

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA**

<b>KURT GLICK,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
v.	)	<b>Case No. 1:22-CV-00015-TAV-CHS</b>
	)	
<b>CITY OF TULLAHOMA, TENNESSEE,</b>	)	<b>Judge Thomas A. Varlan</b>
	)	<b>Magistrate Judge Christopher H. Steger</b>
<b>Defendant.</b>	)	

**ANSWER OF DEFENDANT**

Comes now the Defendant, City of Tullahoma, Tennessee (hereinafter referred to as “the City” or “Defendant”) by and through undersigned counsel, and for answer to the Plaintiff’s Complaint filed herein against it, states as follows:

**I. JURISDICTION**

1. To the extent that the allegations contained in the first numbered Paragraph of the Complaint allege or infer any acts or omissions which would lead to liability on the part of the City, those allegations are denied. The City does not dispute this Court’s jurisdiction on Plaintiff’s claims based on Federal law. Plaintiff’s allegations based on State law involve issues to be later decided by this Court and, thus, require no further response from the City.

**II. NATURE OF PROCEEDING**

2. The City admits that based upon the allegations in the Complaint, this proceeding is as it is alleged to be in the Paragraph numbered 2 of the Complaint. Despite that, or even in light of those allegations, the City denies that Plaintiff is entitled to any relief.

### III. THE PARTIES

3. Admitted, upon information and belief.
4. Admitted.
5. Admitted.
6. The City admits the allegations in the first sentence of the Paragraph numbered 6 of the Complaint. The remaining claims in Paragraph 6 of the Complaint raise issues or invoke matters to later be decided by the Court and, thus, require no response at this time.

### IV. FACTUAL BASIS ON PLAINTIFF'S CLAIMS

7. Admitted.
8. Admitted.
9. Denied. Upon information and belief, Plaintiff had approximately ten (10) full-time employees, a varying number of year-round, part-time employees and a number of seasonal staff during the summer months who answered to him in his department.
10. Denied. The position with the City which Plaintiff relates to his lawsuit was not the position of "Athletic Coordinator" but rather "Program Coordinator."<sup>1</sup> The City denies the remaining allegations in the Paragraph numbered 10 of the Complaint as they are stated. Upon information and belief, both Lyle Russell and Plaintiff made the choices of candidates for the position opening of Program Coordinator. At the time of the selection of the candidates, the City did not know the ages or races of any of the candidates and the City chose the candidates based on information in their employment applications and/or resumes. Upon information and belief, one of the candidates chosen was named Jon Slater, someone who Plaintiff personally knew. The City denies any

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<sup>1</sup> The City attaches a true and correct copy of the job posting for "Program Coordinator" as Exhibit 1 to its Answer to the Complaint. The City posted the Program Coordinator job opening on September 16, 2020.

allegations inconsistent with the foregoing which are alleged in Paragraph 10 of the Complaint.

11. Denied as stated. Upon information and belief, the “white, male candidate” was Plaintiff’s friend, Jon Slater, and based upon information supplied in connection with Mr. Slater’s application, the City did not believe Mr. Slater to meet the qualifications for the Program Coordinator position.

12. The City admits that a meeting between the Plaintiff, Jennifer Moody—the City Administrator, and Casta Brice—the City’s Human Resources Director, took place. But, the City denies the allegations contained in the Paragraph numbered 12 of the Complaint which Plaintiff appears to allege were statements or comments from Ms. Moody.

13. Denied as stated. While the City, acting through Ms. Moody, decided not to fill the Program Coordinator (not Athletic Coordinator) position, that decision was not made as “a result of the meeting” referenced in the Paragraphs immediately above.

14. The City denies the insinuation or characterization Plaintiff attributes to the discussions regarding the Program Coordinator position as being “controversial.” There was nothing controversial about the City’s handling of the efforts undertaken to fill the open position. Nevertheless, the City admits that Ms. Moody and Plaintiff had a meeting in Ms. Moody’s office on November 30, 2020.

15. Denied as stated. The City denies Ms. Moody made the comments as they are quoted in the Paragraph numbered 15 of the Complaint. The City admits that Ms. Moody did communicate to Plaintiff that as a result of a grievance being filed against him or related to him in his position, the City was putting Plaintiff on paid administrative leave.

Due to the status of the grievance, the City admits that Ms. Moody did not go into the details of the grievance with Plaintiff at the time.

16. Denied as stated. The City did not tell Plaintiff “to not talk to anyone about the investigation.” The City admits that Ms. Moody informed Plaintiff that while he was on paid, administrative leave, it would be better if he did not speak to other City employees and was not on or at any City facilities for the next few days while interviews were being conducted related to the investigation into the grievance.

17. The City admits that the outside counsel it used to investigate the grievance interviewed Plaintiff on December 2, 2020. The City has no information as to how long the interview of the Plaintiff lasted. The City had no control over how long the Plaintiff spoke in response to the questions posed to him, nor did the City act to control the questions which outside counsel asked.

18. Upon information and belief, the City admits Ms. Moody contacted Plaintiff on or about December 2, 2020 and advised that Plaintiff not return to work until the investigators had completed their report. The City lacks knowledge or information sufficient to form a response to the allegation that this contact “puzzled” Plaintiff.

