

16CV161

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Jenny Grimes, Clerk
Candler County, Georgia

IN THE SUPERIOR COURT OF CANDLER COUNTY
STATE OF GEORGIA

LIONEL SEABROOKS, as
Administrator of the Estate of Fanecia
Holloway, deceased & as Conservator of
Adrianna Seabrooks, a Minor Child.

Plaintiff,

v.

METTER, GEORGIA
and CHARLIE MINCEY

Defendants.

Civil Action File No.: 16CV161

PLAINTIFF'S MOTION TO DETERMINE
SUFFICIENCY OF DEFENDANT METTER, GEORGIA'S RESPONSES TO
PLAINTIFF'S REQUESTS FOR ADMISSIONS

The point of requests for admission is “to expedite trial and clarify the issues in a case.” *Elrod v. Sunflower Meadows Dev.*, 322 Ga. App. 666, 668 (2013). That is exactly what the thirty-three requests in Plaintiff’s 4th Requests for Admission (“RFAs”) were designed to do. For each of the thirty-three matters addressed in Plaintiff’s 4th RFAs, Plaintiff *cited evidence of record* proving that the matter should be admitted. *See* Pls.’ 4th RFAs (Ex. A). In thirty-two of those instances, that citation was to *the testimony of a defense witness*. In the remaining request—which the City admitted—the citation was to a deposition exhibit.

The City dodged many of the requests, failing to respond with the precision that O.C.G.A. § 9-11-36(a)(2) requires. *See* City Resp. to Pls.’ 4th RFAs (Ex. B). The City’s failure to give direct, concise responses threatens to make this trial much more complicated than it needs to be, so Plaintiff conferred with the City in an attempt to resolve this issue. *See* Correspondence (Ex. C). After Plaintiff conferred with the City, the City rectified *some* of its responses by

removing *some* baseless objections and *some* of its extraneous statements. *See* City Am. Resp. to Pls.’ 4th RFAs (Ex. D) (RFA 4, 13, 27, 31, 32). However, the City also left many of its responses unchanged (RFAs 6, 7, 14, 20) and altered others only by changing its words “[b]y way of further response, the City states that” to “[t]he City qualifies its response and states that . . .” (RFAs 1, 2, 3, 5, 8, 16, 18, 21, 33). That change of *form*, but not *substance*, fails to address the insufficiencies raised by Plaintiff that were present in the City’s first RFA responses. The City’s amended responses still do not comport with the statute. Plaintiff accordingly files this motion.

When a party fails to respond as O.C.G.A. § 9-11-36 requires, a trial court has two options. The Court can “order either that the matter is admitted or that an amended answer be served.” O.C.G.A. § 9-11-36(b). After a hearing, the Court has discretion to choose either option. *McClarty v. Trigild Inc.*, 333 Ga. App. 112, 115 (2015) (addressing discretion); *Clements v. Toombs County Hosp. Auth.*, 175 Ga. App. 651, 652-53 (1985) (requiring hearing before request can be deemed admitted).

I. FACTS

On December 5, 2015, a jogger using the Metter-Candler Recreation Department nature trail saw a Pontiac Aztek in the parking lot. Incident Report, Witness Statement p. 69 (Ex. E). Even though the Aztek was idling, it appeared to be empty. *Id.* Concerned, the jogger called the police, described the car to the operator, and provided the vehicle’s tag number. *Id.* As she was doing so, she saw someone sit up in the car and told the operator that the vehicle occupant was “ok.” *Id.* at 70.

Defendant Metter, Georgia (“Defendant” or “the City”) sent out a few officers, including Officer Montevalvo, to try to make contact with the Aztek. Montevalvo Dep. 22:03-05 (Ex. F). By the time Montevalvo saw the Aztek, it had left the Recreation Department and was turning onto

Pine Street from College Street. *Id.* at 22:13-16. Defendant Charles Mincey was driving the vehicle, and Fanecia Holloway (the decedent) was a passenger. 30(b)(6) Dep. 37:07-11 (Ex. G); Mincey Dep. 21:20-21 (Ex. H).

Although neither the Aztek nor anyone in it had committed a crime, Montealvo followed the Aztek for several city blocks. Montealvo Dep. 39:07-40:06, Ex. 16. Eventually, Mincey failed to come to a complete stop at a stop sign. *Id.* at 24:07-13. Montealvo made a call over his radio announcing that he intended to turn on his blue lights and he thought Mincey would run—in his own words, Montealvo was “letting everybody know that he’s possibly going to flee as soon as I hit my lights.” *Id.* at 24:01-03. Montealvo then turned on his blue lights. *Id.* at 24:07-13. Mincey did not pull over. *Id.* Montealvo began to pursue.

