

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

DAVID BIBLE, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL ACTION NO.
	)	2017cv294723
CITY OF ROSWELL, GEORGIA,	)	
	)	
Defendant.	)	

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**DEFENDANT’S ANSWER TO COMPLAINT**

Defendant City of Roswell, Georgia (“Defendant” and/or the “City”), answers the Complaint filed by David Bible, Ronnie Harper, Willie McCluskey, and Brian Rogers (“Plaintiffs”) pursuant to O.C.G.A. §§ 9-11-8(c) and 9-11-12(a) as follows:

**FIRST DEFENSE**

Plaintiffs’ Complaint fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

Plaintiffs’ claims are barred, in whole or in part, by the applicable limitations periods.

**THIRD DEFENSE**

Plaintiffs’ claims are barred, in whole or in part, by the doctrines of accord and satisfaction, failure of consideration, the statute of frauds, fraud, illegality and/or in *pari delicto*, consent, laches, unclean hands, after-acquired evidence, license, justification, avoidable consequences, waiver, estoppel, set off, and/or additional defenses that may arise during the proceedings.

#### **FOURTH DEFENSE**

Plaintiffs' claims are barred to the extent that they failed to satisfy any and all conditions precedent and/or statutory prerequisites to bringing and maintaining their claims against Defendant, including without limitation the conditions precedent under O.C.G.A. § 13-6-11.

#### **FIFTH DEFENSE**

Plaintiffs' claims are barred as violative of public policy. Additionally, and/or alternatively, Plaintiffs' claims are barred in whole or in part to the extent they are inconsistent with the public interest.

#### **SIXTH DEFENSE**

Plaintiffs have suffered no injury and therefore lack standing to assert claims on their own behalf or on behalf of the putative class. Specifically, the allegations in Plaintiffs' Complaint do not support that they suffered an actionable injury.

#### **SEVENTH DEFENSE**

The existence of a bona fide controversy precludes an award of attorney's fees and other expenses of litigation under O.C.G.A. § 13-6-11.

#### **EIGHTH DEFENSE**

Plaintiffs' claims for quantum meruit are barred by sovereign immunity.

#### **NINTH DEFENSE**

Defendant has at all times acted in accord and in good faith compliance with applicable law. Defendant has neither intentionally nor willfully violated the rights of Plaintiffs or any putative class member in any manner.

### **TENTH DEFENSE**

Any damages that Plaintiffs suffered resulted from the acts or omissions of others for whom Defendant is not liable. Additionally, and/or alternatively, any damages that Plaintiffs suffered were the direct and proximate result of their own actions or inactions. Additionally, and/or alternatively, to the extent any employee, official, or other agent or representative of Defendant engaged in unlawful and/or *ultra vires* conduct, Defendant neither authorized nor ratified said conduct, said conduct was outside the scope of employment of said public employee, official, agent, or representative, and Defendant is not otherwise vicariously liable for said conduct.

### **ELEVENTH DEFENSE**

Plaintiffs are required by law to mitigate their damages, if any.

### **TWELFTH DEFENSE**

Subject to and without waiving any of the defenses stated above, Defendant responds to Plaintiffs' Complaint as follows:<sup>1/</sup>

#### **Plaintiffs' Unnumbered Preamble**

Answering the unnumbered preamble Paragraph immediately following the heading "Complaint" on page 1 of Plaintiffs' Complaint, Defendant admits that Plaintiffs purport to bring claims against Defendant on their behalf and on behalf of others allegedly similarly situated to them. Answering further, Defendant denies that Plaintiffs are entitled to any

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<sup>1/</sup> Plaintiffs' section headings serve as a mere reference for the trier of fact. To the extent Plaintiffs' section headings constitute allegations, Defendant denies said allegations.

relief requested or that this case is appropriate for class adjudication. Except as specifically admitted, Defendant denies the allegations contained in said paragraph.

**I. NATURE OF THE ACTION AND OVERVIEW**

1.

Defendant denies the allegations in Paragraph 1 of the Complaint.

2.

Defendant denies as pled the allegations in Paragraph 2 of the Complaint.

3.

Answering Paragraph 3 of the Complaint, Defendant admits that the firefighters it employs are subject to written, workplace policies and procedures, as amended from time to time. Except as otherwise admitted herein, Defendant denies the allegations contained in Paragraph 3 of the Complaint.

4.

Answering Paragraph 4 of the Complaint, Defendant states that the Policy Manual, as amended from time to time, speaks for itself and constitutes the best source of information concerning its content. Except as otherwise stated herein, Defendant denies the allegations set forth in Paragraph 4 of the Complaint.

