

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**TINA L. WALLACE**

**PLAINTIFF**

**VS.**

**CAUSE NO.: 3:17-cv-270-DPJ-FKB**

**CITY OF JACKSON, LEE VANCE, IN HIS  
INDIVIDUAL CAPACITY, AND  
JOHN DOES 1-4**

**DEFENDANTS**

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**ANSWER AND AFFIRMATIVE DEFENSES OF  
LEE VANCE, INDIVIDUALLY**

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**COMES NOW**, the Defendant, Lee Vance, in his Individual Capacity (“Vance”), through counsel, pursuant to the Federal Rules of Civil Procedure and other applicable authority, and files his Answer and Affirmative Defenses to the Complaint exhibited against him by the Plaintiff, Tina L. Wallace (“Plaintiff” or “Wallace”). In support thereof, Vance states as follows:

**First Defense**

The Complaint fails to state a claim upon which relief can be granted<sup>1</sup> and should be dismissed with prejudice.<sup>2</sup>

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<sup>1</sup>A Plaintiff’s obligation to properly plead and provide grounds for entitlement to relief prevents District Courts from carrying the onerous burden of “straining to find inferences favorable to the plaintiff.” *Southland Securities Corp. V. INSpire Ins. Solutions, Inc.*, 365 F. 3d 353,361 (5<sup>th</sup> Cir. 2004); *Hemphill v. Coldwell Banker Real Estate Corp.*, 2007 U.S. Dist. LEXIS 83700 (N.D. Miss. 2007), relying on *Papasan v. Allain*, 478 U.S. 265, 286 (1986)(emphasis supplied).

<sup>2</sup>Plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955,1965, 1974 (2007). "Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* at 1965.

**Second Defense**

Vance has not breached any duty owed to the Plaintiff, whether contractual, common law, state or federal statutory law.

**Third Defense**

Vance owed no duty to the Plaintiff that was breached in this action.

**Fourth Defense**

Vance reserves all statutory and/or indemnity rights he may have against all others whether parties to this action or not.

**Fifth Defense**

Vance denies that any of his actions and/or omissions caused the Plaintiff harm or special harm.

**Sixth Defense**

Vance's actions with the Plaintiff, if any, were conducted in good faith.

**Seventh Defense**

Vance denies each and every allegation in which the Plaintiff seeks to impose liability upon him, whether expressly denied herein or not.

**Eighth Defense**

The Complaint is barred by the doctrine of laches and should therefore be dismissed with prejudice.

**Ninth Defense**

The Complaint is barred by the applicable statute of limitations and should therefore be dismissed with prejudice with all costs assessed against the Plaintiff.

**Tenth Defense**

The sole proximate and/or contributing cause of the Plaintiff's damages, if any, were not caused or contributed to by any act or omission of Vance, but such damages, if any, were caused and/or contributed to by the acts and/or omissions of others for which Vance cannot be held liable.

**Eleventh Defense**

Any damages sustained by the Plaintiff were solely and proximately caused and/or contributed to by the unforeseeable, intervening or superseding causes and/or other causes attributable to persons, entities or events with respect to which Vance had neither control, right to control, duty to control nor any other legal relationship whatsoever.

**Twelfth Defense**

Without waiving any other affirmative defense, Vance affirmatively pleads and alleges that he is not responsible for the intentional acts, if any, by any agents, representatives or employees of the City of Jackson, Mississippi, or any other Defendant toward the Plaintiff and that any alleged intentional acts of any agent, representative or employees of City and/or any other Defendant, if any, were not reasonably foreseeable by Vance.

**Thirteenth Defense**

The Plaintiff's claims for punitive damages are barred by Miss. Code Ann. § 11-46-15(2).

**Fourteenth Defense**

The Plaintiff failed to comply with the requirements of Miss. Code Ann. § 11-46-11(3), and the Complaint should therefore be dismissed.