Montealvo had a decision to make. The Metter Police Department had a clear policy in place governing motor vehicle pursuits. The policy, titled “Vehicle Operations,” was a part of the “Standard Operating Policy and Procedures Manual,” which contained the formally adopted policies and procedures of the Metter Police Department. 30(b)(6) Dep. 17:01-11. Montealvo was familiar with the standard operating procedures. Montealvo Dep. 72:12-15. The part of the standard operating procedures labeled “Vehicle Operations” *expressly forbade* pursuits when the alleged violator’s only crimes were “misdemeanor offenses, non-forcible felonies, *traffic*, or civil infractions.” *See* “Vehicle Operations Policy” (Ch. 12 of SOP Manual) at 108 (Ex. I) (emphasis added).¹

Although the driver of the Aztek had committed only “traffic infractions,” Montealvo decided to chase the Aztek anyway.

¹ At some points in deposition testimony and elsewhere, this same document has been variously called the “Vehicle Operations Policy” or “Chapter 12,” since it constituted the 12th chapter of the Standard Operating Policy and Procedures Manual. It is also referred to as “Exhibit 5,” because it was made Exhibit 5 to the City’s 30(b)(6) deposition.

Montealvo chased Mincey for miles. Montealvo Dep. 40:10-20. Montealvo chased Mincey across no-passing zones, weaving around oncoming traffic, running people off of the road. *Id.* at 25:01-09. By Montealvo's own account, the Aztek ran "at least" four people off the road. *Id.* at 31:18-25. Traffic "had to stop, veer basically to oncoming traffic to avoid collision" *Id.* at 23:19-24. Montealvo admits that they were traveling at "a very high rate of speed" and that there was "a good bit of traffic." *Id.* at 25:01-03, 41:10-18.

Montealvo could have discontinued the pursuit as required by the Vehicle Operations Policy. *See* Vehicle Operations Policy at 108-112. But Montealvo continued to accelerate, reaching speeds of 110 miles per hour while chasing Mincey in and out of traffic. 30(b)(6) Dep. 39:25-40:03. As Montealvo chased the Aztek driven by Mincey, Montealvo witnessed several near collisions, but he nevertheless continued to chase. Montealvo Dep. 25:07-19, 32:22-33:03. Montealvo notified dispatch that he was nearing the city limits and that he was travelling at 110 miles per hour, but he still "continued to pursue." *Id.* at 26:11-15. Montealvo was still chasing Mincey at speeds of over 100 miles per hour when the Aztek lost control, veered off the road, and flipped. *Id.* at 26:09-25. Ms. Holloway, the passenger, was ejected. *Id.* at 27:16-28:05. She was pronounced dead on the scene. *See* GSP Crash Report (Ex J). Ms. Holloway is the decedent on whose behalf this case has been filed.

On January 7, 2016, counsel for Plaintiff sent an Open Records Act ("ORA") request to the City seeking, among other things, "a copy of Metter Police Department's policies in effect on December 5, 2015." *See* Open Records Request (Ex. K). In response to that request, the city's clerk acquired a computer jump drive from the Chief of the Metter Police Department, and then sent that jump drive to Plaintiff's counsel. Conner Dep. 6:24-8:20 (Ex. L). The jump drive that the City sent to Plaintiff contained the Standard Operating Procedures Manual ("SOP Manual")

referred to above, which in turn contained the Vehicle Operations Policy referred to above. *Id.* at 11:13-13:22. As noted above, the Vehicle Operations Policy explicitly forbade vehicle pursuits for “misdemeanor offenses, non-forcible felonies, traffic, or civil infractions.” *See* “Vehicle Operations” Policy (Ch. 12 of SOP Manual) at 108. The Vehicle Operations Policy had an effective date of October 29, 2007. *Id.* at 104.

The City agreed in deposition testimony that the SOP Manual containing the Vehicle Operations Policy had been “formally adopted” before Montevalvo engaged in this chase. 30(b)(6) Dep. 16:02-05, 16:15-19. Montevalvo also agreed that the SOP Manual, which contained the Vehicle Operations Policy, is the document that “governs the police force.” Montevalvo Dep. 71:05-13. However, the City now claims that the Vehicle Operations Policy contained within the SOP Manual did *not* apply. Instead, the City asserts that a new document titled “5-3” controlled as the police policy on high-speed chases. 30(b)(6) Dep. 16:02-14, 22:17-22. “5-3” was not produced in response to Plaintiffs’ Open Records Request—Defendant produced it only after litigation began. Unlike the Vehicle Operations Policy, “5-3” had not been approved by the City Council, had never been enacted by General Order, and had no effective date. 30(b)(6) Dep. 12:19-21, 23:21-24:02, 27:11-29:13.

When deposed, the former chief of the police department, Mack Seckinger, claimed that although all officers of his department had allegedly “signed off on receiving, reading -- reading and understanding [the 5-3 document]” because it was put on a clipboard in their briefing room; neither he nor the City could produce that clipboard or the signatures of Metter’s officers. 30(b)(6) Dep. 25:19-26:10. The current chief of the police department, Rob Shore, testified that he had been a captain in the department from 2016-2018, including at the time of the subject collision, and *he had never signed off on “5-3.”* Shore Dep. 6:17-21, 29:06-14 (Ex. M). To

Shore's knowledge, "there [was] nothing there that indicates anybody signed off on it." *Id.* at 35:17-23. In fact, Shore testified that *since* this collision the police pursuit policy has changed from the Vehicle Operations Policy in Chapter 12, but it has *not* changed to anything called "5-3". *Id.* at 28:03-11.

