

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON

MAR 22 1999 EE

MICHAEL W. MILNE, CLERK OF COURT

CLAUDIA NAVARRO PINEDA, *et al.*, §
Plaintiffs, §
v. §
CITY OF HOUSTON, *et al.*, §
Defendants. §

Civil Action No. H-98-3877
JURY DEMANDED

**ANSWER OF DEFENDANT, CITY OF HOUSTON,
TO PLAINTIFFS' FIRST AMENDED COMPLAINT AND JURY DEMAND**

Defendant, City of Houston, files its answer to plaintiffs' first amended complaint and jury demand:

ANSWER

1. Defendant, City of Houston, admits that on July 12, 1998, the individual defendants named in this suit, all officers of the Houston Police Department of defendant City of Houston on that date, proceeded to the home of Pedro Oregon Navarro, entered his home without a warrant, and fired approximately thirty-three (33) rounds into the bedroom of Pedro Oregon Navarro. Upon information and belief, defendant, City of Houston admits that Pedro Oregon Navarro was hit nine times in the back, once in the top of the head, once in the top of the shoulder, and once in the back of the hand. Defendant, City of Houston, denies all other allegations of paragraph 1 of plaintiffs' first amended complaint.

2. Defendant, City of Houston, admits that the individual defendants, D.H. Strouse, D.R. Barrera, P.A. Herrada, D.R. Perkins, L.E. Tillery, and James R. Willis were on duty, but defendant, City of Houston, contends that they acted outside the course and scope of their employment with the Police Department of the City of Houston. Defendant, City of Houston, denies that they acted under

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color of state law. Defendant, City of Houston, denies that it violated the civil rights of Pedro Oregon Navarro, and denies that any custom, policy, or practice of the City of Houston resulted in a violation of the civil rights of any of the plaintiffs or of Pedro Oregon Navarro and further denies all other allegations in paragraph 2, including subsections (a), (a), (b), (c), (d), (e), (f), (g), and (h), of plaintiffs' first amended complaint.

3. Defendant, City of Houston, does not have sufficient information to admit or deny whether plaintiff, Claudia Navarro Pineda, is the mother of Pedro Oregon Navarro, deceased, or whether she is a resident of Houston, Harris County, Texas.

4. Defendant, City of Houston admits that Susana Oregon Navarro, has made application as independent administratrix of the estate of Pedro Oregon Navarro, but does not have sufficient information to admit or deny the remaining allegations of paragraph 4 of plaintiffs' first amended complaint.

5. Defendant, City of Houston, does not have sufficient information to admit or deny whether Ashley Oregon-Lores is the minor daughter of Pedro Oregon Navarro, deceased, or whether Ana Isabel Lores and Ashley Oregon-Lores are residents of Houston, Harris County, Texas.

6. Defendant, City of Houston, does not have sufficient information to admit or deny whether Belinda Marili Viera is the minor daughter of Pedro Oregon Navarro, deceased, or whether Blanca Lidia Viera and Belinda Marili Viera are residents of Houston, Harris County, Texas.

7. Defendant, City of Houston, does not have sufficient information to admit or deny whether plaintiff, Rogelio Oregon Navarro is the brother of Pedro Oregon Navarro, deceased, or whether he is a resident of Houston, Harris County, Texas. Defendant, City of Houston, admits that Rogelio Oregon Navarro was present in the apartment located at 6711 Atwell, No. 16, Houston,

Texas, at the time Pedro Oregon Navarro was shot. Defendant, City of Houston, denies the all other allegations in paragraph 7 of plaintiffs' first amended complaint.

8. Defendant, City of Houston, does not have sufficient information to admit or deny whether plaintiff, Salvador Lopez is a resident of Houston, Harris County, Texas. Defendant, City of Houston, admits that Mr. Lopez was present in the apartment located at 6711 Atwell, No. 16, Houston, Texas, at the time Pedro Oregon Navarro was shot. Defendant, City of Houston, denies all other allegations in paragraph 8 of plaintiffs' first amended complaint.

9. Defendant, City of Houston, does not have sufficient information to admit or deny whether plaintiff, Nelly Mejia is a resident of Houston, Harris County, Texas. Defendant, City of Houston, admits that Ms. Mejia was present in the apartment located at 6711 Atwell, No. 16, Houston, Texas, at the time Pedro Oregon Navarro was shot. Defendant, City of Houston, denies all other allegations in paragraph 9 of plaintiffs' first amended complaint.

10. Defendant, City of Houston, admits that it is a municipality organized under the laws of the State of Texas, and may be served with process by serving Ms. Anna Russell, the City Secretary, at 900 Bagby, Houston, Texas 77002.

11. Defendant, City of Houston, is without sufficient information to admit or deny the allegations of paragraph 11 of plaintiffs' first amended complaint, but admit that D.H. Strouse, D.R. Barrera, P.A. Herrada, D.R. Perkins, L.E. Tillery, and James R. Willis have been served, have appeared in this action, and are represented by counsel.