5.

Defendant denies the allegations set forth in Paragraph 5 of the Complaint.

6.

Defendant denies the allegations set forth in Paragraph 6 of the Complaint.

7.

Defendant denies the allegations set forth in Paragraph 7 of the Complaint.

**II. PARTIES**

8.

Answering Paragraph 8 of the Complaint, Defendant admits that the City is a political subdivision of the State of Georgia. Answering further, Defendant admits that this Court possesses jurisdiction over the subject-matter of Plaintiffs' claims in accordance with and as limited by applicable law. Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 8 of the Complaint.

9.

Answering Paragraph 9 of the Complaint, Defendant admits it has employed Plaintiff David Bible since 2000 in various positions throughout his employment, including as a part-time firefighter, part-time emergency medical technician ("EMT"), part-time fire lieutenant, and part-time fire captain. Answering further, Defendant admits that Plaintiff Bible retired on March 25, 2017 and that, prior to his employment by Defendant, Plaintiff Bible served as a volunteer in the Roswell Volunteer Fire Department. Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 9 of the Complaint.

10.

Answering Paragraph 10 of the Complaint, Defendant admits it employed Plaintiff Ronnie Harper as a part-time firefighter and part-time EMT from 2000 to the present. Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 10 of the Complaint.

11.

Answering Paragraph 11 of the Complaint, Defendant admits it employed Plaintiff Willie McCluskey as a part-time firefighter and part-time EMT from 2001 to the present. Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 11 of the Complaint.

12.

Answering Paragraph 12 of the Complaint, Defendant admits it employed Plaintiff Brian Rogers in various positions beginning in 2007, including as a part-time firefighter, part-time paramedic, and part-time fire captain. Answering further, Defendant admits that, at the time of Plaintiffs' Complaint, Plaintiff Rogers is currently employed by the City. Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 12 of the Complaint.

13.

Answering Paragraph 13 of the Complaint, Defendant admits that Plaintiffs are subject to City and departmental policies and procedures, Georgia law, and City ordinances, where applicable. Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 13 of the Complaint.

### **III. JURISDICTION AND VENUE**

14.

Answering Paragraph 14 of Plaintiffs' Complaint, Defendant admits that this Court possesses jurisdiction over the subject-matter of Plaintiffs' claims in accordance with and

as limited by applicable law. Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 14 of the Complaint.

15.

Defendant admits the allegations set forth in Paragraph 15 of the Complaint.

#### **IV. FACTUAL BACKGROUND**

16.

Answering Paragraph 16, Defendant admits that it currently employs over 100 part-time and full-time firefighters in the Roswell Fire Department. Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 16 of the Complaint.

17.

Defendant denies the allegations set forth in Paragraph 17 of the Complaint.

18.

Defendant denies as pled the allegations set forth in Paragraph 18 of the Complaint.

19.

Defendant denies as pled the allegations set forth in Paragraph 19 of the Complaint.

20.

Answering Paragraph 20 of the Complaint, Defendant states that the article referenced therein speaks for itself and constitutes the best source of information concerning its content. Except as otherwise stated herein, Defendant denies the allegations set forth in Paragraph 20 of the Complaint.

21.

Defendant denies as pled the allegations set forth in Paragraph 21 of the Complaint.

22.

Answering Paragraph 22 of the Complaint, Defendant states that the article referenced therein speaks for itself and constitutes the best source of information concerning its content. Except as otherwise stated herein, Defendant denies the allegations set forth in Paragraph 22 of the Complaint.

23.

Answering Paragraph 23 of the Complaint, Defendant states that Sections 3.180 and 3.200 of the City Charter, as amended from time to time, speak for themselves and constitute the best source of information concerning their content. Defendant therefore denies any allegations that are inconsistent therewith, that take Sections 3.180 and 3.200 out of context, or that otherwise assign an incorrect or incomplete meaning to Sections 3.180 and 3.200. Except as otherwise stated herein, Defendant denies the allegations set forth in Paragraph 23 of the Complaint.

24.

Answering Paragraph 24 of the Complaint, Defendant admits its City Council has codified City Ordinances and those regarding city personnel. Answering further, Defendant states that City Ordinances 2.2.2 and 2.2.4, and the City of Roswell Policy Manual, as amended from time to time, speak for themselves and constitute the best source of information concerning their content. Defendant therefore denies any allegations that are inconsistent therewith, that take Ordinances 2.2.2, 2.2.4, and the Policy Manual out of



context, or that otherwise assign an incorrect or incomplete meaning to Ordinances 2.2.2, 2.2.4, and the Policy Manual. Except as otherwise stated herein, Defendant denies the allegations set forth in Paragraph 24 of the Complaint.

