

DUPLICATE

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

**GEORGIACARRY.ORG, INC. and
RYAN GILL,**

Plaintiffs,

v.

WILLIAM O'BRIEN, in his official capacity
of chief of police of DeKalb County, Georgia,

Defendants.

**CIVIL ACTION FILE NO.
11CV7100-6**

DEFENDANT WILLIAM O'BRIEN'S ANSWER AND DEFENSES TO COMPLAINT

COMES NOW Defendant William O'Brien (hereafter "Defendant") in the above-styled action, by and through counsel, and hereby submits his answer and defenses to Plaintiffs' complaint as follows:

FIRST DEFENSE

Plaintiffs' complaint fails to state a claim or cause of action against Defendant upon which relief may be granted, and therefore it should be dismissed.

SECOND DEFENSE

Plaintiffs' claims are barred and should be dismissed because Plaintiffs have no clear legal right or entitlement to the relief sought in his complaint.

THIRD DEFENSE

All acts, or refusals to act, which form the basis of Plaintiffs' complaint were made in the good faith performance of Defendant's official duties, and thus Defendant is entitled to official immunity.

FOURTH DEFENSE

Plaintiffs' claims are barred and should be dismissed because Plaintiffs have adequate remedies at law to redress any alleged violations.

FIFTH DEFENSE

Plaintiffs' claims are barred and should be dismissed because Plaintiffs have not stated a viable claim for mandamus because Defendant had no legal duty to perform the actions sought to be required of him.

SIXTH DEFENSE

Plaintiffs' complaint is premature and should be dismissed because Plaintiffs have not exhausted all administrative remedies.

SEVENTH DEFENSE

Plaintiffs' complaint should be dismissed because Plaintiffs possess other meaningful remedies, and mandamus is not available where other remedies exist.

EIGHTH DEFENSE

To the extent any of the theories of recovery espoused by Plaintiffs sound in tort, such claims should be dismissed because they are barred by the doctrine of sovereign immunity and official immunity.

NINTH DEFENSE

Plaintiffs' claims should be dismissed because a writ of mandamus legally directs only an officer to perform a clear legal duty.

TENTH DEFENSE

Plaintiffs are not entitled to recover any damages from Defendant because any harm that Plaintiffs have suffered is not a consequence of any conduct by Defendant.

ELEVENTH DEFENSE

Plaintiffs' claims should be dismissed because the acts sought to be compelled are matters within the discretion of Defendant, and Plaintiffs cannot show a gross abuse of discretion.

TWELFTH DEFENSE

Plaintiffs' claims should be dismissed because, to the extent Plaintiffs challenge any actions of Defendant that expired prior to the date of the filing of this action, such claims are moot, null and void.

THIRTEENTH DEFENSE

Plaintiffs' claims should be dismissed because the Defendant's actions, which are at issue in this case, promoted legitimate and proper governmental interests, and were rationally related thereto.

FOURTEENTH DEFENSE

Without waiving any of the foregoing defenses, but insisting and relying upon each of them, Defendant answers the various paragraphs of Plaintiffs' complaint as follows:

I. Introduction

1.

Defendant denies the allegations contained in paragraph 1 of Plaintiff's Complaint.

II. Parties

2.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 2 of Plaintiff's complaint.

3.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 3 of Plaintiff's Complaint.

4.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 4 of Plaintiff's complaint.

5.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 5 of Plaintiff's complaint.

6.

Defendant admits the allegations contained in paragraph 6 of Plaintiff's complaint.

7.

Defendant denies the allegations contained in paragraph 7 of Plaintiff's complaint.

8.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 8 of Plaintiff's Complaint. To the extent that this paragraph purports to state a claim or cause of action against Defendant, it is denied.

9.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 9 of Plaintiff's complaint. To the extent that this paragraph purports to state a claim or cause of action against Defendant, it is denied.

10.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 10 of Plaintiff's complaint. To the extent that this paragraph purports to state a claim or cause of action against Defendant, it is denied.

11.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 11 of Plaintiff's complaint. To the extent that this paragraph purports to state a claim or cause of action against Defendant, it is denied.

12.

Defendant denies the allegations contained in paragraph 12 of Plaintiff's complaint.

13.

Defendant denies the allegations contained in paragraph 13 of Plaintiff's complaint.

14.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 14 of Plaintiff's complaint. To the extent that this paragraph purports to state a claim or cause of action against Defendant, it is denied.

