

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 4:22-cv-30052

PAULINE GUNTLOW, in her capacity as	)
Personal Representative of the	)
ESTATE OF VICTORIA GUNTLOW,	)
Plaintiff	)
	)
vs.	)
	)
PRESTON KELLY, DANA CLEMENT,	)
MATTHEW MERANTI, DAVID SHERMAN,	)
and CITY OF NORTH ADAMS,	)
Defendants	)

DEFENDANTS' ANSWER TO COMPLAINT AND DEMAND FOR JURY TRIAL

NOW COME the Defendants, Preston Kelly, Dana Clement, Matthew Meranti, David Sherman and City of North Adams ("Defendants"), and in answer to the Plaintiff's Complaint ("Complaint"), by the counts and paragraphs numbered therein, say:

PARTIES

1. The Defendants neither admit nor deny the allegations contained in Paragraph 1 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

2. The Defendants neither admit nor deny the allegations contained in Paragraph 2 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

3. The Defendants neither admit nor deny the allegations contained in Paragraph 3 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

4. The Defendants neither admit nor deny the allegations contained in Paragraph 4 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

5. The Defendants neither admit nor deny the allegations contained in Paragraph 5 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

6. The Defendants admit the allegations contained in Paragraph 6 of the Plaintiff's Complaint.

7. The Defendants neither admit nor deny the allegations contained in Paragraph 7 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

8. The Defendants neither admit nor deny the allegations contained in Paragraph 8 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

9. The Defendants neither admit nor deny the allegations contained in Paragraph 9 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

JURISDICTION

10. The Defendants neither admit nor deny the allegations contained in Paragraph 10 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

11. The Defendants neither admit nor deny the allegations contained in Paragraph 11 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

12. The Defendants admit the allegations contained in Paragraph 12 of the Plaintiff's Complaint.

FACTS

13. The Defendants admit the allegations contained in Paragraph 13 of the Plaintiff's Complaint.

14. The Defendants neither admit nor deny the allegations contained in Paragraph 14 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

15. The Defendants neither admit nor deny the allegations contained in Paragraph 15 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

16. The Defendants neither admit nor deny the allegations contained in Paragraph 16 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

17. The Defendants admit the allegations contained in Paragraph 17 of the Plaintiff's Complaint.

18. The Defendants neither admit nor deny the allegations contained in Paragraph 18 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

19. The Defendants neither admit nor deny the allegations contained in Paragraph 19 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

20. The Defendants neither admit nor deny the allegations contained in Paragraph 20 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

21. The Defendants admit the allegations contained in Paragraph 21 of the Plaintiff's Complaint.

22. The Defendants neither admit nor deny the allegations contained in Paragraph 22 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

23. The Defendants neither admit nor deny the allegations contained in Paragraph 23 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

24. The Defendants neither admit nor deny the allegations contained in Paragraph 24 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

25. The Defendants neither admit nor deny the allegations contained in Paragraph 25 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

26. The Defendants neither admit nor deny the allegations contained in Paragraph 26 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

27. The Defendants neither admit nor deny the allegations contained in Paragraph 27 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

28. The Defendants neither admit nor deny the allegations contained in Paragraph 28 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

29. The Defendants neither admit nor deny the allegations contained in Paragraph 29 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a

belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

30. The Defendants neither admit nor deny the allegations contained in Paragraph 30 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

31. The Defendants deny the allegations contained in Paragraph 31 of the Plaintiff's Complaint.

32. The Defendants neither admit nor deny the allegations contained in Paragraph 32 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

33. The Defendants neither admit nor deny the allegations contained in Paragraph 33 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

34. The Defendants neither admit nor deny the allegations contained in Paragraph 34 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

35. The Defendants neither admit nor deny the allegations contained in Paragraph 35 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a

belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

36. The Defendants deny the allegations contained in Paragraph 36 of the Plaintiff's Complaint.

37. The Defendants deny the allegations contained in Paragraph 37 of the Plaintiff's Complaint.

38. The Defendants deny the allegations contained in Paragraph 38 of the Plaintiff's Complaint.

39. The Defendants neither admit nor deny the allegations contained in Paragraph 39 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

40. The Defendants deny the allegations contained in Paragraph 40 of the Plaintiff's Complaint.

41. The Defendants deny the allegations contained in Paragraph 41 of the Plaintiff's Complaint.

42. The Defendants admit the allegations contained in Paragraph 42 of the Plaintiff's Complaint.

43. The Defendants deny the allegations contained in Paragraph 43 of the Plaintiff's Complaint.

44. The Defendants neither admit nor deny the allegations contained in Paragraph 44 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a

belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

45. The Defendants deny the allegations contained in Paragraph 45 of the Plaintiff's Complaint.

46. The Defendants deny the allegations contained in Paragraph 46 of the Plaintiff's Complaint.

47. The Defendants deny the allegations contained in Paragraph 47 of the Plaintiff's Complaint.

48. The Defendants admit the allegations contained in Paragraph 48 of the Plaintiff's Complaint.

49. The Defendants admit the allegations contained in Paragraph 49 of the Plaintiff's Complaint.

50. The Defendants neither admit nor deny the allegations contained in Paragraph 50 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

51. The Defendants neither admit nor deny the allegations contained in Paragraph 51 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

52. The Defendants deny the allegations contained in Paragraph 52 of the Plaintiff's Complaint.

53. The Defendants neither admit nor deny the allegations contained in Paragraph 53 of the Plaintiff's Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the Plaintiff to her burden of proof.