The City concedes that it produced the SOP Manual and the Vehicle Operations Policy in response to Plaintiff's counsel's Open Records Request in January 2016. Conner Dep. 13:06-22; 30(b)(6) Dep. 13:06-21. The City admits that it did *not* produce "5-3" at that time. *Id.*; City Resp. to RFA 14 (*See* Ex. B). Nonetheless, the City continues to assert that the duly-enacted Vehicle Operations Policy was inapplicable, and instead that "5-3" applied.

Plaintiff served his Fourth Requests for Admission ("RFAs") on the City on April 20, 2018. Plaintiff drafted these RFAs to narrow the issues of the case, addressing the Vehicle Operations Policy, how officers were trained on the policy, the effect of police policies on safety, and whether Officer Montealvo violated the Vehicle Operations Policy. The City served amended responses to these RFAs on September 3, 2018, after Plaintiff brought insufficiencies in the City's initial responses to its attention in accordance with Uniform Superior Court Rule 6.4(b).

Most of Defendant's amended responses are still insufficient because Defendant:

- (a) admitted requests subject to groundless objections (RFAs 5, 16); and
- (b) inserted extraneous, self-serving statements into responses that should have been admitted concisely in good faith (RFAs 1-3, 6-8, 14, 18, 20, 21, 33).

As to the RFAs identified in category (a) above (i.e., Plaintiff's 4th RFAs 5, 16), Plaintiff respectfully asks the Court to deem the RFAs admitted. *See* O.C.G.A. § 9-11-36(b) (authorizing this remedy).

As to the RFAs identified in category (b) above (i.e., Plaintiff's 4th RFAs 1-3, 6-8, 14, 18, 20, 21, 33), Plaintiff respectfully asks that the Court direct the City to serve amended responses *without* extraneous, self-serving statements added. *See* O.C.G.A. § 9-11-36(b) (authorizing this remedy).

II. STANDARD OF REVIEW

O.C.G.A. § 9-11-36 permits parties to serve requests for admission to ascertain “the truth of any matters within the scope of [discovery] which are set forth in the request and that relate to statements or opinions of fact or of the application of law to fact” To avoid admission, O.C.G.A. § 9-11-36(a)(2) requires responding parties to provide “a written answer or objection addressed to the matter.” O.C.G.A. § 9-11-36(a)(2). If the responding party objects, it must explain why. *Id.* If the responding party denies, it must “specifically deny or set forth in detail the reasons why the answering party cannot truthfully admit or deny the answer.” *Id.*

“The purpose of discovery is, of course, to shorten trial time and to narrow the issues.” *American Oil Co. v. Manpower, Inc.*, 124 Ga. App. 79 (1971). Requests for admission are likewise intended “to expedite trial and clarify the issues in a case” *Elrod v. Sunflower Meadows Dev.*, 322 Ga. App. 666, 668 (2013). “The language of O.C.G.A. § 9-11-36(a) as amended in 1972 clearly indicates the Legislature’s intent to broaden the scope of requests and thereby liberalize the use of this valuable discovery tool.” *G.H. Bass & Co. v. Fulton County Bd. of Tax Assessors*, 268 Ga. 327, 329 (1997). The responding party’s obligation under O.C.G.A. § 9-11-36 “is clear, unambiguous, and unequivocal . . . [o]ne must comply strictly and literally with the terms of the statute upon the peril of having his response construed to be an admission.” *Id.* at 331.

O.C.G.A. § 9-11-36(a)(2) requires parties responding to requests for admission to “fairly meet the substance of the requested admission” and for answers and objections to be “addressed to the matter.” If the party cannot admit or deny the request, it must “set forth in detail the reasons why [it] cannot truthfully admit or deny the matter.” *Id.* An answer that is evasive, incomplete, contains superfluous arguments, or fails to answer the matter requested, “is to be treated as a failure to answer.” O.C.G.A. § 9-11-37; *see also Brown v. Ohio Cas. Ins. Co.*, 239 Ga. App. 251, 254 (1999) (evasive and non-responsive answers to requests for admissions are deemed admitted).

Determining whether a response was insufficient and, if so, what course of action should be taken is for the trial court’s discretion. *McClarty v. Trigild Inc.*, 333 Ga. App. 112, 115 (2015). If the Court determines that an answer does not comply with O.C.G.A. § 9-11-36, it may order that the matter is admitted or that an amended answer be served. O.C.G.A. § 9-11-36(a)(2); *see also Tavakolian v. Agio Corp.*, 304 Ga. App. 660, 666 (5) (2010) (an RFA may be deemed admitted “after the requesting party has moved to determine the sufficiency of the answer and the trial court finds the answer fails to comply with statutory requirements”). A hearing must be held before a court may so rule. *Clements v. Toombs County Hosp. Auth.*, 175 Ga. App. 651, 652 (1) (1985). Courts should rule on the sufficiency of an RFA response before trial. *Id.* at 653.

