

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

ROBERT RICHARD LUCAS, *

Plaintiff, * **CIVIL ACTION FILE**

V. * **NO: 4:10-CV-0030HLM**

CITY OF BRASWELL, GEORGIA; *
WALTER A. WILLIAMS; RICHARD
FENNELL, and ALLEN FENNELL. *

Defendants. *

CONSOLIDATED PRE-TRIAL ORDER

1.

There are no pending motions or other matters except as noted:

The City of Braswell and the City Officials, Walter Williams and Allen Fennell contend they are entitled to immunity from Plaintiff's claims and have filed a trial brief in support thereof.

There is a pending motion by Defendants' counsel to withdraw as counsel for Richard Fennell, which is unopposed by Plaintiff.

The Defendants have also filed a motion in limine seeking to preclude any mention by Lucas or his counsel of the actual transaction between the

City of Braswell and the City of Powder Springs as Lucas did not personally participate in the transaction and cannot testify about the transaction.

The parties request they be permitted to file any additional motions in limine no later than ten (10) calendar days prior to trial. Responses thereto shall be due no later than five (5) calendar days prior to trial.

2.

All discovery has been completed, unless otherwise noted. Pursuant to Rule 37.1 of the Local Rules of the Northern District of Georgia, the Court will not consider further motions to compel discovery. Provided that there is no resulting delay in readiness for trial, the parties shall, however, be permitted to take the depositions of persons for the preservation of evidence for use at trial.

3.

Unless otherwise noted, the names of the Parties shown in the caption of this Order and the capacity in which they appear are correct and complete, and there is no question by any party as to misjoinder or non-joinder of these parties: **N/A.**

4.

Unless otherwise noted, there is no question as to the jurisdiction of the Court; jurisdiction is based upon the following code sections. (Where there are multiple claims, list each its claim and its jurisdictional basis separately.)

By Plaintiff:

The Court has subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331, 1343, and 1367. The Court has subject matter jurisdiction over Defendant's counterclaims pursuant to 28 U.S.C. § 1367.

By Defendants:

The Court has subject matter jurisdiction over Defendants' Counterclaims pursuant to 28 U.S.C. § 1867.

(a) Count I of Defendants' Counterclaims (Trover and Conversion):

28 U.S.C. § 1367;

(b) Count II of Defendants' Counterclaims (Trespass to Personalty):

28 U.S.C. § 1367.

5.

The individually-named attorneys are designated as lead counsel for the parties:

For the Plaintiff: **WILLIAM J. ATKINS**
Georgia. Bar. No. 027060
Atkins & Attwood, LLC
6400 Powers Ferry Road, Suite 112
Atlanta, Georgia 30339
(404) 969-4130
(404) 969-4140 fax

NATALIE WOODWARD
Georgia Bar No. 773827
Woodward & Stern, LLC
38 Sloan Street
Roswell, Georgia 30075
(770) 640-7667
(770) 640-7866 fax

For the Defendants: **C. KING ASKEW**
 Georgia Bar No. 025400
 MARK M.J. WEBB
 Georgia. Bar No. 744639
 Brinson, Askew, Berry, Seigler,
 Richardson & Davis LLP
 P.O. Box 5007
 Rome, Georgia 30162-5007
 (706) 291-8853
 (706) 234-3574 fax

6.

Pursuant to Rule 39.3(B)(2)(b), the Plaintiff is normally entitled to open and close arguments to the jury. State below the reasons, if any, why the Plaintiff should not be permitted to open arguments to the jury.

The Parties agree that Plaintiff is entitled to open and close arguments to the jury.

7.

The Parties agree that the above-captioned case is to be tried before a jury.

8.

State whether the parties request that the trial to a jury be bifurcated, i.e. that the same jury consider separately issues such as liability and damages. State briefly the reasons why trial should or should not be bifurcated.

By Plaintiff:

The trial should not be bifurcated. Further, the jury should consider issues of liability, special and compensatory damages during its initial deliberations. In the event that the jury returns a verdict in favor of the Plaintiff against Richard Fennell or Allen Fennell, in the *individual capacities*, Plaintiff requests that, following a brief presentation (and charge) related solely to punitive damages, the jury should deliberate separately as to whether to award punitive damages against one or both of the defendants.

By Defendants:

Plaintiff has alleged multiple claims against Defendants, including claims for punitive damages against Defendants. Therefore, the issues regarding punitive damages should be bifurcated. *See Ga. Farm Bureau Mut. Ins. Co. v. Miller*, 222 Ga. App. 95, 96 (1996).

9.

Attached hereto as Attachment "A," and made a part of this Order by reference, are the questions which the Plaintiff and Defendants request that the Court propound to the jurors concerning their legal qualifications to serve.

10.

Attached hereto as Attachment "B-1" are the questions that Plaintiff wishes to be propounded to the jurors on voir dire examination.

Attached hereto as Attachment "B-2" are the questions that Defendants wish to be propounded to the jurors on voir dire examination.

The Court will question prospective jurors as to their address and occupation and as to the occupation of a spouse, if any. Follow-up questions by counsel may be permitted. The determination of whether the district judge or counsel will propound general voir dire questions is a matter of courtroom policy which shall be established by each judge.

11.

State any objections to the Parties voir dire questions:

By Plaintiff:

Plaintiff proposes that the parties will jointly submit their objections to their respective voir dire questions ten (10) days before the call of the case for trial.

By Defendants:

- (a) Defendants object to Questions 1-12 of Plaintiff's proposed voir dire questions as overly intrusive to the extent that the questions attempt to ascertain information other than where the prospective jurors live, their occupations, their spouse's occupation.**
- (b) Defendants object to Question 15 because this calls for a legal conclusion by the potential jurors.**
- (c) Defendants object to Question 22 because it attempts to ascertain the potential jurors' political affiliations.**
- (d) Defendants object to Question 27 because it is irrelevant as to whether the potential jurors will be adequately able to serve as impartial jurors in the trial of this matter.**
- (e) Defendants object to Question 28 because it is irrelevant as to whether the potential jurors will be adequately able to serve as impartial jurors in the trial of this matter.**

- (f) **Defendants object to Question 33 because it is overly vague.**
- (g) **Defendants object to Question 35.a. because it is overly vague.**
- (h) **Defendants object to Question 40 because it is irrelevant as to whether the potential jurors will be adequately able to serve as impartial jurors in the trial of this matter.**

12.

A statement of the reasons supporting a party's request, if any, for preemptory challenges in addition to those allowed by 28 U.S.C. § 1870:

The parties do not request additional strikes.

13.

A brief description, including style and civil action number, of any pending related litigation: **None.**

14.

Attachment "C" of Plaintiff's Proposed Pre-trial Order is Plaintiff's outline of the case, which includes: (a) a succinct factual statement for each item of plaintiff's cause of action; (b) a separate listing of all rules, regulations, statutes, ordinances, and illustrative case law creating a specific legal duty relied upon by Plaintiff; (c) a separate listing of each and every act of negligence relied upon in negligence cases; (d) a separate statement for each item of damage claimed.

15.

Attached hereto as Attachment "D" is Defendant's outline of the case, which includes: (a) a succinct factual summary of defendant's general, special, and affirmative defenses; (b) a separate listing of all rules, regulations, statutes, ordinances, and illustrative case law creating a defense relied upon by defendant; (c) a separate statement for each item of damage claimed in a counterclaim.

16.

Attached as Exhibit "E" are the facts stipulated by the parties.

None. The parties have not agreed upon any stipulated facts but will confer in good faith and submit any fact stipulations to the Court at the call of the case for trial.

17.

Legal issues to be tried:

Plaintiff contends:

- (a) Whether the Defendants are liable for false arrest of Lucas in violation of the 4th Amendment and, if so, what are Lucas' damages?**

- (b) Whether the Defendants are liable for malicious prosecution of Lucas in violation of the 4th Amendment and, if so, what are Lucas' damages?**
- (c) Whether the City of Braswell, by and through its decision-making body, ratified the unconstitutional acts of the individual defendants in causing Lucas' arrest and prosecution without probable cause?**
- (d) Whether Richard Fennell, in his capacity as Mayor of the City of Braswell, acted with final policy making authority on behalf of Braswell when he engaged in actions resulting Lucas' arrest and prosecution without probably cause?**
- (e) Whether Allen Fennell, in his capacity as City Manager for the City of Braswell, acted with final policy making authority on behalf of Braswell when he engaged in actions resulting in Lucas' arrest and prosecution without probable cause?**
- (f) Whether the defendants are liable for False Arrest of Lucas under applicable Georgia law and, if so, what are Lucas' damages?**

Defendants contend:

- (a) Whether each City Official is entitled to qualified immunity for any claims of false arrest;**
- (b) Whether, each City Official is entitled to qualified immunity for any claims of malicious prosecution;**
- (c) Whether each City Official is entitled to official or qualified immunity for any false arrest claims arising under Georgia law;**
- (d) Whether Braswell is entitled to sovereign immunity for any false arrest claims arising under Georgia law;**
- (e) Whether each City Official is entitled to official or qualified immunity for any malicious prosecution claims arising under Georgia law;**
- (f) Whether Braswell is entitled to sovereign immunity for any malicious prosecution claims arising under Georgia law;**
- (g) Whether Plaintiff can substantiate his claims for damages;**
- (h) Whether, pursuant to Georgia case and statutory law, Plaintiff committed the tort of conversion;**
- (i) Whether, pursuant to Georgia case and statutory law, Plaintiff committed the tort of trespass to personalty.**

18.

(a) Attached hereto as Attachment "F-1" for Plaintiff and Attachment "F-2" for Defendants are a list of all witnesses (and their addresses) whom Plaintiff and Defendants will or may have present at trial, including expert, impeachment, and rebuttal witnesses whose use can or should have been reasonably anticipated. Each party has also included in the party's list a reasonably specific summary of the expected testimony of each witness.

(b) A representation that a witness will be called may be relied upon by other parties unless notice is given fourteen (14) days prior to trial to permit other parties to subpoena the witness or obtain the witness' testimony by other means.

