

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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RODRIGO LOPEZ,

Plaintiff,

v.

Case No.: 21-CV-1028

SAM PYNENBERG,  
FOX VALLEY METRO POLICE  
DEPARTMENT,  
THE VILLAGE OF LITTLE CHUTE,  
and  
THE VILLAGE OF KIMBERLY,

Defendants.

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**ANSWER AND AFFIRMATIVE DEFENSES**

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NOW COME the Defendants, Sam Pynenberg (“Mr. Pynenberg”), the Fox Valley Metro Police Department (“FVMPD”) and The Village of Little Chute (“Little Chute”) (collectively, the “Defendants”), by and through their attorneys, Davis & Kuelthau, s.c., and as to the Plaintiff’s Complaint, answer as follows:

**INTRODUCTION**

1. In answering Paragraph 1, upon information and belief, allege that said paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, Defendants affirmatively deny liability.

**JURISDICTION**

2. Admit that jurisdiction is invoked pursuant to 28 U.S.C. §§ 1343 and 1331. Admit that this Court has supplemental jurisdiction to hear and decide pendent claims arising out of state law.

3. Admit only that the alleged incident occurred in Outagamie County, Wisconsin, on or about September 3, 2019. Deny that any acts committed by the Defendants were unlawful.

### **PARTIES**

4. Upon representation of Counsel, admit.
5. Admit that Mr. Pynenberg is a citizen and resident of the State of Wisconsin. Admit that at all times material hereto, Mr. Pynenberg was employed as a police officer at the FVMPD. Deny all remaining allegations contained in the paragraph.
6. Admit that the FVMPD is a police department formed by and serving the Villages of Little Chute and Kimberly. Admit that the FVMPD, at all relative times, employed Mr. Pynenberg. Deny the remaining allegations contained in the paragraph.
7. These answering Defendants presently lack information sufficient to form a belief as to the truth or accuracy of the allegations contained therein and, therefore, deny and leave Plaintiff to his proof.

### **FACTUAL ALLEGATIONS**

8. Upon information and belief, admit that Eduard Lopez was born on 9/12/1983 and was 35 years old at the time of his death on or about September 3, 2019. Deny any remaining allegations contained in the paragraph.
9. Upon information and belief, admit.
10. Upon information and belief, admit.
11. Upon information and belief, admit that Eduard Lopez did not stop for law enforcement.
12. Upon information and belief, admit.
13. Upon information and belief, admit.

14. Upon information and belief, admit.
15. Upon information and belief, admit.
16. Upon information and belief, admit.
17. Upon information and belief, admit.
18. Affirmatively assert that said paragraph is vague. These answering Defendants presently lack information sufficient to form a belief as to the truth or accuracy of the allegations contained therein and, therefore, deny and leave Plaintiff to his proof.
19. Upon information and belief, admit.
20. Upon information and belief, admit.
21. Upon information and belief, admit.
22. Affirmatively assert that said paragraph is vague. These answering Defendants presently lack information sufficient to form a belief as to the truth or accuracy of the allegations contained therein and, therefore, deny and leave Plaintiff to his proof.
23. Affirmatively assert that said paragraph is vague. These answering Defendants presently lack information sufficient to form a belief as to the truth or accuracy of the allegations contained therein and, therefore, deny and leave Plaintiff to his proof.
24. Affirmatively assert that said paragraph is vague. These answering Defendants presently lack information sufficient to form a belief as to the truth or accuracy of the allegations contained therein and, therefore, deny and leave Plaintiff to his proof.
25. Affirmatively assert that said paragraph is vague. These answering Defendants presently lack information sufficient to form a belief as to the truth or accuracy of the allegations contained therein and, therefore, deny and leave Plaintiff to his proof.

26. Affirmatively assert that said paragraph is vague. These answering Defendants presently lack information sufficient to form a belief as to the truth or accuracy of the allegations contained therein and, therefore, deny and leave Plaintiff to his proof.
27. Deny.
28. Deny.
29. Admit that Mr. Pynenberg attempted to stop Eduard Lopez as he fled from law enforcement. Admit that Eduard Lopez eventually stopped after being shot. These answering Defendants lack sufficient information to form a belief as to the truth or accuracy of the remaining allegations and, therefore, deny and leave Plaintiff to his proof.
30. Deny.
31. Deny.
32. Deny.
33. Deny.
34. Deny.
35. Deny.
36. Deny.
37. Deny.
38. Deny.
39. Deny.
40. Deny.
41. Deny.
42. Deny.

