

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE**

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**GLENN WHITING,** )  
 )  
 **Plaintiff,** )  
 )  
 v. )  
 )  
 **CITY OF ATHENS, SETH SUMNER,** )  
 **BO PERKINSON, JAMESON SLIGER,** )  
 **TY GABLE, ROD WALKER, SETH** )  
 **WALKER, TONIA RATLEDGE DAKE,** )  
 **CHAD RAMSEY, DEB CARDIN, CODY** )  
 **WILLIAMS, DAVE ALBERTSON, TYLER** )  
 **HICKS, ENOCH DIXON, ROBERT EVANS,** )  
 **JASON FLING, JOSHUA FULBRIGHT,** )  
 **GREGORY GABLE, JACKSON ENGRAM,** )  
 **QUINTON KEY, CLARK KIRKSLEY,** )  
 **CHRISTOPHER LILLARD, DUSTIN** )  
 **MARTIN, DEXTER MILLER, CASEY** )  
 **MOSES, ROBERT MOSES, RONALD** )  
 **NIPPER, JOSHUA ROACH, JOHNATHAN** )  
 **PARROT, TIMOTHY SCHULTZ,** )  
 **CHRISTOPHER SMITH AND OFFICER JIM** )  
 **GARLAND BADGE #132** )  
 )  
 **Defendants.** )

**No. 3:23-CV-00002-TRM-DCP**

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**ANSWER TO COMPLAINT OF DEFENDANT CITY OF ATHENS, TENNESSEE**

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Defendant City of Athens, Tennessee hereby appears, by and through counsel, and expressly reserving the defense of insufficient service of process pursuant to Federal Rule of Civil Procedure 12(b)(5), failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6), and all other affirmative defenses expressly set out herein and provides the following Answer to the Plaintiff's Complaint:

1. The allegations in paragraph 1 of the Plaintiff's Complaint are admitted upon information and belief.

2. The allegations in paragraph 2 of the Plaintiff's Complaint are denied.

3. The Defendant lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 3 of the Plaintiff's Complaint. Those allegations are, therefore, denied.

4. The factual allegations in paragraph 4 of the Plaintiff's Complaint are admitted. It is denied that the Defendants violated any aspect of Federal or Tennessee law or are liable to the Plaintiff in any amount.

5. The factual allegations in paragraph 5 of the Plaintiff's Complaint are admitted. It is denied that the Defendants violated any aspect of Federal or Tennessee law or are liable to the Plaintiff in any amount.

6. The allegations in paragraph 6 of the Plaintiff's Complaint are denied.

7. The factual allegations in paragraph 7 of the Plaintiff's Complaint are admitted. It is denied that the Defendants violated any aspect of Federal or Tennessee law or are liable to the Plaintiff in any amount.

8. The allegations in paragraph 8 of the Plaintiff's Complaint are denied as stated. Defendant Rod Walker has been a volunteer firefighter for the City of Athens at all times relevant and still serves as a volunteer firefighter for the City of Athens. It is denied that the Defendants violated any aspect of Federal or Tennessee law or are liable to the Plaintiff in any amount.

9. The factual allegations in paragraph 9 of the Plaintiff's Complaint are admitted. It is denied that the Defendants violated any aspect of Federal or Tennessee law or are liable to the Plaintiff in any amount.

10. The allegations in paragraph 10 of the Plaintiff's Complaint are denied.

11. As to the allegations in paragraph 11 of the Plaintiff's Complaint, it is admitted only that Defendant Ramsey was a firefighter for the City of Athens, Tennessee on July 4, 2022. Any other allegations in paragraph 11 of the Plaintiff's Complaint are denied as stated, and strict proof is demanded thereof.

12. The allegations in paragraph 12 of the Plaintiff's Complaint are denied as stated, and strict proof is demanded thereof.

13. The allegations in paragraph 13 of the Plaintiff's Complaint are denied.

14. The allegations in paragraph 14 of the Plaintiff's Complaint are denied as stated, and strict proof is demanded thereof.

15. The allegations in paragraph 15 of the Plaintiff's Complaint are admitted. It is denied that the Defendants violated any aspect of Federal or Tennessee law or are liable to the Plaintiff in any amount.

16. The factual allegations in paragraph 16 of the Plaintiff's Complaint are admitted. It is denied that the Defendants violated any aspect of Federal or Tennessee law or are liable to the Plaintiff in any amount.<sup>1</sup>

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<sup>1</sup> The Complaint does not contain a paragraph 17 or a paragraph 18.