(c) Witnesses not included on the witness list will not be permitted to testify, unless expressly authorized by court order based upon a showing that the failure to comply was justified. The attorneys may not reserve the right to add witnesses.

19.

(a) Attached hereto as Attachment "G-1" for Plaintiff and Attachment "G-2" for Defendants are the types list of all documentary and physical evidence that will be tendered at trial. Learned treatises which counsel expect to use at trial, if

any, shall not be admitted as exhibits and are be separately listed on the party's exhibit list.

(b) Prior to trial, counsel shall affix stickers number to correspond with the party's exhibit list to each exhibit. Plaintiff shall use yellow stickers and Defendants shall use blue stickers. The Parties will use white stickers for joint exhibits. The surname of a party must be shown on the numbered sticker when there are either multiple plaintiffs or multiple defendants.

(c) The separate, typed listing of each party's objections to the exhibits of another party must be typed and on a separate page and attached to the exhibit list of the party against whom the objections are raised. Objections to authenticity, privilege, competency, and to the extent possible, relevancy, of the exhibits shall be included. Any listed document to which any objection is not raised shall be deemed to have been stipulated as to authenticity by the parties, and such documents will be admitted at trial without further proof of authenticity.

(d) Unless otherwise noted, copies rather than originals of documentary evidence may be used at trial. Documentary or physical exhibits may not be submitted by counsel after filing of the pre-trial order, except upon consent of all the parties or permission of the Court. Exhibits so admitted must be numbered, inspected by counsel, and marked with stickers prior to trial.

(e) Documentary and physical exhibits may not be submitted by counsel after filing of the pre-trial order, except upon consent of the parties or permission of the court. Exhibits so admitted must be numbered, inspected by counsel, and marked with stickers prior to trial.

(f) Counsel shall familiarize themselves with all exhibits (and the numbering thereof) prior to trial. Counsel will not be afforded time during trial to examine exhibits that are or should have been listed.

By Plaintiff:

Plaintiff proposes that the parties be permitted to supplement their exhibit lists in light of the outstanding discovery matters addressed herein provided, however, that supplemental exhibit lists shall be exchanged no later than ten (10) days prior to the call of the case for trial and submitted to the Court along with any objections thereto no later than five (5) days prior to the call of the case for trial.

20.

The following designated portions of the testimony of the persons listed below may be introduced by deposition:

None.

21.

Attached hereto as Attachment "H-1" for Plaintiff and Attachment "H-2" for the Defendants are any trial briefs which counsel may wish to file containing citations to legal authority concerning evidentiary questions and any other legal issues which counsel anticipate will arise during the trial of the case. Limitations, if any, regarding the format and length of trial briefs as a matter of individual practice which shall be established by each judge.

22.

In the event this is a case designated for trial to the Court with a jury, requests for charge must be submitted no later than 9:30 A.M. on the date on which the case is calendared (or specifically set) for trial. Requests which are not timely filed and which are not otherwise in compliance with Rule 51.1 of the Local Rules of the Northern District of Georgia will not be considered. In addition, each party should attach to the request to charge a short (not more than one page) statement of that party's contentions, covering both claims and defenses, which the Court may use in its charge to the jury.

23.

If counsel desire for the case to be submitted to the jury in a manner other than upon a general verdict, the form of submission agreed to by all counsel shall

be shown in Attachment "I" to this Pre-trial Order. If counsel cannot agree on a special form of submission, parties will propose their separate forms for the consideration of the Court.

24.

Unless otherwise authorized by the Court, arguments in all jury cases shall be limited to one-half hour for each side. Should any party desire any additional time for argument, the request should be noted and explained herein.

By Plaintiff:

Plaintiff requests 45 minutes for argument.

25.

If the case is designated for trial to the Court without a jury, counsel are directed to submit proposed findings of fact and conclusions of law not later than the opening of trial: N/A.

26.

Pursuant to LF 16.3, lead counsel and persons possessing settlement authority to bind the parties met in person on NA to discuss in good faith, the possibility of settlement of this case. The Court (____) has or (X) has not discussed settlement of this case with counsel. It appears at this time that there is:

____ A good possibility of settlement

Some possibility of settlement

Little possibility of settlement

No possibility of settlement

The parties discussed the possibility of settlement by telephone during the Joint Preliminary Planning Conference. The parties concluded that there was little to no chance of settlement prior to trial. The parties have not discussed settlement since that time.

27.

Unless otherwise noted, the Court will not consider this case for a special setting, and it will be scheduled by the clerk in accordance with the normal practice of the Court.

By Plaintiff:

Plaintiff requests that this matter be specially set for trial this calendar year.

28.

The Plaintiff estimates that he will require (2) days to present his evidence.

Defendants estimate that it will require (1-2) days to present their evidence, based on rulings related to immunity defenses.

IT IS HEREBY ORDERED that the above constitutes the Pre-trial Order for the above-captioned case (_____) approved by the Court after conference with the parties.

IT IS FURTHER ORDERED that the foregoing, including the attachments thereto, constitutes the Pre-trial Order in the above case and that it supersedes the pleadings which are hereby amended to conform hereto and that this Pre-trial Order shall not be amended except by Order of the Court to prevent manifest injustice. Any attempt to reserve a right to amend or add to any part of the Pre-trial Order after the Pre-trial Order has been filed shall be invalid and of no effect and shall not be binding upon any party or the Court, unless specifically authorized in writing by the Court.

IT IS SO ORDERED this ____ day of _____, 2010.

HAROLD L. MURPHY
JUDGE, UNITED STATES DISTRICT COURT
ROME DIVISION

ATTACHMENT A

LEGAL QUALIFICATION TO SERVE

The Plaintiff requests that the following questions be posed to the panel regarding their qualifications to serve:

1. Have you served as a grand or petit jury in federal court during the two years immediately preceding your call to serve in this matter?
2. Are any of you under 18 years of age?
3. Are you a registered voter?
4. Do any of you have a charge pending against you for the commission of, or have you been convicted in State or Federal Court of a crime punishable by imprisonment for more than one year, and if so have your civil rights been restored?
5. Do any of you have a physical or mental health condition that would prevent you from serving as a juror in this case?
6. Are any of you not a resident of one of the following counties: Paulding County, Polk County, Floyd County?
7. Have any of you resided in one of these counties for a period of less than one year?
8. Are any of you not a citizen of the United States?

9. Have you or a member of your family ever been represented by William J. Atkins, Natalie Woodward, or any attorney with the Atlanta, Georgia firm of Atkins & Attwood, LLC or the Roswell, Georgia firm of Woodward + Stern, LLC?
10. Have you or a member of your family ever been represented by C. King Askew, Mark M.J. Webb, or any attorney with the Rome, Georgia law firm of Brinson, Askew, Berry, Seigler, Richardson & Davis, LLP?
11. Are you related by blood or marriage to Robert Richard Lucas, Walter A. Williams, Richard Fennell, or Allen Fennell?
12. Are you an officer or employee of the City of Braswell, Georgia?
13. Are you an elected official of Floyd County, Polk County or Paulding County or an employee of Floyd County, Polk County or Paulding County or are you related by blood or marriage to any employee or elected official of Floyd County, Polk County or Paulding County?
14. Are you an elected official of any city in Floyd County, Polk County or Paulding County or an employee of any city in Floyd County, Polk County or Paulding County or are you related by blood or marriage to

any employee or elected official of any city in Floyd County, Polk County or Paulding County?

15. Are you related by blood or marriage to William J. Atkins or James A. Attwood, or any employee, lawyer or partner of the law firm Atkins & Attwood, LLC?
16. Are you related by blood or marriage to Natalie S. Woodward or Corey M. Stern, or any employee, lawyer or partner of the law firm Atkins & Attwood, LLC?
17. Have any of you been represented by, or sought the advice or services of, any employee, lawyer or partner of the law firms of Woodward + Stern, Atkins and Attwood or Brinson, Askew, Berry, Seigler, Richardson and Davis?

ATTACHMENT A – LEGAL QUALIFICATION QUESTIONS

Defendants request that the following questions be posed to the panel:

1. Are you eighteen (18) years of age or older?
2. Are you a registered voter?
3. Are you related by blood or marriage to Robert Richard Lucas, Walter

A. Williams, Richard Fennell, or Allen Fennell?

4. Are you an officer or employee of the City of Braswell, Georgia?

5. Are you related by blood or marriage to William J. Atkins, Natalie

Woodward, or any employee of the Atlanta, Georgia firm of Atkins & Attwood, LLC or the Roswell, Georgia firm of Woodward + Stern, LLC?

ATTACHMENT B-1

PLAINTIFF'S PROPOSED VOIR DIRE

1. How long have you lived at your current address?
2. How long have you lived in the county where you live now?
3. Have you ever lived in Floyd County, Polk County or Paulding County Georgia;
 - a. If so, when did you live there?
 - b. How long did you live there?
4. Which of the following best describes your type of residence?
 - _____ Rent
 - _____ Own home
 - _____ Own apartment/condo
 - _____ Own mobile home
 - _____ Other _____
5. Describe what you do for a living, that is, how you spend your typical day on the job?
6. Have you ever held a supervisor position(s)?
 - a. If so, what was the position(s)?
 - b. How many people did you supervise(s)?

7. To the best of your knowledge, have you ever been subjected to a background check by any of the employers listed above and/or any other prospective employer? If so, please explain whether you successfully passed the background check and, if not, please explain why you did not pass.
8. How many years of schooling have you completed?
9. What schools did you attend; when did you graduate; and what was your degree?
10. If you attended college and/or graduate school, please describe your areas of concentration?
11. Do you still attend or do you plan on attending school in the future?
 - a. If so, what do you/will you study?
12. If you are married, or have a life-partner, please describe their educational background by including the information you have provided for yourself concerning your educational background.
13. To the extent not identified in response to any of the preceding questions, please identify whether you have any formal legal training, and/or have taken any courses in constitutional law, civil rights or otherwise relating to

our legal system? If so, please identify and describe the training and/or courses.

