to Fed.R.Civ.P. 8 and 12, hereby answer and respond to Plaintiff's Civil Rights Complaint and Jury Demand as follows:

I. ANSWER

1. Defendants admit the allegations set forth in paragraphs 14, 15, 16, 26, 27, 29, 30, 31, 32, 40, 43, and 46 of Plaintiff's Civil Rights Complaint and Jury Demand ("Complaint").

2. Defendants deny the allegations set forth in paragraphs 4, 9, 37, 39, 41, 45, 51, 52, 54, 55, 59, 60, 61, 62, 64, 65, 66, 67, 68, 69, 70, 77, 78 (to include all subparagraphs), 79, 80, 81, 82, 83, 84, 90, 91, 92, 93, 94, 95, 101, 102 (to include all subparagraphs), 103, and 104 of the Complaint.

3. Defendants are without sufficient knowledge and information to form a belief as to the veracity of the allegations set forth in paragraphs 1, 2, 12, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, 34, 42, 44, 47, 48, 49, 88, 89, 98, 99, and 100 of the Complaint and, as such, deny same.

4. With respect to the allegations set forth in paragraph 3 of the Complaint, Defendant Weiman admits that he arrested A.N. and placed her in handcuffs. Defendant Weiman admits that at the time he arrested A.N., he had received limited information about her medical condition. Defendants deny the remaining allegations in said paragraph.

5. With respect to the allegations set forth in paragraph 5 of the Complaint, Defendant Weiman admits that he was instructed to obtain medical clearance for A.N. before taking her to the juvenile facility. Defendant Weiman admits that he took A.N. to the hospital and that medical staff examined her. Defendants are without sufficient knowledge and information to form a belief as to the veracity of the remaining allegations in said paragraph and, as such, deny same.

6. With respect to the allegations set forth in paragraph 6 of the Complaint, Defendants admit that limited force was used to restrain A.N. at the hospital given her assaultive and resistive behavior toward medical staff, to include the use of a hobble. Defendants deny the remaining allegations in said paragraph.

7. With respect to the allegations set forth in paragraph 7 of the Complaint, Defendants admit that A.N. was placed in a wheelchair and that A.N. was placed inside a patrol car after leaving the hospital. Defendants deny the remaining allegations in said paragraph.

8. With respect to the allegations set forth in paragraph 8 of the Complaint, Defendants deny that they used “unnecessary and aggressive treatment” toward A.N. Defendants

are without sufficient knowledge and information to form a belief as to the veracity of the remaining allegations in said paragraph and, as such, deny same.

9. With respect to the allegations set forth in paragraphs 10 and 11 of the Complaint, Defendants do not contest jurisdiction or venue at this time.

10. With respect to the allegations set forth in paragraph 33 of the Complaint, Defendant Weiman denies the allegation that he viewed A.N.'s conduct of looking down as evasive or incriminating. Defendants are without sufficient knowledge and information to form a belief as to the veracity of the remaining allegations in said paragraph and, as such, deny same.

11. With respect to the allegations set forth in paragraph 35 of the Complaint, Defendant Weiman admits that he told H.N. that A.N. would be arrested. Defendants deny the remaining allegations in said paragraph.

12. With respect to the allegations set forth in paragraph 36 of the Complaint, Defendant Weiman admits those allegations set forth in paragraph 36.a. and 36.c. Defendants are without sufficient knowledge and information to form a belief as to the remaining allegations in said paragraph (to include all subparagraphs) and, as such, deny same.

13. With respect to the allegations set forth in paragraph 38 of the Complaint, Defendant Weiman admits that he handcuffed A.N. Defendant denies the remaining allegations in said paragraph.

14. With respect to the allegation set forth in paragraph 50 of the Complaint, Defendant Weiman admits that he heard the nurse state "this won't work if you try to hit me," and concerned for the safety of the medical staff, he attempted to place handcuffs on A.N. Defendants deny the remaining allegations in said paragraph.