12. Defendant, City of Houston, admits that jurisdiction is proper in this Court pursuant to, *inter alia*, 28 U.S.C. §§ 1331 and 1343 and all other applicable law.

13. Defendant, City of Houston, admits that venue is proper in this Court pursuant to 28 U.S.C. § 1391 and all other applicable law.

14. Defendant, City of Houston, admits that it received a copy of the letter attached as Exhibit A to plaintiffs' first amended complaint and that plaintiffs have not received a response to their letter. It is inappropriate to state settlement negotiations and/or posture in a pleading. In addition, Federal Rule of Evidence 408 makes responses to paragraph 14 of plaintiffs' first amended complaint inappropriate.

15. Defendant, City of Houston, is without sufficient information to admit or deny the allegations of paragraph 15 of plaintiffs' first amended complaint.

16. Defendant, City of Houston, admits that the six individual police officer defendants were members of a gang task force of the Southwest Patrol Division of the Police Department.

17. Defendant, City of Houston, admits that on the night of July 11, 1998, defendants Herrada and Willis stopped a vehicle in the vicinity of Atwell and Bellaire in Harris County, Texas.

18. Defendant, City of Houston, admits that the vehicle was driven by Nicholas B. Stutes, aged 18, that Ryan F. Baxter, aged 28, and a 15 year old male were in the vehicle and that defendants Herrada and Willis ticketed Nicholas Stutes for traffic offenses and released him.

19. Defendant, City of Houston, admits that defendants Herrada and Willis arrested Mr. Baxter on charges of public intoxication and providing alcohol to a minor, that Baxter was on probation for possession of a controlled substance, and that Mr. Baxter admitted to drinking alcohol on the night of the incident. Defendant, City of Houston, is without sufficient information to admit or deny that Mr. Baxter admitted to defendants Herrada and Willis that he had purchased and smoked crack cocaine on the night of the incident.

20. Defendant, City of Houston, is without sufficient information to admit or deny the allegations of paragraph 20 of plaintiffs' first amended complaint because of conflicting statements with respect to the events which culminated in Mr. Baxter's revelation of Rogelio Oregon Navarro as his alleged drug supplier.

21. Defendant, City of Houston, is without sufficient information to admit or deny the of the allegations of paragraph 21 of plaintiffs' first amended complaint because of conflicting statements.

22. Defendant, City of Houston, admits the allegations of paragraph 22 of plaintiffs' first amended complaint.

23. Defendant, City of Houston, denies the allegations of paragraph 23 of plaintiffs' first amended complaint until plaintiffs specify which defendant decided to book Mr. Baxter.

24. Defendant, City of Houston, is without sufficient information to admit or deny the allegations of paragraph 24 of plaintiffs' first amended complaint because of conflicting statements.

25. Defendant, City of Houston, admits that after the door was opened, the six individual defendants entered the apartment, but denies the exact sequence of events as alleged in paragraph 25 of plaintiffs' first amended complaint.

26. Defendant, City of Houston, admits that a total of approximately thirty-three (33) rounds were fired into the bedroom of Pedro Oregon Navarro, that at least one of the individual defendants paused to reload. Upon information and belief, defendant, City of Houston, admits that nine shots hit Pedro Oregon Navarro in the back, that one shot hit Pedro Oregon Navarro in the top of his shoulder, that one shot hit Pedro Oregon Navarro in the back of his left hand, and that one shot hit Pedro Oregon Navarro in the top of his head.

27. Defendant, City of Houston, admits that Pedro Oregon Navarro never fired the gun he had in his hand. Defendant, City of Houston, denies that the responses of all of the individual officers constituted an excessive use of force.

28. Defendant, City of Houston, admits that a subsequent search of the apartment in question established that there were no drugs found on the premises. Upon information and belief, defendant, City of Houston, admits that the autopsy report indicates that no Ethanol, Methanol, Acetone, or Isopropanol were detected in the blood of Pedro Oregon Navarro and no Marihuana Metabolite, Cocaine Metabolite, Amphetamine/Methamphetamine, Opiate, or Phencyclidine was detected in the urine of Pedro Oregon Navarro. Defendant, City of Houston, denies all other allegations in paragraph 28 of plaintiffs' first amended complaint.

29. Defendant, City of Houston, admits that after a subsequent search, Rogelio Oregon Navarro, Mr. Lopez, and Ms. Mejia were not armed, that they were handcuffed, and that they led to patrol cars. Defendant, City of Houston, denies all other allegations of paragraph 29 of plaintiffs' first amended complaint.

30. Defendant, City of Houston, admits that the individual officers were on duty as alleged in paragraph 2 of plaintiffs' first amended complaint, but denies all other allegations of paragraph 30 of plaintiffs' first amended complaint.

31. Paragraph 31 of plaintiffs' first amended complaint requires no response.

32. Defendant, City of Houston, admits that the first claim for relief is brought by Claudia Navarro Pineda, Susan Oregon Navarro, Ana Isabel Lores, and Blanca Lidia Viera, but has insufficient information to admit or deny whether these plaintiffs have standing to bring this lawsuit.

