

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

THE NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
JACKSONVILLE BRANCH

and

JACKSONVILLE BROTHERHOOD OF
FIREFIGHTERS, A CHAPTER OF THE
INTERNATIONAL ASSOCIATION OF
AFRICAN-AMERICAN PROFESSIONAL
FIREFIGHTERS,

CASE NO.: 3:13-cv-161-J-32MCR

on behalf of themselves and the class they
represent,

Plaintiffs,

v.

CONSOLIDATED CITY OF JACKSONVILLE.

Defendant.

**DEFENDANT CITY OF JACKSONVILLE'S ANSWER
AND AFFIRMATIVE DEFENSES**

Defendant City of Jacksonville (the "City") hereby files its Answer and Affirmative Defenses to the Complaint in this Action.

ANSWER

SUMMARY OF CLAIMS

1. The City admits that Plaintiffs, the National Association for the Advancement of Colored People, Jacksonville Branch (the "NAACP"), and the Jacksonville Brotherhood of Firefighters (the "JBOF"), have brought the instant action, making the allegations described in

paragraph 1 of the Complaint. The City denies the allegations and Plaintiffs' standing to bring this action.

JURISDICTION AND VENUE

2. Admits that, if Plaintiffs have standing, the Court has jurisdiction over this action; denies entitlement to relief.

3. Admits that, if Plaintiffs have standing, this Court is the proper venue; denies entitlement to relief.

PARTIES

4. The City denies the third and fourth sentences of paragraph 4. The City is without knowledge as to the remaining allegations, and therefore denies them.

5. The City denies the third sentence of paragraph 5. The City is without knowledge as to the remaining allegations, and therefore denies them.

6. The City denies the allegations in paragraph 6.

7. The City admits the allegations in paragraph 7.

8. The City admits the allegations in paragraph 8.

9. The City admits the allegations in paragraph 9.

PROCEDURAL AND ADMINISTRATIVE REQUIREMENTS

10. The City is without knowledge as to the date on which JBOF filed its alleged EEOC charge, and as to the dates and content of any alleged right-to-sue letter, and therefore denies the overall allegation that Plaintiffs have satisfied all the procedural and administrative requirements for proceeding under Title VII. Furthermore, assuming *arguendo* that the EEOC issued the alleged right-to-sue letter, the City denies that the letter could satisfy the procedural and administrative requirements of Title VII and 29 C.F.R. 1601.28. The City further denies any

allegations inconsistent with the operative EEOC charges.

BACKGROUND

11. The City admits that *Coffey v. Braddy*, 3:71-cv-44, was filed in 1971 and resulted in a consent decree that imposed race-based requirements on the hiring of entry-level firefighters, and that the pleadings therein speak for themselves. To the extent the allegations in paragraph 11 are inconsistent with such pleadings, the City denies those allegations. The City denies the remaining allegations, and further denies that such allegations are proper or relevant.

12. The City admits that, following the alleged noose incidents, Mayor Peyton asked the Jacksonville Human Rights Commission (the “JHRC”) to investigate some aspects of the JFRD. The City further admits that on August 8, 2006, following its investigation, the JHRC issued a report, and that the report speaks for itself. The City denies any allegations inconsistent with the report and further denies the remaining allegations and any inferences as to the authoritative weight or accuracy of JHRC’s report.

13. The City admits that the dockets of *Coffey v. Braddy*, Case Nos. 3:71-cv-44 and 3:09-mc-22, speak for themselves. The City denies the remaining allegations and any allegations inconsistent with the dockets of the cited cases.

14. The City admits that the mediation efforts continue, that on April 23, 2012, the United States Department of Justice (the “DOJ”) filed a lawsuit against the City, and that such pleading and other pleadings referenced speak for themselves. The City denies any allegations inconsistent with such pleadings and denies the remaining allegations in paragraph 14.

15. The City admits that Plaintiffs have filed the action described in paragraph 15, but denies they are entitled to relief.

CLASS DEFINITION

16. The City admits that Plaintiffs are attempting to bring a class action, as described in paragraph 16, but denies they are entitled to relief.

STATEMENT OF THE CLAIM

Allegations as to Recruitment and Hiring

17. Denies.

18. Admits.

19. Denies.

20. The City admits that the JHRC issued a report in August 2006, and that the report speaks for itself. The City denies any allegations in paragraph 20 inconsistent with the report and further denies the remaining allegations in paragraph 20 and any inferences as to their authoritative weight or accuracy.

21. The City admits that it established the JFRD Cadet Program, and that the program was in place for a number of years, until it ended. The City denies the remaining allegations in paragraph 21.

22. The City admits the existence of a high school program designed to raise an interest in firefighting as a career, subject to statutory limitations. The City denies the remaining allegations and any inferences inconsistent with applicable laws.

23. The City admits that applicants for the position of firefighter must undergo a driver's license check, a criminal background check, a criminal background check, and an oral interview. The remaining allegations are denied.

24. Denies.

25. Denies.

26. The City is without knowledge as to the calculations and analysis performed by Plaintiffs, and therefore denies the allegations.