14. To the extent not identified in response to any of the preceding questions, please identify whether you have received any formal training and/or taken any courses in medicine and/or psychology? If so, please identify and describe the training and/or courses.
15. In response to the events of September 11, 2001, Congress enacted the Patriot Act and the President authorized use of wiretaps without first securing a search warrant under certain circumstances. How do you feel about these changes and their effect, if any, on civil liberties in the United States?
18. Have you ever belonged to the National Rifle Association or any other organization that is concerned with protecting the right to own weapons?
19. Have you or an immediate family member ever participated in any group concerned with crime prevention or victims' rights? If yes, please identify that person's relation to you and/or identify the group; its purpose; and the extent of your/their participation in it.
20. Do you belong to or associate with any group or organization that has protection or promotion of civil liberties as a goal?

- a. If so, please identify the particular organization and the extent of your participation in it.
21. Do you ever watch TV programs that show real life police activities like the programs named "Cops" or "America's Most Wanted?"
22. Do you listen to talk radio? ____ Yes ____ No. If yes, please identify and describe the stations and/or programs you listen most frequently (i.e. Air America; Rush Limbaugh; Sean Hannity, etc.)
24. Have you, your spouse/partner, or other close family members ever served in the military? If so, please describe in detail your (their) military experience. (Please include the branch of service, highest rank attained, type of discharge, inclusive dates of service, and whether you ever participated in a military court martial.)
25. Have you ever served as a juror before?
- a. If yes, please describe each case on which you served by *only* providing the following information: a. Type of case (i.e. criminal, domestic, personal injury, business, etc.); b. Court (i.e. State (Superior or State); Federal); c. Number of jurors; d. Did you reach a verdict?
26. Have you ever served as a jury foreperson?
27. How did you feel about your experience as a juror?

28. Was there anything about your experience as a juror which would make you not want to serve again?
29. Have you ever served on a grand jury?
 - a. If yes, please identify: the type (Federal/State); where you served; and when you served.
30. If you served on a grand jury or a jury during a criminal trial, please describe how the experience affected your view concerning law enforcement officers?
31. Have you ever had an unfavorable experience with a lawyer or judge (for example, contracted for services rendered, felt that justice was not served, etc.)? If yes, please explain.
32. Have you, or has anyone in your family, ever sued or been sued by anyone? If yes, please explain:
33. How do you feel about the way the criminal justice system is working in the United States?
34. Have you ever called the police for any reason? If yes, please explain.
35. Have you, or has any close friend or relative of yours, been a victim or witness to any kind of crime, whether it was reported to law enforcement

authorities or not (including robbery, burglary, assault, sexual assault, etc.)?

a. If so, how did you feel that the police or law enforcement agency handled the situation?

b. If there was a court hearing, did you testify in court?

36. Have you ever had to appear in court, or in any court proceeding, as a plaintiff, defendant, victim, or witness for any reason other than you have indicated above? If yes, please explain.

38. Have you, or has someone you know, ever been employed by or volunteered with any local, state or federal law enforcement agency? If yes, please explain.

39. Have you had any training, courses, or work experience in law enforcement, criminal justice, administration of justice, or law? If yes, please describe.

40. Have you ever been on a ride-along with police officers? If yes, please describe.

**ATTACHMENT B-2 – DEFENDANTS’ GENERAL VOIR DIRE
QUESTIONS FOR THE JURY**

1. Have any of you ever worked for a law enforcement agency? If so, what was the agency? What was your position with the agency? How long did you work for the agency? Did you leave voluntarily?
2. Have any of your relatives or close friends worked for a law enforcement agency? If so, what was the agency? How long were they employed there? What is their current status with the agency?
3. Have any of you ever worked for a city or county government? If so, what city or county? What was your position? How long did you work for city or county government? Did you leave voluntarily?
4. Have any of your relatives or close friends worked for a city or county government? If so, what was the city or county? How long were they employed there? What is their current status with the agency?
5. Have you ever filed a lawsuit against your employer or former employer? Have you ever filed a lawsuit against anyone? If so, what were the circumstances?
6. Do you have any legal training? If so, what is your level of training?
7. Are you related to anyone or do you have any close friends with legal training? If so, what is that person’s level of training?
8. Do you know any reason why you could not be a fair and impartial juror for both sides in this case?
9. Have you ever been arrested for, convicted of, or charged with stealing property? If so, when? What were the circumstances?
10. Has anyone ever filed a lawsuit against you? If so, when? What were the circumstances?

11. Have you ever served on a jury when the Rome, Georgia law firm of Brinson, Askew, Berry, Siegler, Richardson & Davis, LLP represented a party? The attorneys at that firm are: Robert M. Brinson, C. King Askew, Robert L. Berry, Joseph M. Siegler, Jr., Thomas D. Richardson, J. Anderson Davis, Wright W. Smith, Mark M.J. Webb, I. Stewart Duggan, Stephen B. Moseley, Kristy L. Treadway, A. Franklin Beacham, Bryant G. Speed, Norman S. Fletcher, Frank H. Jones, Kimberly Moseley, Allison S. Warren, Samuel L. Lucas, and David M. Brearley.

12. Have you or a member of your family ever been represented by William J. Atkins, Natalie Woodward, or any attorney with the Atlanta, Georgia firm of Atkins & Attwood, LLC or the Roswell, Georgia firm of Woodward + Stern, LLC?

13. Do you know any of the individuals who may testify in this matter? These individuals are: Robert Richard Lucas, Carla Lucas, Hunter Lucas, Arthur T. Anthony, Richard Fennell, Allen Fennell, Walter A. Williams, Johnny Summerville, Patricia Vaughn, Andrew Plummer, Marla J. Hert, Leslie Hawkins, Jackie Adair, Helen Waters, Danny Forsyth, Reggie Rowe, Jerry Adair, Marvin Howard, Mike Weaver, John Webb, Gerald Bell, David Bray, Larry Ellison, Brenda Costello, Magistrate Judge Tex Farr, Dave Barton, Jeff Deaton, Sgt. Carl Lively, Charles Spann, Officer M. Glass, Lieutenant Julie Collins, Ray P. Dean, Carlos McConnell, Lisa Baty, and Sgt. Bill Greene.

Defendants request the right to ask additional questions based on responses to the questions above.

ATTACHMENT C

PLAINTIFF'S OUTLINE OF THE CASE

A. SUMMARY OF PLAINTIFF'S CONTENTIONS

Defendant **City of Braswell, Georgia** consists of approximately 3.1 square miles of land and straddles the county line between Polk and Paulding counties. Braswell has its own police department, employing a Chief of Police, a lieutenant and three officers. Defendants **Richard Fannell** and **Allen Fannell** are residents of Braswell and, at all times relevant to this action, **Allen Fannell** served as the City Manager, while **Richard Fannell** served as Mayor.

Plaintiff **Richard Lucas** was a P.O.S.T. certified law enforcement officer who became the Chief of Police for Braswell in October of 2006. Lucas served as Chief of Police until November 19, 2007, when he resigned his position. Defendant **Walter A. Williams** became the acting Chief of Police for the City of Braswell after **Lucas** resigned. Prior to becoming the Chief of Police, **Williams** worked as a part-time police officer for Braswell Police Department ("BPD"). He reported to **Lucas**. **Williams** also worked as a police officer for the Powder Springs Police Department.

On approximately December 12, 2006, Lucas had a conversation with **Richard Fennell**. He explained that BPD needed two police vehicles. Richard Fennell said Braswell could not afford to buy two police vehicles at that time. **Richard Fennell** told Lucas that Braswell would contribute \$1,000.00 to purchase one vehicle. **Richard Fennell** told Lucas that if Lucas agreed to purchase the additional police vehicle for BPD with his own money, Braswell would reimburse him for the cost of the vehicle once property taxes were paid to Braswell by its citizens. As the duly elected Mayor of Braswell, Richard Fennel acted with actual and apparent authority to bind Braswell to this agreement. **Lucas** agreed to this arrangement with Braswell.

In December, 2006, Lucas used the \$1,000.00 given to him by Richard Fennell on behalf of Braswell to purchase a used 2000 Crown Victoria Patrol vehicle from Johnny Summerville for BPD. In March, 2007, **Lucas** learned from **Williams** that the City of Powder Springs was selling a used 2002 Crown Victoria vehicle. **Williams**, worked for Lucas at BPD and also worked for the City of Powder Springs. One of his responsibilities as a Powder Springs employee was to handle the sale of surplus police equipment, including the 2002 Crown Victoria.

Relying upon his arrangement with **Richard Fennell**, Lucas made arrangements to purchase the 2002 Crown Victoria with his own money. Lucas used \$750.00 of his own money, and borrowed \$750.00 from Mac McConnell, who, at the time, also worked for Lucas at BPD, to come up with the purchase price of \$1,500.00.

Lucas sent McConnell to purchase the 2002 Crown Victoria from the City of Powder Springs. **Williams** met McConnell at the City of Powder Springs. **Williams** told McConnell that the City of Powder Springs would not accept cash payment; instead Powder Springs would require a check identifying the purchaser as a municipality, rather than an individual. However, **Williams** also knew that **Lucas** was funding the purchase of the 2002 Crown Victoria with his own money so, to protect **Lucas's** ownership interest, **Williams** listed **Lucas** as the buyer of the vehicle on the Georgia Motor Vehicle Title. **Williams** gave the Title to **Lucas**. **Lucas** still has possession of the title which indicates that the buyer of the vehicle is **Richard Lucas**.

Lucas reimbursed \$750.00 to McConnell shortly after the purchase. Lucas placed the 2002 Crown Victoria in service with BPD and waited for Braswell to reimburse him the full purchase price of \$1,500.00. Between

the time Lucas purchased the vehicle pursuant to his arrangement with Richard Fennell and the present day, Lucas was never reimbursed by Braswell for the purchase price of the 2002 Crown Victoria.

