

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

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STEPHANIE RAPKIN,

Plaintiffs,

v.

CASE NO. 23-CV-670

VILLAGE OF SHOREWOOD,  
VILLAGE OF WHITEFISH BAY,  
PETER NIMMER,  
NICHOLAS MUELLER,  
IAN KURDRYNSKYY,  
THOMAS LIEBENTHAL,  
HALSTON WOLBER,  
ALI-RAZA GOVANI,  
CODY SMITH, and  
JULIA ZURFLUH,

Defendants.

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**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES**

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Defendants, Village of Whitefish Bay (“VWFB”) and Julia Zurfluh (“Zurfluh”), by their attorneys, WIRTH + BAYNARD, Answer the Plaintiff’s Complaint (Dkt. 1) and assert affirmative defenses by alleging and showing to the court as follows:

**INTRODUCTION**

1. Answering paragraph 1, as to these responding Defendants, admit that Zurfluh was at the Rapkin residence on June 7<sup>th</sup>, 2020. As to the remaining allegations, deny.
2. Answering paragraph 2, as to these responding Defendants, deny.
3. Answering paragraph 3, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.
4. Answering paragraph 4, as to these responding Defendants, deny.

5. Answering paragraph 5, as to these responding Defendants, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

6. Answering paragraph 6, as to these responding Defendants, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

7. Answering paragraph 7, as to these responding Defendants, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

8. Answering paragraph 8, as to these responding Defendants, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

9. Answering paragraph 9, as to these responding Defendants, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

10. Answering Paragraph 10, as to these responding Defendants, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

### **JURISDICTION AND VENUE**

11. Answering paragraph 11, assert that the allegations in this Paragraph are conclusions of law to which no response is required. To the extent that a response is required, deny any deprivation on the part of these responding Defendants as alleged, or otherwise.

12. Answering paragraph 12, assert that the allegations in this Paragraph are conclusions of law to which no response is required.

13. Answering paragraph 13, admit only those allegations that identify the composition and location of the VWFB; as to all other allegations, assert that the allegations in this Paragraph are conclusions of law to which no response is required.

### **PARTIES**

14. Answering paragraph 14, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

15. Answering paragraph 15, admit upon information and belief Defendant Village of Shorewood is a political subdivision of the State of Wisconsin. As to the remaining allegations, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

16. Answering paragraph 16, admit the Village of Whitefish Bay is a political subdivision of the State of Wisconsin and was the employer of Defendant Zurfluh at the time of the alleged occurrence giving rise to this lawsuit. As to the remaining allegations, assert that those are legal conclusions to which no response is required; to the extent that a response is required, deny any liability to Plaintiff as alleged or otherwise.

17. Answering paragraph 17, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

18. Answering paragraph 18, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

19. Answering paragraph 19, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

20. Answering paragraph 20, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

21. Answering paragraph 21, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

22. Answering paragraph 22, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

23. Answering paragraph 23, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

24. Answering paragraph 24, admit Julia Zurfluh was at the time of this alleged occurrence employed as an officer with the Village of Whitefish Bay Police Department and was on duty and in the course and scope of her employment with the Village of Whitefish Bay; deny any misconduct on the part of these responding Defendants, and deny liability to the Plaintiff as alleged or otherwise.

### **FACTS**

25. Answering paragraph 25, as to these responding Defendants, admit Zurfluh was wearing a body cam, which captured her interactions with Plaintiff. As to the remaining allegations, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

26. Answering paragraph 26, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

27. Answering paragraph 27, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

28. Answering paragraph 28, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

29. Answering paragraph 29, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

30. Answering paragraph 30, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

31. Answering paragraph 31, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

32. Answering paragraph 32, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

33. Answering paragraph 33, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

34. Answering paragraph 34, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

35. Answering paragraph 35, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

36. Answering paragraph 36, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

37. Answering paragraph 37, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

38. Answering paragraph 38, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

39. Answering paragraph 39, to the extent that the allegations purport to make a claim of conduct on the part of these responding Defendants, deny. As to all other allegations, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

