

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

Jeana K. Reinbold, solely as Chapter 7	)	
Trustee of the Bankruptcy Estate of	)	
Chauncey Ramon Carnes,	)	
	)	Case No. 2020-CV-06214
Plaintiff,	)	
	)	Judge: Franklin U. Valderrama
v.	)	
	)	Magistrate Judge: Sunil R. Harjani
City of Chicago and Chicago Police	)	
Officers Delgado #4780 and	)	
Swank, # 11337,	)	
	)	
Defendants.	)	

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**DEFENDANT CITY OF CHICAGO'S ANSWER TO PLAINTIFF'S COMPLAINT AT  
LAW, AFFIRMATIVE DEFENSES, AND JURY DEMAND**

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NOW COMES the Defendant City of Chicago ("Defendant City"), by and through its attorney, Celia Meza, Acting Corporation Counsel for the City of Chicago, and for its Answer to Plaintiff Jeana K. Reinbold's Complaint at Law, Affirmative Defenses, and Jury Demand, states as follows:

1. This a civil action arising under 42 U.S.C. § 1983. The jurisdiction of this Court is conferred by 28 U.S.C. § 1343 AND 28 U.S.C. § 1367.

**ANSWER:** Defendant City admits Plaintiff brings this civil action pursuant to 42 U.S.C. § 1983 and admits this Court has jurisdiction under 28 U.S.C. § 1343. To the extent that supplemental claims may be contained in Plaintiff's complaint, Defendant City admits that this Court has jurisdiction under 28 U.S.C. § 1367. Defendant City denies all allegations of wrongdoing in this complaint.

2. Plaintiff Jeana K. Reinbold brings this action solely in her capacity as Chapter 7 Trustee of the Bankruptcy Estate of Chauncey Ramon Carnes.

**ANSWER:** Defendant City lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph.

3. Carnes filed a chapter 7 bankruptcy case in the United States Bankruptcy Court for the Central District of Illinois on April 29, 2020 which was assigned case number 20-80509. Plaintiff

was appointed as chapter 7 trustee of Carnes's bankruptcy case on that date and continues to serve as trustee of the case.

**ANSWER:** Defendant City admits, upon information and belief, that Carnes filed a chapter 7 bankruptcy case in the United States Bankruptcy Court for the Central District of Illinois on April 29, 2020, which was assigned case number 20-80509. Defendant City admits, upon information and belief, that Plaintiff was named as a bankruptcy trustee on a Notice of Bankruptcy Chapter 7 Case Form (Official Form 309-A) filed under case number 20-80509 on April 29, 2020. Defendant City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in this paragraph.

4. Pursuant such appointment, Plaintiff is charged with the duties of collecting and reducing to money the property of the bankruptcy estate for which the trustee serves for the benefit of the bankruptcy estate.

**ANSWER:** Defendant City lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph.

5. Upon the filing of the bankruptcy case, Plaintiff became the owner and real party in interest with respect to the claims set forth in this complaint.

**ANSWER:** Defendant City lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph.

6. On August 5, 2020, Plaintiff's application to hire undersigned counsel to assist the Plaintiff in pursuing and prosecuting the claims set forth in this complaint was allowed by the Bankruptcy Court.

**ANSWER:** Defendant City admits, upon information and belief, that on August 5, 2020, Plaintiff's application to employ Kenneth N. Flaxman, P.C. to assist the Plaintiff in pursuing and prosecuting the claims set forth in this complaint was granted by the Bankruptcy Court. Defendant City denies all allegations of wrongdoing in this complaint.

7. Chauncey Carnes is an African American male.

**ANSWER:** Defendant City admits, upon information and belief, the allegation set forth in this paragraph.

8. Defendant City of Chicago is a municipal corporation organized and existing under the laws of the State of Illinois.

**ANSWER:** Defendant City admits the allegations set forth in this paragraph.

9. Defendant, Chicago Police Officer Delgado, #4780 and Chicago Police Officer Swank, #11337 were at all times relevant acting under color of their office as police officers of defendant City of Chicago. Plaintiff sues defendants Delgado and Swank in their individual capacities.

**ANSWER:** Defendant City admits, upon information and belief, the allegations set forth in this paragraph, however, denies any allegations of wrongdoing.

10. On February 2, 2020 at about 10:00 p.m., Carnes was lawfully operating his motor vehicle in the City of Chicago, traveling westbound on 57th Street in the vicinity of South Stewart Avenue.

