

IN THE SUPERIOR COURT OF CHEROKEE COUNTY
STATE OF GEORGIA

Kerry Walker, *
 *
 Plaintiff, *
 * Civil Action No.:
 v. * 07-CV-3325
 *
 Garry Moss, et al., *
 *
 Defendants. *

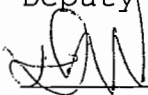
DEFENDANT'S DEMAND FOR JURY TRIAL

COME NOW Defendants Moss and Sumner, by special appearance, without waiving sufficiency of service or submitting to the jurisdiction of the court, by and through the Attorney General of the State of Georgia, and file this demand for a jury trial on all issues triable by a jury pursuant to the rules of the Civil Practice Act.

Respectfully submitted, this 10th day of December, 2007.

THURBERT E. BAKER
Georgia Bar No. 033887
Attorney General

KATHLEEN M. PACIOUS
Georgia Bar No. 558555
Deputy Attorney General



DEVON ORLAND
Georgia Bar No. 554301
Senior Assistant Attorney General

Tina M. Piper

TINA M. PIPER

Georgia Bar No. 142469

Assistant Attorney General

Please address all
Communications to:
TINA M. PIPER
40 Capitol Square, S.W.
Atlanta, GA 30334-1300
Telephone: (404) 463-8850
Facsimile: (404) 651-5304
tpiper@law.ga.gov

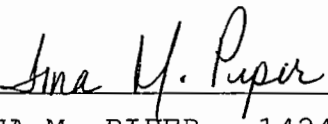
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of
the foregoing DEFENDANT'S DEMAND FOR JURY TRIAL upon:

Kerry Walker
4590 (A) Knox Bridge Highway
Canton, Georgia 30114

by placing the same in the United States Mail with
adequate, first class postage placed thereon.

This 10th day of December, 2007.



TINA M. PIPER 142469
Assistant Attorney General



Department of Law
State of Georgia

THURBERT E. BAKER
ATTORNEY GENERAL

40 CAPITOL SQUARE SW
ATLANTA, GA 30334-1300

Writer's Direct
Dial:
404-463-8850
Fax 404-651-5304

December 10, 2007

VIA U.S. MAIL

Superior Court of Cherokee County
Patricia Baker, Clerk
90 North Street
Suite G170
Canton, Georgia 30114

RE: *Kerry Walker vs. Garry Moss, et al.*
Superior Court of Cherokee County, Civil Action No: 07-CV-3325

Dear Ms. Baker:

Please find enclosed for filing in connection with the above-referenced matter Defendants' Demand for Jury Trial and Answer by Special Appearance on behalf of Defendants Moss and Sumner.

Also enclosed is a copy of the first page of this document, which I would ask that you stamp with your filing notation and return to me in the self-addressed, stamped envelope. By copy of this letter, I am providing Plaintiff, Kerry Walker with his service copies of this document.

Should you have any questions on this matter, feel free to call me at (404) 463-8850. Thank you.

Sincerely,

Freda Moore
Secretary to Tina M. Piper

Enclosures

cc: Plaintiff, Kerry Walker (w/Enclosure)

**IN THE SUPERIOR COURT OF CHEROKEE COUNTY
STATE OF GEORGIA**

Kerry Walker,
Plaintiff,

v.

Garry Moss, et al.,
Defendants.

*
*
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*
*
*
*

CIVIL ACTION NO.
07-CV-3325

**ANSWER BY SPECIAL APPEARANCE ON BEHALF
OF DEFENDANTS MOSS AND SUMNER**

COME NOW, Defendants Moss and Sumner, by and through counsel, Thurbert E. Baker, Attorney General of Georgia, and hereby make this special appearance without waiving service or submitting to this Court's jurisdiction, respond to the Complaint filed by Kerry Walker, Plaintiff, as follows:

FIRST DEFENSE

The Complaint should be dismissed for insufficiency of service of process for failing to serve Defendants pursuant to O.C.G.A. § 9-11-4(c).

SECOND DEFENSE

The Complaint should be dismissed to the extent that Plaintiff alleges claims under the Georgia Torts Claim Act, as Defendants are State of Georgia employees acting within the scope of their employment and as such, are immune from suit pursuant to O.C.G.A. § 50-21-25.

THIRD DEFENSE

The Complaint should be dismissed for failure to state a claim upon which relief can be granted.

FOURTH DEFENSE

The Complaint should be dismissed because Plaintiff cannot show a clear legal right to the relief sought.

FIFTH DEFENSE

The Complaint should be dismissed because, to the extent that Plaintiff alleges claims under the Georgia Tort Claims Act, Plaintiff failed to file an ante litem notice, as required by O.C.G.A. § 50-21-26.

SIXTH DEFENSE

The Complaint should be dismissed because, to the extent that Plaintiff alleges claims under the Georgia Tort Claims Act, Plaintiff failed, as required by O.C.G.A. § 50-21-35, to serve Defendant and the director of the Risk Management Division of the Department of Administrative Services, and to mail a copy of the Complaint to the Attorney General.

SEVENTH DEFENSE

The Complaint should be dismissed because Defendant Moss is entitled to prosecutorial immunity.

EIGHTH DEFENSE

The Complaint should be dismissed because Defendant Sumner is entitled to judicial immunity.

NINETH DEFENSE

The Complaint should be dismissed on the grounds of sovereign immunity.

TENTH DEFENSE

The Complaint should be dismissed because Defendants Moss and Sumner are entitled to official immunity.

ELEVENTH DEFENSE

This Complaint should be dismissed because Defendants are entitled to qualified immunity.

