

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

LESLIE K. JOHNSON,

Plaintiff,

v.

LENOIR CITY, TENNESSEE, TONY R.
AIKENS, DON WHITE, and W. DALE
HURST,

Defendants.

No. 3:13-cv-342

ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT

Defendants Lenoir City, Tennessee, Tony R. Aikens, Don White and W. Dale Hurst hereby appear, by and through counsel, and in without waiving any previously asserted defenses, now submit this answer to the Plaintiff's First Amended Complaint.

1. Upon information and belief, the allegations in paragraph 1 of the Plaintiff's First Amended Complaint are admitted.
2. The allegations in paragraph 2 of the Plaintiff's First Amended Complaint are admitted.
3. The allegations in paragraph 3 of the Plaintiff's First Amended Complaint are admitted.
4. The allegations in paragraph 4 of the Plaintiff's First Amended Complaint are admitted.
5. The allegations in paragraph 5 of the Plaintiff's First Amended Complaint are admitted.

6. These Defendants deny each and every claim raised against them by the Plaintiff. These Defendants admit that this court has jurisdiction over this lawsuit solely because of the Plaintiff's claim related to a violation of her First Amendment rights. These Defendants deny that this Court should exercise pendant jurisdiction over the remaining state law claims, and move that this matter should be dismissed as it relates to all state law claims. These Defendants do not raise any objection as to the venue of this Honorable Court based on the reasoning stated above. In short, the Plaintiff has asserted only one federal claim, violation of her First Amendment rights. All other claims raised by the Plaintiff are state law claims. In the event the federal claim is dismissed, then these Defendants submit that this Court should decline to exercise jurisdiction over the remaining state law claims.

7. Upon information and belief, the allegations in paragraph 7 of the Plaintiff's First Amended Complaint are admitted.

8. It is admitted that the Plaintiff worked for the City under an employment agreement that speaks for itself. Any claims raised by the Plaintiff beyond that Agreement are denied and strict proof is required thereof. It is denied that at the time of her discharge the Plaintiff was under contract to work through at least November 27, 2014, and strict proof is required in the alternative.

9. The allegations in paragraph 9 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

10. It is denied the Plaintiff had a contract for employment. It is admitted that the Lenoir City City Council did not take any action related to the Plaintiff's employment status with the City. It is admitted that the Plaintiff was terminated, and it is admitted City Council approval

was not required. In short, the Lenoir City City Council played no role in the Plaintiff's termination, nor was it expected to.

11. The allegations in paragraph 11 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

12. As is evidenced by the material facts in this case, it is denied that the Plaintiff was qualified for her job. It is denied the Plaintiff performed her job duties in an excellent manner as is averred by the Plaintiff in paragraph 12 of her First Amended Complaint. It is admitted that up until the time she began acting in a manner that warranted the termination of her employment the Plaintiff performed her job duties to a degree that justified her employment. Any other allegations in paragraph 12 of the Plaintiff's Complaint which are relevant to this case and have not been responded to thus far, are denied and strict proof is required thereof.

13. The allegations in paragraph 13 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

14. Paragraph 14 of the Plaintiff's First Amended Complaint, to the extent they assert and aver allegations against these Defendants, are denied and strict proof is required thereof. Paragraph 14 makes generalities that fail to state a claim upon which relief may be granted and/or require a more definite statement to be made by the Plaintiff. In the event the Plaintiff alters or changes the allegations in paragraph 14, then these Defendants retain the right to amend their answer as needed.

15. The allegations in paragraph 15 of the Plaintiff's First Amended Complaint call for a legal conclusion to be made by these Defendants. Further, the allegations in paragraph 15 are vague, ambiguous, and fail to state a claim with sufficient specificity that would allow these

Defendants to fully respond to those allegations. To the extent the Plaintiff alleges claims against the Defendants in Paragraph 15, then said allegations are denied.