- 43. Deny.
- 44. Affirmatively assert that said paragraph calls for a legal conclusion, to which no response is required.

**COUNT I**

VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION PURSUANT TO 42 U.S.C. § 1983

Right to Be Free From Excessive Force  
(Against All Defendants)

- 45. Re-assert and re-allege Paragraphs 1 through 44 above as though fully set forth herein.
- 46. Affirmatively assert that said paragraph calls for a legal conclusion, to which no response is required.
- 47. Affirmatively assert that said paragraph calls for a legal conclusion, to which no response is required.
- 48. Deny.
- 49. Deny.
- 50. Deny.
- 51. Deny.
- 52. Deny.
- 53. Deny.
- 54. Affirmatively assert that said paragraph calls for a legal conclusion, to which no response is required. To the extent a response is required, deny.
- 55. Deny.

**COUNT II**  
VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES  
CONSTITUTION PURSUANT TO 42 U.S.C. § 1983  
Right to Due Process of Law, Substantive and Procedural  
(Against All Defendants)

- 56. Re-assert and re-allege Paragraphs 1 through 55 above as though fully set forth herein.
- 57. Affirmatively assert that said paragraph calls for a legal conclusion, to which no response is required.
- 58. Affirmatively assert that said paragraph calls for a legal conclusion, to which no response is required.
- 59. Deny.
- 60. Deny.
- 61. Admit.
- 62. Deny.
- 63. Deny.
- 64. Deny.
- 65. Deny.
- 66. Affirmatively assert that said paragraph calls for a legal conclusion, to which no response is required. To the extent a response is required, deny.
- 67. Deny.

**COUNT III**  
VIOLATION OF THE SIXTH AND EIGHTH AMENDMENT TO THE UNITED STATES  
CONSTITUTION PURSUANT TO 42 U.S.C. § 1983  
Right to Be Free From Punishment without benefit of Jury Trial  
(Against All Defendants)

- 68. Re-assert and re-allege Paragraphs 1 through 67 above as though fully set forth herein.

- 69. Affirmatively assert that said paragraph calls for a legal conclusion, to which no response is required.
- 70. Affirmatively assert that said paragraph calls for a legal conclusion, to which no response is required.
- 71. Deny.
- 72. Admit that Defendants' actions were conducted within the scope of their official duties as police officers. Deny that any Defendant used excessive force upon Eduard Lopez.
- 73. Deny.
- 74. Deny.
- 75. Deny.
- 76. Deny.
- 77. Affirmatively assert that said paragraph calls for a legal conclusion, to which no response is required. To the extent a response is required, deny.
- 78. Deny.

**COUNT IV**  
**WRONGFUL DEATH-NEGLIGENCE**  
**(Against All Defendants)**

- 79. Re-assert and re-allege Paragraphs 1 through 78 above as though fully set forth herein.
- 80. Affirmatively assert that said paragraph calls for a legal conclusion, to which no response is required. To the extent a response is required, affirmatively assert that Defendants did not violate any of Eduard Lopez's constitutional rights.
- 81. Deny.

82. Affirmatively assert that said paragraph calls for a legal conclusion, to which no response is required. To the extent a response is required, upon information and belief, affirmatively assert that said policies and procedures were in place, and training and supervision was proper.
83. Deny.
84. Affirmatively assert that said paragraph calls for a legal conclusion, to which no response is required. To the extent a response is required, deny.
85. Deny each and every allegation contained within said paragraph.
86. Affirmatively assert that said paragraph calls for a legal conclusion, to which no response is required.
87. Deny.
88. Deny.
89. Deny all allegations contained therein, including Subparts A through D.

**COUNT V**  
**LOSS OF CONSORTIUM**  
**(Against All Defendants)**

90. Re-assert and re-allege Paragraphs 1 through 89 above as though fully set forth herein.
91. Affirmatively assert that said paragraph is vague. These answering Defendants presently lack information sufficient to form a belief as to the truth or accuracy of the allegations contained therein and, therefore, deny and leave Plaintiff to his proof.
92. Affirmatively assert that said paragraph is vague. These answering Defendants presently lack information sufficient to form a belief as to the truth or accuracy of the allegations contained therein and, therefore, deny and leave Plaintiff to his proof.