On November 6, 2007, Richard Fennell lost the mayoral election to Jerry Adair. Lucas resigned as police chief for Braswell on November 19, 2007. Prior to his resignation, Lucas asked Richard Fennell whether Braswell ever planned to reimburse him for the 2002 Ford Crown Victoria. Richard Fennell replied that "he wasn't the mayor anymore." Lucas asked the City Manager, Allen Fennell, whether Braswell ever planned to reimburse him for the 2002 Ford Crown Victoria. Allen Fennell told Lucas that he had "donated" the vehicle to Braswell. Lucas flatly denied "donating" the vehicle to Braswell and demanded that Braswell pay him the full purchase price of the vehicle.

Lucas purchased the 2002 Ford Crown Victoria with his own money (after reimbursing McConnell) and had valid Title to the vehicle in his possession. Richard Fennell informed Lucas that Braswell did not intend to honor his agreement with Lucas to reimburse him for the 2002 Ford Crown Victoria. Accordingly, Lucas took the 2002 Ford Crown Victoria out of service for BPD. The vehicle was being used by officer Andrew

Plummer. Lucas went to Plummer's apartment, repossessed the 2002 Ford Crown Victoria and stored it in plain view at his home until Braswell reimbursed him for the purchase price of the vehicle.

Lucas took the 2002 Ford Crown Victoria to a used car dealership and inquired about selling the vehicle. The used car dealership checked with Williams, who had been appointed as acting Police Chief for Braswell after Lucas resigned on November 17, 2007. Williams told the used car dealership not to sell the vehicle. Williams told the dealership that the vehicle was "stolen." Although Williams knew Lucas well and knew how to locate him, he made no effort to contact him to clear up the dispute concerning the 2002 Ford Crown Victoria.

Williams informed Richard and Allen Fennell that Lucas had possession of the 2002 Ford Crown Victoria and had attempted to sell the vehicle. Richard and Allen Fennell, acting with actual and apparent authority on behalf of Braswell, ordered Williams to take all necessary steps to force Lucas to give the car to Braswell.

Williams met with the Mayor of Powder Springs, Patricia Vaughn, in mid-December 2007. Williams lied to Vaughn, telling her that Lucas had lost the title to the 2002 Ford Crown Victoria. Under these false

pretenses, Williams asked Vaughn to issue a replacement title listing the City of Braswell as the owner of the 2002 Ford Crown Victoria. Williams did not tell Vaughn that a dispute had arisen with Lucas as to whether Braswell had reimbursed Lucas for the vehicle. Relying upon Williams' materially false and misleading representations, Vaughn issued a duplicate title on December 21, 2007.

Williams knowingly secured the duplicate title listing the City of Braswell as the owner of the 2002 Ford Crown Victoria under false pretenses so that he would have some basis in fact, albeit a false fact, to list the vehicle as "stolen" in the GCIC/NCIC system. Allen and Richard Fennell were aware that Williams was taking steps to procure a duplicate title from Powder Springs under false pretenses. Allen and Richard Fennell were also aware that Williams intended to use the duplicate title to pursue a criminal prosecution of Lucas.

Williams had the 2002 Ford Crown Victoria listed as a "stolen vehicle" on the Georgia Crime Information Database ("GCIC"). Williams contacted the Polk County Sheriff's Office and informed them that Lucas might be in possession of a stolen vehicle – the 2002 Ford Crown Victoria.

On December 21, 2007, several Polk County Sheriff's officers surrounded Lucas' house looking for Lucas. Lucas was not home. Lucas learned that the Polk County Sheriff's officers were at his house because the 2002 Ford Crown Victoria had been reported stolen. Lucas called 9-1-1 and drove down to the Polk County Sheriff's Office. Lucas ultimately spoke with Deputy Carl Lively. Lucas showed Lively the title to the 2002 Ford Crown Victoria. Lively noted that Lucas was listed as the purchaser and that his signature appeared on the title. Lively called Williams. He informed Williams that Lucas had valid title to the 2002 Ford Crown Victoria. He told Williams that the vehicle would remain in Lucas' possession as he appeared to be the rightful owner of the vehicle.

As the Polk County Sheriff's Department was unwilling to arrest Lucas or seize his vehicle, Williams spoke again with Richard and Allen Fennell. The individual defendants agreed to institute a criminal prosecution against Lucas so that Braswell could get the 2002 Ford Crown Victoria without having to pay for the vehicle.

Williams swore out an arrest warrant for Lucas alleging that Lucas had stolen the 2002 Ford Crown Victoria from its rightful owner, Braswell, on or about November 12, 2007. At the time he swore out the warrant,

Williams knew that the facts alleged in his warrant application were false, misleading and incomplete. Williams represented that the vehicle was stolen on November 12th, despite knowing that Lucas remained the duly appointed Chief of Police in Braswell until November 19th. Williams represented that Braswell purchased the vehicle, despite knowing that Lucas had paid for the vehicle with his own money and despite knowing that he had personally given Lucas title to the vehicle.

Williams omitted critical facts from his presentation to the magistrate including that Lucas had a valid title to the vehicle in his possession, that the Bill of Sale had been made out in Lucas' name , that Lucas had paid for the vehicle with his own money, and that Williams had no proof that Braswell had ever reimbursed Lucas for the vehicle.

On January 9, 2008, officers with the Floyd County Sheriff's Department arrived at Mr. Lucas's house. A deputy placed Lucas under arrest for Theft By Taking. Lucas was arrested and transported to the Floyd County jail. He was later transferred to the Paulding County jail. Lucas was placed in general population with inmates he had previously arrested. Lucas remained in custody for several hours prior to making bond. Following a preliminary hearing in Paulding County Magistrate

Court, the judge dismissed the charges against Lucas as no probable cause existed to support the arrest warrant.

Long after the criminal prosecution terminated in Lucas's favor, Braswell produced a check in the amount of \$3,000.00 written to Lucas by Richard Fennell in March, 2007. The back of the check appears to have been endorsed by Mr. Lucas over to Richard Fennell, who actually cashed the check through his personal checking account.

Lucas's signature on the check is a forgery. Lucas never received the check, nor did he sign over the check to Richard Fennell in exchange for \$3,000.00 in cash. Lucas will present expert testimony by Arthur Anthony, a certified forensic writing and document examiner, that: (a) the signature purporting to be Lucas's on the back of the check was written by the same person who signed the name Richard Fennell; and (b) that the signature purporting to be Lucas's on the back of the check was not written by Richard Lucas.

B. RELEVANT RULES, REGULATIONS, STATUTES AND CASE LAW

Plaintiff lists the statutes and cases generally applicable to his claims and relevant defenses. Plaintiff will supplement this general list with a more detailed review of relevant statutes and cases in Plaintiff's trial brief.

1. Statutes:

42 U.S.C. § 1983
42 U.S.C. § 1981(a)
42 U.S.C. § 1988
O.C.G.A. § 51-7-1
O.C.G.A. § 51-7-40

2. Applicable Case Law:

i. 4th Amendment: False Arrest (w/arrest warrant):

Malley v. Briggs, 475 U.S. 335, 106 S. Ct. 1092 (1986)
Garmon v. Lumpkin County, Ga., 878 F.2d 1406 (11th Cir. 1989)
Pickens v. Hollowell, 59 F.3d 1203 (11th Cir. 1995)
Tillman v. Coley, 886 F.2d 317 (11th Cir. 1989)
Homes v. Kucynda et al, 321 F.3d 1069 (11th Cir. 2003)

ii. 4th Amendment: Malicious Prosecution:

Laura Skop v. City of Atlanta et al, 485 F.3d 1130 (11th Cir. 2007)
Kingsland v. City Of Miami, 369 F.3d 1210 (11th Cir. 2004)
Whiting v. Traylor, 85 F.3d 581 (11th Cir. 1996)
Kelly v. Curtis, 21 F.3d 1544 (11th Cir. 1994)

iii. First Amendment: Retaliatory Prosecution

Bennett v. Hendrix, 423 F.3d 1247 (11th Cir. 2005)

iv. Qualified Immunity

Laura Skop v. City of Atlanta et al, 485 F.3d 1130 (11th Cir. 2007)
Hope v. Pelzer, 536 U.S. 730, 122 S.Ct. 2508 (2002)
Saucier v. Katz, 533 U.S. 194, 121 S.Ct. 2151 (2001)

C. DAMAGES AND OTHER RELIEF SOUGHT:

Plaintiff expects to seek recovery of special, compensatory and punitive damages at trial, as follows:

- (1) Special Damages: Plaintiff seeks special damages to compensate him for economic injuries, including reduced earning capacity causally related to the constitutional injuries inflicted by the Defendant. At present, Plaintiff expects to recover the following special damages: (a) \$6,000.00 in defense costs associated with defending the criminal charges; (b) \$356.00 bonding fee; and (c) lost income in an amount of not less than \$25,000.00. Plaintiff is entitled to recover such damages under well-established authority in this Circuit. See generally, *Wright v. Sheppard*, 919 F.2d 665, 669 (11th Cir. 1990).
- (2) Compensatory Damages: The Plaintiff will seek an award of compensatory damages in an amount to be determined by the enlightened conscience of the jury. Compensatory damages in this case are available to compensate Plaintiff for his humiliation, fear, frustration, anger, embarrassment, loss of

reputation, self doubts, and the entire range of emotional reactions that result from being subjected to an unlawful arrest and malicious prosecution by the Defendant. Compensatory damages are available to plaintiffs in civil rights cases under the common law, as applied to such matters in Federal Court. See generally, *Carey v. Piphus*, 435 U.S. 247, 254-55, 98 S.Ct. 1042, 1047-48, 55 L.Ed.2d 252 (1977); *Wright v. Sheppard*, 919 F.2d 665, 669 (11th Cir. 1990). As the exact amount of compensatory damages can only be determined by the enlightened conscience of the jury, Plaintiff cannot fairly determine the amount he is likely to request prior to trial, however, Plaintiff expects to seek in excess of **\$1,000,000.00** in compensatory damages.