16. The allegations in paragraph 16 of the Plaintiff's First Amended Complaint call for a legal conclusion to be made by these Defendants. Further, the allegations in paragraph 16 are vague, ambiguous, and fail to state a claim with sufficient specificity that would allow these Defendants to fully respond to those allegations. To the extent the Plaintiff alleges claims against the Defendants in Paragraph 16, then said allegations are denied.

17. Paragraph 17 of the Plaintiff's First Amended Complaint fails to state with specificity grounds for relief. As such, a more definite statement is requested by these Defendants. To the extent the Plaintiff asks these Defendants to guess about what conversations she may have had with certain individuals, said allegations are denied and strict proof is required thereof. To the extent the Plaintiff is asserting specific claims against these Defendants, said allegations are denied and strict proof is required thereof. Paragraph 17 of the Plaintiff's First Amended Complaint is vague and ambiguous, fails to provide any type of time frame as to the specific assertions in paragraph 17, and are therefore denied. It is further denied that the Plaintiff should have been included in meetings regarding matters beyond her own job duties and description. Anything not previously admitted or denied in paragraph 17 is hereby denied as if specifically set out herein.

18. Paragraph 18 of the Plaintiff's First Amended Complaint is vague, ambiguous, and fails to advise specifically the time period of the allegations that would allow these Defendants to affirmatively admit or deny any of the allegations contained therein. Paragraph 18 is violative of Rule 8 of the Federal Rules of Civil Procedure in that it fails to identify with sufficient specificity who the city officials or purported City Council members are that would

enable these Defendants to follow up on those allegations. The assertions made in paragraph 18 are vague and ambiguous. To the extent the Plaintiff is asserting claims against these Defendants in paragraph 18 of her First Amended Complaint, said claims are denied and strict proof is required thereof.

19. Paragraph 19 of the Plaintiff's First Amended Complaint is vague and ambiguous. It is not clear what "concerns" the Plaintiff is referring to in paragraph 19 of her Complaint as it pertains to Defendant White. To the extent the Plaintiff is asserting claims in paragraph 19 of her Complaint against any of these Defendants, said claims are denied and strict proof is required thereof.

20. To the extent the Plaintiff alleges claims against these Defendants in Paragraph 20 of the First Amended Complaint, said claims are denied and strict proof is required thereof.

21. The allegations in paragraph 21 of the Plaintiff's First Amended Complaint are vague and ambiguous and fail to state with specificity what concerns she may have talked to Defendant Hurst about. The allegations in paragraph 21 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

22. The allegations in paragraph 22 of the Plaintiff's First Amended Complaint are admitted.

23. The allegations in paragraph 23 of the Plaintiff's First Amended Complaint fail to state a claim against these Defendants, therefore no answer is warranted. It is admitted that Defendant White was appointed to his new position on November 9, 2012.

24. The allegations in paragraph 24 of the Plaintiff's First Amended Complaint are admitted insofar as the Plaintiff was advised of Mr. White's new appointment. To the extent

Paragraph 23 of the First Amended Complaint is incomplete or, out of context in nature, or makes allegations against the Defendants, said claims are denied.

25. The allegations in paragraph 25 of the Plaintiff's First Amended Complaint are vague, ambiguous, and fail to meet the requirements of Federal Rule of Civil Procedure No. 8. For purposes of this Answer, in the event the Plaintiff is asserting allegations against these Defendants in paragraph 25 of her First Amended Complaint, then said allegations are denied and strict proof is required thereof.

26. It is admitted that Defendants White and Hurst advised that the City wanted to move the Police Department into the SunTrust building as soon as possible. The remaining allegations in paragraph 26 of the Plaintiff's First Amended Complaint are vague, ambiguous, and fail to state a claim with such specificity that would allow these Defendants to respond. In the event the Plaintiff asserts that paragraph 26 of her First Amended Complaint makes claims and allegations against these Defendants, then said claims and allegations are denied and strict proof is required thereof.

27. The allegations in paragraph 27 of the Plaintiff's First Amended Complaint are vague and ambiguous and fail to state with specificity any particular claims against these Defendants. To the extent the Plaintiff asserts claims against these Defendants in paragraph 27 of the First Amended Complaint, then said allegations are denied and strict proof is required thereof.

