

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

PETER BOURNE,

Plaintiff,

v.

CITY OF DECATUR, GEORGIA, and
CHIEF OF POLICE MIKE BOOKER,
in his individual capacity,

Defendants.

CIVIL ACTION NO:

1:18-CV-05320-MHC-LTW

JURY TRIAL DEMANDED

**ANSWER AND DEFENSES OF DEFENDANTS
CITY OF DECATUR, GEORGIA AND CHIEF OF POLICE MIKE
BOOKER TO AMENDED COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 12(a), Defendants City of Decatur, Georgia (“the City”) and Chief of Police Mike Booker (“Chief Booker”) (collectively, “Defendants”) respectfully answer Plaintiff’s Amended Complaint as follows:

PURPORTED NATURE OF COMPLAINT

1. Defendants admit that Plaintiff purports to bring this action pursuant to the Americans with Disabilities Act Amendments Act of 2008 (“ADAAA”), 42 U.S.C. § 12102, *et seq.*, Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e, *et seq.*, 42 U.S.C. §1981, 42 U.S.C. §1983, and the Equal Protection Clause of the United States Constitution, and that Plaintiff alleges certain discriminatory and retaliatory conduct. Defendants deny that Defendants engaged

in any unlawful acts with respect to Plaintiff, denies that Defendants violated the ADAAA, Title VII, Section 1981, Section 1983 or the United States Constitution, and deny that Plaintiff is entitled to any relief whatsoever from either Defendant. Except as expressly admitted, the remaining allegations in Paragraph 1 are denied.

2. Defendants admit that Plaintiff asserts certain facts that he alleges to be in support of this action, but deny that Defendants engaged in any unlawful acts with respect to Plaintiff, deny that Defendants violated the ADAAA, Title VII, Section 1981, Section 1983 or the United States Constitution, and deny that Plaintiff is entitled to any relief whatsoever from either Defendant. Except as expressly admitted, the remaining allegations in Paragraph 2 are denied.

JURISDICTION AND VENUE

3. Defendants admit that this Court has subject matter jurisdiction over Plaintiff's claims. Defendants deny that the Court has jurisdiction over Defendant Chief Booker to the extent that Chief Booker is entitled to qualified immunity with respect to Plaintiffs' claims. Defendants deny that the Court has jurisdiction over Defendant City of Decatur to the extent that the City is entitled to sovereign and/or governmental immunity with respect to Plaintiffs' claims.

4. Defendants deny that any violation of Plaintiff's rights occurred. Defendant admits that, to the extent this Court has jurisdiction, venue is proper in

this Court. Except as expressly admitted, the remaining allegations in Paragraph 4 are denied.

5. Denied.

6. Denied.

7. Denied.

8. Denied.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

9. Defendants admit that counsel for Plaintiff filed a Charge of Discrimination No. 410-2017-05901, dated August 30, 2017, with the U.S. Equal Employment Opportunity Commission. Defendants deny that all of the alleged acts described in the Charge occurred within 180 days of the Charge's filing. Except as expressly admitted, the remaining allegations in Paragraph 9 are denied.

10. Defendants admit that Plaintiff amended his EEOC Charge on January 30, 2018. Defendants further admit that prior to the date of amending his Charge, Plaintiff had received a Notice of Pending Termination from the City. Except as expressly admitted, the remaining allegations in Paragraph 10 are denied.

11. Admitted.

12. Admitted.

THE PARTIES

13. Based upon representations made by Plaintiff, Defendants admit that Plaintiff is a Black male. Defendants lack sufficient information to confirm or deny the remaining allegations in Paragraph 13, and therefore deny same.

14. Defendants admit that during the period of his employment with the City, Plaintiff was an “employee” within the meaning of 42 U.S.C. § 2000e(f).

15. Paragraph 15 states a legal conclusion, to which no response is required. To the extent that any response is necessary, Defendants deny the allegations in Paragraph 15.

16. Upon information and belief, Defendants admit that Plaintiff has been diagnosed with an anxiety disorder. Defendants lack sufficient information to confirm or deny the remaining allegations in Paragraph 16 regarding Plaintiff’s alleged mental impairments and therefore deny same. Except as expressly admitted, the remaining allegations in Paragraph 16 are denied.

