

NOW COMES the Defendants, CITY OF SAGINAW and TABITHA HOSKINS, by and through their attorney, KAILEN C. PIPER and GREGORY W. MAIR, and in Answer to Plaintiff's First Amended Complaint, states as follows:

INTRODUCTION

1. That these Defendants admit only that The City of Saginaw employs parking enforcement officers. That these Defendants deny that any actions undertaken by the officers was unconstitutional pursuant to *United States v Jones*, 565 U.S.400(2012). That further, these Defendants deny any and all other allegations set forth in the instant paragraph of Plaintiff's Complaint for lack of sufficient information, leaving Plaintiff to her strict proofs.

PARTIES

2. That these Defendants neither admit nor deny that Plaintiff is a resident of the County of Saginaw for lack of sufficient information, leaving Plaintiff to her strict proofs. That further, these Defendants admit that Plaintiff has received numerous parking tickets for violation. These Defendants deny the remaining allegations set forth in the instant paragraph of Plaintiff's Complaint as legally and factually unfounded.

3. That these Defendants admit the allegations set forth in the instant paragraph of Plaintiff's Complaint.

4. That these Defendants admit only that Tabitha Hoskins is employed as an

enforcement officer in the City of Saginaw. That further, these Defendants neither admit nor deny the remaining allegations in the instant paragraph of Plaintiff's Complaint for the lack of sufficient information, leaving Plaintiff to her strict proofs.

JURISDICTION

5. That these Defendants deny that Plaintiff is entitled to the relief pursuant to 42 U.S.C. § 1983. That these Defendants further deny that these Defendants violated Plaintiff's Fourth Amendment rights, or any other constitutional rights.

6. That these Defendants deny the allegations set forth in the instant paragraph of Plaintiff's Complaint for lack of sufficient information to Defendant at this time and upon information and belief, these Defendants deny that this Court has proper subject matter jurisdiction.

7. That these Defendants deny that this Court has proper subject matter jurisdiction over this matter and therefore venue is not proper with the information and knowledge available at this juncture to form a belief as to the truth of these allegations.

GENERAL ALLEGATIONS

8. That these Defendants neither admit nor deny the allegations set forth in the instant paragraph of Plaintiff's Complaint for lack of sufficient information, leaving Plaintiff to her strict proofs.

9. That these Defendants neither admit nor deny the allegations set forth in the instant paragraph of Plaintiff's Complaint for lack of sufficient information, leaving Plaintiff to her strict proofs.

10. That these Defendants neither admit nor deny the allegations set forth in the instant paragraph of Plaintiff's Complaint for lack of sufficient information, leaving Plaintiff to her strict proofs.

11. That these Defendants admit only that Plaintiff has received numerous parking tickets for violating the local ordinance by exceeding the time limit available in the parking space. That further, these Defendants deny that the parking ticket violated Plaintiff's constitutional rights, Fourth Amendment or otherwise.

12. That the allegations set forth in the instant paragraph of Plaintiff's Complaint does not warrant a response from these Defendants and as such these Defendants neither admit nor deny the allegations set forth in the instant paragraph.

13. That these Defendants neither admit nor deny the allegations set forth in the instant paragraph of Plaintiff's Complaint for lack of sufficient information, leaving Plaintiff to her strict proofs.

14. That these Defendants neither admit nor deny the allegations set forth in the instant paragraph of Plaintiff's Complaint for lack of sufficient information, leaving Plaintiff to her strict proofs.

15. That these Defendants deny the allegations set forth in the instant paragraph of Plaintiff's Complaint as legally and factually unfounded in the manner and form alleged, leaving Plaintiff to her strict proofs.

16. That these Defendants neither admit nor deny the allegations set forth in the instant paragraph of Plaintiff's Complaint.

17. That these Defendants deny the allegations set forth in the instant paragraph of Plaintiff's Complaint as untrue in the manner and form alleged and legally and factually unfounded.

18. That these Defendants deny the allegations set forth in the instant paragraph of Plaintiff's Complaint as untrue in the manner and form alleged and legally and factually unfounded.

19. That these Defendants neither admit nor deny Plaintiff's legal conclusion as to the opinion and holding of *United States v Jones*, 565 U.S.400(2012), as the opinion and holding speaks for itself. That further, these Defendants deny the allegations set forth in the instant paragraph as untrue in the manner and form alleged as legally and factually unfounded.