28. The allegations in paragraph 28 of the Plaintiff's First Amended Complaint are vague and ambiguous. To the extent they assert claims against these Defendants, then said allegations are denied and strict proof is required thereof.

29. The allegations in paragraph 29 of the Plaintiff's First Amended Complaint are vague and ambiguous. To the extent they assert claims against these Defendants, then said allegations are denied and strict proof is required thereof.

30. The allegations in paragraph 30 of the Plaintiff's First Amended Complaint are vague and ambiguous. To the extent they assert claims against these Defendants, then said allegations are denied and strict proof is required thereof.

31. It is admitted that an e-mail was sent by the Plaintiff to Defendants Hurst, White and Aikens. The e-mail speaks for itself. To the extent the Plaintiff asserts claims against these Defendants in paragraph 31 of the Plaintiff's First Amended Complaint, said claims are denied and strict proof is required thereof.

32. The allegations in paragraph 32 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

33. It is admitted that an e-mail was sent by the Plaintiff to Defendants Hurst, White and Aikens. The e-mail speaks for itself. To the extent the Plaintiff asserts claims against these Defendants in paragraph 33 of the Plaintiff's First Amended Complaint, said claims are denied and strict proof is required thereof.

34. The allegations in paragraph 34 of the Plaintiff's First Amended Complaint fail to state a claim upon which relief may be granted against these Defendants. In the event the Plaintiff asserts that paragraph 34 does make claims against these Defendants, then said claims are denied and strict proof is required thereof.

35. It is admitted that Defendants White and Hurst met with the Plaintiff and suspended her from work on January 23, 2013. It is admitted that Defendant White revealed to the Plaintiff that he was provided an e-mail after becoming Public Safety Director relative to a

city vehicle being seen in a Turkey Creek shopping center. It is admitted that Defendant White did not address the Turkey Creek matter about this incident prior to January 23, 2013 with the Plaintiff. Anything not previously admitted or denied in paragraph 35 of the Plaintiff's First Amended Complaint is hereby denied and strict proof is required thereof.

36. It is denied that Defendant White "aggressively interrogated" the Plaintiff. It is admitted that discussions related to the City's vehicle use policy were held between Defendants White and Hurst and the Plaintiff on January 23, 2013. It is admitted that the Plaintiff was being monitored based on a previous complaint as it pertained to her non-employment related activities while still being paid by the City. It is denied that Defendant White had been following the Plaintiff in her vehicle since November of 2012.

37. The allegations in paragraph 37 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

38. It is admitted that until she was confronted with evidence of her violations, at which time her newly found silence spoke volumes, the Plaintiff adamantly, aggressively tried to deny and explain certain matters to White and Hurst on January 23, 2012. The remaining allegations in paragraph 38 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

39. It is admitted that Defendant Hurst had previously advised the Plaintiff that if she had occasional, non-job related errands that would take only a brief period of time to accomplish in mere minutes, then it was okay for her to accomplish those tasks in a limited capacity. It is denied, as alleged in paragraph 39 of the Plaintiff's First Amended Complaint, that Defendant Hurst expressly approved the improper personal use of the Plaintiff's city vehicle for any matter beyond brief occasions that were limited in time and scope. Any other allegations in paragraph

39 of the Plaintiff's First Amended Complaint against these Defendants that is not admitted or denied is hereby denied as if specifically set out herein.

40. The allegations in paragraph 40 of the Plaintiff's First Amended Complaint fail to state a claim against these Defendants upon which relief may be granted. To the extent the Plaintiff alleges that paragraph 40 makes claims against these Defendants, then said allegations are denied and strict proof is required thereof.

41. The allegations in paragraph 41 of the Plaintiff's First Amended Complaint fail to state a claim against these Defendants upon which relief may be granted. To the extent the Plaintiff alleges that paragraph 41 makes claims against these Defendants, then said allegations are denied and strict proof is required thereof.