**Fifteenth Defense**

Vance affirmatively asserts and invokes all substantive and procedural defenses available to him for which a good faith legal and/or factual basis exists or may exist in his favor pursuant to Miss. Code Ann. § 11-46-1 *et seq.* (the Mississippi Tort Claims Act, hereinafter “MTCA”), specifically including, but not limited to, Miss. Code Ann. § 11-46-5; § 11-46-7; § 11-46-9; § 11-46-11; § 11-46-13; § 11-46-15 and § 11-46-17 as to all Plaintiffs’ claims, state and federal, if any. To the extent the Complaint, or any subsequently filed pleading may seek a trial by jury on state law claims against Vance, then Vance specifically moves this Court to strike any such jury demand on the basis that same is prohibited by the aforementioned statutes.

**Sixteenth Defense**

The Plaintiff failed to mitigate her damages.

**Seventeenth Defense**

The Complaint is barred by the doctrines of waiver and estoppel and should, therefore, be dismissed with prejudice with all costs assessed against the Plaintiff.

**Eighteenth Defense**

The Plaintiff’s claims for intentional torts, if any, are barred by the applicable one-year statute of limitations.

**Nineteenth Defense**

Plaintiff’s claims for negligent infliction of emotional distress and general negligence against are barred by the applicable statute of limitations and the Mississippi Tort Claims Act.

**Twentieth Defense**

Plaintiff’s claims of intentional and/or negligent infliction of emotional distress, if any, are specifically barred by Miss. Code Ann. § 11-46-9(c).

**Twenty-First Defense**

Vance asserts any all other affirmative defenses to which he may be entitled, including contributory negligence, estoppel, fraud, illegality, release, res judicata, collateral estoppel, statute of frauds and waiver.

**Twenty-Second Defense**

Plaintiffs' claims against Vance are prohibited by prevailing Federal and State Law and all other applicable defenses thereto as is alleged to have arisen out of the acts, practices, policies or procedures, or omissions of a government entity.

**Twenty-Third Defense**

Vance has no custom, practice or policy that caused or contributed to the alleged deprivations, injuries and/or damages suffered by the Plaintiff.

**Twenty-Fourth Defense**

Vance hereby asserts the defenses of qualified immunity, sovereign immunity, and any other immunity available to him under federal or state law.

**Twenty-Fifth Defense**

At all material times, herein, Vance, at all times relevant hereto, used the degree of care required of him under law and is not liable in damages to the Plaintiff.

**Twenty-Sixth Defense**

The actions or inactions on the part of the Plaintiff was the sole, proximate and only cause of the incident complained of and the alleged damages sustained by the Plaintiff, if any. In the alternative, the actions or inactions on the part of the Plaintiff amounted to an intervening cause and

as such, constitute the sole, proximate cause and only cause of the incident complained of and the damages sustained by the Plaintiff, if any.

**Twenty-Seventh Defense**

If the actions or inactions on the part of the Plaintiff was not the sole, proximate cause of the incident complained of and the alleged damages sustained by the Plaintiff, if any, the actions or inactions on the part of the Plaintiff caused and contributed to the incident complained of and the damages sustained by the Plaintiff, if any, and any damages which the Plaintiff would otherwise be entitled, must be reduced in degree and to the proportion that the action or inaction of the Plaintiff caused or contributed to the incident.

**Twenty-Eighth Defense**

Vance asserts any and all other defenses available to them under Miss Code Ann. § 85-5-7 and § 11-1-65.

**Twenty-Ninth Defense**

Vance hereby gives notice that he intends to rely upon such other and further defenses that may become available or apparent during discovery in this civil action and reserves the right to amend his answer to assert any such defenses.

**Thirtieth Defense**

Pursuant to F.R.C.P. 12(b)(7), 17 and 19, if the damages, or any part thereof, claimed by Plaintiff in the Complaint have been paid or provided by any person, corporation or party, including insurer, workers' compensation carrier, employer or governmental entity, which holds any rights of subrogation, assignment, loan receipt or lien holder interest therefore as a result of such payment(s), then under F.R.C.P. 12(b)(7), 17 and 19, any and all such persons, corporations or parties whatever

