

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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SHAWN WINT,

Plaintiff,

**ANSWER**

-against-

Index #: 024359/2018E

JEREMIAH WILLIAMS (927673) & ERIC FLORIO  
(943245),

Law Dept. #: 2019-004909

Defendants.  
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Defendants, DETECTIVE JEREMIAH WILLIAMS & SERGEANT ERIC

FLORIO, by upon ZACHARY W. CARTER, Corporation Counsel, answering the complaint,

allege information and belief:

1. Deny each allegation set forth in paragraphs 1, 13-14, 18-20, 21-27, 29-39, 43, 45, 47-48, 50, 52-54, 56, 58-60, 62, 64, 66, 68, 71-75, 79-81, 84-86, inclusive.
2. Deny knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in paragraphs 2, 4-5, 7-11, 15-17, 28, 40-41, 49, 55, 61, 65, 67, 69, 76, 78, 82, 87, 88, inclusive.
3. Deny each allegation set forth in paragraph 12, inclusive, except that the City of New York is a municipal corporation which employed DETECTIVE JEREMIAH WILLIAMS and SERGEANT ERIC FLORIO and maintains a Police Department pursuant to law.
4. Deny each allegation set forth in paragraphs 3, 6, inclusive, except that except admits that DETECTIVE JEREMIAH WILLIAMS and SERGEANT ERIC FLORIO were duly appointed and acting within the scope of their employment..

5. Deny each allegation set forth in paragraphs 44, 46, 51, 57, 63, 70, 77, 83, inclusive, except as otherwise pleaded herein.

### **AFFIRMATIVE DEFENSES**

6. Plaintiff's culpable conduct caused or contributed, in whole or in part, to his/her/their injuries and or damages.

7. At all times mentioned in the complaint, plaintiff knew or should have known in the exercise of due/reasonable care of the risks and dangers incident to engaging in the activity alleged. Plaintiff voluntarily performed and engaged in the alleged activity and assumed the risk of the injuries and/or damages claimed. Plaintiff failed to use all required, proper, appropriate and reasonable safety devices and/or equipment and failed to take all proper, appropriate and reasonable steps to assure his/her/their safety. Plaintiff's primary assumption of risk solely caused his/her/their injuries and/or damage and defendants owed no duty to the plaintiff with respect to the risk assumed. Plaintiff's express assumption of risk solely caused his/her/their injuries and/or damage and defendants owed no duty to the plaintiff with respect to the risk assumed. Plaintiff's implied assumption of risk caused or contributed, in whole or in part to his/her/their injuries. In any action for injuries arising from the use of a vehicle in, or upon which plaintiff was riding; it will be claimed that the injuries and/or damages sustained were caused by the failure of the plaintiff to use available seat-belts and/or other safety devices.

8. Defendants are immune from suit for their exercise of discretion in the performance of a governmental function and/or their exercise of professional judgment.

9. The amounts recoverable by plaintiff are subject to limitation pursuant to Section 1601 of the Civil Practice Law and Rules, by reason of the culpable conduct of other persons who are, or with reasonable diligence could have been made party defendants to this action, or pursuant to Section 15-108 of the General Obligations Law, by reason of a prior

settlement between plaintiff and said persons, or pursuant to Section 4545 of the Civil Practice Law and Rules are subject to reduction by collateral sources received by plaintiff, or by reason of the fact that punitive damages are not recoverable against municipal defendants.

10. If plaintiff demonstrates that the acts complained of were undertaken in the scope of the actors' employment, then such acts as may have been committed by law enforcement officers in the employ of the City of New York were justified as being reasonably necessary, and were committed in good faith without malice and with probable cause, and in the exercise of professional judgment or the performance of discretionary functions for which defendants are qualifiedly privileged under the laws of this State and of the United States. Individual defendants represented by the Office of the Corporation Counsel did not violate any clearly established constitutional or statutory right of which a reasonable person would have known and therefore are/is protected by qualified immunity.

11. Plaintiff's complaint fails to state a cause of action upon which relief can be granted.

12. Plaintiff's complaint fails to allege a prima facie case against the defendant answering hereby.

13. This action was not commenced in compliance with section 305(b) of the CPLR.

**WHEREFORE**, defendants demand judgment dismissing the complaint and all cross-claims against them, or, in the event that they are adjudged liable, granting judgment over, or apportioning such liability in accordance with their equitable shares of responsibility, and awarding the costs of this action, together with such other and further relief as to the court may seem just.

ZACHARY W. CARTER  
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