

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MARC FRUCHT, SEAN TAFT-MORALES, :
By and through his next friend, :
HUGH TAFT-MORALES :

Plaintiffs, :

v. :

CV No. 04-0599 (RJL)

DISTRICT OF COLUMBIA and :
JOHN/JANE DOES 1-20 :

Defendants. :

ANSWER OF DEFENDANT DISTRICT OF COLUMBIA

Defendant District of Columbia, by and through its attorney, the Office of the Attorney General for the District of Columbia, responds to the complaint as follows:

First Defense

The complaint fails to state a claim upon which relief may be granted.

Second Defense
Overview

1. The allegations in paragraph 1 represent a statement of claims of the pleader, and as such, do not require a response. However, to the extent a response is required, the allegations in paragraph 1 of the Complaint are denied.

2. The allegations in paragraph 2 represent a statement of claims of the pleader, and as such, do not require a response. However, to the extent a response is required, the allegations in paragraph 2 of the Complaint are denied.

3. The allegations in paragraph 3 represent a statement of claims of the pleader, and as such, do not require a response. However, to the extent a response is required, the allegations in paragraph 3 of the Complaint are denied.

4. The allegations in paragraph 4 represent a statement of claims of the pleader, and as such, do not require a response. However, to the extent a response is required, the allegations in paragraph 4 of the Complaint are denied.

Jurisdiction and Venue

5. Defendant acknowledges the existence of the statutory provision cited in paragraph 5 of the Complaint, but deny that jurisdiction over the subject matter is conferred solely thereby.

6. Defendant acknowledges the existence of the statutory provision cited in paragraph 6 of the Complaint, but deny that venue over the subject matter is conferred solely thereby.

Parties

7. Defendant is without sufficient information to admit or deny whether Plaintiff Mark Frucht is a resident of Wisconsin. All other allegations contained in paragraph 7 of the Complaint are denied.

8. Defendant is without sufficient information to admit or deny whether Plaintiff Sean Taft-Morales, is a minor, or a resident of Maryland. Defendant is without sufficient information to admit or deny whether Hugh Taft-Morales is the next of friend and father of Sean Taft-Morales. All other allegations contained in paragraph 8 of the Complaint are denied.

9. Defendant admits the allegations contained in paragraph 9 of the Complaint.

10. Defendant is without sufficient information or knowledge to either admit or deny whether the Jane/John Does 1-20 are Metropolitan Police Department Officers. All other allegations in paragraph 10 represent the legal conclusions of the pleader, and as such, do not require a response.

Allegations

11. Defendant denies the allegations contained in paragraph 11 of the Complaint.

12. The Defendant admits that A.N.S.W.E.R. Coalition sought and obtained permits for both the rally and march. Defendant is without sufficient information or knowledge to either admit or deny all other allegations in paragraph 12 of the Complaint.

13. The allegations in paragraph 13 are denied.

14. The allegations in paragraph 14 are denied.

15. The Defendant admits that at times during the march, Metropolitan Police Department flanked the sides of the march with motorcycles and bicycles. All other allegations in paragraph 15 are denied.

16. The allegations in paragraph 16 are denied.

17. The allegations in paragraph 17 are denied.

18. Defendant is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 18 of the Complaint.

19. Defendant is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 19 of the Complaint.

20. Defendant admits that Plaintiff Marc Frucht was carrying a camera. Defendant denies that members of the Metropolitan Police Department jumped upon Plaintiff Marc Frucht. Defendant is without sufficient information or knowledge to either admit or deny all other allegations contained in paragraph 20 of the Complaint.

21. Defendant admits that members of the Metropolitan Police Department were on top of Plaintiff Marc Frucht. Defendant denies that the Plaintiff did not resist. Defendant denies that members of the Metropolitan Police Department twisted the Plaintiff left leg or beat him on his left thigh. Defendant is without sufficient information or knowledge to either admit or deny all other allegation in paragraph 21 of the Complaint.

22. The allegations in paragraph 22 are denied.

23. The allegations in paragraph 23 are denied.

24. The allegations in paragraph 24 are denied.

25. The allegations in paragraph 25 are denied.

26. The allegations in paragraph 26 are denied.

27. The allegations in paragraph 27 are denied.

28. Defendant admits that Plaintiff Marc Frucht was taken into custody and questioned by members of the Metropolitan Police Department. All other allegations in paragraph 28 are denied.

29. Defendant admits that Plaintiff Marc Frucht was taken to the hospital for treatment of his injuries. Defendant is without sufficient information or knowledge to either admit or deny all other allegations contained in paragraph 29 of the Complaint.