17. Defendants deny that Plaintiff was capable of performing the essential functions of his job during the entire period of time at issue in this lawsuit.

18. Admitted.

19. Defendants admit that the City was the public employer of Plaintiff until the termination of his employment on January 23, 2018. Except as expressly admitted, the remaining allegations in Paragraph 19 are denied.

20. Admitted.

21. Defendants admit that the City is subject to the requirements of the ADA as an employer.

22. Defendants admit that the City is subject to the jurisdiction of this Court except with respect to claims against which the City of Decatur is protected by sovereign and/or governmental immunity. Defendants further admit that the City may be served with process by service on its City Manager at 509 N. McDonough Street, Decatur, Georgia 30030. Except as expressly admitted, the remaining allegations in Paragraph 22 are denied.

23. Admitted.

24. Denied.

25. Denied.

PLAINTIFF'S STATEMENT OF ALLEGED FACTS

26. Admitted.

27. Upon information and belief, Defendants admit that Plaintiff was hospitalized in approximately mid-August 2016. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 27, and therefore deny same.

28. Admitted.

29. Defendants lack sufficient information to admit or deny the allegations in Paragraph 29, and therefore deny same.

30. Defendants admit that Plaintiff took approximately two weeks of medical leave beginning in mid-August 2016. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 30, and therefore deny same.

31. Defendants admit that Plaintiff returned to work in September 2016, not 2017, and was scheduled on night shift. Except as expressly admitted, the remaining allegations in Paragraph 31 are denied.

32. Defendants admit that Plaintiff reported to Sgt. John Bender that he had difficulty staying awake on the night shift due to medication he was taking. Except as expressly admitted, the remaining allegations in Paragraph 32 are denied.

33. Defendants admit that Plaintiff did not complete his shift and Sgt. Bender told him to talk to the Captains or Chief Booker about the issue. Except as expressly admitted, the remaining allegations in Paragraph 33 are denied.

34. Admitted.

35. Defendants admit that Plaintiff met with Chief Booker and told him that he had difficulty staying awake on the night shift due to medication he was taking. Except as expressly admitted, the remaining allegations in Paragraph 35 are denied.

36. Defendants admit that during that meeting, Plaintiff and Chief Booker discussed the possibility of Plaintiff moving to the day shift. Except as expressly admitted, the remaining allegations in Paragraph 36 are denied.

37. Defendants admit that the City requested that Plaintiff provide documentation from his health care professional regarding his ability to perform the essential functions of his job. Except as expressly admitted, the remaining allegations in Paragraph 37 are denied.

38. Defendants admit that Capt. Matics informed Plaintiff that he was being placed on Administrative Leave with Pay pending providing the requested documentation to Human Resources. Except as expressly admitted, the remaining allegations in Paragraph 38 are denied.

39. Defendants admit that Plaintiff provided Capt. Matics with a doctor's note on or about September 12, 2016. Except as expressly admitted, the remaining allegations in Paragraph 39 are denied.

40. Defendants admit that the City requested that Plaintiff provide more detailed information including the expected duration of the reported drowsiness during the night shift. Except as expressly admitted, the remaining allegations in Paragraph 40 are denied.

41. Defendants admit that Plaintiff provided the City a doctor's note in which a doctor recommended "avoiding night shifts for the next 3 months if

possible.” Except as expressly admitted, the remaining allegations in Paragraph 41 are denied.

42. Admitted.

43. Denied.

44. Defendants admit that Plaintiff sent an email to Chief Booker stating that he was removing himself from the promotional process. Except as expressly admitted, the remaining allegations in Paragraph 44 are denied.

45. Defendants admit that Plaintiff’s four-year recertification by the Georgia Peace Officer Standards and Training Council (“POST”) was due to be completed in late 2016. Except as expressly admitted, the remaining allegations in Paragraph 45 are denied.

46. Defendants lack sufficient information to confirm or deny the allegations in Paragraph 46, and therefore deny same.

47. Defendants lack sufficient information to admit or deny the allegations regarding the number of occasions on which Plaintiff saw Dr. Canty, and therefore denies same. Defendants admit that Plaintiff was returned to work following Dr. Canty’s report. Except as expressly admitted, the remaining allegations in Paragraph 47 are denied.

