

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

DAVID BIBLE, RONNIE HARPER, WILLIE
MCCLUSKEY, and BRIAN ROGERS,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

CITY OF ROSWELL,

Defendant.

Civil Action File No.

2017CV294723

Class Action Complaint

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs David Bible, Ronnie Harper, Willie McCluskey, and Brian Rogers (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated, file this Class Action Complaint for breach of contract against Defendant, City of Roswell (“Defendant” or the “City”), seeking monetary damages and declaratory relief. Plaintiffs allege the following upon personal knowledge as to their own acts, and as to all other allegations, upon information and belief based on investigation by counsel.

I. NATURE OF THE ACTION AND OVERVIEW

1. This class action is brought on behalf of Plaintiffs and all persons currently and/or formerly employed as firefighters by the Roswell Fire Department between August 29, 2011 through and including the date of the filing of this Complaint (the “Class Period”), who worked forty (40) hours or more per standard workweek, but did not receive the benefits conferred upon regular full-time employees, in violation of the City of Roswell Human Resources Policies and Procedures Manual (the “Policy Manual”).

2. In an effort to restrict spending, in or about the year 2000, the City converted to a system whereby, instead of employing full-time firefighters, it began employing significant numbers of purportedly part-time firefighters (i.e., individuals who did not work full-time hours). That system ostensibly remains in place today. Because part-time City employees are not entitled to benefits, the City has cut—and continues to cut—tens of millions of dollars from its budget by operating such a system. Indeed, according to news reports, by 2010, the City was estimated to be cutting as much as \$8 million per year from its budget by operating a fire department force dominated by purportedly part-time personnel. This practice of denying benefits to the vast majority of its firefighters allows Defendant to maintain one of the largest fire departments in Georgia, in terms of the number of firefighters employed, while still spending less than many other fire departments statewide for a city of its size. However, those budget cuts have been—and continue to be—wrongfully taken directly out of the pockets of deserving firefighters.

3. Defendant's firefighters, like all City employees, are subject to the City's official, written policies and procedures governing employment. Pursuant to the plain language of the Policy Manual, the Code of Ordinances of the City of Roswell, Georgia (the "Ordinances") and the City Charter of Roswell (the "Charter"), the provisions of the Policy Manual constitute binding rules, and thus create certain contractual responsibilities between the City and its employees. These policies have been in place at all times during the Class Period, and remain in place today.

4. The Policy Manual unequivocally provides that "[a]n employee whose standard workweek is *forty hours or more* is a regular full-time employee,"¹ as distinct from a part-time

¹ Unless otherwise noted, any emphasis in the quoted material in this Complaint has been added by Plaintiffs.

employee, which is defined as “[a]n employee whose standard workweek is *less than forty hours per week*.” This distinction is critical because “[a] person appointed to a *part-time position shall not be eligible* for the privileges and benefits conferred through the Human Resources Policy & Procedures Manual to regular full-time City employees.” The benefits conferred upon regular full-time employees are substantial, and include holiday pay, paid time off, paid sick leave, and retirement benefits, among many other valuable benefits and privileges.

5. However, numerous firefighters have routinely worked full-time hours for weeks, months, and even years consecutively on-end (i.e., their standard workweeks are full-time), only to be incorrectly and improperly labeled “part-time” employees by the City. Accordingly, those firefighters have been denied, and the City has refused and failed to provide them with, the benefits conferred upon regular full-time employees.

6. Despite reaping the benefits of its firefighters’ full-time efforts, the City has withheld from Plaintiffs—and many other similarly situated firefighters—the regular full-time employee benefits to which Plaintiffs and the Class are entitled. Throughout the Class Period, the City has thus breached its obligation to treat its firefighters as required by its own written policies.

7. As a result of Defendant’s wrongful acts, Plaintiffs and other Class members have suffered significant losses and damages, for which they are entitled to recover.

II. PARTIES

8. Defendant City of Roswell is a municipality and political subdivision of the State of Georgia, incorporated in 1854, with a population of nearly 100,000. The City is subject to the jurisdiction of this Court, and may be served with process through the Mayor, Jere Wood, at the City of Roswell Mayor’s Office, 38 Hill Street, Roswell, Georgia 30075.