42. It is admitted that on January 25, 2013 the Plaintiff was discharged. It is denied that all of these Defendants discharged the Plaintiff as is alleged in the First Amended Complaint, and strict proof is required in the alternative. The remaining allegations in paragraph 42 of the Plaintiff's First Amended Complaint fail to state a claim upon which relief may be granted against these Defendants. To the extent the Plaintiff does assert that there are additional claims made against these Defendants in paragraph 42 of the Plaintiff's First Amended Complaint, then said allegations are denied and strict proof is required thereof.

43. It is denied that all of these Defendants discharged the Plaintiff. It is admitted that Mayor Aikens discharged the Plaintiff. It is admitted that there were several legitimate, lawful and non-discriminatory reasons for the Plaintiff's discharge from Lenoir City.

44. These Defendants deny the Plaintiff was retaliatory discharged. It is admitted the Plaintiff has filed this lawsuit. Anything else not admitted or denied in paragraph 44 of the Plaintiff's First Amended Complaint is hereby denied and strict proof is required thereof.

45. The allegations in paragraph 45 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

46. The allegations in paragraph 46 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

47. The allegations in paragraph 47 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

48. To the extent the Plaintiff alleges claims against these Defendants in paragraph 48 of her First Amended Complaint, then said allegations are denied and strict proof is required thereof. It is further admitted that the termination of the Plaintiff was based on legitimate, lawful and non-discriminatory reasons.

49. The allegations in paragraph 49 of the Plaintiff's First Amended Complaint are denied as written and strict proof is required thereof.

50. It is admitted that the individually-named Defendants were the Plaintiff's supervisors. It is denied that all three of them had the authority to suspend or discharge the Plaintiff or to make the decision to suspend or discharge the Plaintiff.

51. The allegations in paragraph 51 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

52. The allegations in paragraph 52 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

53. To the extent the Plaintiff alleges paragraph 53 of her First Amended Complaint asserts claims and allegations against these Defendants, said allegations are denied and strict proof is required thereof.

54. To the extent the Plaintiff alleges paragraph 54 of her First Amended Complaint asserts claims and allegations against these Defendants, said allegations are denied and strict proof is required thereof. Further, these Defendants affirmatively maintain that the reasons for the Plaintiff's discharge were legitimate and non-discriminatory in nature.

55. To the extent the Plaintiff alleges paragraph 55 of her First Amended Complaint asserts claims and allegations against these Defendants, said allegations are denied and strict proof is required thereof. Further, these Defendants affirmatively maintain that the reasons for the Plaintiff's discharge were legitimate and non-discriminatory in nature.

56. The allegations in paragraph 56 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

57. The allegations in paragraph 57 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

58. The allegations in paragraph 58 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

59. All previous responses by these Defendants are adopted and incorporated herein by reference. Anything not previously admitted or denied is hereby denied as if specifically set out herein.

60. The allegations in paragraph 60 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

61. The allegations in paragraph 61 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

62. To the extent the Plaintiff asserts that paragraph 62 of her First Amended Complaint alleges fault or makes claims against these Defendants, then said claims and allegations are denied and strict proof is required thereof.

63. To the extent the Plaintiff asserts that paragraph 63 of her First Amended Complaint alleges fault or makes claims against these Defendants, then said claims and allegations are denied and strict proof is required thereof.

64. To the extent the Plaintiff asserts that paragraph 64 of her First Amended Complaint alleges fault or makes claims against these Defendants, then said claims and allegations are denied and strict proof is required thereof.

65. The allegations in paragraph 65 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

66. The allegations in paragraph 66 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

67. The allegations in paragraph 67 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

68. To the extent the Plaintiff asserts that paragraph 68 of her First Amended Complaint alleges fault or makes claims against these Defendants, then said claims and allegations are denied and strict proof is required thereof.

69. The allegations in paragraph 69 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

70. The allegations in paragraph 70 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

71. The allegations in paragraph 71 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

72. The allegations in paragraph 72 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

73. The allegations in paragraph 73 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

74. The allegations in paragraph 74 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

75. The allegations in paragraph 75 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

76. The allegations in paragraph 76 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

77. The allegations in paragraph 77 of the Plaintiff's First Amended Complaint are denied and strict proof is required thereof.