TWELTH DEFENSE

To the extent Plaintiff alleges claims for False Arrest, Abuse of Process, Malicious Prosecution, or claims against Defendants performed in a discretionary function, these claims should be dismissed as they are barred by the Georgia Torts Claim Act, pursuant to O.C.G.A. § 50-21-21.

THIRTEENTH DEFENSE

Without waiving the above defenses, or any other defenses to which Defendants may be entitled, Defendants answer the allegations contained in Plaintiff's Complaint as follows:

1.

Defendants deny paragraph 1 of Plaintiff's Complaint.

2.

Defendants deny paragraph 2 of Plaintiff's Complaint.

3.

Defendants are without knowledge sufficient to form a belief as to the truth of the matter and therefore deny paragraph 3 of Plaintiff's Complaint.

4.

Defendants are without knowledge sufficient to form a belief as to the truth of the matter regarding the conclusory statements in paragraph 4, and thereby deny same.

5.

To the extent that Defendants are unable to decipher any claims, Defendants deny allegations in paragraph 5.

6.

Defendants deny paragraph 6 of Plaintiff's Complaint.

7.

Defendants are without knowledge sufficient to form a belief as to the truth of the matter regarding allegations made in paragraph 1a of Plaintiff's Affidavit, and therefore deny same.

8.

Defendants are without knowledge sufficient to form a belief as to the truth of the matter regarding allegations made in paragraph 2a of Plaintiff's Affidavit, and therefore deny same.

9.

Defendants are without knowledge sufficient to form a belief as to the truth of the matter regarding allegations made in paragraph 3a of Plaintiff's Affidavit, and therefore deny same.

10.

Defendants are without knowledge sufficient to form a belief as to the truth of the matter regarding allegations made in paragraph 4a of Plaintiff's Affidavit, and therefore deny same.

11.

Defendants are without knowledge sufficient to form a belief as to the truth of the matter regarding allegations made in paragraph 5a of Plaintiff's Affidavit, and therefore deny same.

12.

Defendants are without knowledge sufficient to form a belief as to the truth of the matter regarding allegations made in paragraph 6a of Plaintiff's Affidavit, and therefore deny same.

13.

Defendants are without knowledge sufficient to form a belief as to the truth of the matter regarding allegations made in paragraph 7a of Plaintiff's Affidavit, and therefore deny same.

14.

Defendants are without knowledge sufficient to form a belief as to the truth of the matter regarding allegations made in paragraph 8a of Plaintiff's Affidavit, and therefore deny same.

15.

Defendants are without knowledge sufficient to form a belief as to the truth of the matter regarding allegations made in paragraph 9a of Plaintiff's Affidavit, and therefore deny same.

16.

Defendants are without knowledge sufficient to form a belief as to the truth of the matter regarding allegations made in paragraph 10a of Plaintiff's Affidavit, and therefore deny same.

17.

Defendants are without knowledge sufficient to form a belief as to the truth of the matter regarding allegations made in paragraph 11a of Plaintiff's Affidavit, and therefore deny same.

18.

Defendants are without knowledge sufficient to form a belief as to the truth of the matter regarding allegations made in paragraph 12a of Plaintiff's Affidavit, and therefore deny same.

19.

Defendants are without knowledge sufficient to form a belief as to the truth of the matter regarding allegations made in paragraph 13a of Plaintiff's Affidavit, and therefore deny same.

20.

Defendants are without knowledge sufficient to form a belief as to the truth of the matter regarding allegations made in paragraph 14a of Plaintiff's Affidavit, and therefore deny same.

21.

Defendants are without knowledge sufficient to form a belief as to the truth of the matter regarding allegations made in paragraph 15a of Plaintiff's Affidavit, and therefore deny same.

22.

Defendants are without knowledge sufficient to form a belief as to the truth of the matter regarding allegations made in the "Conclusion" section of Plaintiff's Affidavit, and therefore deny same.

23.

Defendants are without knowledge sufficient to form a belief as to the truth of the matter regarding allegations made in paragraph 1a of Plaintiff's Affidavit, and therefore deny same.

24.

Defendants are without knowledge sufficient to form a belief as to the truth of the matter regarding allegations made in paragraphs 1-49 of the Affidavit of Jeff Rusbridge, and therefore deny same.

25.

Defendants are without knowledge sufficient to form a belief as to the truth of the matter regarding allegations made in pages 1-16 of Plaintiff's Exhibit 2, and therefore deny same.

This the ____ day of December, 2007.

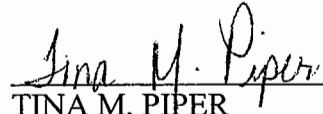
Respectfully submitted,

THURBERT E. BAKER 033887
Attorney General

KATHLEEN M. PACIOUS 558555
Deputy Attorney General



DEVON ORLAND
Georgia Bar No. 554301
Senior Assistant Attorney General



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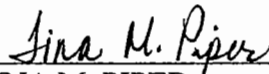
tpiper@law.ga.gov

CERTIFICATE OF SERVICE

I do hereby certify that I have this day served the within and foregoing ANSWER BY SPECIAL APPEARANCE ON BEHALF OF DEFENDANTS MOSS AND SUMNER, prior to filing the same, by depositing a copy thereof, postage prepaid, in the United States Mail, properly addressed upon:

Kerry Walker
4590 (A) Knox Bridge Highway
Canton, Georgia 30114

This the 10th of December, 2007.



TINA M. PIPER
Assistant Attorney General

State Department of Law
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Atlanta, GA 30334-1300
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FAX: (404) 561-5304
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