19. The allegations in paragraph 19 of the Plaintiff's Complaint are denied. The provided list contains several individuals who, to the knowledge of this Defendant, do not exist and several individuals who, to the knowledge of this Defendant, are not its employees. It is specifically denied that any of the individuals listed in paragraph 19 of the Plaintiff's Complaint are properly sued. The Plaintiff's purported joinder of each of these parties fails to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6) and pursuant to the decisions of the United States Supreme Court in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). The Plaintiff's joinder of these parties is in bad faith. They should be dismissed from this action, and this allegation should be stricken from the Complaint. Sanctions should be levied against the Plaintiff and counsel for the Plaintiff for joining these parties to this litigation in violation of Federal Rule of Civil Procedure 11.

20. Paragraph 20 of the Plaintiff's Complaint contains legal allegations to which no response is required, and none is given. This Defendant does not contest subject matter jurisdiction. The Defendant reserves the right to contest subject matter jurisdiction for claims brought under Tennessee law.

21. Paragraph 21 of the Plaintiff's Complaint contains legal allegations to which no response is required, and none is given. This Defendant does not contest venue.

22. The allegations in paragraph 22 of the Plaintiff's Complaint are denied.

23. The allegations in paragraph 23 of the Plaintiff's Complaint are denied.

24. The allegations in paragraph 24 of the Plaintiff's Complaint are denied.

25. The allegations in paragraph 25 of the Plaintiff's Complaint are denied.

26. The allegations in paragraph 26 of the Plaintiff's Complaint are denied.

27. The allegations in paragraph 27 of the Plaintiff's Complaint are denied.

28. The allegations in paragraph 28 of the Plaintiff's Complaint are denied.

29. The Athens Regional Park was closed to the public to provide a safety drop zone for the fireworks display and because the entrance and exit to the Athens Regional Park was within that safety drop zone. It is admitted that certain City employees and their guests were allowed to park in the parking lot of the Athens Regional Park and observe the fireworks show. Any other allegations in paragraph 29 of the Plaintiff's Complaint are denied.

30. It is admitted that the fireworks show was a matter of public discussion. This Defendant lacks information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 30, and those allegations are denied.

31. The allegations in paragraph 31 of the Plaintiff's Complaint are denied.

32. As to the allegations in paragraph 32 of the Plaintiff's Complaint, it is admitted that Glenn Whiting harassed and engaged in confrontational behavior with multiple individuals and videotaped families and children on the day in question. The Defendant relies upon the video recording, and any allegations inconsistent with the video are denied.

33. The Defendant lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 33 of the Plaintiff's Complaint. Those allegations are therefore denied, and strict proof is demanded thereof.

34. The allegations in paragraph 34 of the Plaintiff's Complaint are denied.

35. The Defendant lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 35 of the Plaintiff's Complaint. The Defendant relies upon the video recording, and any allegations inconsistent with the video are denied.

36. The Defendant lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 36 of the Plaintiff's Complaint. The Defendant relies upon the video recording, and any allegations inconsistent with the video are denied.

37. The Defendant lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 37 of the Plaintiff's Complaint. The Defendant relies upon the video recording, and any allegations inconsistent with the video are denied.

38. The Defendant lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 38 of the Plaintiff's Complaint. The Defendant relies upon the video recording, and any allegations inconsistent with the video are denied.

39. The allegations in paragraph 39 of the Plaintiff's Complaint are denied.

40. The Defendant lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 40 of the Plaintiff's Complaint. The Defendant relies upon the video recording, and any allegations inconsistent with the video are denied. The legal allegations in paragraph 40 of the Plaintiff's Complaint are specifically denied.

41. The allegations in paragraph 41 of the Plaintiff's Complaint are denied as stated, and strict proof is demanded thereof.

42. It is admitted that the Plaintiff continued to video record families and children throughout his visit to the park. It is admitted that multiple people repeatedly asked the Plaintiff not to do this. All other allegations in paragraph 42 of the Plaintiff's Complaint are denied.

43. The allegations in paragraph 43 of the Plaintiff's Complaint are denied.

44. As to the allegations in paragraph 44 of the Plaintiff's Complaint, it is admitted only that Defendant Gable asked Mr. Whiting not to record children. The Defendant relies upon

the video recording, and any allegations inconsistent with the video are denied. All other allegations in this paragraph are denied.

45. The allegations in paragraph 45 of the Plaintiff's Complaint are denied.

46. The Defendant lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 46 of the Plaintiff's Complaint. The Defendant relies upon the video recording, and any allegations inconsistent with the video are denied.

47. The Defendant lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 47 of the Plaintiff's Complaint. The Defendant relies upon the video recording, and any allegations inconsistent with the video are denied.

48. The Defendant lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 48 of the Plaintiff's Complaint. The Defendant relies upon the video recording, and any allegations inconsistent with the video are denied.