15. With respect to the allegations set forth in paragraph 53 of the Complaint, Defendant Weiman admits that his report states that “[A.N.] continually screamed that we were hurting her and ignored my orders to stop fighting with me.” Defendant Weiman admits that his report also states that “[d]uring this time [A.N.] continually attempted to kick with her legs and pull away from my grip and I observed her wrists and stomach were becoming red from her struggles.” Defendants deny the remaining allegations in said paragraph.

16. With respect to the allegations set forth in paragraph 56 of the Complaint, Defendant Norton admits that he applied a hobble to A.N.’s legs. Defendants deny the remaining allegations in said paragraph.

17. With respect to the allegations set forth in paragraph 57 of the Complaint, Defendants admit that they lifted up A.N. and placed her in a wheelchair. Defendant Weiman denies that he torqued A.N.’s arm high above her shoulders and that such alleged use of force was “extraordinary.” Defendants are without sufficient knowledge and information to form a belief as to the veracity of the remaining allegations in said paragraph and, as such, deny same.

18. With respect to the allegations set forth in paragraph 58 of the Complaint, Defendants admit that A.N. was placed in a wheelchair. Defendants deny the remaining allegations in said paragraph.

19. With respect to the allegations set forth in paragraph 63 of the Complaint, Defendant Weiman admits that he prepared a report indicating that he had received information about A.N.’s condition and that A.N. was handcuffed. Defendants deny the remaining allegations in said paragraph.

20. With respect to the allegations set forth in paragraphs 72, 73, 75, 76, 86, 87, and 97 of the Complaint, such are legal assertions as opposed to factual allegations and thus do not require a response from Defendants.

21. With respect to the allegations set forth in paragraph 74 of the Complaint, Defendants Weiman and Norton admit that at all relevant times as alleged in the Complaint, they were acting under the color of state law and in their capacity as police officers for the City and County of Broomfield. Defendants deny the remaining allegations in said paragraph.

22. Defendants deny those allegations realleged in paragraphs 71, 85, and 96 of the Complaint.

23. Defendants deny all allegations not expressly admitted herein.

II. DEFENSES

1. Plaintiffs' Complaint, at least in part, fails to state a claim upon which relief can be granted.

2. The individual Defendants are qualifiedly immune from Plaintiffs' claims.

3. Defendants' actions were at all times conducted in good faith and without intent to injure or deprive Plaintiffs' of their civil rights.

4. Plaintiffs have failed to plead and prove a municipal custom or policy upon which liability could attach to the City and County of Broomfield.

5. Defendants' actions were at all times conducted without regard to any alleged disability and were based on exigent circumstances.

6. A.N. may not have been a qualified individual with a disability within the scope or meaning of the Americans with Disabilities Act, 42 U.S.C. § 12102, *et seq.*

7. All actions taken by Defendants were for legitimate non-discriminatory reasons.
8. Plaintiffs' claims are barred by the doctrines of undue burden and/or reasonable accommodation.
9. Plaintiffs' damages, if any, are not to the extent and nature as alleged.
10. Not all of the named Plaintiffs are proper parties in interest and/or may lack standing.
11. Plaintiffs have failed to reasonably mitigate their alleged damages.
12. The individual Defendants are not be liable for punitive damages.
13. Defendants reserve the right to add additional affirmative defenses which are revealed by way of disclosures and discovery.

REQUEST FOR RELIEF

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendants request that the Court grant relief as follows:

- A. Dismissing Plaintiffs' Complaint with prejudice;
- B. Entering judgment in favor of Defendants and against Plaintiffs for attorney's fees expended in defense of this action;
- C. Entering judgment in favor of Defendants and against Plaintiffs for costs; and
- D. Such other and further relief as the Court deems just and proper.

JURY DEMAND

DEFENDANTS HEREBY DEMAND THAT THIS CASE BE TRIED TO A JURY PURSUANT TO FED.R.CIV.P. 38.

Respectfully submitted,

/s/ Eric M. Ziporin

Eric M. Ziporin

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Attorney for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of February, 2020, I electronically filed a true and correct copy of the above and foregoing **ANSWER** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email address:

Zachary D. Warren
zwarren@highlandslawfirm.com

s/ Barbara A. Ortell

Barbara A. Ortell
Legal Secretary