30. Defendant is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 30 of the Complaint.

31. Defendant denies that Metropolitan Police Department attacked the crowd violently forcing the crowd to compress. Defendant denies that members of the Metropolitan Police Department pushed or struck demonstrators from both sides using clubs and fists. Defendant is without sufficient information or knowledge to either admit or deny all other allegations contained in paragraph 31 of the Complaint.

32. The allegations in paragraph 32 are denied.

33. Defendant denies that as a consequence of a police assault, other individuals were pushed or fell on Plaintiff Taft-Morales. Defendant is without sufficient information or knowledge to either admit or deny all other allegations contained in paragraph 33 of the Complaint.

34. Defendant is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 34 of the Complaint.

35. Defendant is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 35 of the Complaint.

36. Defendant is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 36 of the Complaint.

37. Defendant is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 37 of the Complaint.

38. Defendant is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 38 of the Complaint.

39. Defendant is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 39 of the Complaint.

40. The allegations in paragraph 40 represent the legal conclusions of the pleader, and as such, do not require a response. However, to the extent a response is required, the allegations in paragraph 40 are denied.

41. The allegations in paragraph 41 represent the legal conclusions of the pleader, and as such, do not require a response. However, to the extent a response is required, the allegations in paragraph 41 are denied.

42. The allegations in paragraph 42 represent the legal conclusions of the pleader, and as such, do not require a response. However, to the extent a response is required, the Defendant is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 42 of the Complaint.

Unconstitutional Policies of the MPD

43. The allegations in paragraph 43 are denied.

44. The allegations in paragraph 44 are denied.

45. The allegations in paragraph 45 are denied.

46. The allegations in paragraph 46 are denied.

47. The allegations in paragraph 47 are denied.

48. The allegations in paragraph 48 are denied

49. The allegations in paragraph 49 are denied.

50. The allegations in paragraph 50 are denied.

51. The allegations in paragraph 51 are denied.

(a) The allegations in paragraph 51(a) are denied.

(b) The allegations in paragraph 51(b) are denied.

52. The allegations in paragraph 52 represent the legal conclusions of the pleader, and as such, do not require a response. However, to the extent a response is required, the Defendant is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 52 of the Complaint.

Count I
(First Amendment and Fourth Amendment; Assault and Battery)

53. Defendant incorporates by reference its responses to paragraphs one through fifty-two.

54. The allegations in paragraph 54 are denied.

55. The allegations in paragraph 55 are denied.

56. The allegations in paragraph 56 is a statement of claims by and of the pleader, and as such, do not require a response.

Count II
(Wrongful and False Arrest)

57. The allegations in paragraph 57 are denied.

58. The allegations in paragraph 58 are denied.

59. The allegations in paragraph 59 are denied.

60. The allegations in paragraph 60 is a statement of claims by and of the pleader, and as such, do not require a response.

Count III
(Injunctive Relief)

61. Defendant is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 61 of the Complaint.

62. The allegations in paragraph 62 are denied.

63. The allegations in paragraph 63 is a statement of claims by and of the pleader, and as such, do not require a response.

Count IV
(Negligence)

64. The allegations in paragraph 64 represent the legal conclusions of the pleader, and as such, do not require a response. However, to the extent a response is required, the allegations in paragraph 64 are denied.

Third Defense

To the extent that Plaintiffs were damaged and/or injured as alleged in the Complaint, said damages and/or injuries were the result of a third party that may or may not be a party to this action.

Fourth Defense

All actions performed by Defendant met or exceeded the applicable standard of care, and did not rise to negligence, gross negligence, violations of common law, statutory and operational standards, deliberate indifference, and/or unconstitutional policy or custom.

Fifth Defense

To the extent Plaintiffs have suffered any damages alleged in the Complaint, those damages resulted from their reckless, willful, illegal, and/or other wrongful conduct, their concurrent or contributory negligence or their assumption of the risk.

Sixth Defense

To the extent Plaintiffs have suffered any damages alleged in the Complaint, the Plaintiffs failed to mitigate their damages.

Seventh Defense

Defendant asserts immunity, qualified immunity, absence of bad faith and absence of gross negligence.

Eighth Defense

Plaintiffs may have failed to fully satisfy the mandatory notice requirement pursuant to D.C. Code 12-309.

Ninth Defense

Defendant reserves the right to assert any and all defenses, which are supported by facts, learned through discovery or at trial herein.

General Denial

Any allegation(s) not specifically admitted herein is denied, and strict proof thereof is demanded.

Respectfully Submitted,

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Deputy Attorney General
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