54. The Defendants deny the allegations contained in Paragraph 54 of the Plaintiff's Complaint.

55. The Defendants deny the allegations contained in Paragraph 55 of the Plaintiff's Complaint.

56. The Defendants deny the allegations contained in Paragraph 56 of the Plaintiff's Complaint.

57. The Defendants deny the allegations contained in Paragraph 57 of the Plaintiff's Complaint.

58. The Defendants admit the allegations contained in Paragraph 58 of the Plaintiff's Complaint.

59. The Defendants deny the allegations contained in Paragraph 59 of the Plaintiff's Complaint.

60. The Defendants neither admit nor deny the allegations contained in Paragraph 60 of the Complaint as the document referenced therein speaks for itself.

61. The Defendants deny the allegations contained in Paragraph 61 of the Plaintiff's Complaint.

COUNT I
VIOLATION OF 42 U.S.C. §1983 - UNLAWFUL ENTRY
(Individual Defendants)

62. The Defendants repeat and reallege their answers to the allegations contained in Paragraphs 1 through 61 of the Plaintiff's Complaint and incorporate them herein by reference.

63. The Defendants deny the allegations contained in Paragraph 63 of the Plaintiff's Complaint.

64. The Defendants deny the allegations contained in Paragraph 64 of the Plaintiff's Complaint.

COUNT II
VIOLATION OF 42 U.S.C. §1983 - FALSE ARREST
(Individual Defendants)

65. The Defendants repeat and reallege their answers to the allegations contained in Paragraphs 1 through 64 of the Plaintiff's Complaint and incorporate them herein by reference.

66. The Defendants deny the allegations contained in Paragraph 66 of the Plaintiff's Complaint.

67. The Defendants deny the allegations contained in Paragraph 67 of the Plaintiff's Complaint

COUNT III
VIOLATION OF 42 U.S.C. §1983 - EXCESSIVE FORCE
(Defendants KELLY and SHERMAN)

68. The Defendants repeat and reallege their answers to the allegations contained in Paragraphs 1 through 67 of the Plaintiff's Complaint and incorporate them herein by reference.

69. The Defendants deny the allegations contained in Paragraph 69 of the Plaintiff's Complaint.

70. The Defendants deny the allegations contained in Paragraph 70 of the Plaintiff's Complaint.

COUNT IV
VIOLATION OF 42 U.S.C. §1983 - MALICIOUS PROSECUTION
(Individual Defendants)

71. The Defendants repeat and reallege their answers to the allegations contained in Paragraphs 1 through 70 of the Plaintiff's Complaint and incorporate them herein by reference.

72. The Defendants deny the allegations contained in Paragraph 72 of the Plaintiff's Complaint.

73. The Defendants deny the allegations contained in Paragraph 73 of the Plaintiff's Complaint.

**COUNT V
VIOLATION OF 42 U.S.C. §1983 - TRESPASS
(Individual Defendants)**

74. The Defendants repeat and reallege their answers to the allegations contained in Paragraphs 1 through 73 of the Plaintiff's Complaint and incorporate them herein by reference.

75. The Defendants deny the allegations contained in Paragraph 75 of the Plaintiff's Complaint.

76. The Defendants deny the allegations contained in Paragraph 76 of the Plaintiff's Complaint.

**COUNT VI
FALSE ARREST AND IMPRISONMENT
(Individual Defendants)**

77. The Defendants repeat and reallege their answers to the allegations contained in Paragraphs 1 through 76 of the Plaintiff's Complaint and incorporate them herein by reference.

78. The Defendants deny the allegations contained in Paragraph 78 of the Plaintiff's Complaint.

79. The Defendants deny the allegations contained in Paragraph 79 of the Plaintiff's Complaint.

**COUNT VII
ASSAULT AND BATTERY
(Defendants KELLY and SHERMAN)**

80. The Defendants repeat and reallege their answers to the allegations contained in Paragraphs 1 through 79 of the Plaintiff's Complaint and incorporate them herein by reference.

81. The Defendants deny the allegations contained in Paragraph 81 of the Plaintiff's Complaint.

82. The Defendants deny the allegations contained in Paragraph 82 of the Plaintiff's Complaint.

**COUNT VIII
MALICIOUS PROSECUTION
(Individual Defendants)**

83. The Defendants repeat and reallege their answers to the allegations contained in Paragraphs 1 through 82 of the Plaintiff's Complaint and incorporate them herein by reference.