- (3) Punitive Damages (individual capacity claims only): The Plaintiff expects to establish that one or both of the defendants acted willfully and with reckless disregard for his federally protected rights under the First and Fourth Amendments. Plaintiffs alleging constitutional violations such as false arrest and malicious prosecution may recover punitive damages

from an individual defendant. See generally, *Smith v. Wade*, 461 U.S. 30, 51 (1983). In the event of a verdict in Plaintiff's favor as to liability, special and general damages, the Plaintiff will seek an award of punitive damages in an exact amount to be determined by the enlightened conscience of the jury, however, Plaintiff expects to seek an amount proportional to the jury's award of special and compensatory damages.

- (4) Prejudgment Interest: To the extent allowed by applicable law, Plaintiff will seek recovery of prejudgment interest. See generally, *Loefler v. Frank*, 486 U.S. 459 (1988).
- (5) Attorneys Fees and Costs: Plaintiffs seek attorneys fees and costs as authorized by 42 U.S.C. § 1988, based on the applicable hourly rates of counsel and the actual amount of all costs incurred in this litigation. Through preparation of the Pre-Trial Order, attorneys fees exceed **\$40,000.00** and expenses exceed **\$4,000.00**.

Plaintiff's good faith estimates above will conform to the evidence produced at trial.

ATTACHMENT D – DEFENDANTS’ OUTLINE OF THE CASE

A. SUCCINCT FACTUAL SUMMARY.

The City of Braswell (“Braswell”) is a municipality located in Polk and Paulding Counties in northwest Georgia. Walter A. Williams (“Williams”) is the Chief of the Braswell Police Department. Richard E. Fennell (“R. Fennell”) is the former Mayor of Braswell. Allen Fennell (“A. Fennell”) is the City Manager of Braswell.¹

In March 2007, the City of Braswell purchased a 2002 Ford Crown Victoria (Vehicle Identification Number 2FAFP71W12X103486) (“hereinafter referred to as the “Patrol Car”) from the City of Powder Springs for use by the Braswell Police Department. The Patrol Car was purchased with a \$1,500 cashier’s check from the City of Braswell. The Patrol Car was used by the City of Braswell and its police officers continuously from March until November 2007.

After being terminated as Chief of Police by the City Council in November 2007, Plaintiff Richard Robert Lucas (“Lucas”) went to the home of Andrew Plummer, a Braswell police officer, while Mr. Plummer was out-of-town and

¹ Williams, R. Fennell, and A. Fennell will sometimes be collectively referred to as the “City Officials.”

removed the Patrol Car from Plummer's home. Lucas hid the Patrol Car behind a garage at his personal residence.

In December 2007, Williams, who succeeded Lucas as Chief of Police, was asked to investigate the missing Patrol Car by Allen Fennell, the City Manager of Braswell. Williams contacted the City of Powder Springs, Georgia and obtained from the City of Powder Springs copies of a bill of sale, showing the Patrol Car to have been sold to the City of Braswell, and a copy of the cashier's check, evidencing payment to the City of Powder Springs by the City of Braswell.

Williams also received a phone call from Ray Dean, a used car salesman. Dean advised Williams that Lucas had contacted Dean about trading two Ford Crown Victoria Police Cruisers for a Ford truck. Based on his investigation, Williams swore out a theft-by-taking warrant for Lucas' arrest. Lucas was booked and made bail within a few hours. At his probable cause hearing, a Paulding County magistrate judge stated: "It seems more like a civil argument. I don't think anything happened criminally. I know he still has possession of the car but still I don't see the criminal intent there." The magistrate judge then dismissed the warrant.

Lucas has now sued Braswell, Williams, R. Fennell, and A. Fennell claiming: (1) false arrest under federal law against each City Official; (2) malicious

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prosecution under federal law against each of the City Officials; (3) false arrest under Georgia law against Braswell and each of the City Officials; (4) malicious prosecution under Georgia law against Braswell and each of the City Officials; (5) has requested punitive damages against Braswell and each City Official.

B. RULES, REGULATIONS, STATUTES, ORDINANCES, AND ILLUSTRATIVE CASE LAW.

Defense of Qualified Immunity to Federal Law Claims:

- (1) *Rioux v. City of Atlanta, Ga.*, 520 F.3d 1269 (11th Cir. 2008);
- (2) *Durruthy v. Pastor*, 351 F.3d 1080 (11th Cir. 2003);
- (3) *Wood v. Kesler*, 323 F.3d 872 (11th Cir. 2003);
- (4) *Kelly v. Curtis*, 21 F.3d 1544 (11th Cir. 1994).

Defense of Official or Qualified Immunity to State Law Claims:

- (1) *Burnett v. Unified Govt. of Athens-Clarke Co., Ga.*, 2009 WL 5175296 (M.D. Ga. Dec. 29, 2009);
- (2) *Campbell v. Goode*, 304 Ga. App. 47 (2010);
- (3) *Valades v. Uslu*, 301 Ga. App. 885 (2009);
- (4) *Reed v. Dekalb Co.*, 264 Ga. App. 83 (2003);
- (5) *Reese v. City of Atlanta*, 261 Ga. App. 761 (2003).

Defense of Sovereign Immunity to State Law Claims:

- (1) O.C.G.A. § 33-24-51;
- (2) O.C.G.A. § 36-33-3;
- (3) *Cameron v. Lang*, 274 Ga. 122 (2001);
- (4) *Campbell v. Goode*, 304 Ga. App. 47 (2010);
- (5) *Scott v. City of Valdosta*, 280 Ga. App. 481 (2006);
- (6) *Reese v. City of Atlanta*, 261 Ga. App. 761 (2003);
- (7) *City of Atlanta v. Heard*, 252 Ga. App. 179 (2001).

Conversion and Trover:

- (1) *Natl. City Bank of Rome v. Busbin*, 175 Ga. App. 103 (1985);
- (2) *Mitzner v. Hyman*, 175 Ga. App. 311 (1985).

Trespass to Personalty:

- (1) O.C.G.A. § 44-1-3;
- (2) O.C.G.A. §§ 51-10-1, 51-10-3;
- (3) *Crenshaw v. Moore*, 10 Ga. 384 (1851);
- (4) *Lowery v. McTier*, 99 Ga. App. 423 (1959).

C. SEPARATE STATEMENT OF EACH ITEM OF DAMAGE CLAIMED IN A COUNTERCLAIM.

Braswell asserts in its counterclaim that, in taking its 2002 Ford Crown Victoria (with special police equipment), Lucas has committed the tort of conversion, or in the alternative, the tort of trespass to personalty.

In its action for conversion, Braswell may receive one of the following types of damages: (1) an alternative verdict for the property or its value; (2) money damages alone; or (3) return of the property plus the cost of hire. O.C.G.A. § 44-15-151.

In its action for trespass to personalty, Braswell may receive either: (1) if damaged, the reasonable cost of hire of the vehicle, plus the cost of repairs; (2) if destroyed or rendered useless, the full value of the vehicle plus interest. *Ga. Ry. & Elec. Co. v. Wallace & Co.*, 122 Ga. 547 (1905); *Atlanta Cotton-Seed Oil Mills v. Coffey*, 80 Ga. 145 (1887); *Boral Bricks, Inc. v. Old S. Transp. Mgt., Inc.*, 198 Ga. App. 678, 679 (1991).

ATTACHMENT E – FACTS STIPULATED BY THE PARTIES

None.

ATTACHMENT "F-1"

PLAINTIFF'S WITNESS LIST

Plaintiff Will Call:

Robert Richard Lucas
c/o William J. Atkins
Atkins & Attwood, LLC

Plaintiff May Call:

Natalie S. Woodward
Woodward + Stern, LLC

Mark Webb
Brinson, Askew, Berry, Seigler, Richardson and Davis, LLC

Carla Lucas
c/o William J. Atkins
Atkins & Attwood, LLC

Hunter Lucas
c/o William J. Atkins
Atkins & Attwood, LLC

Arthur T. Anthony
P.O. Box 620420
Atlanta, GA 30362

Defendant Richard Fennell
c/o Mark Webb
Brinson, Askew, Berry, Seigler, Richardson and Davis, LLC

Defendant Allen Fennell
c/o Mark Webb
Brinson, Askew, Berry, Seigler, Richardson and Davis, LLC

Defendant Walter A. Williams

c/o Mark Webb

Brinson, Askew, Berry, Seigler, Richardson and Davis, LLC

Johnny Summerville

3870 Collard Valley Road

Cedartown, Georgia 30125-4514

Mayor Patricia Vaughn

City of Powder Springs, Georgia

4484 Marietta Street

Powder Springs, Georgia 30127

Andrew Plummer

24 Courtyard Lane

Cartersville, Georgia 30120

Marla J. Hert,

City of Braswell

Leslie Hawkins

City of Braswell

Jackie Adair

City of Braswell

Helen Waters

City of Braswell

Danny Forsyth

City of Braswell

Reggie Rowe

City of Braswell

Jerry Adair

City of Braswell

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Attachment F-1

Marvin Howard

City of Braswell

Mike Weaver

City of Braswell

John Webb

City of Braswell

Jeff Groom

City of Braswell

Gerald Bell

City of Braswell

David Bray

City of Braswell

Larry Ellison

City of Braswell

Brenda Costello

City of Braswell

Magistrate Judge Tex Farr

Paulding County Magistrate Court

280 Constitution Blvd.

First Floor

Dallas, GA 30132

Dave Barton

(Address to be provided)

Jeff Deaton

Precinct One Auto Sales

2282 Highway 411 Northeast

Cartersville, Ga 30121-8073

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Sgt. Carl Lively
Floyd County Police Department

Charles Spann
(Address to be provided)

Officer M. Glass
Floyd County Police Department

Lieutenant Julie Collins
Powder Springs Police Department

Any witness listed by Defendants in their list of witnesses. Plaintiff may request that she be permitted to call additional rebuttal witnesses based upon the testimony at trial.