25.

Answering Paragraph 25 of the Complaint, Defendant states that City Ordinance 2.2.1, as amended from time to time, speaks for itself and constitutes the best source of information concerning its content. Defendant therefore denies any allegations that are inconsistent therewith, that take Ordinance 2.2.1 out of context, or that otherwise assign an incorrect or incomplete meaning to Ordinance 2.2.1. Except as otherwise stated herein, Defendant denies the allegations contained in Paragraph 25 of the Complaint.

26.

Answering Paragraph 26 of the Complaint, Defendant admits the City has a set of written policies and procedures known as the City of Roswell Human Resources Policies and Procedures Manual. Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 26 of the Complaint.

27.

Answering Paragraph 27 of the Complaint, Defendant states that Section 3.8 of the Policy Manual, as amended from time to time, speaks for itself and constitutes the best source of information concerning its content. Defendant therefore denies any allegations that are inconsistent therewith, that take Section 3.8 out of context, or that otherwise assign an incorrect or incomplete meaning to Section 3.8. Except as otherwise stated herein, Defendant denies the allegations set forth in Paragraph 27 of the Complaint.

28.

Answering Paragraph 28 of the Complaint, Defendant states that the Policy Manual, as amended from time to time, speaks for itself and constitutes the best source of information concerning its content. Defendant therefore denies any allegations that are inconsistent therewith, that take the Policy Manual out of context, or that otherwise assign an incorrect or incomplete meaning to it. Except as otherwise stated herein, Defendant denies the allegations set forth in Paragraph 28 of the Complaint.

29.

Answering Paragraph 29 of the Complaint, Defendant states that Section 9.0 of the Policy Manual, as amended from time to time, speaks for itself and constitutes the best source of information concerning its content. Defendant therefore denies any allegations that are inconsistent therewith, that take Section 9.0 out of context, or that otherwise assign an incorrect or incomplete meaning to Section 9.0. Except as otherwise stated herein, Defendant denies the allegations set forth in Paragraph 29 of the Complaint.

30.

Answering Paragraph 30 of the Complaint, Defendant admits that eligible individuals employed by the City prior to March 1, 2011, are covered by the City's Defined Benefit Pension Plan, while eligible individuals employed on or after March 1, 2011, are covered by the Defined Contribution Plan. Answering further, Defendant states that Section 9.7 of the Policy Manual, as amended from time to time, speaks for itself and constitutes the best source of information concerning its content. Defendant therefore denies any allegations that are inconsistent therewith, that take Section 9.7 out of context,

or that otherwise assign an incorrect or incomplete meaning to Section 9.7. Except as otherwise stated herein, Defendant denies the allegations set forth in Paragraph 30 of the Complaint.

31.

Answering Paragraph 31 of the Complaint, Defendant states that Section 10.2 of the Policy Manual (and its subparts), as amended from time to time, speaks for itself and constitutes the best source of information concerning its content. Defendant therefore denies any allegations that are inconsistent therewith, that take Section 10.2 out of context, or that otherwise assign an incorrect or incomplete meaning to Section 10.2. Except as otherwise stated herein, Defendant denies the allegations set forth in Paragraph 31 of the Complaint.

32.

Answering Paragraph 32 of the Complaint, Defendant states that Section 10.4 of the Policy Manual (and its subparts), as amended from time to time, and any corresponding charts contained therein, speak for themselves and constitutes the best source of information concerning their content. Defendant therefore denies any allegations that are inconsistent therewith, that take any part of Section 10.4 out of context, or that otherwise assign an incorrect or incomplete meaning to any part of Section 10.4. Except as otherwise stated herein, Defendant denies the allegations set forth in Paragraph 32 of the Complaint.

33.

Answering Paragraph 33 of the Complaint, Defendant states that Section 10.5 of the Policy Manual (and its subparts), as amended from time to time, speaks for itself and

constitutes the best source of information concerning its content. Defendant therefore denies any allegations that are inconsistent therewith, that take Section 10.5 out of context, or that otherwise assign an incorrect or incomplete meaning to Section 10.5. Except as otherwise stated herein, Defendant denies the allegations set forth in Paragraph 33 of the Complaint.

34.

Answering Paragraph 34 of the Complaint, Defendant states that Section 1.6 of the Policy Manual, as amended from time to time, speaks for itself and constitutes the best source of information concerning its content. Defendant therefore denies any allegations that are inconsistent therewith, that take Section 1.6 out of context, or that otherwise assign an incorrect or incomplete meaning to Section 1.6. Except as otherwise stated herein, Defendant denies the allegations set forth in Paragraph 34 of the Complaint.