are real parties in interest herein, including for such subrogation, assignment, lien or otherwise, and must be joined as a party needed for just adjudication herein. If any such person, company or party exists, he, she or it should be joined by order of this court either as a Plaintiff or an involuntary Plaintiff. Further, pursuant to F.R.C.P. 12(b)(7), 17 and 19, any such person, corporation or party whatsoever who has paid or provided all or any part of Plaintiff's claimed damages, and thereby holds subrogation rights, assignment rights, loan receipt, lien holder rights, or rights otherwise arising from the accident is a real party in interest pursuant to F.R.C.P. 17, and for such payment and interest, the damages claimed in this action to the extent of such rights must be brought in the name of the subrogee, assignee, loan receipt holder, lien holder or other party whatsoever holding such interest; and Plaintiff has no further interest or right of recovery thereto.

**Thirty-First Defense**

Vance asserts all rights of credit, set off and/or contribution that he may have pursuant to the laws of the State of Mississippi.

**Thirty-Second Defense**

Plaintiff's claims, if any, against Vance, that may be alleged to have possibly arisen from judicial and/or administrative inaction of the City, are prohibited by statute, where said allegations claim that City employees were acting within the scope of their employment for the City of Jackson.

**Thirty-Third Defense**

Plaintiff's claims against Vance are prohibited by statute because they are alleged to have arisen from alleged failures of the City of Jackson and its employees to execute or perform a statute, ordinance, or regulation.

**Thirty-Fourth Defense**

Plaintiff's claims against Vance are prohibited because Vance is immune from allegations based on Vance's exercise or performance or the failure to exercise or perform a discretionary function or duty.

**Thirty-Fifth Defense**

The Complaint is barred because Plaintiff fails to properly plead: capacity, fraud, mistake, conspiracy, condition of mind, official document or act, judgment, and/or special damages as required by Rule 9 of the Federal Rules of Civil Procedure.

**Thirty-Sixth Defense**

The alleged acts or omissions alleged by the Plaintiff against Vance as may be set forth in the Complaint herein, do not rise to the level of a constitutional violation.

**Thirty-Seventh Defense**

Plaintiff's Complaint is barred as there was probable cause supporting Plaintiff's arrest and prosecution, if any.

**Thirty-Eighth Defense**

Vance cannot be used to hold the City of Jackson liable to the Plaintiff under the doctrine of *respondeat superior* pursuant to 42 U.S.C.A. § 1983 for any alleged acts or omissions of employees of the City. As a result, Plaintiff's claims for negligence, gross negligence, and/or *respondeat superior* liability against Vance and/or the City of Jackson are barred by the MTCA, *supra*, and *Monell v. New York City Dep't. of Soc. Servs.*, 436 U.S. 658 (1978)<sup>3</sup>.

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<sup>3</sup>*Monell* clearly rejects government liability based on the doctrine of *respondeat superior*, and a government body such as the City cannot be held liable under §1983 merely because the City employs a tortfeasor.



**Thirty-Ninth Defense**

The Plaintiff is not entitled to recover punitive damages pursuant to 42 U.S.C.A. § 1983 or official capacity theory against Vance, as recovery of such damages against the City, a political subdivision and/or municipality, is prohibited.

**Fortieth Defense**

Vance invokes and asserts all privileges and immunities afforded to him under both the federal and state constitutions and statutory and common law.

**Forty-First Defense**

Vance affirmatively asserts that the language of Miss. Code Ann. § 11-46-9, clearly states that law enforcement officers acting within the course and scope of their employment, while engaged in the performance of duties related to police protection, without reckless disregard for the safety and well being of others not engaged in criminal conduct, are entitled to immunity.<sup>4</sup> Therefore, the Plaintiff's claims against Vance in the Complaint are barred.