33. Defendant, City of Houston, admits that this claim is brought pursuant to 42 U.S.C. § 1983, 1988, and §§ 71.001 *et seq.* of the Texas Civil Practice and Remedies Code and for violations of the Fourth Amendment and Fourteenth Amendment, and pursuant to all other applicable law. Defendant, City of Houston, is without sufficient information to admit or deny whether Claudia Navarro Pineda, Susana Oregon Navarro, Ms. Lores, or Ms. Viera have standing to bring this lawsuit. Defendant, City of Houston, denies that such claims constitute a cause of action against defendant, City of Houston, for which relief may be granted.

34. Defendant, City of Houston, is without sufficient information to admit or deny whether each of the plaintiffs named in the first claim for relief is entitled to bring this claim pursuant to § 71.004 of the Texas Civil Practice and Remedies Code and all other applicable law or that Claudia Navarro Pineda is Pedro Oregon Navarro's mother, that Susana Oregon Navarro will qualify as independent administratrix of the estate of Pedro Oregon Navarro, deceased, that Ashley Oregon-Lores is Pedro Oregon Navarro's minor daughter, or that Belinda Marili Viera is Pedro Oregon Navarro's minor daughter.

35. Defendant, City of Houston, is without sufficient information to admit or deny the allegations of paragraph 35 of plaintiffs' first amended complaint.

36. Defendant, City of Houston, is without sufficient information to admit or deny the allegations of paragraph 36 of plaintiffs' first amended complaint.

37. Defendant, City of Houston, is without sufficient information to admit or deny the allegations of paragraph 37 of plaintiffs' first amended complaint.

38. Defendant, City of Houston, is without sufficient information to admit or deny the allegations of paragraph 38 of plaintiffs' first amended complaint.

39. Defendant, City of Houston, is without sufficient information to admit or deny the allegations of paragraph 39 of plaintiffs' first amended complaint.

40. Defendant, City of Houston, is without sufficient information to admit or deny the allegations of paragraph 40 of plaintiffs' first amended complaint.

41. Defendant, City of Houston, is without sufficient information to admit or deny the allegations of paragraph 41 of plaintiffs' first amended complaint.

42. Defendant, City of Houston, is without sufficient information to admit or deny the allegations of paragraph 42 of plaintiffs' first amended complaint.

43. Defendant, City of Houston, is without sufficient information to admit or deny the allegations of paragraph 43 of plaintiffs' first amended complaint.

44. Defendant, City of Houston, is without sufficient information to admit or deny the allegations of paragraph 44 of plaintiffs' first amended complaint.

45. Paragraph 45 of plaintiffs' first amended complaint requires no response.

46. Defendant, City of Houston, admits that the second claim for relief is brought by plaintiff Susana Oregon Navarro who has made application for independent administratrix of the estate of Pedro Oregon Navarro, deceased , by plaintiff Rogelio Oregon Navarro, by plaintiff Salvador Lopez, and by plaintiff, Nelly Mejia, and admits that Rogelio Oregon Navarro, Mr. Lopez, and Ms. Mejia have standing to sue for injuries, if any, inflicted on their own bodies. Defendant, City of Houston, is without sufficient information to admit or deny whether Susana Oregon Navarro has standing to bring this lawsuit. Defendant, City of Houston, denies that they have stated a cause of action against defendant, City of Houston, upon which relief may be granted.

47. Defendant, City of Houston, admits that this claim is brought pursuant to 42 U.S.C. §§ 1983 and 1988 for the violations of the Fourth and Fourteenth Amendments and that Rogelio Oregon Navarro, Mr. Lopez, and Ms. Mejia have standing to bring this lawsuit for injuries inflicted on their own bodies. Defendant, City of Houston is without sufficient information to admit or deny whether Susana Oregon Navarro has standing to bring this lawsuit. Defendant, City of Houston, denies that they have stated a cause of action against defendant, City of Houston, upon which relief may be granted.

48. Defendant, City of Houston, admits that the actions of the individual defendants were undertaken without a warrant and that Rogelio Oregon Navarro, Mr. Lopez and Ms. Mejia were handcuffed. Defendant, City of Houston, denies all other allegations contained in paragraph 48 of plaintiffs' first amended complaint because more than one search of the apartment was conducted and because of the existence of conflicting statements with regard to whether probable cause arose after the initial entry by the individual defendants.

49. Defendant, City of Houston, denies the allegations of paragraph 49.

50. Defendant, City of Houston, does not have sufficient information to admit or deny the allegations of paragraph 50.

51. Defendant, City of Houston, does not have sufficient information to admit or deny the allegations of paragraph 51.


52. Defendant, City of Houston, denies the allegations of paragraph 52.

PRAYER

53. For these reasons, defendant, City of Houston, requests this Court to enter judgment that plaintiffs take nothing, dismiss plaintiffs' suit with prejudice, and award defendant all other relief to which it is entitled.

Respectfully submitted,

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