ATTACHMENT F-2 – LIST OF DEFENDANTS’ WITNESSES

DEFENDANTS MAY CALL:

Witness name	Address
Walter A. Williams	c/o Mark M.J. Webb Brinson, Askew, Berry, Siegler, Richardson & Davis, LLP
Richard Fennell	c/o Mark M.J. Webb Brinson, Askew, Berry, Siegler, Richardson & Davis, LLP
Allen Fennell	c/o Mark M.J. Webb Brinson, Askew, Berry, Siegler, Richardson & Davis, LLP
Ray P. Dean	c/o Percent One Auto Sales, Inc. 2282 Highway 411 Cartersville, Georgia 30121
Sgt. Carl Lively	c/o Floyd County Police Department 5 Government Plaza Rome, Georgia 30161
Drew Plummer	24 Courtyard Lane Cartersville, Georgia 30120
Lisa Baty	c/o Paulding County Magistrate Court 280 Constitution Boulevard Room 1041 Dallas, Georgia 30132

Sgt. Bill
Greene c/o Powder Springs Police Department
4483 Pineview Drive
P.O. Box 46
Powder Springs, Georgia 30127

Marla J. Hert c/o The City of Braswell, Georgia
6997 Braswell Mountain Road
Rockmart, Georgia 30153

Jackie Adair c/o The City of Braswell, Georgia
6997 Braswell Mountain Road
Rockmart, Georgia 30153

Leslie
Hawkins c/o The City of Braswell, Georgia
6997 Braswell Mountain Road
Rockmart, Georgia 30153

Helen Waters c/o The City of Braswell, Georgia
6997 Braswell Mountain Road
Rockmart, Georgia 30153

First National Bank 967 N. Main Street
Representative PO Box 228
Cedartown, Georgia 30125

Defendants may also call any witnesses listed by Plaintiff.
Defendants may request that they be permitted to call additional rebuttal
witnesses based upon testimony at trial.

ATTACHMENT G-1 --
PLAINTIFF'S LIST OF DOCUMENTARY AND PHYSICAL EVIDENCE
 (Exhibits with "strikethrough" will not be offered at trial)

COURT USE	EXHIBIT NUMBER	DESCRIPTION
	1	Floyd County Police Department Incident Report of December 22, 2007.
	2	History Arrest/Booking Report of Robert Richard Lucas dated January 8, 2008.
	3	Resignation Letter of Walter A. Williams dated November 18, 2007.
	4	Bill of Sale dated March 10, 2007 of 2002 Ford Crown Victoria.
	5	Replacement Title of 2002 Ford Crown Victoria issued on December 21, 2007
	6	Counter Check from First National Bank of Polk County dated March 12, 2007 with Remittur identified as City of Braswell and payee identified as City of Powder Springs.
	7	Entry of Appearance of Natalie S. Woodward in case of State of Georgia v. Robert Richard Lucas, Superior Court of Paulding County.
	8	Acknowledgement of employment of Robert Richard Lucas with City of Braswell dated December 18, 2004.
	9	Police Officer Oath of Office of Robert Richard Lucas dated December 18, 2004.
	10	Police Officer Employment Conditions of Robert Richard Lucas dated December 18, 2004.
	11	Georgia Peace Officer Standards and Training Council Change of Status Form of Robert Richard Lucas dated December 18, 2004.

ATTACHMENT G-1 --
PLAINTIFF'S LIST OF DOCUMENTARY AND PHYSICAL EVIDENCE
 (Exhibits with "strikethrough" will not be offered at trial)

COURT USE	EXHIBIT NUMBER	DESCRIPTION
	12	Resignation of Braswell Police Department Officer John Bell dated November 17, 2007.
	13	Resignation of Officer Andrew Plummer dated November 17, 2007.
	14	Title of 2002 Crown Victoria issued to City of Powder Springs on October 31, 2001.
	15	Bill of Sale dated December 9, 2006 of 2000 Ford Crown Victoria from Floyd County, Georgia to Johnny Summerville for \$100.00.
	16	Bill of Sale Dated December 9, 2006 of 2000 Ford Crown Victoria to Richard Lucas for \$1,000.00 from Johnny Summerville.
	17	Bank Ledger Entry from December 12, 2006 from City of Braswell Checking Account Ledger showing payment to Robert Richard Lucas of \$1,000.00 for 2000 Crown Victoria.
	18	Copy of Check to Robert Richard Lucas for \$1,000.00 for purchase of 2000 Crown Victoria Patrol Car dated December 12, 2006.
	19	Check from City of Braswell with Payee identified as Richard Lucas and dated March 12, 2007.
	20	Braswell Police Department Incident Report dated December 21, 2007.
	21	Copy of Identification Card for Richard Lucas from City of Braswell Police Department
	22	Receipt of Court Reporter Fee for Probable Cause Hearing of \$418.38.

ATTACHMENT G-1 --
PLAINTIFF'S LIST OF DOCUMENTARY AND PHYSICAL EVIDENCE
 (Exhibits with "strikethrough" will not be offered at trial)

COURT USE	EXHIBIT NUMBER	DESCRIPTION
	23	City of Braswell Account Statement from December 31, 2006.
	24	Chief Executive Training Class Registration.
	25	Response from Mark M.J. Webb to Open Records Request to City of Braswell dated November 7, 2008
	26	City of Braswell Minutes February 7, 2006.
	27	City of Braswell Minutes May 2, 2006.
	28	City of Braswell Minutes September 5, 2006.
	29	City of Braswell Minutes October 3, 2006
	30	City of Braswell Minutes November 7, 2006
	31	City of Braswell Minutes December 5, 2006
	32	City of Braswell Minutes March 6, 2007
	33	City of Braswell Minutes May 21, 2007
	34	City of Braswell Minutes June 18, 2007
	35	City of Braswell Minutes July 9, 2007
	36	City of Braswell Minutes August 7, 2007
	37	City of Braswell Minutes October 2, 2007
	38	City of Braswell Minutes November 13, 2007
	39	City of Braswell Minutes from Special Called Meeting of November 19, 2007

ATTACHMENT G-1 --
PLAINTIFF'S LIST OF DOCUMENTARY AND PHYSICAL EVIDENCE
 (Exhibits with "strikethrough" will not be offered at trial)

COURT USE	EXHIBIT NUMBER	DESCRIPTION
	40	City of Braswell Minutes January 8, 2008
	41	City of Braswell Minutes February 5, 2008
	42	City of Braswell Agenda and Minutes March 4, 2008
	43	City of Braswell Minutes April 1, 2008
	44	City of Braswell Minutes May 6, 2008
	45	City of Braswell Minutes June 3, 2008
	46	City of Braswell Minutes September 2, 2008
	47	City of Braswell Minutes February 5, 2008
	48	Ledger showing income to City of Braswell
	49	City of Braswell Minutes April 1, 2008
	50	Letter from Walter Williams to Ms. Waters.
	51	City of Braswell Employment Application of Walter Williams
	52	Police Officer Employment Conditions of Walter Williams dated March 17, 2006
	53	Acknowledgement of Employment of Walter Williams dated September 22, 2007
	54	Memo to Frank Rotondo from Ellen Cormier dated November 16, 2007.
	55	Letter to Chief Richard Lucas dated December 14, 2006

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ATTACHMENT G-1 --
PLAINTIFF'S LIST OF DOCUMENTARY AND PHYSICAL EVIDENCE
 (Exhibits with "strikethrough" will not be offered at trial)

COURT USE	EXHIBIT NUMBER	DESCRIPTION
	56	Chief Executive Training Class Form from March, 2007
	57	Quick Reports Seminar Receipt dated March 27, 2007.
	58	Original Title issued to Robert Richard Lucas from City of Powder Springs for 2002 Crown Victoria
	59	Certificate of Title of 1996 Crown Victoria
	60	Handwritten Letter to Richard Lucas from Dave Barton dated December 14, 2006
	61	Letter from Brinson, Askew, Berry, Seigler, Richardson and Davis dated December 3, 2008.
	62	Letter from Brinson, Askew, Berry, Seigler, Richardson and Davis dated March 13, 2008
	63	Copies of Open Records Requests sent to City of Braswell dated November 24, 2008
	64	Letter from Brinson, Askew, Berry, Seigler, Richardson and Davis dated October 28, 2008
	65	Letter to Brinson, Askew, Berry, Seigler, Richardson and Davis dated October 30, 2008
	66	Copies of Open Records Requests sent to City of Braswell dated October 16, 2008
	67	Floyd County Detention Personal Property Form of Robert Richard Lucas
	68	Appearance Bond of Robert Richard Lucas

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Attachment G-1

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ATTACHMENT G-1 --**PLAINTIFF'S LIST OF DOCUMENTARY AND PHYSICAL EVIDENCE**

(Exhibits with "strikethrough" will not be offered at trial)

COURT USE	EXHIBIT NUMBER	DESCRIPTION
	69	Order from Paulding County Magistrate Court of March 6, 2008 dismissing warrant against Robert Richard Lucas
	70	Warrant Application of Robert Richard Lucas against Walter Williams dated March 6, 2008

*Prior Statements, Depositions and Other Documents Likely to Be Used For
Purposes Of Refreshing Recollection, Impeachment of Witnesses
At Trial and/or Substantive Evidence*

	71	Affidavit of Patricia Vaughn dated March 5, 2008
	72	Typed statement from Andrew Plummer
	73	Transcript of Probable Cause Hearing from March 2, 2008, including sworn testimony of Andrew Plummer, Walter Williams, and Robert Richard Lucas

**ATTACHMENT G-2 – DEFENDANTS’ LIST OF DOCUMENTARY AND
PHYSICAL EVIDENCE AND OBJECTIONS TO PLAINTIFF’S
EVIDENCE**

LIST OF DOCUMENTARY EVIDENCE				
Court Use	Defendants ' Exhibit No.	Description	Admit	Denied
	1	Braswell Police Department Incident Report, Case No. 2007-11- 006, Report Date of Nov. 24, 2007		
	2	Braswell Police Department Supplemental Report, Case No. 2007-11- 006, Report Date of Nov. 28, 2007		
	3	Braswell Police Department Supplemental Report, Case No. 2007-11- 006, Report Date of Nov. 30, 2007		
	4	Bill of Sale for 2002 Crown Victoria from City of Powder Springs to City of Braswell		
	5	Check No. 4976989507 from City of Braswell to City of Powder Springs		
	6	Braswell Police Department Supplemental Report, Case No. 2007-11- 006, Report Date of Dec. 1, 2007.		
	7	Affidavit of Sgt. Bill Greene, Powder Springs Police Department		
	8	Print-out from Georgia		

		Registration and Title Information System, Dated Dec. 17, 2007		
	9	Limited Power of Attorney/Motor Vehicle Transactions, Dated Dec. 18, 2007		
	10	Georgia Department of Revenue, Motor Vehicle Division Receipt for 2002 Ford Crown Victoria		
	11	Georgia Department of Revenue, Motor Vehicle Division Receipt for 2002 Ford Crown Victoria		
	12	Georgia Certificate of Title for 2002 Crown Victoria		
	13	State Warrant and Mittimus Affidavit, Signed by Chief Walter A. Williams		
	14	Braswell Police Department Incident Report, Case No. 2007-11-007, Report Date of Dec. 21, 2007		
	15	Floyd County Police Department Incident Report, Case No. 07120039, Report Date of Dec. 22, 2007		
	16	Braswell Police Department Supplemental Report, Case No. 2007-11-007, Report Date of Dec. 22, 2007		

Defendants may also use as evidence any document listed by Plaintiff not objected to by Defendants.