15.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 15 of Plaintiff's complaint. To the extent that this paragraph purports to state a claim or cause of action against Defendant, it is denied.

16.

Defendant denies the allegations contained in paragraph 16 of Plaintiff's complaint.

17.

Plaintiffs appear to be making a statement of law in paragraph 17 of the complaint; and thus it appears no response is required from Defendant. To the extent that this paragraph purports to state a claim or cause of action against Defendant, it is denied.

18.

Defendant denies the allegations contained in paragraph 18 of Plaintiff's complaint.

19.

Defendant denies the allegations contained in paragraph 19 of Plaintiff's complaint.

20.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 20 of Plaintiff's complaint. To the extent that this paragraph purports to state a claim or cause of action against Defendant, it is denied.

21.

Defendant denies the allegations contained in paragraph 21 of Plaintiff's complaint.

22.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 22 of Plaintiff's complaint. To the extent that this paragraph purports to state a claim or cause of action against Defendant, it is denied.

23.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 23 of Plaintiff's complaint. To the extent that this paragraph purports to state a claim or cause of action against Defendant, it is denied.

24.

Defendant denies the allegations contained in paragraph 24 of Plaintiff's complaint.

25.

Defendant denies the allegations contained in paragraph 25 of Plaintiff's complaint.

26.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 26 of Plaintiff's complaint. To the extent that this paragraph purports to state a claim or cause of action against Defendant, it is denied.

27.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 27 of Plaintiff's complaint. To the extent that this paragraph purports to state a claim or cause of action against Defendant, it is denied.

28.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 28 of Plaintiff's complaint. To the extent that this paragraph purports to state a claim or cause of action against Defendant, it is denied.

29.

Defendant denies the allegations contained in paragraph 29 of Plaintiff's complaint.

30.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 30 of Plaintiff's complaint. To the extent that this paragraph purports to state a claim or cause of action against Defendant, it is denied.

31.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 31 of Plaintiff's complaint. To the extent that this paragraph purports to state a claim or cause of action against Defendant, it is denied.

32.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 32 of Plaintiff's complaint. To the extent that this paragraph purports to state a claim or cause of action against Defendant, it is denied.

33.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 33 of Plaintiff's complaint. To the extent that this paragraph purports to state a claim or cause of action against Defendant, it is denied.

34.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 34 of Plaintiff's complaint. To the extent that this paragraph purports to state a claim or cause of action against Defendant, it is denied.

35.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 35 of Plaintiff's complaint. To the extent that this paragraph purports to state a claim or cause of action against Defendant, it is denied.

36.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 36 of Plaintiff's complaint. To the extent that this paragraph purports to state a claim or cause of action against Defendant, it is denied.

37.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 37 of Plaintiff's complaint. To the extent that this paragraph purports to state a claim or cause of action against Defendant, it is denied.

38.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 38 of Plaintiff's complaint. To the extent that this paragraph purports to state a claim or cause of action against Defendant, it is denied.

39.

Defendant lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 39 of Plaintiff's complaint. To the extent that this paragraph purports to state a claim or cause of action against Defendant, it is denied.

40.

Defendant denies the allegations contained in paragraph 40 of Plaintiff's complaint.

Prayer for Relief

41.

Plaintiffs' demands and requests contained in paragraph 41 of their complaint should be denied.

42.

Plaintiffs' demands and requests contained in paragraph 42 of their complaint should be denied.

43.

Plaintiffs' demands and requests contained in paragraph 43 of their complaint should be denied.

44.

Plaintiffs' demands and requests contained in paragraph 44 of their complaint should be denied.

45.

Plaintiffs' demands and requests contained in paragraph 45 of their complaint should be denied.

FIFTEENTH DEFENSE

All other allegations, claims and prayers contained in the Plaintiff's complaint that have not been specifically admitted or denied are hereby denied.

WHEREFORE, having fully answered the claims asserted in Plaintiffs' complaint, Defendant prays that:

- (a) The complaint/petition be dismissed;
- (b) Judgment be entered in favor of Defendant;
- (c) All costs be taxed against Plaintiffs; and
- (d) Any other and further relief that this Court deems just and appropriate to be granted to Defendant.

Respectfully submitted this 12th day of September 2011.

DUANE D. PRITCHETT
CHIEF ASSISTANT COUNTY ATTORNEY
Georgia Bar No. 588330


BRENDA A. RASPBERRY
SENIOR ASSISTANT COUNTY ATTORNEY
Georgia Bar No. 595130

Attorneys for Defendant

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