49. As to the allegations in paragraph 49 of the Plaintiff's Complaint, it is admitted that no employees of the City of Athens were disciplined for any actions that occurred on the day of the events in question. The remaining allegations in paragraph 49 of the Plaintiff's Complaint are denied.

50. The allegations in paragraph 50 of the Plaintiff's Complaint are denied as stated, and strict proof is demanded thereof.

51. Paragraph 51 of the Plaintiff's Complaint contains legal allegations to which no response is required, and none is given. To the extent paragraph 51 of the Plaintiff's Complaint contains any factual allegations, the same are denied.

52. The allegations in paragraph 52 of the Plaintiff's Complaint are denied.

53. The allegations in paragraph 53 of the Plaintiff's Complaint are denied.

54. The allegations in paragraph 54 of the Plaintiff's Complaint are denied.

55. Paragraph 55 of the Plaintiff's Complaint contains legal allegations to which no response is required, and none is given. It is specifically denied that Bo Perkinson and Brandon Ainsworth are municipal policymakers, as that term is defined by federal law. It is further specifically denied that Defendant Seth Sumner is a municipal policymaker for the actions that form the basis of the Plaintiff's Complaint. Any other factual allegations in paragraph 55 of the Plaintiff's Complaint are denied.

56. The allegations in paragraph 56 of the Plaintiff's Complaint are denied.

57. The allegations in paragraph 57 of the Plaintiff's Complaint are denied.

58. The allegations in paragraph 58 of the Plaintiff's Complaint are denied.

59. The Defendant incorporates and relies upon its responses to the preceding paragraphs 1-58.

60. The allegations in paragraph 60 of the Plaintiff's Complaint are denied. This allegation is entirely insufficient in that it does not identify the statements concerning the Plaintiff, to whom those statements were communicated, or the individuals who made those statements.

61. The allegations in paragraph 61 of the Plaintiff's Complaint are denied. This allegation is entirely insufficient in that it does not identify the statements concerning the Plaintiff, to whom those statements were communicated, or the individuals who made those statements.

62. The allegations in paragraph 62 of the Plaintiff's Complaint are denied. This allegation is entirely insufficient in that it does not identify the statements concerning the



Plaintiff, to whom those statements were communicated, or the individuals who made those statements.

63. The allegations in paragraph 63 of the Plaintiff's Complaint are denied. This allegation is entirely insufficient in that it does not identify the statements concerning the Plaintiff, to whom those statements were communicated, or the individuals who made those statements. Further, it is affirmatively averred that the Plaintiff self-published what he now claims are defamatory statements. The video was taken and prepared by the Plaintiff, who himself caused that video to be published to social media. To the extent the Plaintiff claims to have incurred any damage as a result of the publication, those damages were self-inflicted.

64. The allegations in paragraph 64 of the Plaintiff's Complaint are denied.

65. The allegations in paragraph 65 of the Plaintiff's Complaint are denied.

66. The allegations in paragraph 66 of the Plaintiff's Complaint are denied as stated, and strict proof is demanded thereof.

67. The allegations in paragraph 67 of the Plaintiff's Complaint are denied.

68. The allegations in paragraph 68 of the Plaintiff's Complaint are denied.

69. The allegations in paragraph 69 of the Plaintiff's Complaint are denied.

70. The allegations in paragraph 70 of the Plaintiff's Complaint are denied.

71. The Defendant incorporates and relies upon its responses to the preceding paragraphs 1-70.

72. The allegations in paragraph 72 of the Plaintiff's Complaint are denied.

73. The allegations in paragraph 73 of the Plaintiff's Complaint are denied.

74. The Defendant incorporates and relies upon its responses to the preceding paragraphs 1-73.

75. The allegations in paragraph 75 of the Plaintiff's Complaint are denied.

76. The Defendant incorporates and relies upon its responses to the preceding paragraphs 1-75.

77. The allegations in paragraph 77 of the Plaintiff's Complaint are denied.

78. The allegations in paragraph 78 of the Plaintiff's Complaint are denied.

79. The allegations in paragraph 79 of the Plaintiff's Complaint are denied.

80. The Defendant incorporates and relies upon its responses to the preceding paragraphs 1-79.

81. Paragraph 81 of the Plaintiff's Complaint contains legal allegations to which no response is required, and none is given. To the extent paragraph 81 of the Plaintiff's Complaint contains factual allegations, the same are denied.

82. The allegations in paragraph 82 of the Plaintiff's Complaint are denied.

83. The Plaintiff's prayer for relief is denied in full. The Plaintiff is not entitled to relief of any kind in this action.

84. This Defendant requests a jury to try all matters in this cause of action as it now stands. The Defendant reserves the right to modify or withdraw this jury demand as this action progresses or in response to any amendments to the pleadings in this matter.