DEFENDANTS' OBJECTIONS TO PLAINTIFF'S EVIDENCE		
Plaintiff's Exhibit No.	Description	Objection
7	Entry of Appearance of Natalie S. Woodward in case of State of Georgia v. Richard Robert Lucas, Superior Court of Paulding County	Relevance
12	Resignation of Braswell Police Department Officer John Bell dated November 17, 2007	Relevance
25	Response from Mark M.J. Webb to Open Records Request to City of Braswell dated November 7, 2008	Relevance
41	City of Braswell Minutes February 5, 2008	Relevance
42	City of Braswell Agenda and Minutes March 4, 2008	Relevance
43	City of Braswell Minutes April 1, 2008	Relevance
44	City of Braswell Minutes May 6, 2008	Relevance
45	City of Braswell Minutes June 3, 2008	Relevance
46	City of Braswell Minutes September, 2 ,2008	Relevance
47	City of Braswell Minutes February 5, 2008	Relevance
48	Ledger showing income to City of Braswell	Relevance
49	City of Brawell Minutes April 1, 2008	Relevance
54	Memo from Frank Rotondo from Ellen Cormier dated November 16, 2007	Hearsay
55	Letter from Chief Richard Lucas dated December 14, 2006	Hearsay Foundation
60	Handwritten letter to Robert Lucas	Hearsay

	from Dave Barton dated December 14, 2006	
61	Letter from Brinson, Askew, Berry, Siegler, Richardson & Davis dated December 3, 2008	Hearsay Relevance
62	Letter from Brinson, Askew, Berry, Siegler, Richardson & Davis dated March 13, 2008	Hearsay Relevance
63	Copies of Open Records Request sent to City of Braswell dated November 24, 2008	Relevance
64	Letter from Brinson, Askew, Berry, Siegler, Richardson & Davis dated October 28, 2008	Hearsay Relevance
65	Letter from Brinson, Askew, Berry, Siegler, Richardson & Davis dated October 30, 2008	Hearsay Relevance
66	Copies of Open Records Requests sent to City of Braswell dated October 16, 2008	Relevance
67	Floyd County Detention Personal Property Form of Robert Richard Lucas	Relevance
71	Affidavit of Patricia Vaughn dated March 5, 2008	Hearsay Relevance Duplication
72	Typed statement from Andrew Plummer	Hearsay Relevance Duplication
73	Transcript of Probable Cause hearing from March 2, 2008, including sworn testimony of Andrew Plummer, Walter Williams, and Robert Richard Lucas	Hearsay Relevance Duplication

ATTACHMENT H-2

TRIAL BRIEF OF DEFENDANTS CITY OF BRASWELL, WALTER A. WILLIAMS, AND ALLEN FENNELL

I. INTRODUCTION AND STATEMENT OF ISSUES.

Defendants City of Braswell, Georgia (sometimes referred to as “Braswell”), Walter A. Williams, and Allen Fennell¹ submit this brief to clarify the issues surrounding the defense of qualified immunity, the doctrine of official immunity, and the privilege of sovereign immunity. The issues to be decided by the Court are as follows:

- A. The City Officials conducted an investigation, were satisfied that they had probable cause, and applied for a search warrant for the arrest of Plaintiff Richard Lucas for the crime of theft by taking a 2002 Ford Crown Victoria belonging to the City of Braswell (“Patrol Car”). Did the City Officials violate the bounds of clearly-established law such that they lose the defense of qualified immunity?
- B. Under the same facts as above, did the City Officials’ acts show a lack of actual malice or intent to injure Lucas such that they are not

¹Walter A. Williams and Allen Fennell will collectively be referred to as the “City Officials.”

entitled to assert the doctrine of official immunity?

- C. Lucas has neither shown that Braswell waived its sovereign immunity nor that the City Officials were not performing a governmental function. Has Braswell lost the privilege of sovereign immunity?

As demonstrated in Part II below, the answer to each of these questions is “no.”

II. ARGUMENT AND CITATION OF AUTHORITY.

- A. **Because the City Officials acted within their discretionary authority and because the City Officials acted within the bounds of clearly-established law, they are entitled to the defense of qualified immunity.**

As a matter of policy, courts have developed the defense of qualified immunity to ensure that government officials feel confident that they can perform their discretionary duties without the nagging fear of personal liability or harassing litigation. *Durruthy v. Pastor*, 351 F.3d 1080, 1087 (11th Cir. 2003). With this policy purpose as its goal, qualified immunity offers complete protection to government officials in their individual capacities. *Wood v. Kesler*, 323 F.3d 872, 877 (11th Cir. 2003).

A qualified immunity analysis requires two steps. First, a court must determine whether a government official was acting within the scope of his discretionary authority at the time the alleged wrongful acts occurred. *Al-Amin v.*

Smith, 511 F.3d 1317, 1324 (11th Cir. 2008); *Durruthy*, 351 F.3d at 1087. Once the official establishes this fact, the burden shifts to the plaintiff to show that the defense of qualified immunity is not appropriate. *Durruthy*, 351 F.3d at 1087. In order to determine whether qualified immunity is not appropriate, a court must consider two things. *Al-Amin*, 511 F.3d at 1324. First, a court must determine whether the plaintiff has established a violation of a constitutional right. *Al-Amin*, 511 F.3d at 1324; *Durruthy*, 351 F.3d at 1087. Second, a court must determine whether the law surrounding the constitutional right is “clearly established.” *Durruthy*, 351 F.3d at 1087; *see also Rioux v. City of Atlanta, Ga.*, 520 F.3d 1269, 1282 (11th Cir. 2008). The law is clearly established where it would give a government official fair warning that the alleged wrongful act was unconstitutional. *Al-Amin*, 511 F.3d at 1325. However, this standard must be judged within the specific factual context of each case, and not as a general proposition. *Rioux*, 520 F.3d at 1283; *Durruthy*, 351 F.3d at 1087.

1. ***The City Officials are entitled to qualified immunity on Lucas’ claims for false arrest because they had at least arguable probable cause to apply for an arrest warrant against Lucas; therefore, they did not violate any of Lucas’ clearly-established rights.***

The first claim in Lucas’ Complaint is one for false arrest against the City Officials. (See Pl.’s Compl. ¶¶ 98-106.) However, Lucas should not recover

because the City Officials are entitled to qualified immunity on this claim. As discussed above, the Court must first determine whether the City Officials were acting within their discretionary authority. Lucas has acknowledged that the City Officials were acting within their discretionary authority in his Complaint. (Pl.'s Compl. at ¶¶ 99, 108, 121-132, 130-132.) Therefore, Lucas has conceded this part of the analysis.²

Having established that the City Officials were acting within their discretionary authority, the burden then shifts to Lucas to show that the City Officials are not entitled to qualified immunity. *Durruthy*, 351 F.3d at 1087. Assuming, for the sake of argument, that Lucas has established a *prima facie* case of a Fourth Amendment violation,³ the inquiry then shifts to whether the right was clearly established. *Id.* Here, Lucas cannot prove that the City Officials violated

²Even without Lucas' acknowledgment, it is clear that the City Officials were acting within their discretionary authority. To determine whether a government official is acting within his discretionary authority, a court must look to whether the official was "engaged in a legitimate job-related function." *Anderson v. Bd. of Regents of Univ. System of Ga.*, 2010 WL 427652 *4 (N.D. Ga. Feb. 2, 2010) (quoting *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1265 (11th Cir. 2004)). Under the facts of the present case, there is no dispute that the City Officials were engaged in a legitimate job-related function. The entirety of this action deals with the purchase of the Patrol Car by the City of Braswell and the city police chief and city manager's efforts to recover that vehicle.

³The City Officials do not concede that Lucas has made this *prima facie* case.

any clearly-established constitutional right.

Lucas alleges that the City Officials were aware that they had no probable cause—or arguable probable cause—to apply for a warrant for his arrest. (Pl.’s Compl. at ¶¶ 100-102.) His claim of false arrest is premised upon this allegation. (See Pl.’s Compl. at ¶¶ 103-105.) In the Eleventh Circuit, an officer has probable cause where an arrest is “objectively reasonable based on a totality of the circumstances.” *Lee v. Ferraro*, 284 F.3d 1188, 1195 (11th Cir. 2002). Under this standard, an arrest is valid where, under the facts and circumstances within an officer’s knowledge, a reasonable officer would believe that a suspect has committed a crime. *Id.*

The facts of this case indicate that the City Officials had probable cause to believe that Lucas committed a crime. On November 24, 2007, Allen Fennell, acting within his authority as the Braswell City Manager, requested that Williams investigate the missing Patrol Car. Williams investigated the incident as requested. During his investigation, the City of Powder Springs provided Williams with: (1) a copy of a certified check, remitted by the City of Braswell to purchase the Patrol Car; and, (2) a bill of sale evidencing the sale of the Patrol Car from the City of Powder Springs to the City of Braswell. On December 22, 2007, Williams also received a phone call from a used car salesman alerting Williams to

the fact that Lucas was seeking to trade two Crown Ford Victoria police cruisers for a Ford truck and that the police vehicle at issue was hidden behind Lucas' garage in Floyd County. Based on his investigation, Williams applied for an arrest warrant for Lucas on a theft-by-taking charge. Additionally, even under Lucas' theory of the case,⁴ Allen Fennell, the City Manager, and Walter Williams, the Braswell City Police Chief, had no knowledge of Richard Fennell's alleged failure to provide Lucas with City of Braswell check #2302 or its proceeds.