9. Plaintiff David Bible (“Bible”) served the Roswell Fire Department for nearly 25 years. From 2000 until his retirement on March 25, 2017, Bible held the positions of Fire Captain, Fire Lieutenant, firefighter, and emergency medical technician (“EMT”), before which he served as a paid volunteer firefighter for eight years, from 1992 to 2000. Throughout his employment, Bible was required or caused to—and did in fact—work forty (40) hours or more per standard workweek, virtually all weeks, each year from 2000 through his retirement in 2017.

10. Plaintiff Ronnie Harper (“Harper”) has been employed as a firefighter and EMT with the City of Roswell for over 16 years, from 2000 through the present. Throughout his employment, Harper has been required or caused to work—and has in fact worked—forty (40) hours or more per standard workweek, virtually all weeks each year from 2000 through the present.

11. Plaintiff Willie McCluskey (“McCluskey”) has been employed as a firefighter and EMT with the City of Roswell for over 15 years, from 2001 through the present. Throughout his employment, McCluskey has been required or caused to work—and has in fact worked—forty (40) hours or more per standard workweek, virtually all weeks, each year from 2001 through the present.

12. Plaintiff Brian Rogers (“Rogers”) has been employed as a firefighter—specifically, as a Fire Captain, firefighter, and paramedic—with the City of Roswell for over 10 years, from 2007 through the present. Throughout his employment, Rogers has been required or caused to work—and has in fact worked—forty (40) hours or more per standard workweek, virtually all weeks, each year from 2007 through the present.

13. As City employees, Plaintiffs and the Class were at all times subject to the laws of the State of Georgia, as well as the laws and ordinances of the City of Roswell and the policies

and procedures created thereunder, with respect to their employment, compensation, and benefits.

III. JURISDICTION AND VENUE

14. The Court has general subject matter jurisdiction over claims for legal redress of this kind and nature, pursuant to Ga. Const. art. VI, Sec. IV, Para. I, and O.C.G.A. § 15-6-8.

15. Venue is proper in Fulton County under Ga. Const. art. VI, Sec. II, Para. VI.

IV. FACTUAL BACKGROUND

A. Background on the Roswell Fire Department

16. The City of Roswell presently maintains one of the largest fire departments of any jurisdiction in Georgia, employing well over 100 firefighters.

17. The fact that the City employs such a substantial number of firefighters is no coincidence; rather, it is the result of a concerted effort initiated by the City, in or about the year 2000, to minimize spending in the Roswell Fire Department. Around that time, the City decided it could significantly reduce expenses by avoiding payment of benefits to most of its firefighters.

18. To achieve this goal, rather than employing full-time firefighters and relying on some volunteer firefighters, the City converted to a system (which ostensibly remains in place today) whereby the majority of its firefighters are purportedly part-time employees—i.e., they purportedly do not work full-time hours.

19. Because part-time City employees are not entitled to the benefits conferred upon regular full-time employees (including, among other things, various forms of paid days off and retirement benefits), the City has been able to cut millions of dollars from its budget each year, while maintaining one of the largest fire departments of any jurisdiction in Georgia.

20. The City's shift to a majority part-time firefighter system, and its corresponding impacts on the budget, are well-documented. Indeed, according to a news report by the Atlanta Journal Constitution ("AJC"), as of 2010, "[m]ost metro departments don't use part-timers at all, but Roswell hires them by the truckload. One hundred twenty-two of Roswell's 140 fire employees are part-timers -- by far the most in the area."² And, as a result, it has been estimated that "the city saves about \$8 million yearly with a part-time department" because "[t]he city *doesn't have to provide benefits* or extensive training *to part-timers.*" *Id.*

21. These savings, however, have been achieved by wrongful means: the City has characterized and treated as "part-time," firefighters who regularly work full-time hours most—and in some cases, all—workweeks, withholding benefits from firefighters who are in fact regular full-time employees. Thus, these savings have been achieved purely at the expense of such City firefighters who are categorized by the City as part-time employees when in reality, such individuals are serving as full-time employees.

22. Despite exploiting its firefighters, Roswell Mayor Jere Wood has publicly expressed the City's content with the millions of dollars shaved off the budget since shifting to the part-time scheme, stating, "I like the current arrangement because it's very cost effective," and "[i]t saves us millions of dollars." *Id.*

B. The City's Own Policies Obligate it to Provide Benefits to Employees Who Work Full-Time Hours

23. Pursuant to the City Charter, codified at 1971 Ga. L. (Act No. 568), p. 3289, the policies and procedures contained in the Policy Manual have the force and effect of law.³

² Ralph Ellis, ATLANTA JOURNAL CONSTITUTION, Nov. 7, 2010, available at: <http://www.ajc.com/news/local/part-timers-dominate-roswell-fire-department/aJJftfNDMPegMY5kmQwi5M/> (last accessed August 28, 2017).