20. That the allegations set forth in the instant paragraph of Plaintiff's Complaint does not warrant a response from these Defendants and as such these Defendants neither admit nor deny the allegations set forth in the instant paragraph.

21. That these Defendants neither admit nor deny the allegations set forth in the

instant paragraph of Plaintiff's Complaint for lack of sufficient information, leaving Plaintiff to her strict proofs.

22. That these Defendants deny the allegations set forth in the instant paragraph of Plaintiff's Complaint as legally and factually unfounded.

CLASS ALLEGATIONS

23. That these Defendants admit only that Plaintiff has commenced this action on behalf of herself and to the cost of others. That these Defendants further deny the remaining allegations set forth in the instant paragraph of Plaintiff's Complaint as untrue in the manner and form alleged.

24. That these Defendants deny the allegations set forth in the instant paragraph of Plaintiff's Complaint as untrue in the manner and form alleged as legally and factually unfounded.

25. That these Defendants deny the allegations set forth in the instant paragraph of Plaintiff's Complaint as untrue in the manner and form alleged as legally and factually unfounded.

26. That these Defendants deny the allegations set forth in the instant paragraph of Plaintiff's Complaint as untrue in the manner and form alleged as legally and factually unfounded.

27. That these Defendants deny the allegations set forth in the instant paragraph of Plaintiff's Complaint as untrue in the manner and form alleged as legally and

factually unfounded.

28. That these Defendants deny the allegations set forth in the instant paragraph of Plaintiff's Complaint as untrue in the manner and form alleged and legally and factually unfounded.

29. That these Defendants deny the allegations set forth in the instant paragraph of Plaintiff's Complaint as untrue in the manner and form alleged and legally and factually unfounded.

30. That these Defendants neither admit nor deny the opinion and holding of *United States v Jones*, 565 U.S.400(2012) as the opinion and holding speaks for itself. That further, these Defendants deny any and all constitutional violations, Fourth Amendment or otherwise as well as the allegations contained in said paragraph in the manner and form alleged.

31. That these Defendants neither admit nor deny the opinion and holding of *United States v Jones*, 565 U.S.400(2012) as the opinion and holding speaks for itself. That further, these Defendants deny any and all constitutional violations, Fourth Amendment or otherwise as well as the allegations contained in said paragraph in the manner and form alleged.

32. That these Defendants neither admit nor deny the opinion and holding of *United States v Jones*, 565 U.S.400(2012) as the opinion and holding speaks for itself. That further, these Defendants deny any and all constitutional violations,

Fourth Amendment or otherwise as well as the allegations contained in said paragraph in the manner and form alleged.

33. That these Defendants neither admit nor deny the opinion and holding of *United States v Jones*, 565 U.S.400(2012) as the opinion and holding speaks for itself. That further, these Defendants deny any and all constitutional violations, Fourth Amendment or otherwise as well as the allegations contained in said paragraph in the manner and form alleged.

34. That these Defendants deny the allegations set forth in the instant paragraph of Plaintiff's Complaint as legally and factually unfounded.

35. That these Defendants deny the allegations set forth in the instant paragraph of Plaintiff's Complaint as legally and factually unfounded.

36. That these Defendants deny the allegations set forth in the instant paragraph of Plaintiff's Complaint as legally and factually unfounded. That these Defendants neither admit nor deny the opinion and holding of *Monell v New York City Department of Social Services* as the opinion and holding speaks for itself.

37. That these Defendants deny the allegations set forth in the instant paragraph of Plaintiff's Complaint as legally and factually unfounded.

38. That these Defendants deny the allegations set forth in the instant paragraph of Plaintiff's Complaint as legally and factually unfounded.

RELIEF REQUESTED

39. That these Defendants deny that Plaintiff, or any potential class members have suffered any damages delineated in subparagraphs (a) through (g) as a result of the actions of these Defendants. That these Defendants respectfully request that this honorable Court enter an Order Dismissing the above-entitled action, denying any and all beliefs sought by the Plaintiff and denying any class certification and awarding Defendant its cost and attorney fees incurred herein.

NEW MATTER AND AFFIRMATIVE DEFENSES.