85. The Complaint fails to state a claim upon which relief may be granted against this Defendant, and the Complaint should be dismissed against the Defendant in its entirety.

86. The Defendant specifically relies upon the terms of the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101 *et. seq.* This Defendant specifically relies upon the enumerated statutory immunities in Tenn. Code Ann. § 29-20-205.

87. This Defendant affirmatively maintains that it is entitled to recovery of all costs in this cause allowable by law, including, but not limited to, attorney fees and discretionary costs as the same may be set out in 42 U.S.C. § 1988 or any other law that would entitle this Defendant to such a recovery.

88. To the extent the claims alleged against the City fall out of the applicable statute of limitations, those claims would fail to state a claim upon which relief can be granted and should be dismissed.

89. The Defendant affirmatively relies upon the defense of insufficient service of process pursuant to Fed. R. Civ. P. 12(b)(5). The individual upon whom the Summons directed to the City of Athens was served is not an individual upon whom service can be made pursuant to the provisions of the Federal and Tennessee Rules of Civil Procedure. The Plaintiff, therefore, has not properly served this Defendant, and the claims against it should be dismissed.

90. The Defendant affirmatively avers that the Plaintiff has failed to state a claim pursuant to 42 U.S.C. § 1983 in that the Complaint does not contain adequate allegations to show that each of the named Defendants were acting under color of law at the time of the incident in question. Further, the Complaint does not contain adequate allegations to demonstrate all of the essential elements of a claim of First Amendment retaliation pursuant to 42 U.S.C. § 1983.

91. The Defendant affirmatively avers that the Plaintiff has not stated an adequate theory of municipal liability pursuant to 42 U.S.C. § 1983. Under the law of this Circuit, a plaintiff may not maintain a claim against a governmental entity pursuant to 42 U.S.C. § 1983 solely upon a theory of vicarious liability. Further, the Plaintiff has not come forward with plausible allegations to demonstrate that any of the named Defendants are municipal policymakers, as that term has been defined by governing Sixth Circuit precedent. The

Complaint further fails to contain necessary allegations of a prior pattern of similar constitutional violations and/or constitutional municipal custom practice or policy.

92. The Plaintiff's claim fails to meet the plausibility pleading standards set out by the United States Supreme Court in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). In order to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6), a plaintiff's complaint must be plausible on its face and contain direct or inferential allegations on all necessary elements of each cause of action. The Plaintiff's Complaint utterly fails to meet this standard, particularly as to the numerous Defendants which are named in paragraph 19 above but for whom no specific allegations are ever made out. The Plaintiff's Complaint therefore fails to state a claim upon which relief can be granted and should be dismissed with sanctions levied against the Plaintiff and his counsel for the filing of this Complaint in violation of Federal Rule of Civil Procedure 11.

93. The Defendant relies upon the doctrine of qualified immunity under federal and state law, and the individual governmental entity employees are entitled to qualified immunity for claims maintained against them in their individual capacities.

94. Anything not previously admitted or denied is hereby denied as the same is specifically set out herein.

95. The Defendant reserves the right to amend its Answer as this action progresses.

RESPECTFULLY submitted this 7<sup>th</sup> day of February, 2023.

CITY OF ATHENS, TENNESSEE

By: /s/ Brian R. Bibb, BPR No. 031024  
DAN R. PILKINGTON, BPR No. 024660  
BRIAN R. BIBB, BPR NO. 031024  
WATSON, ROACH, BATSON & LAUDERBACK, P.L.C.  
1500 Riverview Tower  
900 South Gay Street, P.O. Box 131  
Knoxville, Tennessee 37901-0131  
(865) 637-1700  
[dpilkington@watsonroach.com](mailto:dpilkington@watsonroach.com)  
[bbibb@watsonroach.com](mailto:bbibb@watsonroach.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing has been served upon parties, or counsel for the parties in interest herein by delivery of the same to the offices of said party or parties' counsel, or by mailing the same to said offices by United States Mail, with sufficient postage thereon to carry the same to its destination:

Van R. Irion  
Law Office of Van R. Irion  
800 South Gay Street, Suite 700  
Knoxville, Tennessee 37929  
[van@irionlaw.com](mailto:van@irionlaw.com)

Keith H. Grant  
Laura Beth Rufolo  
Robinson, Smith & Wells PLLC  
Suite 700, Republic Centre  
633 Chestnut Street  
Chattanooga, TN 37450  
[kgrant@rswlaw.com](mailto:kgrant@rswlaw.com)

Dated this 7<sup>th</sup> day of February, 2023.

/s/ Brian R. Bibb, BPR No. 031024  
DAN R. PILKINGTON, BPR No. 024660  
BRIAN R. BIBB, BPR No. 031024