III. ARGUMENT

Defendant’s responses to RFAs 1-3, 5-8, 14, 16, 18, 20, 21, and 33 do not comply with O.C.G.A. § 9-11-36(a)(2).

A. Admissions subject to groundless objections

O.C.G.A. § 9-11-36(a)(2) requires responding parties to “*specifically* deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter,” and permits qualifications of admissions or denial *only* where required by good faith. (emphasis supplied). If good faith requires qualification, “[the responding party] shall specify so much of it as is true and qualify or deny the remainder.” *Id.*

O.C.G.A. § 9-11-36 does *not* permit a party to both answer and object to a request. *Old Reliable Wholesale, Inc. v. Cornell Corp.*, No. 5:06-CV-02389-DDD, 2008 WL 2323777, at *2 (N.D. Ohio June 4, 2008) (objecting to and answering an RFA amounts to submitting “two responses to the same request, which is impermissible under [Fed. R. Civ. P. 36].”). Answering as such results in a waiver of the objection. *See, e.g., Mann v. Island Resorts Dev., Inc.*, No. 3:08CV297/RS/EMT, 2009 WL 6409113, at *3 (N.D. Fla. Feb. 27, 2009) (“a responding party is given only two choices: to answer or to object . . . ‘[w]henver an answer accompanies an objection, the objection is deemed waived.’”). The practice of answering subject to an objection “lacks any rational basis. There is either a sustainable objection to a question or request or there is not . . . all a mixed response really says is counsel does not know for sure whether the objection is sustainable, that it probably is not, but thinks it is wise to cover all bets anyway, just in case.” *Tardif v. People for the Ethical Treatment of Animals*, No. 2:09-CV-537-FTM-29, 2011 WL 1627165, at *2 (M.D. Fla. Apr. 29, 2011).

Defendant admits Plaintiff’s 4th RFAs 5 and 16, but attempts to make its response unusable at trial by inserting non-meritorious objections.

RFA: The “Standard Operating Policy and Procedures Manual,” which has been marked as Plaintiff’s Exhibit 5, contains the formally adopted policies and procedures of the Metter Police Department. See Rule 30(b)(6) Dep. 16:16-17:11; Monteavlo Dep. 71:05-13.

Defendant’s Testimony:²

24 Right now I’m going to show you what I’ll mark as
25 Plaintiff’s Exhibit No. 5.

1 (Plaintiff’s Exhibit 5 was marked for
2 identification.)
3 Q. (By Mr. Butler) Now, what does that say on
4 the front of it?
5 A. It says, “SOP and Procedures Manual Metter
6 Police Department.”
7 Q. All right. And these contain the formally
8 adopted -- to use what I think was your phrase --
9 policies and procedures of the Metter Police
10 Department; isn’t that right?
11 A. Right.

Initial RFA Response: The city objects to Request 5 on the grounds that “formally adopted” is **vague and ambiguous** as there is no provision in the City’s Charter for adopting policies of the police department. Without waiving its objections, the City admits that Plaintiff’s Exhibit 5 contains a General Order and a Standard Operating Police and Procedures Manual for the City of Metter. By way of further response, the City states that Plaintiff’s Exhibit 5 does not contain the pursuit policy in effect at the time of the subject incident.

Am. RFA Response: Admitted. The City qualifies its response on the grounds that “formally adopted” is vague and ambiguous as there is no provision in the City’s Charter for adopting policies of the police department. The City further qualifies its response because Plaintiff’s Exhibit 5 does not contain the pursuit policy utilized by the Metter Police Department at the time of the subject incident.

Remedy: Plaintiff respectfully requests that the Court deem RFA 5 admitted.

² 30(b)(6) Dep. 16:24-17:11.

RFA: The “5-3” document that has been marked as Plaintiff’s Exhibit 6 has never been formally adopted by the City Council. *See* Rule 30(b)(6) Dep. 12:19-21, 26:24-27:02.

Defendant’s Testimony:³

19	However, 5-3 was not formally adopted by
20	the city manager or city council, but it was the
21	policy that we were under. And that's the policy

1	review and -- but it never was formally adopted by
2	the city manager, city council.

Initial RFA Response: The City objects to Request 16 on the grounds that “formally adopted” is **vague and ambiguous**. Without waiving its objections, the City admits that “Chapter 5-3” has never been “formally adopted” by the City council but states that adoption, passage, or approval is not required under the City’s Charter for any policy to have force and [e]ffect.

Am. RFA Response: Admitted. The City qualifies its response to Request 16 on the grounds that “formally adopted” is vague and ambiguous and that adoption, passage, or approval is not required under the City’s Charter for any policy to have force and [e]ffect.

Remedy: Plaintiff respectfully requests that the Court deem RFA 16 admitted.