³ See *Atkinson v. City of Roswell*, 203 Ga. App. 192, 194 (1992) (citing *Toomey v. Norwood Realty Co.*, 211 Ga. 814, 816–17 (1955)).

Indeed, according to Section 3.180 of the Charter, “[a]ll ordinances, bylaws, rules and regulations, not in force in the City of Roswell, Georgia not inconsistent with this Act, **are hereby declared valid and of force until amended or repealed** by the mayor and city council.” Additionally, Section 3.200 of the Charter provides, “[t]he city council shall provide for the preparation of a general codification of all the ordinances of the city **having the force and effect of law.**”

24. In turn, Defendant’s City Council has codified official City Ordinances, including Ordinances regarding personnel. Ordinance 2.2.2 provides, “[t]he employment practices of the City of Roswell shall be set forth in a document known as the City of Roswell Personnel Manual.” Additionally, according to Ordinance 2.2.4, “[e]ligibility for benefits and the cost to employees shall be specified in the personnel manual.” Thus, the Policy Manual and its provisions regarding personnel, including employee benefits, constitutes the City’s official codification of its policies regarding the same, and has the force and effect of law.

25. Ordinance 2.2.1 generally defines the types of employment classifications recognized by the City, providing that “regular” employees are those who work “full-time whether salary is hourly, weekly or some other pay rate,” while “part-time” employees are those who “work at irregular intervals on a short-term basis.”

26. Pursuant to the mandate of the Ordinances, the City has established, approved, and adopted a set of written policies and procedures governing employee personnel practices, known as the City of Roswell Human Resources Policies and Procedures Manual.

27. Section 3.8 of the Policy Manual clarifies the general definitions set forth in Ordinance 2.2.1 concerning the employment classifications, distinguishing between regular full-time employees and part-time employees, as follows: “[a]n employee whose standard workweek

is *forty hours or more is a regular full-time employee*. An employee whose standard workweek is *less than forty hours per week is a part-time employee*.” *Id.* at § 3.8.1.

28. The Policy Manual also clarifies the importance of the distinction between regular full-time employees and part-time employees, noting that “[a] person appointed to a *part-time position shall not be eligible for the privileges and benefits conferred* through the Human Resources Policy & Procedures Manual *to regular, full-time City employees*.” *Id.*

29. Section 9.0 of the Policy Manual then recites the various benefits conferred upon regular full-time employees—including, *inter alia*, holiday pay, paid time off, paid sick leave, and retirement benefits—and notes that part-time employees are not eligible for such benefits.

30. Section 9.7 of the Policy Manual, addressing retirement benefits, provides that “City of Roswell *full-time, benefits eligible employees are eligible* for retirement benefits in accordance with the City of Roswell Retirement Plans.” Individuals employed by the City prior to March 1, 2011, are covered by the City’s Defined Benefit Pension Plan, while those employed on or after March 1, 2011, are covered by the Defined Contribution Plan. *Id.*

31. Sections 10.2 and 10.2.1 of the Policy Manual, addressing holiday pay, provide that “[a]ll *regular full-time . . . employees* of the City *will receive* paid leave on officially designated holidays,” which includes “eleven (11) official holidays each year,” while “[p]art-time . . . employees *shall not receive* paid leave on official holidays.” Also, “[e]mployees required to work on an observed official holiday *shall be paid* at their regular hourly rate for the hours actually worked in addition to any holiday pay to which they may be entitled.” *Id.* at § 10.2.2.

32. Section 10.4 of the Policy Manual, addressing Paid Time Off, provides that “[o]nly *full-time employees are eligible* for Paid Time Off (PTO),” while “[p]art-time . . .

employees shall not be eligible to accrue Paid Time Off.” Section 10.4.2 then offers two charts illustrating the applicable PTO accrual rates: the first chart depicts the accrual rates for regular, full-time employees, while the second depicts the accrual rates specifically for Fire Department 24-hour Shift Personnel. The charts provide that regular full-time employees and Fire Department 24-hour Shift Personnel, respectively, accrue PTO based upon their number of service years, as follows:

Accrual Table for Regular Full-Time Employees

Service Years	Accrued Hours Per Service Year	Accrual Rate Per Bi-Weekly Pay Period
0-4 Yrs.	96 hours	3.7 hours
5-9 Yrs.	136 hours	5.23 hours
10 + Yrs.	176 hours	6.77 hours

Accrual Table for Fire Department 24-hour Shift Personnel

Service Years	Accrued Hours Per Service Year	Accrual Rate Per Bi-Weekly Pay Period
0-4 Yrs.	130 hours	5.00 hours
5-9 Yrs.	184 hours	7.08 hours
10 + Yrs.	238 hours	9.16 hours

Id.