**ANSWER:** Defendant City admits, upon information and belief, that on February 2, 2020 at about 10:00 a.m., Carnes was operating a motor vehicle westbound at or near 341 W. Marquette in the City of Chicago. Defendant City denies that Carnes was operating the vehicle lawfully.

11. At the above-referred date, time, and place, defendants Delgado and Swank stopped Carnes's vehicle and ordered Carnes to produce documents showing that he was lawfully operating the vehicle.

**ANSWER:** Defendant City admits, upon information and belief, that Defendant Officers Delgado and Swank stopped Carnes's vehicle and asked Carnes for proof of insurance and his driver's license. Defendant City denies the remaining allegations in this paragraph.

12. Neither defendant Delgado nor defendant Swank had a lawful basis to conduct the traffic stop and appear to have been motivated by their perceptions of Carnes's race.

**ANSWER:** Defendant City denies the allegations set forth in this paragraph.

13. Carnes complied with the officers' order and produced the requested documents, which showed that Carnes was lawfully operating the vehicle.

**ANSWER:** Defendant City admits, upon information and belief, that Carnes produced his driver's license. Defendant City denies that Carnes produced the proof of insurance requested of him, however, admits that Carnes stated he was driving a rental vehicle. Defendant City denies the remaining allegations set forth in this paragraph.

14. Defendants Delgado and Swank instructed Carnes to remain in his car and either Delgado or Swank walked to the officers' vehicle.

**ANSWER:** Defendant City admits, upon information and belief, the allegations set forth in this paragraph.

15. Shortly thereafter Delgado and Swank returned to Carnes, ordered him to step out the car and handcuffed him.

**ANSWER:** Defendant City admits, upon information and belief, the allegations set forth in this paragraph.

16. Neither defendant Delgado nor defendant Swank had a lawful basis to perform the above-described acts; these officers thereby subjected Carnes to an unreasonable seizure in violation of the Fourth Amendment.

**ANSWER:** Defendant City denies the allegations set forth in this paragraph.

17. Defendants Delgado and Swank continued to detain Carnes while they searched his vehicle.

**ANSWER:** Defendant City admits, upon information and belief, that Carnes was detained. Defendant City denies, upon information and belief, that Defendant Officer Swank searched Carnes's vehicle. Defendant City lacks knowledge or information sufficient to form a belief as to the truth of whether Defendant Officer Delgado searched Carnes's vehicle. Defendant City admits, upon information and belief, that Defendant Officers Delgado and Swank searched Carnes's person. Defendant City denies the remaining allegations set forth in this paragraph.

18. The search did not turn up any contraband or any evidence of a crime.

**ANSWER:** Defendant City denies, upon information and belief, that Defendant Officer Swank searched Carnes's vehicle. Defendant City lacks knowledge or information sufficient to form a belief as to the truth of whether Defendant Officer Delgado searched Carnes's vehicle. Defendant City admits, upon information and belief, that Defendant Officers Delgado and Swank searched Carnes's person and found no contraband or any evidence of a crime, however, denies any wrongdoing as alleged in Plaintiff's complaint.

19. Neither defendant Delgado nor defendant Swank had a lawful basis to continue to detain Carnes or to search his vehicle; these officers thereby subjected Carnes to an unreasonable search and seizure in violation of the Fourth Amendment.

**ANSWER:** Defendant City denies the allegations set forth in this paragraph.

20. Carnes remained at the scene with defendants Delgado and Swank until two additional officers arrived. At the direction of defendants Delgado and Swank, these officers searched Carnes and transported him to the Seventh District police station.

**ANSWER:** Defendant City admits, upon information and belief, that Carnes remained at the scene with Defendant Officers Delgado and Swank until additional officers arrived. Defendant City admits, upon information and belief, that the additional officers transported Carnes to the Seventh District police station. Defendant City denies that the remaining allegations in this paragraph accurately describes the facts and circumstances of the event as alleged and therefore denies the remaining allegations set forth in this paragraph.

21. Neither defendant Delgado nor defendant Swank had a lawful basis to order the continued detention of Carnes or to order the search of his person; these officers thereby subjected Carnes to an unreasonable search and seizure in violation of the Fourth Amendment.

**ANSWER:** Defendant City denies the allegations set forth in this paragraph.

22. As a direct and proximate result of the above described acts, Carnes was searched and detained in a cell at the Seventh District police for several hours until defendant Delgado or defendants Swank informed Carnes that there was no basis for his detention.