Plaintiff told the City that its objections were groundless. Instead of withdrawing them, the City recast them by replacing “[t]he City objects to” with “[t]he City qualifies its response” in response to RFA 5 and 16. Despite the City’s change in the *form* of its responses, the City’s assertion that the RFAs are “vague and ambiguous” is still an objection and it still lacks merit. And although a party may object when a term used in an RFA is subject to multiple interpretations, where “the range of interpretative possibilities is fairly limited,” the request “is straightforward” and requires an answer. *Booth Oil Site Admin. Group v. Safety-Kleen Corp.*,

³ 30(b)(6) Dep. 12:19-21, 27:01-02.

194 F.R.D. 76, 81 (W.D. N.Y. 2000). The City's objections lack merit and RFA 5 and 16 should be deemed admitted.

B. Insertion of extraneous, self-serving qualifications into responses that should have been admitted concisely.

Pursuant to O.C.G.A. § 9-11-36(a)(2), parties responding to requests for admission must fairly meet the substance of the requested admission. Courts applying Fed. R. Civ. P. 36⁴ do not permit a party to qualify its answers in a way that makes the answers non-responsive or to provide an evasive denial that does not specifically deny the matter. *See Havenfield Corp. v. H&R Block, Inc.*, 67 F.R.D. 93, 97 (W.D. Mo. 1973) (deeming RFAs admitted upon finding that party's "qualified answers . . . do not fully 'meet the substance of the requested admission[s]' in that the answers are nonspecific, evasive, ambiguous and appear to go to the accuracy of the requested admissions rather than the 'essential truth' contained therein.") (quoting *Riordan v. Ferguson*, 147 F.2d 983 (2nd Cir. 1945)); *Caruso v. Coleman Co.*, No. CIV. A. 93-CV-6733, 1995 WL 347003, at *2 (E.D. Pa. June 7, 1995) (deeming RFAs admitted where defendant provided evasive denials that did not meet the substance of the RFA).

O.C.G.A. § 9-11-36(a)(2) *only* allows parties to qualify their responses to requests for admission where *required* by good faith. If good faith requires qualification, "[the responding party] shall specify so much of it as is true and qualify or deny the remainder." *Id.* (emphasis added). Courts may deem the matter admitted when it finds a lack of good faith on the part of the responding party. *See JZ Buckingham Investments LLC v. U.S.*, 77 Fed. Cl. 37, 45 (U.S. Ct. Fed. Cl. 2007). Courts find a lack of good faith and "have ordered matters admitted . . . when the evidence shows that it should have been admitted." *Id.* (collecting cases) (citations omitted).

⁴ Fed. R. Civ. P. 36 contains the same essential requirements as and nearly identical language to O.C.G.A. § 9-11-36. Though not dispositive, federal rulings concerning requests for admission provide significant analysis relating thereto.

Here, the text of Plaintiff's requests *cited the evidence of record* that "show[ed] that [these RFAs] should have been admitted." *See id.* But the City did not straightforwardly admit the majority of Plaintiff's RFAs, instead inserting whatever language it could to soften its admissions.

In its responses to Plaintiff's 4th RFAs 1-3, 6-8, 14, 18, 20, 21, and 33, the City followed its admissions with extraneous, self-serving assertions that were not made in good faith and are therefore not permissible under O.C.G.A. § 9-11-36(a)(2). In its amended responses, the City altered its boilerplate language by changing "[b]y way of further response, the City states that . . ." to "[t]he City qualifies its response and states that" That change of *form*, but not *substance*, does not authorize the City to insert extraneous, self-serving statements into RFA responses that should have been concise—i.e., "admitted."

RFA 1

RFA: High-speed police chases can be dangerous and can put the lives of citizens at risk. *See* Rule 30(b)(6) Dep. 7:11-17; Monteavlo Dep. 49:07-09.

Defendant's Testimony:⁵

11	Q.	And the reason for that is police chases,
12		particularly high-speed chases, can be dangerous;
13		isn't that right?
14	A.	Right.
15	Q.	They can put the lives of citizens at
16		risk; right?
17	A.	Right.

Initial RFA Response: In response to Request 1, the City admits that police pursuits may be dangerous or put lives at risk only in certain circumstances and depending on the circumstances of the pursuit.

⁵ Delivered through its designated Rule 30(b)(6) witness at 7:11-17.

Am. RFA Response: Admitted. The City qualifies its response to show that police pursuits may be dangerous or put lives at risk depending on the circumstances of the pursuit.

Remedy: Plaintiff respectfully requests that the Court direct Defendant to amend RFA 1 to omit extraneous statements.

RFA 2

RFA: Because high-speed police chases can be dangerous, a police department should have a policy on police chases. *See* Rule 30(b)(6) Dep. 7:07-14; Shore Dep. 22:06-08.

Defendant's Testimony:⁶

7	Q. Now, would you agree that it's important
8	for any police department to have a policy on police
9	chases?
10	A. I agree with that.
11	Q. And the reason for that is police chases,
12	particularly high-speed chases, can be dangerous;
13	isn't that right?
14	A. Right.