48. Admitted.

49. Defendants admit that Plaintiff was placed on light duty in December 2016. Except as expressly admitted, the remaining allegations in Paragraph 49 are denied.

50. Defendants admit that the City paid all of Plaintiff's recertification costs and fees. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 50, and therefore deny same.

51. Denied.

52. Defendants admit that Plaintiff attended some or all of a two-week instructor training course in late March and early April. Except as expressly admitted, the remaining allegations in Paragraph 52 are denied.

53. Defendants lack sufficient information to admit or deny the allegations in Paragraph 53, and therefore deny same.

54. Upon information and belief, Defendants admit that Plaintiff suffered an apparent medical emergency at the training academy. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 54, and therefore deny same.

55. Upon information and belief, Defendants admit that Plaintiff was taken to the hospital following this medical incident. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 55, and therefore deny same.

56. Defendants lack sufficient information to admit or deny the allegations in Paragraph 56, and therefore deny same.

57. Defendants lack sufficient information to admit or deny the allegations in Paragraph 57, and therefore deny same.

58. Defendants admit that Plaintiff took additional time off from work following the medical incident at the training academy. Except as expressly admitted, the remaining allegations in Paragraph 58 are denied.

59. Admitted.

60. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 60, and therefore deny same.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

65. Upon information and belief, Dr. Mark Ackerman is a psychologist with a Ph.D. Except as expressly admitted, the remaining allegations in Paragraph 65 are denied.

66. Denied.

67. Denied.

68. Admitted.

69. Defendants lack sufficient information to admit or deny the allegations in Paragraph 69, and therefore deny same.

70. Defendants lack sufficient information to admit or deny the allegations in Paragraph 70, and therefore deny same.

71. Defendants lack sufficient information to admit or deny the number of times that Plaintiff saw Dr. Ackerman, and therefore deny same. Defendants admit that Dr. Ackerman's report included his opinion that Plaintiff's condition did not preclude him from performing any of the essential functions of his job. Except as expressly admitted, the remaining allegations in Paragraph 71 are denied.

72. Admitted.

73. Denied.

74. Denied.

75. Denied.

76. Defendants admit that Connie Jacobs contacted Plaintiff in May 2017 to advise him that the City needed further clarification from Dr. Ackerman before Plaintiff could return to work. Defendants lack sufficient information to admit or deny whether this was "later that day" as alleged in Paragraph 76, and therefore Defendants deny same. Except as expressly admitted, the remaining allegations in Paragraph 76 are denied.

77. Denied.

78. Defendants lack sufficient information to admit or deny the allegations in Paragraph 78, and therefore deny same.

79. Defendants admit that Plaintiff became physically ill at work in or around May 2017. Except as expressly admitted, the remaining allegations in Paragraph 79 are denied.

80. Defendants admit that Sgt. Bender offered Plaintiff a ride home. Except as expressly admitted, the remaining allegations in Paragraph 80 are denied.

81. Denied.

82. Denied.

83. Defendants admit that Capt. Matics asked to meet with Plaintiff following Plaintiff having become ill at work. Except as expressly admitted, the remaining allegations in Paragraph 83 are denied.

84. Defendants admit that Capt. Matics asked Plaintiff if being sick related to the prior incident at the training academy. Except as expressly admitted, the remaining allegations in Paragraph 84 are denied.

85. Denied.

86. Denied.

87. Defendant admits that on the next shift rotation, Plaintiff was allowed to remain on day shifts and that Sgt. Zachery became his supervisor. Except as expressly admitted, the remaining allegations in Paragraph 87 are denied.

88. Defendants lack sufficient information to admit or deny the allegations in Paragraph 88, and therefore deny same.

89. Defendants lack sufficient information to admit or deny the allegations in Paragraph 89, and therefore deny same.

90. Defendants lack sufficient information to admit or deny the allegations in Paragraph 90, and therefore deny same.

91. Defendant admits that Plaintiff was asked to speak with Capt. Boyett about several matters in and about July and August 2017. Except as expressly admitted, the remaining allegations in Paragraph 91 are denied.