**Forty-Second Defense**

Vance affirmatively pleads that Plaintiff's claims against him are barred because Plaintiff cannot show any actual injury. *Al-Amin v. Smith*, 511 F.3d 1317 (C.A.11 (Ga.) 2008), *cert. denied* 129 S.Ct. 104 (lack of showing actual injury precluded §1983 action against law enforcement officials where only conclusory allegations were made by plaintiff without plaintiff ever providing

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<sup>4</sup>See *McGarth v. City of Gautier*, 794 So. 2d 983,985 (Miss. 2001). The MTCA provides that the City "...shall not be liable or be considered to have waived immunity for any conduct of employees, unless the employee acted with reckless disregard of the safety and well being of any person not engaged in criminal activity at the time of the injury..." Miss. Code Ann. § 11-46-9. Accordingly, the City is completely immune from any claims arising from the acts or omission complained of and against its employees unless the complaining party pierces the immunity by the MTCA and shows reckless disregard. *Lee v. Mississippi Department of Transportation*, 37 So. 3d 73, 80 (Miss. App. 2009).

specifics). The Plaintiff's lack and/or inability to show or articulate any actual injury precludes Plaintiff's recovery against Vance under Section 1983.<sup>5</sup>

#### **Forty-Third Defense**

Plaintiff's claims against Vance are barred as Vance's conduct with Plaintiff, if any, do not evince some appreciation of the unreasonable risk involved, or a deliberate indifference of that risk and the high probability of harm involved. *City of Laurel v. Williams*, 21 So. 3d at 1175 (Miss. 2009).

#### **Forty-Fourth Defense**

And now, without waiver of any other defense contained herein, Vance responds to the allegations of the Complaint, paragraph by paragraph, as follows:

This first unnumbered paragraph appears introductory in nature, and therefore does not require a response. To the extent that this introductory, unnumbered paragraph commencing with the words "Tina L. Wallace, . . .," seeks to impose liability on Vance, Vance denies same and demands strict proof thereof.

#### **JURISDICTION AND VENUE**

1. Vance denies the allegations contained in Paragraph 1 of the Complaint as stated.
2. Vance is without sufficient knowledge to admit or deny the allegations contained in Paragraph 2 of the Complaint, and therefore denies same.

#### **PARTIES**

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<sup>5</sup>See *Menendez v. County of San Bernardino*, 540 F.3d 1109, 1118-1119 (CA 9<sup>th</sup> 2008) (evidence presented at trial in civil rights action by plaintiff did not prove plaintiff suffered emotional damages related to and following the illegal arrest of plaintiff and illegal search of plaintiff's home, and district court did not err in instructing jury's limited consideration of same); *Lockett v. New Orleans City, et al.*, 607 F.3d at 999 (CA 5<sup>th</sup> 2010)(holding that plaintiff's *de minimis* injury, along with his own deposition testimony, defeated his excessive force claim).

3. Without waiver of any of its defenses herein, Vance admits, upon information and belief, that the Plaintiff is an African-American female adult citizen of Hinds County, Mississippi as alleged in Paragraph 3 of the Complaint.

4. Vance admits that the City is a Municipality and may be served with a copy of the Summons and Complaint by serving the Mayor Tony Yarber as alleged in Paragraph 4 of the Complaint.

5. Vance admits that he may be personally served with process where he may be found and that he is being sued in his individual capacity as alleged in Paragraph 5 of the Complaint.

6. Vance is without sufficient information to admit or deny the allegations contained in Paragraph 6 of the Complaint, and therefore denies same.

#### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

7. Vance denies the allegations contained in Paragraph 7 of the Complaint as stated.

8. Vance is without sufficient information to admit or deny the allegations contained in Paragraph 8 of the Complaint, and therefore denies same.

#### **STATEMENT OF FACTS**

9. Without waiver of any of its defenses herein, Vance admits, upon information and belief, the allegations contained in Paragraph 9 of the Complaint.

10. Without waiver of any of its defenses herein, Vance admits that Wallace supervised precinct commanders as alleged in Paragraph 10 of the Complaint. However, Vance denies the remaining allegations contained in Paragraph 10 of the Complaint and demands strict proof thereof.

11. Vance denies the allegations contained in Paragraph 11 of the Complaint and demands strict proof thereof.

12. Vance denies the allegations contained in Paragraph 12 of the Complaint and demands strict proof thereof.

13. Vance admits that Tyree Jones was suspended for 30 days in 2015 as alleged in Paragraph 13 of the Complaint. However, Vance denies the remaining allegations contained in Paragraph 13 of the Complaint and demands strict proof thereof.