6	Q. Do you agree it's important for a police
7	department to have a policy on police pursuits?
8	A. Yes, sir.

Initial RFA Response: The City admits Request 2. By way of further response, the City states that every police pursuit must be examined based on the facts and circumstances known to the pursuing officer at the time, and any department must use its discretion in utilizing or implementing pursuit policies.

Am. RFA Response: The City admits Request 2. The City qualifies its response and states that every police pursuit must be examined based on the facts and circumstances known to the pursuing officer at the time, and any department must use its discretion in utilizing or implementing pursuit policies.

Remedy: Plaintiff respectfully requests that the Court direct Defendant to amend RFA 2 to omit extraneous statements.

⁶ Rule 30(b)(6) Dep. 7:07-14; Shore Dep. 22:06-08.

RFA 3

RFA: The police department's policy should establish the rules for when a high-speed chase is appropriate and when it is not. *See* Rule 30(b)(6) Dep. 8:01-06.

Defendant's Testimony:⁷

1	Q. Well, I'll ask you this. Do you agree
2	that a police department needs to have rules for when
3	a high-speed chase is appropriate and when it's not?
4	A. Right. I agree with that.
5	Q. And that's what a policy is; right?
6	A. I agree with that.

Initial RFA Response: The City admits Request 3. By way of further response, the City states that each department must exercise its discretion in adopting or utilizing a pursuit policy, and that policy should afford the officer involved in the pursuit the necessary discretion to evaluate the circumstances of each pursuit.

Am. RFA Response: The City admits Request 3. To qualify its response, the City states that each department must exercise its discretion in adopting or utilizing a pursuit policy, and that policy should afford the officer involved in the pursuit the necessary discretion to evaluate the circumstances of each pursuit.

Remedy: Plaintiff respectfully requests that the Court direct Defendant to amend RFA 3 to omit extraneous statements.

RFA 6

RFA: Chapter 12 of the "Standard Operating Policy and Procedures Manual," which has been marked as Plaintiff's Exhibit 5, addresses police pursuits. *See* Plaintiff's Exhibit 5; Rule 30(b)(6) Dep. 16:16-17:11.

Chapter 12 of SOP Manual (Exhibit 5):⁸

Chapter 12: Vehicle Operations

⁷ Rule 30(b)(6) Dep. 8:01-06.

⁸ Standard Operations Manual (Ex. 1) at 104, 108.

F. Vehicle Pursuit Actions

Defendant's Testimony:⁹

1 (Plaintiff's Exhibit 5 was marked for
2 identification.)
3 Q. (By Mr. Butler) Now, what does that say on
4 the front of it?
5 A. It says, "SOP and Procedures Manual Metter
6 Police Department."

Initial RFA Response: The City admits Request 6. By way of further response, the City states that Chapter 12 of Plaintiff's Exhibit 5 was not the pursuit policy utilized by the Metter Police Department at the time of the subject incident.

Am. RFA Response: The City admits Request 6. By way of further response, the City states that Chapter 12 of Plaintiff's Exhibit 5 was not the pursuit policy utilized by the Metter Police Department at the time of the subject incident.

Remedy: Plaintiff respectfully requests that the Court direct Defendant to amend RFA 6 to omit extraneous statements.

RFA 7

RFA: Under Chapter 12 of the SOP Manual that has been marked Plaintiff's Exhibit 5, police officers should not engage in high-speed chases for misdemeanors, nonforcible felonies, traffic violations, or civil infractions. See Rule 30(b)(6) Dep. 22:17-22; Plaintiff's Exhibit 5 at 108.

Defendant's Testimony:¹⁰

17 Q. And highlighted there in pink or magenta
18 or something, it says, "Pursuits for misdemeanor
19 offenses, nonforcible felonies, traffic or civil
20 infractions are prohibited." Is that what it says?
21 A. Under Chapter 12. But he was operating on
22 5-3. So there's a difference there.

⁹ Rule 30(b)(6) Dep. 17:01-06.

¹⁰ Rule 30(b)(6) Dep. 22:17-22.

Chapter 12 of SOP Manual (Exhibit 5):¹¹

- | | |
|----|---|
| 4. | Pursuits for misdemeanor offenses, non-forcible felonies, traffic, or civil infractions are prohibited. |
|----|---|

Initial RFA Response: The City admits Request 7. By way of further response, the City states that Chapter 12 of Plaintiff's Exhibit 5 was not the pursuit policy utilized by the Metter Police Department at the time of the subject incident.

Am. RFA Response: The City admits Request 7. By way of further response, the City states that Chapter 12 of Plaintiff's Exhibit 5 was not the pursuit policy utilized by the Metter Police Department at the time of the subject incident.

Remedy: Plaintiff respectfully requests that the Court direct Defendant to amend RFA 7 to omit extraneous statements.