33. Section 10.5 of the Policy Manual, addressing sick leave, provides that “[r]egular full-time employees will be eligible for paid sick leave, payable at their regular rate of pay,” while “part-time . . . employees are not eligible to accrue paid sick leave and must take leave without pay for all sick leave absences.” As with its policy regarding PTO, the City’s sick leave policy provides for differing accrual rates for regular full-time employees and Fire Department 24-hour Shift Personnel. According to Section 10.5.4, “[f]ull-time employees shall accrue sick leave at 3.7 hours per bi-weekly pay period,” and “Fire Department 24-hour Shift Personnel shall accrue sick leave at 5.0 hours per bi-weekly pay period.” *Id.*

34. Under Section 1.6 of the Policy Manual, “[d]epartmental operating policies and procedures shall supplement and conform to the policies set forth in the [Policy Manual]” and “[d]epartmental standard operating procedures in conflict with th[e] ‘Manual’ are not allowed.”

35. Section 1.4 of the Policy Manual, addressing modification of policies, notes that the City may *only* amend, modify, change, replace, suspend, or cancel a policy or procedure included in the Policy Manual “through a written revision issued by the City’s Human Resources Office, approved by the City Administrator and approved by a majority vote of the Mayor & Council.” Thus, “[e]ach policy in this Manual *remains in full force and effect until* the City issues a written revision,” and “[n]o employee or official of the City has the authority to make an oral or written modification of any policy in th[e] Manual.” *Id.*

C. **The City Has Refused and Failed to Provide Benefits to Firefighters Who Work Full-Time Hours**

36. Plaintiffs are either current or former firefighters of the Roswell Fire Department, each Plaintiff having served for longer than a decade.

37. Plaintiffs’ job duties are substantial and require fulfilling a great deal of obligations typical to those of most firefighters. Those duties have always included and required abiding by all City policies and procedures, including those contained in the Policy Manual.

38. Throughout their many years of employment, Plaintiffs have each been required or caused to work—and have in fact worked—forty (40) hours or more per standard workweek.

39. By way of example, Plaintiff Bible averaged 50.68 hours per workweek from 2000 to 2016, as illustrated in the following chart:

Year	Hours Worked Per Year	Hours Worked Per Workweek
2000	2,540	48.85
2001	2,509	48.25
2002	2,151	41.37
2003	2,284	43.92
2004	2,562	49.27
2005	2,623	50.44
2006	2,593	49.87
2007	2,527	48.6
2008	2,518.5	48.43
2009	2,769.5	53.26
2010	2,847	54.75
2011	2,857.5	54.95
2012	2,771.5	53.3
2013	2,764	53.15
2014	2,844	54.69
2015	2,849.75	54.8
2016	2,789.5	53.64
Average	2,635.31	50.68

40. Plaintiffs Harper, McCluskey, and Rogers have worked a number of hours similar to Plaintiff Bible throughout their employment, each averaging forty (40) hours or more per standard workweek during most—if not all—weeks, each year during their respective tenures.

41. Thus, Plaintiffs do not work at irregular intervals on a short-term basis, nor are their standard workweeks less than forty (40) hours per week.

42. Throughout their employment, despite working full-time hours, Plaintiffs have been characterized and treated by the City as part-time employees, and thus, have been denied the benefits conferred upon regular full-time employees including, *inter alia*, holiday pay, paid time off, paid sick leave, and retirement benefits.

43. In fact, despite policies regarding PTO and sick leave (¶¶32–33), which explicitly provide that Fire Department 24-hour Shift Personnel, such as Plaintiffs, are entitled to *more* PTO and sick leave than regular full-time employees, the City has refused and failed to provide Plaintiffs with *any* PTO or sick leave whatsoever.

44. Plaintiffs' numerous requests throughout their employment to be characterized and treated as regular full-time employees, and thus to receive the benefits conferred upon regular full-time employees, have all been denied by the City.