40. Answering paragraph 40, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

41. Answering paragraph 41, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

42. Answering paragraph 42, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

43. Answering paragraph 43, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

44. Answering paragraph 44, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

45. Answering paragraph 45, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

46. Answering paragraph 46, admit only that Zurfluh is a member of the Village of Whitefish Bay Police Department, and that she was called to the scene under a request for mutual aid. As to the remaining allegations, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

47. Answering paragraph 47, to the extent that the allegations purport to make a claim of conduct on the part of these responding Defendants, deny. As to all other allegations, lack

knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

48. Answering paragraph 48, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

49. Answering paragraph 49, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

50. Answering paragraph 50, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

51. Answering paragraph 51, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

52. Answering paragraph 52, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

53. Answering paragraph 53, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

54. Answering paragraph 54, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

55. Answering paragraph 55, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

56. Answering paragraph 56, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

57. Answering paragraph 57, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

58. Answering paragraph 58, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

59. Answering paragraph 59, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

60. Answering paragraph 60, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

61. Answering paragraph 61, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

62. Answering paragraph 62, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

63. Answering paragraph 63, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

64. Answering paragraph 64, to the extent that the allegations purport to make a claim of conduct on the part of these responding Defendants, deny. As to all other allegations, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

65. Answering paragraph 65, to the extent that the allegations purport to make a claim of conduct on the part of these responding Defendants, deny. As to all other allegations, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

66. Answering paragraph 66, to the extent that the allegations purport to make a claim of conduct on the part of these responding Defendants, deny. As to all other allegations, lack



knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

67. Answering paragraph 67, to the extent that the allegations purport to make a claim of conduct on the part of these responding Defendants, deny. As to all other allegations, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

68. Answering paragraph 68, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

69. Answering paragraph 69, to the extent that the allegations purport to make a claim of conduct on the part of these responding Defendants, deny. As to all other allegations, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

70. Answering paragraph 70, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

71. Answering paragraph 71, to the extent that the allegations purport to make a claim of conduct on the part of these responding Defendants, deny. As to all other allegations, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

72. Answering paragraph 72, deny any constitutional violation as alleged, or otherwise.

73. Answering paragraph 73, admit upon information and belief that Rapkin was told Zurfluh was going to “check on her.”

74. Answering paragraph 74, as to these responding Defendants, admit only that Zurfluh placed Rapkin under arrest for assault. As to the remaining allegations, deny.

75. Answering paragraph 75, as to these responding Defendants, deny.

76. Answering paragraph 76, as to these responding Defendants, admit that Rapkin struck Govani in the groin with her leg. As to the remaining allegations, deny the officers “roughly” threw Rapkin up against the wall or that they “screamed” in her face.

77. Answering paragraph 77, as to as to these responding Defendants, deny.

78. Answering paragraph 78, to the extent that the allegations purport to make a claim of conduct on the part of these responding Defendants, deny. As to all other allegations, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

79. Answering paragraph 79, to the extent that the allegations purport to make a claim of conduct on the part of these responding Defendants, deny. As to all other allegations, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

80. Answering paragraph 80, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

81. Answering paragraph 81, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

82. Answering paragraph 82, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

83. Answering paragraph 83, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

84. Answering paragraph 84, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

85. Answering paragraph 85, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

86. Answering paragraph 86, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

87. Answering paragraph 87, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

88. Answering paragraph 88, to the extent that the allegations purport to make a claim of conduct on the part of these responding Defendants, deny. As to all other allegations, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

89. Answering paragraph 89, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

90. Answering paragraph 90, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

91. Answering paragraph 91, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

92. Answering paragraph 92, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

#### **COUNT I:**

#### **42 U.S.C. § 1983 Claim for Initial Unlawful Entry/Failure to Intervene**

93. Answering paragraph 93, responding Defendants reallege and incorporate, as though more fully set forth herein, the responses to paragraphs 1 through 92 of the Complaint.

94. Answering paragraph 94, as to these responding Defendants, deny.

95. Answering paragraph 95, as to these responding Defendants, deny.

96. Answering paragraph 96, as to these responding Defendants, deny.

97. Answering paragraph 97, as to these responding Defendants, deny.

**COUNT II:**

**42 U.S.C. § 1983 Claim for Unlawful Seizure and Arrest**

98. Answering paragraph 98, responding Defendants reallege and incorporate, as though more fully set forth herein, the responses to paragraphs 1 through 97 of the Complaint.