RFA 8

RFA: The actions of Adrian Montealvo on December 5, 2015 violated Chapter 12 of the SOP Manual that has been marked as Plaintiff's Exhibit 5. *See* Rule 30(b)(6) Dep. 46:09-11.

Defendant's Testimony:¹²

- | | |
|----|---|
| 9 | Q. Do you agree he violated Chapter 12? |
| 10 | A. As Chapter 12 was written, yes. But that |
| 11 | wasn't what he was operating under. |

Initial RFA Response: In response to Request 8, the City states that had Chapter 12 been applicable to the pursuit at issue in this case, Officer Montealvo's actions would have violated that Chapter. However, Chapter 12 of the SOP was not utilized by the City of Metter at the time of the subject incident.

Am. RFA Response: Admitted. The City qualifies its response to state that Chapter 12 of the SOP was not utilized by the Metter Police Department at the time of the subject incident.

¹¹ Standard Operations Manual (Ex. I) at 108.

¹² Rule 30(b)(6) Dep. 46:09-11.

Remedy: Plaintiff respectfully requests that the Court direct Defendant to amend RFA 8 to omit extraneous statements.

RFA 14

RFA: Plaintiff's Exhibit 21, the computer jump drive, does *not* contain the "5-3" document that has been marked as Plaintiff's Exhibit 6. *See* Plaintiff's Exhibit 21; Conner Dep. 12:01-19.

Defendant's Testimony:¹³

1	Q. And then SOP chapters has got Chapter 1-1.
2	Do you see that?
3	A. I do.
4	Q. 1-2, 1-3, 1-4. I'm going to cut through
5	the chase. It's got 1-5 through 1-10.
6	A. Okay.
7	Q. Do you see that?
8	A. I do.
9	Q. And then it's got 2-8. Do you see 2-8?
10	A. I do.
11	Q. I know we're squinting. We've then got
12	2-12 and 2-13. Do you see those?
13	A. Yes.
14	Q. We've then got 3-1, 3-8, 4-1, 4-2, 4-5,
15	5-2 and then an organization chart; is that right?
16	A. That's what I see.
17	Q. Do you see anything other than what we've
18	gone through in this folder?
19	A. No.

Initial RFA Response: Admit. By [way] of further response, the Open Record response should have contained the pursuit policy known as "Chapter 5-3" as it was the pursuit policy utilized by the Metter Police Department at the time of the subject pursuit.

Am. RFA Response: Admit. By [way] of further response, the Open Records response should have contained the pursuit policy known as "Chapter 5-3" as it was the pursuit policy utilized by the Metter Police Department at the time of the subject pursuit.

¹³ Conner Dep. 12:01-19.

Remedy: Plaintiff respectfully requests that the Court direct Defendant to amend RFA 14 to omit extraneous statements.

RFA 18

RFA: Current Police Chief Rob Shore, who served as the Captain of the Metter Police Department beginning in October 2016 does not know of any Metter police officer who signed off as having read the “5-3” document. *See* Shore Dep. 35:24-36:02.

Defendant’s Testimony:¹⁴

24	Q. So, to the best of your knowledge, nobody	
25	signed off on the 5-3 draft that's marked as	
		Page 36
1	Plaintiff's Exhibit 6?	
2	A. That's correct.	

Initial RFA Response: The City objects to Request 17 on the ground that it is **vague and ambiguous**. Further, the City admits only that the Chief Rob Shore is unaware of any officer “signing off” on the copy of Chapter 5-3 that is marked specifically as Plaintiff’s Exhibit 6 and that was shown to him at his deposition.

Am. RFA Response: The City qualifies its response to Request 17 on the ground that former Chief Shore was testifying about the copy of “5-3” marked as Plaintiff’s Exhibit 6 and that was shown to him at his deposition.

Remedy: Plaintiff respectfully requests that the Court deem RFA 18 admitted.

RFA 20

RFA: An officer deciding whether to engage in a high-speed chase should balance the danger created by the person being chased against the danger of the chase itself. *See* Rule 30(b)(6) Dep. 37:02-06; Montevalvo Dep. 81:22-82:05; Shore Dep. 12:10-15.

¹⁴ Shore Dep. 35:22-36:2.

Defendant's Testimony:¹⁵

2 Isn't it true that an officer deciding
3 whether to engage in a high-speed chase has to
4 balance the danger created by the person being chased
5 versus the danger created by the chase itself?
6 A. Yes.

22 Would you agree that in whether a chase is
23 authorized you're basically considering the danger
24 created by the suspect and weighing that or
25 balancing that with the danger created by the

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1 pursuit?

2 A. Right.

3 Q. It's basically the danger of the man
4 versus the danger of the chase?

5 A. Correct.

10 Q. Well, do you agree that when an officer
11 decides whether to initiate or continue a high-speed
12 pursuit an officer should balance or weigh the danger
13 to the public created by the suspect versus the
14 danger created by the chase itself?

15 A. I'll agree with that.

Initial RFA Response: The City admits Request 20. By way of further response, in deciding whether to engage in a pursuit, an officer must exercise his discretion and balance multiple factors that the officer observes at that time.