27. Denies.

Allegations as to Assignments

28. Denies.

29. Denies.

30. The City admits that the JHRC issued a report in August 2006, and that the report speaks for itself. The City denies any allegations inconsistent with the report, and further denies the remaining allegations and any inferences as to their authoritative weight or accuracy.

31. Denies.

Allegations as to Hostile Work Environment

32. Denies.

33. Denies.

34. The City admits that on February 17, 2006, two black firefighters reported finding nooses inside their lockers, and that the JHRC conducted an investigation and issued a report that speaks for itself. The City denies any allegations inconsistent with that report, and further denies the remaining allegations and any inferences as to their authoritative weight or accuracy.

35. Denies.

36. Denies.

CLASS ACTION ALLEGATIONS

37. The City admits that Plaintiffs are attempting to bring a class action, but denies that the definition offered in paragraph 37 is proper or that they have met the requirements for a class or class action.

38. Without knowledge, and therefore denies.
39. Without knowledge, and therefore denies.
40. Without knowledge, and therefore denies.
41. Without knowledge, and therefore denies.
42. Without knowledge, and therefore denies.
43. Without knowledge, and therefore denies.
44. Denies.

CLAIM FOR RELIEF

(Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*)

45. The City incorporates, by reference, its answers to all preceding paragraphs, as if fully set forth herein.

46. The City admits that Plaintiffs are attempting to bring this particular claim on their own behalf and on behalf of the Class. The City denies that this claim is properly brought on behalf of either Plaintiffs or the Class as stated in the Complaint.

47. Denies.
48. Denies.
49. Denies.
50. Denies.

PRAYER FOR RELIEF

Admits that Plaintiff is seeking the relief stated. Denies that Plaintiff is entitled to such relief.

CITY'S AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiffs failed, in whole or in part, to state a claim upon which relief can be granted.

Second Affirmative Defense

Plaintiffs' claims are barred in whole or in part by the applicable limitation periods.

Third Affirmative Defense

The City's actions and requirements are job-related and consistent with business necessity.

Fourth Affirmative Defense

The comparison groups used by Plaintiffs are invalid, irrelevant, unlawful, or yield unreliable results for purposes of establishing liability thereunder.

Fifth Affirmative Defense

The calculations and analyses performed by Plaintiffs are invalid, irrelevant, unlawful, or yield unreliable results for purposes of establishing liability thereunder.

Sixth Affirmative Defense

Statutory requirements alter the City's actions and affect the numbers relevant to a determination of liability.

Seventh Affirmative Defense

At all relevant times, the City acted in good faith, without discriminatory intent.

Eighth Affirmative Defense

Factors beyond the City's control have led to fluctuations in the number of JFRD's African American uniformed employees.

Ninth Affirmative Defense

The City has no control over employees' experiences outside the workplace or outside the location and duration of any work-related activity.

Tenth Affirmative Defense

There are no alternative policies and practices that would equally serve the City's legitimate purposes with less discriminatory impact.

Eleventh Affirmative Defense

Plaintiffs have failed to meet the procedural prerequisites and conditions precedent to bring this action. In addition, it appears that Plaintiffs' EEOC charges were not investigated by the EEOC prior to the issuance of any determinations alleged in the Complaint.

Twelfth Affirmative Defense

Plaintiffs are not entitled to any relief for, and their claims are barred by, any alleged acts or omissions which exceed the scope of the charges filed with EEOC.

Thirteenth Affirmative Defense

Plaintiffs are not entitled to any relief under Title VII of the Civil Rights Act of 1964, as amended, for any alleged conduct occurring more than 300 days before the filing of the charge(s) of discrimination.

Fourteenth Affirmative Defense

Even if Plaintiffs have established a prima facie case of discrimination (and the City expressly denies such is the case), the City can articulate legitimate non-discriminatory reasons for its actions.

Fifteenth Affirmative Defense

Even if Plaintiffs could prove a violation under 42 U.S.C. § 2000e (and the City expressly

denies such is the case), the City would have taken the same actions and made the same decisions in the absence of the alleged impermissible motivating factor(s).

Sixteenth Affirmative Defense

Any damages are limited by the terms of Title VII of the Civil Rights Act and the sovereign immunity limits of Chapter 768, Florida Statutes.

Seventeenth Affirmative Defense

Plaintiffs have failed to exhaust their administrative remedies.

Eighteenth Affirmative Defense

Plaintiffs have failed to mitigate their damages with reasonable diligence.

Respectfully submitted,

OFFICE OF GENERAL COUNSEL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 13, 2013, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: **Jane L. Dolkart, Esquire**, jdolkart@lawyerscommittee.org, Lawyers' Committee for Civil Rights Under Law, and **Kirsten L. Doolittle, Esquire**, kd@kdlawoffice.com, Law Office of Kirsten Doolittle, PA. I further certify that I mailed the foregoing document and the notice of electronic filing by mail to the following non- CM/ECF participants: **Ray McClain, Esquire**, Lawyers' Committee for Civil Rights Under Law, Suite 400, 1401 New York Ave NW, Washington, DC 20005.

/s/ Cindy A. Laquidara

CINDY A. LAQUIDARA

Attorney for Defendant