35.

Answering Paragraph 35 of the Complaint, Defendant states that Section 1.4 of the Policy Manual, as amended from time to time, speaks for itself and constitutes the best source of information concerning its content. Defendant therefore denies any allegations that are inconsistent therewith, that take Section 1.4 out of context, or that otherwise assign an incorrect or incomplete meaning to Section 1.4. Except as otherwise stated herein, Defendant denies the allegations set forth in Paragraph 35 of the Complaint.

36.

Defendant admits the allegations set forth in Paragraph 36 of the Complaint.

37.

Defendant denies the allegations set forth in Paragraph 37 of the Complaint.

38.

Defendant denies the allegations set forth in Paragraph 38 of the Complaint.

39.

Defendant denies as pled the allegations set forth in Paragraph 39 of the Complaint.

40.

Defendant denies the allegations set forth in Paragraph 40 of the Complaint.

41.

Defendant denies the allegations set forth in Paragraph 41 of the Complaint.

42.

Answering Paragraph 42 of the Complaint, Defendants admit Plaintiffs have been characterized and treated as part-time employees. Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 42.

43.

Answering Paragraph 43 of the Complaint, Defendant states that the Policy Manual, as amended from time to time, speaks for itself and constitutes the best source of information concerning its content. Except as otherwise stated herein, Defendant denies the allegations set forth in Paragraph 43 of the Complaint.

44.

Defendant denies the allegations set forth in Paragraph 44 of the Complaint.

**V. CLASS ACTION ALLEGATIONS**

45.

Answering Paragraph 45 of the Complaint, Defendant admits Plaintiffs purport to bring this action for themselves and on behalf of a class of other persons, but Defendant denies that such other persons are similarly situated to Plaintiffs or that this action is appropriate for class adjudication. Except as otherwise stated herein, Defendant denies the allegations set forth in Paragraph 45.

46.

Answering Paragraph 46 of the Complaint, Defendant admits there may be records in its possession, custody, or control from which persons in Plaintiffs' putative class may be ascertained. Except as otherwise admitted herein, Defendant denies the allegations set forth in Paragraph 46 of the Complaint.

47.

Defendant denies the allegations set forth in Paragraph 47 of the Complaint.

48.

Defendant denies the allegations set forth in Paragraph 48 of the Complaint.

49.

Defendant denies the allegations set forth in Paragraph 49 of the Complaint, including the allegations set forth in subparts (a) through (f) that purport to present the class's common questions of law and fact.

50.

Defendant denies the allegations set forth in Paragraph 50 of the Complaint.

**VI. CAUSES OF ACTION**

**COUNT ONE: BREACH OF CONTRACT**

51.

Defendant incorporates its Defenses, responses to the unnumbered preamble paragraph immediately following the heading “Complaint,” and Paragraphs 1 through 50 of the Complaint as if fully set forth herein.

52.

Defendant denies the allegations set forth in Paragraph 52 of the Complaint.

53.

Defendant denies the allegations set forth in Paragraph 53 of the Complaint.

54.

Defendant denies the allegations set forth in Paragraph 54 of the Complaint.

55.

Defendant denies the allegations set forth in Paragraph 55 of the Complaint.

**COUNT TWO: BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING**

56.

Defendant incorporates its Defenses, responses to the unnumbered preamble paragraph immediately following the heading “Complaint,” and Paragraphs 1 through 55 of the Complaint as if fully set forth herein.

57.

Defendant denies the allegations set forth in Paragraph 57 of the Complaint.

58.

Defendant denies the allegations set forth in Paragraph 58 of the Complaint.

59.

Defendant denies the allegations set forth in Paragraph 59 of the Complaint.

60.

Defendant denies the allegations set forth in Paragraph 60 of the Complaint.

**COUNT THREE: QUANTUM MERUIT**

61.

Defendant incorporates its Defenses, responses to the unnumbered preamble paragraph immediately following the heading “Complaint”, and Paragraphs 1 through 60 of the Complaint as if fully set forth herein.

62.

Defendant denies the allegations set forth in Paragraph 62 of the Complaint.

63.

Defendant denies the allegations set forth in Paragraph 63 of the Complaint.

64.

Defendant denies the allegations set forth in Paragraph 64 of the Complaint.

65.

Defendant denies the allegations set forth in Paragraph 65 of the Complaint.

66.