78. The Defendants submit that the Plaintiff's claims for relief are without merit, fail to state a claim upon which relief may be granted, and should be dismissed.

79. To the extent applicable, these Defendants hereby request that the Plaintiff's claims be dismissed with all costs, including, but not limited to, attorneys' fees pursuant to 42 U.S.C. § 1988 and any other applicable statutory provisions, taxed against her.

80. These individually-named Defendants, Tony R. Aikens, Don White and W. Dale Hurst, hereby affirmatively assert the doctrine of qualified immunity as a defense in this case. Pursuant to the doctrine of qualified immunity, all actions taken by these Defendants were

reasonable and lawful and they are, therefore, entitled to qualified immunity on all claims raised against them by the Plaintiff.

81. These Defendants affirmatively assert that all actions taken related to the Plaintiff's employment were based on legitimate and non-discriminatory reasons, and, therefore, the Plaintiff's claims should be dismissed. Specifically, the Defendants affirmatively maintain that the Plaintiff was terminated for cause. Prior to the Plaintiff's termination an investigation conducted by the City revealed the Plaintiff acted in an insubordinate manner, neglected her duty as a codes enforcement officer and as an employee of the City of Lenoir City, and misused city property.

82. To the extent the Plaintiff alleges claims actionable under the Tennessee Governmental Tort Liability Act, as found at Tenn. Code Ann. § 29-20-101, *et seq.*, these Defendants affirmatively assert they are immune from suit pursuant to the GTLA.

83. As it pertains to any state law negligence claims, these Defendants affirmatively assert and rely upon the doctrine of comparative fault as has been adopted by the State of Tennessee in this matter. Pursuant to the doctrine of comparative fault, the Plaintiff's claims and allegations should be dismissed pursuant to the Plaintiff's own fault in this case. The trier of fact should be allowed to place fault upon the Plaintiff that should bar and/or mitigate her recovery in this cause due to her own actions and/or inactions taken in her capacity as an employee of the City of Lenoir City.

84. These Defendants affirmatively assert the doctrine of laches, the statute of frauds, and estoppel as affirmative defenses in this matter as it pertains and relates to the breach of contract claim asserted by the Plaintiff.

85. These Defendants affirmatively request a jury to try all claims in this matter except for the TPPA claims and any other claims asserted under the Tennessee Governmental Tort Liability Act. Those claims should be determined by the court consistent with the applicable and established law.

86. In addition to the legitimate non-discriminatory reasons that existed for the termination of the Plaintiff, these Defendants also affirmatively assert, adopt and rely upon the after acquired evidence rule to show the Plaintiff would have nonetheless been terminated for cause due to improper use of city equipment. A city-owned cell phone assigned to and used by the Plaintiff in the course and scope of her employment contained improper, unprofessional, and pornographic images on it that, had the City been aware prior to her termination, would have played a significant role in the employment status of the Plaintiff insofar as those images are in direct violation of portions of the Plaintiff's employment agreement. Relevant images can be found on a disk labeled as Exhibit A to these Defendants' original Answer that was manually filed and is adopted and incorporated herein by reference. Further, other items and information are being gathered and this Defendant retains the right to raise the after-acquired evidence rule in the future should the need arise.

87. Anything not previously admitted or denied herein is specifically denied.

RESPECTFULLY submitted this 16th day of August, 2013.

LENOIR CITY, TENNESSEE, TONY R. AIKENS,
DON WHITE and W. DALE HURST

By: /s/ Benjamin K. Lauderback
BENJAMIN K. LAUDERBACK, BPR NO. 020855
WATSON, ROACH, BATSON,
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system:

Douglas B. Janney, III
2002 Richard Jones Rd Ste 200B
Nashville, TN 37215-2892

Dated this 16th day of August, 2013.

/s/ Benjamin K. Lauderback
BENJAMIN K. LAUDERBACK