V. CLASS ACTION ALLEGATIONS

45. Plaintiffs bring this action as a class action pursuant to O.C.G.A. § 9-11-23(a) and (b)(3), on behalf of a class consisting of all persons currently and/or formerly employed as firefighters by the Roswell Fire Department between August 29, 2011 and the date of the filing of this Complaint (inclusive), who worked forty (40) hours or more per standard workweek, but did not receive the benefits conferred upon regular full-time employees.

46. The members of the Class are so numerous that joinder of all members is impracticable. Upon information and belief, throughout the Class Period, which runs from August 29, 2011 through the date of the filing of this Complaint (inclusive), over 200 individuals have worked as firefighters for the City of Roswell. While the exact number of Class members is unknown to Plaintiffs at this time, and can only be ascertained through appropriate discovery, Plaintiffs believe that there are at least dozens of members in the proposed Class. Members of the Class may be identified from records maintained by the City and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in class actions.

47. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by the City's wrongful and unlawful conduct, as complained of herein.

48. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class action litigation.

49. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) whether the City breached its agreements with Plaintiffs and the Class;
- (b) whether the City violated a duty of good faith and fair dealing in the performance of its agreements with Plaintiffs and the Class;
- (c) whether Plaintiffs and the Class are entitled to recover on a quantum meruit basis;
- (d) whether Plaintiffs and the Class are entitled to declaratory relief and/or other equitable relief;
- (e) whether the City acted in bad faith and/or caused Plaintiffs and the Class unnecessary trouble and expense, entitling Plaintiffs and the Class to attorneys' fees and expenses; and
- (f) to what extent the members of the Class have sustained damages, and the proper measure of damages.

50. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively modest, the expense and burden of individual litigation makes it impossible for members of the Class to individually

redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

VI. CAUSES OF ACTION

Count One: Breach of Contract

51. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

52. The City's duly-enacted policies and procedures create a binding contractual obligation to provide eligible employees with the benefits and privileges conferred thereby.

53. At all times throughout the employment of Plaintiffs and the Class, they had the contractual right under the Policy Manual to receive each benefit conferred upon regular full-time employees and/or Fire Department 24-hour Shift Personnel, including *inter alia*, holiday pay, paid time off, paid sick leave, and retirement benefits.

54. The City has breached—and continues to breach—its contractual obligation to Plaintiffs and the Class by refusing and failing to provide Plaintiffs and the Class with all (much less any) of the aforementioned benefits to which Plaintiffs and the Class have been, and are, lawfully entitled under the Policy Manual as regular full-time employees.

55. As a direct and proximate result of the City's willful, arbitrary, and bad faith refusal to perform under its contractual obligations, Plaintiffs and the Class are entitled to relief to rectify the City's breach of the parties' contract, including the full value of benefits improperly denied.

Count Two: Breach of Duty of Good Faith and Fair Dealing

56. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

57. The City's duly-enacted policies and procedures create a binding contractual obligation to provide benefits to regular, full-time employees.

58. Thus, the City was subject to a duty of good faith and fair dealing in the performance and completion of the parties' contract, including to ensure that it characterized and treated firefighters who worked forty (40) hours or more per standard workweek as regular full-time employees, and accordingly, to provide such employees with the benefits conferred upon full-time employees.

59. The City is liable to Plaintiffs and the Class for its arbitrary and capricious breach of the duty of good faith and fair dealing, as detailed more fully hereinabove.

60. As a direct and proximate result of the City's breach of the duty of good faith and fair dealing, the City is liable to Plaintiffs and the Class for an amount of damages to be determined at trial.

Count Three: Quantum Meruit

61. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

62. Plaintiffs and the Class have performed services valuable to the City, including without limitation, working forty (40) hours or more per standard workweek.

63. At all times, Plaintiffs and the Class performed such valuable services as employees and agents of the City, at the request of the City, and/or knowingly accepted by the City, and with the expectation that they would be provided the benefits conferred upon regular full-time employees for working full-time hours (i.e., forty (40) hours or more per standard workweek).

64. Plaintiffs and the Class did not receive the regular full-time employee benefits that they expected, and to which they were and are lawfully entitled.

65. The City's receipt of the services rendered by Plaintiffs and the Class, without fully and properly compensating them for the same by providing benefits, would be unjust.

66. Plaintiffs and the Class have thus been directly and proximately damaged by the City's wrongful conduct, for which they are entitled to recover in an amount equal to the reasonable value of their services that has been improperly denied.