Defendant denies the allegations set forth in Paragraph 66 of the Complaint.



#### **COUNT FOUR: DECLARATORY JUDGMENT**

67.

Defendant incorporates its Defenses, responses to the unnumbered preamble paragraph immediately following the heading “Complaint,” and Paragraphs 1 through 66 of the Complaint as if fully set forth herein.

68.

Answering the allegations set forth in Paragraph 68 of the Complaint, Defendant states Paragraph 68 is a legal conclusion to which no responsive pleading can or should be framed. Answering further, to the extent a response is required, Defendant states that O.C.G.A. § 9-4-1 speaks for itself, and Defendant therefore denies any allegations that are inconsistent therewith, that take O.C.G.A. § 9-4-1 out of context, or that otherwise assign an incorrect or incomplete meaning to O.C.G.A. § 9-4-1. Except as otherwise stated herein, Defendant denies the allegations set forth in Paragraph 68 of the Complaint.

69.

Answering the allegations set forth in Paragraph 69 of the Complaint, Defendant states Paragraph 69 is a legal conclusion to which no responsive pleading can or should be framed. Answering further, to the extent a response is required, Defendant states that O.C.G.A. § 9-4-2(b) speaks for itself, and Defendant therefore denies any allegations that are inconsistent therewith, that take O.C.G.A. § 9-4-2(b) out of context, or that otherwise assign an incorrect or incomplete meaning to O.C.G.A. § 9-4-2(b). Except as otherwise stated herein, Defendant denies the allegations set forth in Paragraph 69 of the Complaint.

70.

Defendant denies the allegations set forth in Paragraph 70 of the Complaint.

71.

Defendant denies the allegations set forth in Paragraph 71 of the Complaint, including the allegations set forth in subparts (a) through (c).

**COUNT FIVE: ATTORNEYS' FEES AND EXPENSES**

72.

Defendant incorporates its Defenses, responses to the unnumbered preamble paragraph immediately following the heading "Complaint," and Paragraphs 1 through 71 of the Complaint as if fully set forth herein.

73.

Answering the allegations set forth in Paragraph 73 of the Complaint, Defendant admits it is aware of the provisions of its policies and procedures regarding employee benefits. Except as specifically admitted herein, Defendant denies the allegations set forth in Paragraph 73 of the Complaint.

74.

Defendant denies the allegations set forth in Paragraph 74 of the Complaint.

75.

Defendant denies the allegations set forth in Paragraph 75 of the Complaint.

76.

Defendant denies the allegations set forth in Paragraph 76 of the Complaint.

77.

Answering the unnumbered ad damnum clause, which immediately follows Paragraph 76 on page 18 of the Complaint and begins “WHEREFORE,” including subparagraphs (A) through (F) thereof, Defendant denies each allegation contained therein and further denies that Plaintiffs are entitled to the specific relief requested or to any relief whatsoever.

78.

Except as specifically admitted hereinabove in response to the numbered and unnumbered paragraphs of the Complaint, Defendant denies any and all other claims or allegations which are raised or may have been raised by or in the Complaint.

WHEREFORE, having fully answered the allegations in Plaintiffs’ Complaint, Defendant respectfully requests that the Court enter an order dismissing the Complaint in its entirety, with prejudice; award Defendant its costs and expenses, including reasonable attorneys’ fees; and award Defendant any other such relief as this Court deems just and proper.

Respectfully submitted this 1st day of December, 2017.

s/ R. Read Gignilliat  
R. Read Gignilliat  
Georgia Bar No. 293390  
Patrick L. Lail  
Georgia Bar No. 431101  
Timothy M. Boughey  
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<<Signature Continued on Following Page>>

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*Counsel for Defendant, City of Roswell*

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Plaintiffs,	)	
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v.	)	CIVIL ACTION NO.
	)	2017cv294723
CITY OF ROSWELL, GEORGIA,	)	
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Defendant.	)	

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**CERTIFICATE OF SERVICE**

This is to certify that I have this day filed the foregoing **DEFENDANT’S ANSWER TO COMPLAINT** with the Office of the Clerk of Court via its electronic filing system, which will send notices of electronic filing to the following counsel of record:

Michael I. Fistel, Jr.  
William W. Stone  
David A. Weisz  
JOHNSON & WEAVER, LLP  
40 Powder Springs Street  
Marietta, GA 30064

Respectfully submitted this 1st day of December, 2017.

s/ R. Read Gignilliat \_\_\_\_\_  
R. Read Gignilliat  
Georgia Bar No. 293390  
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<<Signature Continued on Following Page>>

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