92. Defendants admit that Capt. Boyett conducted an Internal Affairs investigation into a report by a former trainee that Plaintiff was sleeping on the job and a picture provided by the former trainee showing Plaintiff with his eyes closed in the patrol vehicle. Except as expressly admitted, the remaining allegations in Paragraph 92 are denied.

93. Denied.

94. Defendants admit that Capt. Boyett conducted an Internal Affairs investigation into Plaintiff's conduct in and following an attempted traffic stop that occurred on July 16, 2017. Except as expressly admitted, the remaining allegations in Paragraph 94 are denied.

95. Denied.

96. Defendants admit that Capt. Boyett interviewed Plaintiff as part of her investigation into his conduct in and following the July 16, 2017 attempted traffic stop. Defendants lack sufficient information to admit or deny whether this was “[w]ithin a week” of some other unknown date, as alleged in Paragraph 96, and therefore Defendants deny same. Except as expressly admitted, the remaining allegations in Paragraph 96 are denied.

97. Defendants admit that Plaintiff asked to reschedule the interview for the reasons stated in Paragraph 97, but lacks sufficient information to admit or deny whether those stated reasons are true and therefore denies same. Except as expressly admitted, the remaining allegations in Paragraph 97 are denied.

98. Denied.

99. Defendants lack sufficient information to admit or deny the allegations in Paragraph 99, and therefore deny same.

100. Defendants admit that Capt. Boyett postponed her interview with Plaintiff so that his attorney could attend. Defendants lack sufficient information to admit or deny whether this was “shortly thereafter” some other unknown date, as alleged in Paragraph 100, and therefore Defendants deny same. Except as expressly admitted, the remaining allegations in Paragraph 100 are denied.

101. Admitted.

102. Denied.

103. Defendants lack sufficient information to admit or deny whether Sgt. Zachery is disabled, and therefore denies same. Defendants admit that Sgt. Zachery was not placed on administrative leave with respect to the investigation of Plaintiff's conduct during the July 16, 2017 attempted traffic stop.

104. Admitted.

105. Denied.

106. Denied.

107. Denied.

108. Denied.

109. Denied.

**PURPORTED COUNT I: VIOLATION OF ADA- REGARDED
AS DISABLED**

110. Defendants incorporate by reference their preceding responses to the preceding Paragraphs of the Complaint.

111. Admitted.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

116. Denied.

117. Denied.

PURPORTED COUNT II: VIOLATION OF ADA:
DISCRIMINATION/FAILURE TO ACCOMMODATE

118. Defendants incorporate by reference their preceding responses to the preceding Paragraphs of the Complaint.

119. Admitted.

120. Denied.

121. Defendants admit that they became aware that Plaintiff had been diagnosed with an anxiety disorder during the course of his employment. Except as expressly admitted, the remaining allegations in Paragraph 121 are denied.

122. Denied.

123. Defendants lack sufficient information to admit or deny the allegation in Paragraph 123, and therefore denies same.

124. Defendants admit that Plaintiff requested to be relieved of working the night shift due to the impact of a medication he was taking on his ability to stay awake on the night shift. Except as expressly admitted, the remaining allegations in Paragraph 124 are denied.

125. Denied.

126. Denied.

127. Denied.

128. Denied.

**PURPORTED COUNT III: VIOLATION OF ADA: PROHIBITED
MEDICAL INQUIRIES**

129. Defendants incorporate by reference their preceding responses to the preceding Paragraphs of the Complaint.

130. This Paragraph states a legal conclusion, to which no response is required.

131. Denied.

132. Denied.

133. Denied.

134. Denied.

**PURPORTED COUNT IIV: RETALIATION IN VIOLATION
OF THE ADA**

135. Defendants incorporate by reference their preceding responses to the preceding Paragraphs of the Complaint.

136. Admitted.

137. Denied.

138. Defendants admit that in September 2016, Plaintiff requested to be relieved of working the night shift due to the impact of a medication he was taking on his ability to stay awake on the night shift. To the extent that this Paragraph states a legal conclusion, no response is required. Except as expressly admitted, the remaining allegations in Paragraph 138 are denied.

139. Denied.

140. Defendants admit that Plaintiff was placed on paid administrative leave in April 2017 pending an evaluation by Dr. Ackerman and that Plaintiff filed an EEOC Charge dated August 30, 2017. Except as expressly admitted, the remaining allegations in Paragraph 140 are denied.