NOW COMES the Defendants, CITY OF SAGINAW and TABITHA HOSKINS, by and through their attorney, KAILEN C. PIPER and GREGORY W. MAIR, and in New Matter and Affirmative Defenses, states as follows:

DEFENSES-SPECIAL/ AFFIRMATIVE

1. Plaintiff's Complaint fails to state a claim upon which relief may be granted.
2. Some or all of Plaintiff's claims are barred by the applicable statute of limitations.
3. Plaintiff's claims are jurisdictionally barred by the *Rooker-Feldman* doctrine.
4. Plaintiff's claims are barred by the *Heck* doctrine.
5. Plaintiff was advised of her rights, waived them and pled

responsible/guilty to the ordinance violations that are the subject of Plaintiff's Complaint.

6. That Defendant Hoskins is entitled to qualified immunity.

7. Any damages Plaintiff claims to have suffered were the result of Plaintiff's own acts or actions, thereby barring Plaintiff's claim in whole or in part.

8. The proofs may show that any damages sustained by Plaintiff were caused by the intervening acts of others or third-parties.

9. Plaintiff does not have clean hands and, therefore, is not entitled to equitable relief in this matter.

10. Defendants, at all times, acted in good faith.

11. Plaintiff has failed to mitigate her damages in this matter.

12. Plaintiff claims for injunctive relief are moot.

13. Plaintiff lacks standing as the named representative of a putative class action.

14. The Defendants have taken no action in trespass upon constitutionally protected property rights to obtain any information which was not openly available to the public.

15. *Taylor v City of Saginaw*, 922 F. 3d 328(2019) did not rule that chalking tires is a violation of the Fourth Amendment.

16. The proofs may show Defendants have not physically occupied private property belonging to Plaintiff for the purpose of obtaining information.

17. The Plaintiff has no reasonable expectation of privacy in the exterior of her vehicle and an examination of the exterior of Plaintiff's vehicle or license plate does not constitute a search.

18. The visual observation of Plaintiff's vehicle, tires and/or license plate does not constitute a search.

19. The Plaintiff's claims are barred by the "automobile" exception to the warrant requirement.

20. The Plaintiff's claims are barred by the probability of criminal activity and the individualized suspicion of wrongdoing, reasonable suspicion and probable cause.

21. The Plaintiff's claims are barred by the "community caretaker" exception to the warrant requirement.

22. The Plaintiff's claims are barred by the hazard, traffic impediment and public safety concerns, created by the illegal parking of her vehicle.

23. The Plaintiff's claims are barred by the exigent circumstance exception to the warrant requirement.

24. The Plaintiff's claims are barred by the administrative search exception to the warrant requirement.

25. The Plaintiff's claims are barred by consent to search.

26. The Plaintiff's claims are barred all by other exceptions to the warrant requirement.

27. The Plaintiff's damage claims are barred by the absence of injury or constitutional harm.

28. The Plaintiff's claims for punitive damages are barred, and are not available against a governmental entity under these circumstances.

29. The Plaintiff's claims for class certification are barred by the absence of evidence of numerosity, the non-similarity and inconsistency of questions of law and fact, the absence of typicality between Plaintiff's claims and those of the putative class, the absence of evidence Plaintiff will fairly or adequately protect the interest of the class, and the absence of evidence that maintenance of this action, as a class action, is superior to any other method including of litigating these claims.

30. The Plaintiff's claims are barred by the absence of a violation of clearly defined statutory or constitutional rights and a clearly defined class of litigants.

31. Defendants hereby gives notice that should discovery support them, Defendants intend to rely on such other affirmative defenses as may be applicable, including but not limited to after acquired evidence.

RESERVATION OF RIGHTS

Defendants hereby reserves the right to amend, change, modify or add to the responses and defenses asserted herein based upon information disclosed or discovered as they become known through further investigation and the discovery process.

Date: September 17, 2019

/S/KAILEN C. PIPER
KAILEN C. PIPER (P82865)
Attorney for Defendants
300 St. Andrews Rd., Suite 302
Saginaw, MI 48638

RELIANCE ON DEMAND FOR JURY

NOW COMES Defendants, CITY OF SAGINAW and TABITHA HOSKINS by and through their attorneys, and specifically relies on Plaintiff's Jury Demand and respectfully requests that the Court perfect the Jury Demand at a pretrial conference if in fact it is defective in any respect whatsoever.

Respectfully submitted,

/s/ KAILEN C. PIPER
KAILEN C. PIPER (P82865)
Attorney for Defendants
300 St. Andrews Rd., Suite 302
Saginaw, MI 48638

Date: September 17, 2019

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send confirmation of such filing to the following:

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Respectfully submitted,

Dated: September 17, 2019

/S/ KAILEN C. PIPER (P82865)
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