These facts, viewed in the totality of the circumstances, indicate that the City Officials had probable cause to believe that Lucas committed a crime, namely, theft-by-taking of the Patrol Car. Therefore, the City Officials did not violate any of Lucas' clearly-established rights and are entitled to qualified immunity.

Further, even if Allen Fennell and Williams did not have actual probable cause, they surely had at least arguable probable cause. Under Eleventh Circuit precedent, arguable probable cause is all that is necessary for qualified immunity.

⁴Lucas contends that: (1) Braswell never reimbursed Lucas for a patrol car purchased with Lucas' own money; (2) Richard Fennell actually stole the money to be used for the Patrol Car from Braswell; and, (3) Richard Fennell attempted to cover up his theft of the money and never disclosed to any official, including either Williams or Allan Fennell, what he had done. (*See generally* Pl.'s State. of the Case; Pl.'s Responses to Def.'s 1st Interrogatories and Reqs. for Admiss.)

Wood, 323 F.3d at 878. Under that standard, a court need not find that actual probable cause existed; rather, it need only find that an officer reasonably could have believed probable cause existed based on the facts he knew at the time.

Durruthy, 351 F.3d at 1089; *Wood*, 323 F.3d at 878. Based on the facts as described above, an officer could have reasonably believed that probable cause existed. Therefore, even if actual probable cause did not exist, arguable probable cause did exist. As such, City Officials did not violate any of Lucas' clearly-established rights and are entitled to qualified immunity.

2. *The City Officials are entitled to qualified immunity for Lucas' claim of malicious prosecution because an essential element of the claim—lack of probable cause—is missing.*

With guidance from state law, the Eleventh Circuit has determined that a plaintiff must prove four elements in order to establish a malicious prosecution claim under 42 U.S.C. § 1983. These elements are: (a) a criminal prosecution; (b) with malice; (c) without probable cause; (c) that terminated in the accused's favor; and (d) that damaged the accused. *See Wood*, 323 F.3d at 881-882; *Kelly v. Curtis*, 21 F.3d 1544, 1556 (11th Cir. 1994). As described above, because the City Officials had probable cause—either actual or arguable—to apply for an arrest warrant for Lucas, an essential element of a Lucas' malicious prosecution claim is missing. *See Wood*, 323 F.3d 882 (stating that lack of probable cause is

an essential element of a federal law malicious prosecution claim). In addition, Lucas asserts that Richard Fennell stole funds from Braswell and admits that Richard Fennell did not inform Allen Fennell or any other Braswell employees of his alleged theft. Under Lucas' theory of the events, neither City Official could have acted with malice in investigating or applying for a warrant for Lucas' arrest, because Lucas had possession of the Patrol Car, and the City Officials had no knowledge of Lucas' claims against Richard Fennell. Thus, because Lucas has failed to meet all four elements required of his 42 U.S.C. § 1983 claim, the City Officials are entitled to qualified immunity. *See Wood*, 323 F.3d at 882-883.

Because the City Officials had either actual or arguable probable cause to apply for an arrest warrant for Lucas, and because Lucas cannot show that the City Officials acted with malice, they did not violate any of Lucas' clearly-established rights. Therefore, the City Officials are entitled to qualified immunity from Lucas' claims of false arrest and malicious prosecution.

B. Because the City Officials acted within their discretionary authority and because the City Officials had at least arguable probable cause to apply for an arrest warrant for Lucas—demonstrating a lack of actual malice or an intent to injure—they are entitled to assert the doctrine of official immunity on Lucas' state law claims.

Similar to the federal defense of qualified immunity, Georgia's courts have developed the doctrine of official immunity to preserve a government official's

“independence of action without fear of lawsuits and to prevent a review of his or her judgment in hindsight.” *See Cameron v. Lang*, 274 Ga. 122, 123 (2001).

Pursuant to this policy purpose, official immunity offers limited protection to government officers working within the scope of their official authority. *Reese v. City of Atlanta*, 261 Ga. App. 761, 761 (2003). Government officials are immune from personal liability for their discretionary acts, unless the government officials committed the acts with actual malice or an intent to injure. *Burnett v. Unified Govt. of Athens-Clarke Co., Ga.*, 2009 WL 5175296 *9 (M.D. Ga. Dec. 22, 2009); *Campbell v. Goode*, 304 Ga. App. 47, 49 (2010); *Valades v. Uslu*, 301 Ga. App. 885, 890 (2009); *Reed v. Dekalb Co.*, 264 Ga. App. 83, 86 (2003).

The City Officials are immune from Lucas’ two state law claims—false arrest and malicious prosecution—because of the doctrine of official immunity. First, Lucas has acknowledged that both of these alleged claims were committed within the City Officials’ discretionary authority.⁵ (Pl.’s Compl. at ¶¶ 120, 122-

⁵Even without Lucas’ acknowledgment, it is clear that the City Officials were acting within their discretionary authority. For an act to be “discretionary,” the government official must exercise his personal judgment, which includes examining facts, reaching a conclusion based on such facts, and then acting on them in a way not specifically mandated. *Reed*, 264 Ga. App. at 86. The act of investigating a suspect and applying for a search warrant necessarily requires the examination of facts, reaching a conclusion (e.g. that probable cause exists), and acting on the facts in a specific way not specifically mandated (e.g. applying for an arrest warrant). Therefore, the City Officials’ acts were discretionary.

123, 129, 131-132.) Second, there is no evidence that the City Officials acted with actual malice or intent to injure Lucas;⁶ rather, as discussed above in Parts II.A.1. and II.B. of this Trial Brief, the City Officials had at least arguable probable cause to believe that Lucas had committed a crime. As such, the City Officials are entitled to official immunity on Lucas' state law claims.

C. Because Lucas has not—and cannot—prove a waiver of Braswell's privilege of sovereign immunity, Lucas' false arrest and malicious prosecution claims against Braswell fail.

Under Georgia's Constitution, the General Assembly has the power to waive the sovereign immunity of the state's municipalities. Ga. Const. Art. IX, § II, ¶ 9; *see also City of Atlanta v. Heard*, 252 Ga. App. 179, 181 (2001). Pursuant to this power, the General Assembly has declared: “[I]t is the public policy of the State of Georgia that there is no waiver of sovereign immunity of municipal corporations of the state and such municipal corporations shall be immune from liability for damages.” O.C.G.A. § 36-33-1; *see also City of Atlanta*, 252 Ga. App. at 181. The General Assembly has waived sovereign immunity of municipalities in limited situations, such as when a municipality has purchased auto liability

⁶Georgia courts have created a very high standard for actual malice. *E.g. Campbell*, 304 Ga. App. at 49 (calling a suspect an “a--hole” fails to show actual malice); *Valades*, 301 Ga. App. at 891 (stating that pulling suspect's hair, pointing a weapon at a suspect's neck, asking a suspect whether she “wanted to die,” and kicking a suspect while taking him down do not rise to the level of actual malice).

insurance coverage. *See Scott v. City of Valdosta*, 280 Ga. App. 481, 483-484 (2006). Sovereign immunity is not an affirmative defense; instead, it is a privilege and the plaintiff bears the burden of proving a waiver. *Id.* Furthermore, a municipality is not responsible for the torts of its officers in the performance of governmental functions. *Weaver v. City of Statesboro*, 288 Ga. App. 32, 34 (2007); *see also Davis v. City of Rome*, 23 Ga. App. 188 (1919). It is well-established that under Georgia law, police work—such as performing an investigation and applying for an arrest warrant—constitutes a governmental function. *See Weaver*, 288 Ga. App. at 34-35.

Here, Lucas has not shown any waiver of Braswell's sovereign immunity. Lucas has not proven the existence of any applicable insurance policy, nor does one exist. *See Scott*, 280 Ga. App. at 484-485. As such, Braswell is entitled to sovereign immunity and cannot be found liable for Lucas' state law claims.

III. CONCLUSION.

Because Braswell and its City Officials are protected by the defense of qualified immunity, the doctrine of official immunity, and the privilege of sovereign immunity, they are not liable to Lucas. As discussed in Part II.A.1. above, the City Officials are entitled to the defense of qualified immunity on Lucas' false arrest claim because they had at least arguable probable cause to

apply for an arrest warrant for Lucas, and as such, did not violate any of Lucas' clearly-established rights. As detailed in Parts II.A.2. and II.B., the City Officials are entitled to the defense of qualified immunity for Lucas' malicious prosecution claim because essential elements of the claim—lack of probable cause and malice—are missing. Therefore, the City Officials did not violate any of Lucas' clearly-established rights.

Moreover, Lucas' state law claims against the City Officials fail because the City Officials had at least arguable probable cause to apply for an arrest warrant for Lucas, which demonstrates a lack of actual malice or an intent to injure. Thus, the City officials are entitled to the defense of qualified immunity on Lucas' state law claims. Last, Braswell is entitled to invoke its privilege of sovereign immunity—defeating Lucas' false arrest and malicious prosecution claims—because Lucas cannot prove any waiver of Braswell's sovereign immunity.

For the foregoing reasons, a verdict should be directed in favor of Braswell, Walter A. Williams, and Allen Fennell on each of Lucas' claims.

Each of the undersigned counsel for the parties hereby consents to entry of the foregoing pretrial order, which has been prepared in accordance with the form pretrial order adopted by this Court.

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