141. Defendants admit that Plaintiff's employment with the City was ultimately terminated. Except as expressly admitted, the remaining allegations in Paragraph 141 are denied.

142. Denied.

143. Denied.

144. Denied.

145. Denied.

PURPORTED COUNT V: DENIAL OF EQUAL PROTECTION OF THE LAWS IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION BY CITY OF DECATUR

146. Defendants incorporate by reference their preceding responses to the preceding Paragraphs of the Complaint.

147. Denied.

148. Denied.

149. Denied.

150. Denied.

151. Denied.

152. Denied.

153. Denied.

154. Denied.

155. Denied.

**PURPORTED COUNT VI: RACE DISCRIMINATION UNDER TITLE VII
AGAINST DEFENDANT CITY OF DECATUR**

156. Defendants incorporate by reference their preceding responses to the preceding Paragraphs of the Complaint.

157. Based upon representations made by Plaintiff, admitted.

158. Denied.

159. Denied.

160. Denied.

**PURPORTED COUNT VII: RETALIATION IN VIOLATION OF TITLE
VII AGAINST DEFENDANT CITY OF DECATUR**

161. Defendants incorporate by reference their preceding responses to the preceding Paragraphs of the Complaint.

162. Denied.

163. Denied.

PURPORTED COUNT VIII: RACE DISCRIMINATION IN VIOLATION OF 42 U.S.C. §§ 1981 and 1983 AGAINST DEFENDANTS CITY OF DECATUR AND CHIEF BOOKER

164. Defendants incorporate by reference their preceding responses to the preceding Paragraphs of the Complaint.

165. Denied.

166. Denied.

167. Denied.

PURPORTED COUNT IX: RETALIATION IN VIOLATION OF 42 U.S.C. §§ 1981 and 1983 AGAINST DEFENDANTS CITY OF DECATUR AND CHIEF BOOKER

168. Defendants incorporate by reference their preceding responses to the preceding Paragraphs of the Complaint.

169. Denied.

170. Denied.

171. Denied.

172. Denied.

PLAINTIFF'S PRAYER FOR RELIEF

173. Defendants deny that Plaintiff is entitled to receive any of the relief or recover any of the alleged damages set forth in sections (a) through (q) of the portion of the Complaint titled Prayer for Relief, and further deny that Plaintiff is entitled to any relief whatsoever.

AFFIRMATIVE AND OTHER DEFENSES

Without assuming any burden of proof that would otherwise rest with Plaintiff, Defendant states the following additional defenses:

FIRST DEFENSE

To the extent not otherwise noted, Defendants deny Plaintiff's allegations.

SECOND DEFENSE

Defendants reserve the right to assert additional defenses as may be appropriate based on continuing investigation and discovery.

THIRD DEFENSE

Plaintiff's Complaint fails, in whole or in part, to state a claim upon which relief can be granted.

FOURTH DEFENSE

This Court lacks subject matter jurisdiction over some or all of the claims in Plaintiff's Complaint.

FIFTH DEFENSE

Some of Plaintiff's claims are barred because all administrative remedies have not been properly exhausted.

SIXTH DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent that they exceed the scope of or are inconsistent with the charge of discrimination filed with the EEOC.

SEVENTH DEFENSE

As to some of Plaintiff's claims, Plaintiff has failed to satisfy all conditions precedent to pursuing the claims.

EIGHTH DEFENSE

Plaintiff was employed at will and could be discharged with or without notice and with or without cause.

NINTH DEFENSE

All actions taken by Defendants regarding Plaintiff's employment or affecting Plaintiff were based on legitimate, non-discriminatory, non-retaliatory reasons that were in no way related to Plaintiff's alleged disability, race, or alleged exercise of federally-protected rights.

TENTH DEFENSE

Even assuming any unfavorable personnel action was taken against Plaintiff in which an impermissible consideration was a factor – which Defendants deny – Defendants would have taken the same action even in the absence of the impermissible consideration.

