

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JOHN D. ZUCCARINO,

Plaintiff,

v.

TOWN OF HECTOR NEW YORK and ANDREW  
YESSMAN personally and in his capacity as a Schuyler  
County Sheriff's Deputy,

Defendants.

Civil Case No.  
6:19-cv-06370-FPG

**ANSWER TO COMPLAINT**

**DEFENDANT DEMANDS  
TRIAL BY JURY**

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Defendant, TOWN OF HECTOR NEW YORK, by and through its attorneys, the Law  
Offices of Theresa J. Puleo, alleges and shows to the Court as follows:

1. The allegations contained within paragraphs "1" and "2" of the plaintiff's complaint constitute opinion and conclusions of law and as such cannot be **ADMITTED** or **DENIED**. To the extent the defendant is required to respond to such opinions, defendant **DENIES** the allegations.
2. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief with respect to paragraphs "3", "5", "9", "10", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29", "30", "31", "32", "33", "34", "35", "36", "37", "38", "39", "40", "41", "42", "43", "44", "45", "46" and "47" of the plaintiff's complaint and therefore **DENIES** the same.
3. **ADMITS** the allegations contained in paragraph "4" of the plaintiff's complaint.
4. **DENIES** the allegations in paragraph "6" of the plaintiff's complaint in the form stated.
5. **DENIES** the allegations contained in paragraphs "7", "8", "11", "12", "13", "14", "15" and "16" of the plaintiff's complaint.

**AS AND FOR A SECOND CAUSE OF ACTION**

6. With respect to paragraph "48" of the plaintiff's complaint, defendant repeats, reiterates and realleges each and every admission and denial heretofore made with the same force and effect as if more fully set forth herein.

7. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief with respect to paragraphs "49", "50", "51" and "54" of the plaintiff's complaint and therefore **DENIES** the same.

8. **DENIES** the allegations contained in paragraphs "52", "53", "55" and "56" of the plaintiff's complaint.

9. **DENIES** each and every other allegation not herein specifically admitted, denied or otherwise controverted.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

10. The complaint is barred by qualified immunity.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

11. The complaint is barred by sovereign immunity.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

12. The plaintiff's complaint either in whole or in part, fails to state a cause of action against the Town of Hector upon which the requested relief may be granted.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

13. Upon information and belief, plaintiff's cause of action may not be maintained because the statute of limitations for one or more of plaintiff's claims has expired.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

14. Upon information and belief, some or all of the damages alleged in the plaintiff's complaint are barred and/or subject to the qualifications of the provision of Section 4545 of the Civil Practice Law and Rules.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

15. In the event of any prior or subsequent settlement entered into between plaintiff and another person or persons liable, or claimed to be liable, in tort for the same injury or wrongful death complained of herein, defendant asserts all relevant provisions of General Obligations Law § 15-108.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

16. Upon information and belief, the plaintiff's damages, if any, were brought about either in whole or in part by the plaintiff's own culpable conduct without any negligence, fault or want of care on the part of the defendants.

17. By virtue of the foregoing, in the event any judgment or recovery is made by plaintiff, it should be reduced in accordance with Section 1411 of the Civil Practice Law and Rules

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

18. Upon information and belief, the plaintiff's damages, if any, were brought about either in whole or in part by the culpable conduct of others over whom this answering defendant has no authority, control or dominion and without any negligence, fault or want of care on the part of the defendant.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

19. The liability, if any, of the defendant is limited by operation of Article 16 of the Civil Practice Law and Rules.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

20. Upon information and belief, plaintiff failed to properly mitigate and/or minimize plaintiff's alleged damages

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

21. In the event plaintiff has a judgment against this defendant, defendant is entitled to a set-off or reduction of any verdict for proceeds received from any collateral sources, including but not limited to insurance, social security, disability or employee benefit programs.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

22. The complaint is barred by the doctrine of the assumption of the risk.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

23. Plaintiff failed to comply with General Municipal Law §50(e) and §50(i).

**AS A FOR A FOURTEENTH AFFIRMATIVE DEFENSE  
AND CROSS-CLAIM AGAINST CO-DEFENDANT**

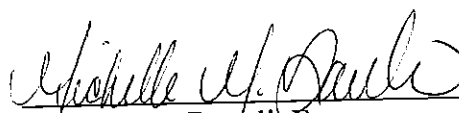
24. That the injuries or damages, if any, alleged in the complaint were, in whole or in part the result of the negligence, recklessness and want of due care of the within co-defendants, without any culpable conduct on the part of the answering defendant contributing thereto.

25. That if any judgment is recovered against the undersigned defendant, then the said defendant shall be entitled to contribution and apportionment of damages.

**WHEREFORE**, defendant Town of Hector New York , demands judgment dismissing the complaint, or in the alternative, judgment reducing the liabilities of the parties to this action due to plaintiff's culpable conduct, or further in the alternative, a determination of the respective liabilities of all the parties to this action, together with the costs and disbursements of this action and such other and further relief as to this Court may seem just and proper.

Dated: June 14, 2019

LAW OFFICES OF THERESA J. PULEO



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