19. The City lacks knowledge or information sufficient to form a belief as to the allegations contained in the Paragraph numbered 19 of the Complaint.

20. Denied as stated. Upon information and belief, Plaintiff was made aware of the issues related to his job performance before the meeting on December 29, 2020. The City further denies the allegations contained in the second and third sentences of the Paragraph numbered 20 of the Complaint.

21. Admitted.

22. Denied as stated.
23. Denied as stated.
24. Denied as stated.
25. Denied as stated.
26. Denied as stated. The City did not “force” Plaintiff to retire.
27. Denied. Ms. Moody did not begin “her” search for Plaintiff’s replacement. The City undertook a search for Plaintiff’s replacement, utilizing the services of both Ms. Brice and representatives from the Municipal Technical Advisory Services (MTAS). The City avers that it selected the final candidates based upon information in their respective resumes and their abilities to demonstrate their qualifications for the position, and not because Ms. Moody wanted “to hire a young female.”
28. Denied.
29. Denied. Plaintiff chose to retire from his position with the City on February 2, 2021.<sup>2</sup> Of note, a group of impartial investigators found Plaintiff to have a management style or practice which consisted of cronyism and retaliation against employees who filed grievances or raised concerns regarding Plaintiff’s performance in his position with the City.<sup>3</sup>

## **V. PLAINTIFF’S CLAIMS**

30. Denied.
31. The allegations contained in Paragraph 31 are so short and so vague that the City cannot reasonably respond. As a matter of general employment law principles,

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<sup>2</sup> A true and correct copy of Plaintiff’s retirement letter, notice to the City is attached to the City’s Answer as Exhibit 2.

<sup>3</sup> A true and correct copy of the eighteen (18) page Wimberly Lawson attorney investigation report, documenting in Section F. the above cited findings related to Plaintiff, is attached to the City’s Answer as Exhibit 3.

sometimes an employer is responsible for the acts of supervising employees. However, to the extent that Plaintiff makes this allegation in the context of this case, the City avers that the allegation involves legal issues to be later decided by this Court.

#### **VI. JURISDICTIONAL PREREQUISITE**

32. The City admits that Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC), to which the City responded, in opposition. The EEOC issued Plaintiff a right to sue letter. However, contrary to what is alleged, Plaintiff does not appear to have attached his right to sue letter to his Complaint, nor did he file the right to sue letter with this Court's Pacer docket for this action.

#### **VII. DAMAGES**

33. Denied.

#### **VIII. PRAYER FOR RELIEF**

34. Defendant denies that Plaintiff is entitled to any of the relief requested.

35. Any allegation not previously addressed above is hereby denied.

#### **AFFIRMATIVE DEFENSES**

1. To the extent that Plaintiff's Complaint in this action fails to state a cause of action or any claim for relief against this Defendant, this Court should dismiss the Complaint in its entirety or the non-sufficient specific allegations.

2. No act or omission on the part of this Defendant violated any of Plaintiff's rights under either Federal or State Law. Any action taken related to the Plaintiff was done for legitimate, non-discriminatory, non-retaliatory reasons.

3. To the extent applicable, this Defendant is entitled to all and any immunities available to it under either State and Federal law, and thru this Answer gives notice of its intent to rely upon such immunities.

4. Plaintiff's damages are barred or diminished due to his own failure to take reasonable steps to mitigate, alter, reduce, or otherwise diminish any of his alleged damages.

5. To the extent the City is immune from punitive damages, Plaintiff's claims for such damages should be barred.

6. Plaintiff was not terminated, constructively or otherwise, and his employment with the City did not end as a result of any illegal act or omission on the part of the City. Plaintiff chose to retire from his position with the City.

7. No policy, practice, procedure, custom, or other action or inaction on the part of the City caused the Plaintiff to be illegally or wrongfully terminated from employment.

8. The City demands a jury to try this action.

9. The City demands its costs and attorney's fees expended herein, and all other relief to which it may be entitled pursuant to 42 U.S.C. § 1988.

10. The City reserves the right to amend this answer and plead further if additional facts become available during the discovery process.

12. By way of this defense the City gives notice of its intent to rely on any after-acquired evidence related to Plaintiff's job performance, or lack thereof, in defense of the claims brought against the City.

WHEREFORE, now having fully answered the Complaint, this Defendant prays that Plaintiff takes nothing by way of the filing of this action, that this Court dismiss Plaintiff's claims with prejudice and that this Court assess all costs and discretionary costs against the

Plaintiff, and to the extent permissible by law, this Court tax this Defendant's attorney's fees and costs against the Plaintiff, and finally, this Court elect not to exercise its supplemental jurisdiction over any alleged state law claims.

NOW, having answered the Complaint and having asserted its defenses and denials, Defendant City of Tullahoma, Tennessee prays that this Court dismiss Plaintiff's action in its entirety with costs taxed to the Plaintiff.

/s/ Robert M. Burns

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### **CERTIFICATE OF SERVICE**

I certify that the foregoing was filed electronically on this the 9<sup>th</sup> day of February 2022. Notice of this filing will be sent by operation of the Court's electronic filing system to:

Harry F. Burnette, #4803  
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