ELEVENTH DEFENSE

If any improper, illegal, discriminatory, or retaliatory actions were taken by any of Defendant City of Decatur's employees against Plaintiff – which Defendants deny – they were outside the course and scope of that employee's employment, contrary to Defendant City of Decatur's policies and good faith efforts to comply with the law, and were not ratified, confirmed or approved by Defendant City of Decatur. Thus, any such actions cannot be attributed or imputed to Defendant City of Decatur.

TWELFTH DEFENSE

Some or all of Plaintiff's claims are barred by the applicable statutes of limitations.

THIRTEENTH DEFENSE

Defendants neither committed any discriminatory practices nor engaged in any conduct with malice or reckless indifference towards Plaintiff's federally protected rights.

FOURTEENTH DEFENSE

Defendants engaged in good faith efforts to comply with Title VII, ADA, the U.S. Constitution, and 42 U.S.C. § 1981 and §1983. Moreover, the conduct complained of by Plaintiff – which Defendants deny constitutes any violation of law – was performed or carried out in good faith based upon reasonable grounds for

believing such conduct was not in violation of federal law, and therefore, Plaintiff fails to state a claim for punitive or liquidated damages.

FIFTEENTH DEFENSE

Plaintiff was not entitled to reasonable accommodation under ADAAA to the extent that his employment posed a direct threat to the health or safety of other individuals.

SIXTEENTH DEFENSE

Defendant City of Decatur has in place a clear and well-disseminated policy against discrimination and retaliation, and a reasonable and available procedure for handling complaints thereof, which provides for prompt and effective responsive action. Plaintiff's claims of discrimination are barred because he unreasonably failed to take advantage of the preventive and corrective opportunities provided by Defendant, or to avoid harm otherwise.

SEVENTEENTH DEFENSE

Without admitting that Plaintiff is a qualified individual with a disability under the ADAAA, Plaintiff is not entitled to recover compensatory or punitive damages because Defendant City of Decatur at all times demonstrated good faith efforts to identify and make a reasonable accommodation in accordance with the law.

EIGHTEENTH DEFENSE

Plaintiff is not, or was not at all relevant times, a qualified individual with a disability under the ADAAA.

NINETEENTH DEFENSE

Plaintiff's retaliation claims are barred to the extent that he cannot establish he engaged in any conduct opposing any practice made unlawful by Title VII, ADAAA, the Equal Protection Clause, or § 1983 or § 1981.

TWENTIETH DEFENSE

There is no causal connection between any conduct in which Plaintiff engaged that is protected under Title VII, ADAAA, the Equal Protection Clause, or § 1983 or § 1981 and any adverse employment action by Defendants, and there is no evidence of animus by Defendants against Plaintiff for the exercise of any right protected by Title VII, ADAAA, the Equal Protection Clause, or § 1983 or § 1981.

TWENTY-FIRST DEFENSE

Plaintiff's claims of retaliation fail as a matter of law where the decision-maker(s) with respect to an allegedly retaliatory personnel action was unaware of Plaintiff's alleged protected activity.

TWENTY- SECOND DEFENSE

To the extent that Plaintiff complained adequately of allegedly unlawful discriminatory or retaliatory actions, Defendant City of Decatur undertook a prompt investigation and made appropriate remedial response.

TWENTY-THIRD DEFENSE

Plaintiff is not entitled to any award for lost back wages for any period during which he was unable to work.

TWENTY-FOURTH DEFENSE

The injuries, damages, and conditions claimed by Plaintiff were due in whole or in part to events and/or conditions existing before or arising subsequent to the events made the basis of this lawsuit, and were not caused by any act or omissions of Defendants nor did Defendants contribute to them in any way.

TWENTY- FIFTH DEFENSE

Plaintiff's damages – the existence of which Defendants deny – may be reduced or offset by virtue of any recovery he has obtained or may obtain from any other source as a result of any workers' compensation claim, unemployment benefits, disability benefits, or other employment.

TWENTY- SIXTH DEFENSE

Any award of liquidated or punitive damages to Plaintiff would be in violation of the constitutional safeguards provided to Defendants under the Constitution of the United States of America.

TWENTY-SEVENTH DEFENSE

Plaintiff is not entitled to a back pay award because Plaintiff suffered no economic damage.

TWENTY-EIGHTH DEFENSE

If Plaintiff has suffered any damages as a result of any alleged wrongdoing by Defendants – which Defendants deny – Plaintiff has failed to mitigate his claimed damages.