84. The Defendants deny the allegations contained in Paragraph 84 of the Plaintiff's Complaint.

85. The Defendants deny the allegations contained in Paragraph 85 of the Plaintiff's Complaint.

**COUNT IX
ABUSE OF PROCESS
(Individual Defendants)**

86. The Defendants repeat and reallege their answers to the allegations contained in Paragraphs 1 through 85 of the Plaintiff's Complaint and incorporate them herein by reference.

87. The Defendants deny the allegations contained in Paragraph 87 of the Plaintiff's Complaint.

88. The Defendants deny the allegations contained in Paragraph 88 of the Plaintiff's Complaint.

**COUNT X
VIOLATION OF 42 U.S.C. §1983 - FAILURE TO DISCIPLINE AND TRAIN
(Defendant City of North Adams)**

89. The Defendants repeat and reallege their answers to the allegations contained in Paragraphs 1 through 88 of the Plaintiff's Complaint and incorporate them herein by reference.

90. The Defendants deny the allegations contained in Paragraph 90 of the Plaintiff's Complaint.

91. The Defendants deny the allegations contained in Paragraph 91 of the Plaintiff's Complaint.

92. The Defendants deny the allegations contained in Paragraph 92 of the Plaintiff's Complaint.

93. The Defendants deny the allegations contained in Paragraph 93 of the Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The defendants say that if they were negligent as alleged which they specifically deny, the negligence of the plaintiff was greater than the alleged negligence of the defendants and, therefore, the plaintiff cannot recover.

SECOND DEFENSE

The defendants say that the plaintiff's own negligence contributed to the cause of the incident and, therefore, the recovery of damages, if any, must be reduced in accordance with the law.

THIRD DEFENSE

The defendants say that the incident as alleged in the plaintiff's complaint was not caused by any person for whose conduct the defendants are legally responsible.

FOURTH DEFENSE

The defendants say that at the time of the alleged incident the plaintiff was guilty of a violation of the law which contributed to the alleged incident.

FIFTH DEFENSE

The plaintiff is not entitled to recover as the complaint does not set forth a claim upon which relief can be granted.

SIXTH DEFENSE

In further answering, the defendants say that the plaintiff's claim is frivolous and not made in good faith, and the defendants, therefore, demands their costs and attorney's fees pursuant to G.L. c. 231, S 6F.

SEVENTH DEFENSE

The defendants say that if plaintiff was injured as alleged, such was due to the acts or negligence of another, which constitute an intervening, superseding cause and, therefore, defendants are not liable.

EIGHTH DEFENSE

The defendants say that the plaintiff has failed to comply with the requirements of M.G.L. c. 258, §§ 2 and 4 and, as such, the Complaint must be dismissed.

NINTH DEFENSE

The defendants say that they are immune from liability in this case.

TENTH DEFENSE

The defendants say that M.G.L. c. 258, § 10 precludes the imposition of liability in this case.

ELEVENTH DEFENSE

The defendants say that they are immune from liability as defendants' actions are privileged.

TWELFTH DEFENSE

The defendants cannot be held liable for violating the civil rights of the plaintiff as there has been no official or unofficial policy, custom, ordinance, regulation, or practice resulting in the deprivation of constitutional rights alleged.

THIRTEENTH DEFENSE

The doctrine of qualified immunity precludes the imposition of liability.

FOURTEENTH DEFENSE

The defendants state that any actions taken by the defendants in connection with the allegations in this complaint were justified and required by considerations of public policy, safety and law enforcement.

FIFTEENTH DEFENSE

The defendants say that they are immune from liability for damages for any violation of the plaintiff's civil rights under federal or state law since their conduct at all relevant times was in good faith, without malice and not in disregard of settled principles of constitutional law.

SIXTEENTH DEFENSE

The defendants state that at all times they acted reasonably, within the scope of their official discretion and with a good faith belief that their actions were lawful and not in violation of any clear established statutory or constitutional right of which a reasonable person would have known with regard to all matters in the complaint which bear on a state or federal question.

SEVENTEENTH DEFENSE

The defendants state that they are immune from suit because of the doctrine of qualified immunity.

EIGHTEENTH DEFENSE

The defendants say that their acts and conduct were performed according to and protected by law and/or legal process and, therefore, the plaintiff cannot recover.

DEMAND FOR JURY TRIAL

The Defendants, Preston Kelly, Dana Clement, Matthew Meranti, David Sherman and City of North Adams, hereby demand a trial by jury.

THE DEFENDANTS,
PRESTON KELLY, DANA CLEMENT,
MATTHEW MERANTI, DAVID SHERMAN
and CITY OF NORTH ADAMS

Dated: July 12, 2022

By *s/ Nancy Frankel Pelletier*
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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this 12th day of July, 2022.

/s/ Nancy Frankel Pelletier
Nancy Frankel Pelletier, Esq.