**ANSWER:** Defendant City admits, upon information and belief, that Carnes was searched and detained in a cell at the Seventh District police station. Defendant City denies, upon information and belief, that Carnes was detained for several hours, that either Defendant Officers Delgado or Swank informed Carnes that there was no legal basis for his detention, and the remaining allegations set forth in this paragraph.

23. Carnes was released shortly thereafter without any charges after Delgado or Swank had admitted that there was no basis for his detention.

**ANSWER:** Defendant City admits, upon information and belief, that Carnes was released without charges after being held for a short time. Defendant City denies that either Defendant Officers Delgado or Swank informed Carnes that there was no basis for his detention and the remaining allegations set forth in this paragraph.

24. Carnes made a prompt complaint about the police misconduct to Chicago's Civilian Office of Police Accountability, which logged his complaint as number 0000571.

**ANSWER:** Defendant City admits, upon information and belief, that Carnes made a complaint about the February 2, 2020 incident, which resulted in the Civilian Office of Police Accountability opening log number 2020-0000571 to investigate the incident. Defendant City denies any misconduct alleged herein.

25. As a result of the foregoing, Carnes was deprived of rights secured by the Fourth and Fourteenth Amendments to the Constitution of the United States, incurred physical harm, was deprived of his liberty, and suffered other damages.

**ANSWER:** Defendant City denies the allegations set forth in this paragraph.

### **AFFIRMATIVE DEFENSES**

1. Defendant City is not liable to Plaintiff for any federal claim for which its employees or agents are not liable to Plaintiff. *See City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986).

2. Defendant City is not liable to Plaintiff for any state law claims if its employees or agents are not liable to Plaintiff. 745 ILCS 10/2-109.

3. The City of Chicago is immune from the imposition of punitive damages under both state and federal law. Under the Illinois Tort Immunity Act, Defendant City is barred from paying any

portion of a judgment representing an award of punitive or exemplary damages against any of its employees. 745 ILCS 10/2-102. Further, Defendant City cannot be held liable for punitive or exemplary damages in any Section 1983 action brought against it directly or indirectly by the injured party or a third party. *City of Newport et al. v. Fact Concerts, Inc.*, 435 U.S. 247 (1981).

4. To the extent Plaintiff failed to mitigate any of his claimed injuries or damages, any verdict or judgment obtained by Plaintiff must be reduced by application of the principle that Plaintiff had a duty to mitigate his claimed injuries and damages, commensurate with the degree of failure to mitigate attributed to Plaintiff by the jury in this case.

5. As to any state law claims made by Plaintiff, Defendant City is not liable to pay attorney's fees as "the law in Illinois clearly is that absent a statute or contractual agreement 'attorney fees and the ordinary expenses and burdens of litigation are not allowable to the successful party.'" *See Kerns v. Engelke*, 76 Ill.2d 154, 166 (1979) (citations omitted); *see also Pennsylvania Truck Lines, Inc. v. Solar Equity Corp.*, 882 F.2d 221, 227 (7th Cir. 1989); *Miller v. Pollution Control Board*, 267 Ill. App. 3d 160, 171, 642 N.E.2d 475, 485 (4th Dist. 1994).

6. To the extent Plaintiff alleges state law claims, Defendant City is not liable under state law for any injury caused by the act or omission of another person. 745 ILCS 10/2-204 (West 2010); 745 ILCS 10/2-109 (West 2010).

7. To the extent Plaintiff alleges state law claims, the Tort Immunity Act protects Defendant Officers and Defendant City from liability for any act or omission performed in the execution or enforcement of any law where such act or omission does constitute willful and wanton conduct. 745 ILCS 10/2-202, 2-109.

8. To the extent Plaintiff alleges state law claims, Defendant Officers and Defendant City cannot be liable for injury resulting from an act or omission in determining policy when exercising discretion or determining policy. 745 ILCS 10/2-201, 2-109.

**JURY DEMAND**

Defendant City hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

**CELIA MEZA**

Acting Corporation Counsel  
City of Chicago

/s/ Lavang Zehawi

**LAVANG ZEHAWI**

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**CERTIFICATE OF SERVICE**

I hereby certify that I have caused true and correct copies of the above and foregoing **Defendant City of Chicago's Answer to Plaintiff's Complaint at Law, Affirmative Defenses, and Jury Demand** to be served upon all parties of record through the Court's electronic filing and docketing system on this 21st day of December, 2020.

/s/ Lavang Zehawi

**LAVANG ZEHAWI**

Assistant Corporation Counsel