TWENTY-NINTH DEFENSE

Defendant Chief Booker has been accorded discretion by Defendant City of Decatur in handling employment matters; however, he has not been delegated policymaking authority regarding such matters. Defendant City of Decatur has no policy or custom that has directly and proximately caused the deprivation alleged by Plaintiff.

THIRTIETH DEFENSE

Plaintiff's claims under Section 1981, Section 1983 and the Fourteenth Amendment of the United States Constitution fail because he has not alleged, and in

any event cannot show, that Defendants acted pursuant to any municipal policy or custom in causing his alleged deprivation of any constitutional right.

THIRTY-FIRST DEFENSE

Defendant Chief Booker has not violated any clearly established right of Plaintiff and thus enjoys a qualified immunity from the award of damages.

THIRTY-SECOND DEFENSE

To the extent Plaintiff seeks punitive or exemplary damages under any claim for which punitive or exemplary damages are not recoverable against a municipal entity, including, without limitation, Section 1981 or Section 1983, Plaintiff may not recover punitive or exemplary damages against Defendant the City.

THIRTY-THIRD DEFENSE

Plaintiff's claims against Defendants are barred, either in whole or in part, by the doctrines of sovereign immunity, qualified immunity and official immunity, and for these reasons, among others, Plaintiff's Complaint against Defendants should be dismissed.

THIRTY-FOURTH DEFENSE

All of Defendant Chief Booker's actions toward Plaintiff have been based upon the good faith exercise of the responsibility conferred upon him to make professional judgments regarding Plaintiff's qualifications and have been made

without any regard for Plaintiff's race, disability, Constitutional rights, or protected activity.

THIRTY-FIFTH DEFENSE

Plaintiff's Complaint fails to set forth any violation of any right guaranteed to Plaintiff by the United States Constitution and therefore Plaintiff's Complaint does not set forth a cause of action under 42 U.S.C. § 1983 or 42 U.S.C. § 1981.

THIRTY-SIXTH DEFENSE

Plaintiff's claims under Section 1981, Section 1983 and the Fourteenth Amendment of the United States Constitution fail to the extent he relies on any theory of respondeat superior or vicarious liability in support of any of those claims.

THIRTY-SEVENTH DEFENSE

Any injury or damages suffered by Plaintiff were the result of an independent intervening cause, and not the result of any alleged actions or omissions of Defendant.

THIRTY-EIGHT DEFENSE

To the extent Defendants discover during the course of this action that Plaintiff engaged in any conduct that would have warranted discharge under City of Decatur policy earlier than the date of actual termination, Plaintiff's right to recover damages beyond the date of discovery will be cut off and Plaintiff will be prevented

from obtaining reinstatement of employment under the after-acquired evidence defense.

THIRTY-NINTH DEFENSE

One or more of the Plaintiff's claims is barred by the business judgment rule.

FORTIETH DEFENSE

Plaintiff's claims are barred by Plaintiff's own comparative and/or contributory negligence.

FORTY-FIRST DEFENSE

Plaintiff's claims are barred by the doctrine of laches and/or estoppel.

FORTY-SECOND DEFENSE

Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

FORTY-THIRD DEFENSE

Plaintiff's Complaint, and each and every cause of action therein, is barred by the doctrine of waiver.

WHEREFORE, having answered Plaintiff's Complaint and asserted their defenses thereto, Defendants pray that Plaintiff's Complaint be dismissed with prejudice, that Plaintiff be ordered to pay Defendants' costs and attorneys' fees associated with defending this action, and for any other relief to which they may be entitled.

This 28th day of January, 2019.

Respectfully submitted,

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

s/ Erika L. Leonard

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*Attorneys for City of Decatur, Georgia and
Chief of Police Mike Booker*

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

PETER BOURNE,

Plaintiff,

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CITY OF DECATUR, GEORGIA, and
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Defendants.

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JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of January 2019, a copy of the foregoing **ANSWER AND DEFENSES OF DEFENDANTS CITY OF DECATUR, GEORGIA AND CHIEF OF POLICE MIKE BOOKER TO AMENDED COMPLAINT** was filed electronically with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

/s/ Erika L. Leonard

Erika L. Leonard