93. Deny.
94. Deny.
95. Deny.

### **AFFIRMATIVE DEFENSES**

Pursuant to Federal Rules of Civil Procedure, which requires answering Defendants to allege affirmative defenses and/or Motions to Dismiss so as to preserve them, answering Defendants allege on information as follows:

1. Upon information and belief, Plaintiff has failed to state a claim upon which relief can be granted.
2. These Answering Defendants are entitled to qualified immunity.
3. These answering Defendants are entitled to discretionary immunity pursuant to Wis. Stat. § 893.80(4).
4. Plaintiff's claims against Fox Valley Metro Police Department are barred as it is not a suable entity. *Best v. City of Portland*, 554 F.3d 698, 698 n.1 (7th Cir. 2009).
5. Plaintiff's *respondeat superior* claims are not actionable under 42 U.S.C. §1983.
6. Upon information and belief, these answering Defendants are not liable to Plaintiff under a *Monell* theory, and Plaintiff has failed to sufficiently plead as such.
7. Upon information and belief, these answering Defendants did not deprive Plaintiff of any rights under federal law or the United States Constitution.
8. Upon information and belief, Mr. Pynenberg acted in defense of himself and defense of others.

9. Upon information and belief, Plaintiff assumed risks when he willfully fled from police and when he attempted to use his motor vehicle as a deadly weapon.
10. Upon information and belief, Plaintiff's injuries and/or damages resulted from his own culpable or negligent conduct in resisting arrest and using his motor vehicle as a deadly weapon.
11. The Defendants acted in the lawful exercise of their discretion, and as a result, the Defendants are entitled to governmental immunity.
12. At no time material hereto did the answering Defendants act in bad faith or in a willful, wanton, outrageous, reckless, and/or malicious manner.
13. Plaintiff did not suffer any injury or damages as a result of any improper acts or omissions by these answering Defendants.
14. Plaintiff's damages, if any are recoverable, are limited by Wis. Stat. § 893.80 and other applicable statutes.
15. Plaintiff's claims for punitive damages are barred by Wis. Stat. § 893.80.
16. At all times material hereto, the actions of Answering Defendants were appropriate under the circumstances and based upon a reasonable good-faith belief that they were justified under the law.
17. The Plaintiff's active resistance to lawful arrest was the cause of any alleged injuries or damages, if any.
18. Merely negligent or careless conduct on the part of a state actor is insufficient to maintain a cause of action pursuant to 42 U.S.C. § 1983.
19. Plaintiff's claims and/or alleged losses are barred by the applicable statute of limitations.

20. Plaintiff's claims are barred pursuant to Wis. Stat. § 893.80, as the Plaintiff failed to comply with the requirements therein.
21. Upon information and belief, service of process may be insufficient or improper.
22. Upon information and belief, this Court may lack personal jurisdiction over one or more of these answering Defendants.
23. Upon information and belief, Plaintiff has failed to properly serve one or more of these answering Defendants.
24. Upon information and belief, Plaintiff lacks standing to bring a claim for loss of consortium.
25. Any and all alleged damages the Plaintiff sustained are barred by and contrary to public policy.
26. To the extent that any claims for punitive damage are made, they must fail, as answering Defendants did not act with malice or reckless indifference to Plaintiff's rights.
27. Answering Defendants hereby reserve the right to amend this pleading, to bring any other party, and/or to raise any other affirmative defenses, according to the established procedure, that arises as a result of discovery.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, these Answering Defendants pray for judgment against the Plaintiff as follows:

1. That judgment be awarded in favor of answering Defendants against the Plaintiff, and that the Complaint be dismissed with prejudice;
2. That these answering Defendants be awarded their costs in defending this suit;

3. That these answering Defendants be awarded their reasonable attorneys' fees as may be determined by this Court; and
4. For such other and further relief as the Court shall deem just and proper.

**THESE ANSWERING DEFENDANTS HEREBY DEMAND A  
TRIAL BY JURY.**

Dated this 4th day of October, 2021.

DAVIS & KUELTHAU, s.c.

By: s/Jason R. Just  
Jason R. Just  
State Bar No. 1104647

Attorneys for Defendants,  
*Sam Pynenberg, Fox Valley Metro Police  
Department and The Village of Little Chute*

P.O. Address:  
318 S. Washington St., Suite 300  
Green Bay, WI 54301  
920.435.9378

Direct Contact Information:  
Jason R. Just

920.431.2226 direct dial  
920.431.2266 direct fax  
[jjust@dkattorneys.com](mailto:jjust@dkattorneys.com)