Count Four: Declaratory Judgment

67. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

68. O.C.G.A. § 9-4-1 provides that the purpose of declaratory judgment is to "settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations."

69. O.C.G.A. § 9-4-2(b) empowers Georgia courts to "declare rights and other legal relations of any interested party petitioning for the declaration, whether or not further relief is or could be prayed, in any civil case in which it appears to the court that the ends of justice require that the declaration should be made."

70. The ends of justice require that such a declaration should be made pursuant to Georgia's Declaratory Judgment Act because there exists a substantial and justiciable controversy with regard to the rights conferred upon Plaintiffs and the Class by the Policy Manual, Plaintiffs and the Class are in a position of uncertainty and insecurity because of the dispute described herein and of having to take some future action which is properly incident to their rights alleged herein, and without direction from the Court, the City's future refusal and

failure to provide employment benefits to firefighters who work forty (40) hours or more per standard workweek might reasonably jeopardize the interests of Plaintiffs and the Class.

71. Accordingly, Plaintiffs and the Class are entitled to a declaratory judgment establishing that:

(a) the Policy Manual, specifically including (but not limited to) the provisions governing employee benefits, creates binding obligations and constitutes part of the employment contract between the City and its employees, including Plaintiffs and the Class;

(b) Plaintiffs and the Class are entitled to recoup the full value of benefits conferred upon regular full-time employees—including, *inter alia*, holiday pay, PTO, paid sick leave, and retirement benefits—for all workweeks during which Plaintiffs and the Class worked forty (40) hours or more but did not receive such benefits; and

(c) going forward, under the terms of the current policies contained in the Policy Manual, City firefighters who work forty (40) hours or more per standard workweek shall be entitled to all benefits conferred upon regular full-time employees—including *inter alia*, holiday pay, PTO, paid sick leave, and retirement benefits.

Count Five: Attorneys' Fees and Expenses

72. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

73. As the drafter and administrator of its policies and procedures regarding employee benefits, the City is aware of its obligation to provide regular full-time employees with benefits, including which employees are entitled to such benefits.

74. Despite being aware (i) that its policies and procedures require providing benefits to employees who work forty (40) hours or more per standard workweek, (ii) that Plaintiffs and

the Class clearly satisfy this definition, and thus, are entitled to benefits, and (iii) that Plaintiffs and the Class have made numerous requests to receive benefits throughout their employment, the City has refused and failed to provide benefits to Plaintiffs and the Class, and continues to do so.

75. The City's willful, continuous breach of its obligation to provide Plaintiffs and the Class with the benefits to which they are entitled under the Policy Manual, constitutes an act of bad faith and has caused Plaintiffs and the Class unnecessary trouble and expense.

76. Pursuant to O.C.G.A. § 13-6-11, Plaintiffs and the Class are entitled to recover the reasonable attorneys' fees and expenses of litigation they have been unnecessarily forced to incur in bringing this action.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

A. Determining that this action is a proper class action and granting class certification pursuant to O.C.G.A. § 9-11-23(a) and (b), as well as appointing Plaintiffs as class representatives;

B. Awarding damages against the City of Roswell equal to the value of all employment benefits which Plaintiffs and the Class have been improperly denied during the Class Period;

C. The entry of declaratory relief pursuant to O.C.G.A. § 9-4-1, *et seq.*, establishing that: (i) the Policy Manual, specifically including (but not limited to) the provisions governing employee benefits, creates binding obligations and constitutes part of the employment contract between the City and its employees, including Plaintiffs and the Class; (ii) Plaintiffs and the Class are entitled to recoup the full value of benefits conferred upon regular full-time employees for all workweeks during which Plaintiffs and the Class worked forty (40) hours or more but did

not receive such benefits; and (iii) going forward, under the terms of the current policies contained in the Policy Manual, City firefighters who work forty (40) hours or more per standard workweek shall be entitled to all benefits conferred upon regular full-time employees;

D. An award to Plaintiffs and the Class of their reasonable costs and expenses incurred in this action, including counsel fees and expert fees, pursuant to O.C.G.A. § 13-6-11;

E. Awarding pre- and post-judgment interest; and

F. Such additional and further relief as the Court may deem just and proper.

VIII. JURY TRIAL DEMANDED

Plaintiffs hereby demand a jury trial be had on all issues so triable.

Dated: August 29, 2017.

JOHNSON & WEAVER, LLP

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