99. Answering paragraph 99, as to these responding Defendants, deny.

100. Answering paragraph 100, as to these responding Defendants, deny.

101. Answering paragraph 101, as to these responding Defendants, deny.

102. Answering paragraph 102, as to these responding Defendants, deny.

**COUNT III:**

**42 U.S.C. § 1983 Claim for Second Unlawful Entry/Failure to Intervene**

103. Answering paragraph 103, responding Defendants reallege and incorporate, as though more fully set forth herein, the responses to paragraphs 1 through 102 of the Complaint.

104. Answering paragraph 104, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

105. Answering paragraph 105, as to these responding Defendants, deny.

106. Answering paragraph 106, as to these responding Defendants, deny.

107. Answering paragraph 107, as to these responding Defendants, deny.

**COUNT IV:**

**42 U.S.C. § 1983 Claim for Conspiracy**

108. Answering paragraph 108, responding Defendants reallege and incorporate, as though more fully set forth herein, the responses to paragraphs 1 through 107 of the Complaint.

109. Answering paragraph 109, as to these responding Defendants, deny.

110. Answering paragraph 110, as to these responding Defendants, deny.

111. Answering paragraph 111, as to these responding Defendants, deny.

**COUNT V:  
42 U.S.C. § 1983 *Monell* Policy Claim  
(Village of Shorewood)**

112. Answering paragraph 112, responding Defendants reallege and incorporate, as though more fully set forth herein, the responses to paragraphs 1 through 111 of the Complaint.

113. Answering paragraph 113, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

114. Answering paragraph 114, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

115. Answering paragraph 115, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

116. Answering paragraph 116, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

117. Answering paragraph 117, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

**AFFIRMATIVE DEFENSES**

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted.
2. Plaintiff's state law claims are subject to the procedural prerequisites for bringing or maintaining a cause of action under § 893.80(1)(a) and (1)(b), Wis. Stats. and the exclusions, immunities and limitations on liability set forth in § 893.80, Wis. Stats.
3. Any injuries or damages suffered by the Plaintiff were caused by her own conduct and/or the conduct and contributory negligence of a third party other than the Defendants.
4. The Plaintiff may have failed to mitigate her damages.

5. The conduct attributed to these responding defendants did not constitute any violation of a cognizable constitutional right and this action must be summarily dismissed.

6. All of the acts of the responding Defendants were undertaken in good faith and not motivated by malice or the intent to harm.

7. The defendants are not liable under 42 USC §1983 because their actions were constitutional under the circumstances or exigent circumstances and did not compromise or deprive the plaintiff of any rights.

8. The defendants acted at all times reasonably and with a good faith belief that their actions were lawful and were not in violation of any federal or state constitutional right.

9. Plaintiff is not entitled to punitive damages.

10. The defendants acted within the discretionary scope of their authority as public officials in response to the circumstances and/or exigent circumstances.

11. Defendants are entitled to discretionary act immunity.

12. The actions of the responding individual defendants were objectively reasonable, and they are entitled to immunity and/or qualified immunity from claims, as well as limitations on actions and damages, as provided by Wisconsin Statutes, by federal regulations, and by operation of state and federal common law.

### **THE DEFENDANTS DEMAND A JURY TRIAL**

**WHEREFORE**, Defendants demand judgment dismissing the Plaintiff's claims and causes of action upon their merits, with prejudice, and with an award of all costs and fees incurred in the defense of this matter.

Dated at Wauwatosa, Wisconsin this 4<sup>th</sup> day of August 2023.

**WIRTH + BAYNARD**

Attorneys for Defendants, Village of  
Whitefish Bay and Julia Zurfluh

BY: /s/ Amanda E. Melrood  
Amanda E. Melrood, WI Bar No. 1089610  
9898 W. Bluemound Road, Suite 2  
Wauwatosa, Wisconsin 53226  
T: 414) 291-7979 / F: (414) 291-7960  
Email: [aem@wbattys.com](mailto:aem@wbattys.com)