Am. RFA Response: The City admits Request 20. By way of further response, in deciding whether to engage in a pursuit, an officer must exercise his discretion and balance multiple factors that the officer observes at that time.

Remedy: Plaintiff respectfully requests that the Court direct Defendant to amend RFA 20 to omit extraneous statements.

¹⁵ Rule 30(b)(6) Dep. 37:02-06; Montevalvo Dep. 81:22-82:05; Shore Dep. 12:10-15.

RFA 21

RFA: When Officer Montevalvo turned on his emergency lights and began pursuing the Aztec, nobody in the Aztec had committed any violent crime. *See* Rule 30(b)(6) Dep. 33:22-25.

Defendant's Testimony:¹⁶

22	Q. It's true that no violent crime had been
23	committed before Montevalvo started chasing that
24	Aztec?
25	A. True.

Initial RFA Response: The City admits Request 21, based on information learned in discovery in this case.

Am. RFA Response: The City admits Request 21, and qualifies its response on the grounds that when he activated his emergency lights, Ofc. Montevalvo did not know whether or not Charlie Mincey had committed a violent crime.

Remedy: Plaintiff respectfully requests that the Court direct Defendant to amend RFA 21 to omit extraneous statements.

RFA 33

RFA: On December 5, 2015, the events that occurred *before* Adrian Montevalvo turned on his emergency lights were not as dangerous as the events that occurred *after* Montevalvo turned on his emergency lights. *See* Montevalvo Dep. 48:18-49:02; *see also* Montevalvo Dep. 47:25-48:09.

Defendant's Testimony:¹⁷

4	Q. In terms of before the Aztec turned onto
5	Claxton Highway, it was at least less dangerous; is
6	that true?
7	A. Before it turned onto 129?
8	Q. Right.
9	A. Yes.

¹⁶ Rule 30(b)(6) Dep. 33:22-25.

¹⁷ Montevalvo Dep. 48:04-09, 48:11-49:02.

11	well, strike that. When did you first turn on your
12	blue lights?
13	A. I stated before, turning on Vertia as he
14	was passing the stop sign on Lewis.
15	Q. All right. I'm going to hand you --
16	what's our next shape going to be?
17	A. Triangle.
18	Q. Put a black triangle, if you would, on
19	Plaintiff's Exhibit 16 where you first turned on
20	your blue lights.
y. 21	A. (Witness complies with request of
22	counsel.)
23	Q. All right. Would you agree that, I think,
24	what went on before that triangle on Plaintiff's
25	Exhibit 16 was less dangerous than what happened

1	after?
2	A. I would agree.

Initial RFA Response: Admit, but deny that the use of emergency lights was the cause of any increased danger.

Am. RFA Response: Admitted. The City qualifies its response to deny that the use of emergency lights was the cause of any increased danger.

Remedy: Plaintiff respectfully requests that the Court direct Defendant to amend RFA 33 to omit extraneous statements.

The City's responses to RFAs 1-3, 6- 8, 14, 18, 20, 21, 33, whether amended or not, do not meet the requirements of O.C.G.A. § 9-11-36(a)(2). The City attempts to avoid direct admissions by inserting "qualify," "qualifies" or "by way of further response," before self-serving statements. Plaintiff asks that the Court direct the City to serve amended responses to RFAs 1-3, 6- 8, 14, 18, 20, 21, 33 without the extraneous language.

IV. CONCLUSION


As to the RFAs identified in categories (a) above (i.e., Plaintiff's 4th RFAs 5 and 16), Plaintiff respectfully asks the Court to deem the RFAs admitted. *See* O.C.G.A. § 9-11-36(b) (authorizing this remedy).

As to the RFAs identified in category (b) above (i.e., Plaintiff's 4th RFAs 1-3, 6- 8, 14, 18, 20, 21, 33), Plaintiff respectfully asks the Court to direct the City to serve amended responses *without* extraneous, self-serving statements. *See* O.C.G.A. § 9-11-36(b) (authorizing this remedy).

Plaintiff respectfully requests a hearing. *See Clements*, 175 Ga. App. at 652 (requiring a hearing before RFAs can be deemed admitted).

Respectfully submitted this 5th day of September, 2018.



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

**LIONEL SEABROOKS, as
Administrator of the Estate of Fanecia
Holloway, deceased & as Conservator of
Adrianna Seabrooks, a Minor Child.**

Plaintiff,

v.

**METTER, GEORGIA
and CHARLIE MINCEY**

Defendants.

Civil Action File No.: 16CV161

CERTIFICATE OF SERVICE

I hereby certify that **PLAINTIFF'S MOTION TO DETERMINE SUFFICIENCY OF
DEFENDANT METTER, GEORGIA'S RESPONSES TO PLAINTIFF'S REQUESTS
FOR ADMISSIONS** was served upon all parties by depositing a true copy of same in the United
States Mail, proper postage prepaid, addressed to counsel of record as follows:

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