14. Vance denies the allegations contained in Paragraph 14 of the Complaint and demands strict proof thereof.

15. Vance is without sufficient information to admit or deny information broadcasted by WLBT as alleged in Paragraph 15 of the Complaint, therefore denies same. Vance denies the remaining allegations contained in Paragraph 15 of the Complaint and demands strict proof thereof.

16. Vance denies the allegations contained in Paragraph 16 of the Complaint and demands strict proof thereof.

17. Vance is without sufficient information to admit or deny the allegations contained in Paragraph 17 of the Complaint, therefore denies same.

18. Vance denies the allegations contained in Paragraph 18 of the Complaint and demands strict proof thereof.

19. Vance denies the allegations contained in Paragraph 19 of the Complaint and demands strict proof thereof.

20. Vance denies the allegations contained in Paragraph 20 of the Complaint and demands strict proof thereof.

21. Vance denies the allegations contained in Paragraph 21 of the Complaint and demands strict proof thereof.

22. Vance denies the allegations contained in Paragraph 22 of the Complaint and demands strict proof thereof.

23. Vance denies the allegations contained in Paragraph 23 of the Complaint and demands strict proof thereof.

24. Vance denies the allegations contained in Paragraph 24 of the Complaint and demands strict proof thereof.

25. Vance denies the allegations contained in Paragraph 25 of the Complaint and demands strict proof thereof.

26. Vance denies the allegations contained in Paragraph 26 of the Complaint and demands strict proof thereof.

27. Vance denies the allegations contained in Paragraph 27 of the Complaint and demands strict proof thereof.

28. Vance denies the allegations contained in Paragraph 28 of the Complaint and demands strict proof thereof.

### **CAUSE OF ACTION**

#### **RACE AND SEX DISCRIMINATION**

29. Vance denies the allegations contained in Paragraph 29 of the Complaint.

30. Without waiving any of its defenses herein, Vance admits the allegations contained in Paragraph 30 of the Complaint, however, Vance specifically denies that the Plaintiff is entitled to any recovery whatsoever against him.

31. Vance denies the allegations contained in Paragraph 31 of the Complaint, and specifically denies that the Plaintiff is entitled to any recovery whatsoever against him.

**DAMAGES**

32. Vance denies the allegations contained in Paragraph 32 of the Complaint, and demands strict proof thereof.

33. Vance denies the allegations contained in Paragraph 33 of the Complaint, and specifically denies that the Plaintiff is entitled to any recovery whatsoever against him.

**RELIEF**

34. Vance denies the allegations contained in Paragraph 34 of the Complaint including sections a. and b., and specifically denies that the Plaintiff is entitled to any recovery whatsoever against him.

35. Vance denies the allegations contained in the last unnumbered paragraph of the Complaint commencing with the words “WHEREFORE PREMISES CONSIDERED, . . .” Vance specifically denies that the Plaintiff is entitled to any relief whatsoever against him.

**AND NOW**, having fully answered the Plaintiff’s Complaint, Vance requests that the Complaint be dismissed against him and that he be awarded his attorneys fees, costs and all other appropriate relief.

**THIS** the 19<sup>th</sup> day of May, 2017.

Respectfully submitted,

**CITY OF JACKSON, MISSISSIPPI**

By: /s/ LaShundra Jackson-Winters  
LaShundra Jackson-Winters, MSB # 101143

of Counsel:

Monica Joiner, City Attorney  
Mississippi Bar No. 102154  
Gregory Burnett, Deputy City Attorney  
Mississippi Bar No. 102624  
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*Attorneys for the City of Jackson*

**CERTIFICATE OF SERVICE**

I, LaShundra Jackson-Winters, one of the attorneys for the Defendant, the City of Jackson, Mississippi, do hereby certify that I have this day delivered a true and correct copy of the above and foregoing document, via electronic mail, to the following:

Lisa M. Ross, Esq.  
P.O. Box 11264  
Jackson, MS 39283-1264

**SO CERTIFIED**, this the 19<sup>th</sup> day of May, 2017.

/s/ LaShundra Jackson-Winters  
LaShundra Jackson-Winters