MINUTES – CALLED MEETING
CITY OF CAMILLA, GEORGIA
JULY 27, 2023

A Called Meeting of the Mayor and City Council of the City of Camilla was called to order at 10:00 a.m. on Thursday, July 27, 2023 by Mayor Owens. He stated the meeting was called by the District 2 delegation (Councilmember Tucker and Councilmen Collins and Palmer).

Roll call indicated the following present: Councilmember Tucker, Councilman Burley, Councilman Collins, and Councilman Palmer. Mayor Owens asked for the record to reflect Councilmembers Pollard and Morgan are on the dais and there will be more clarification.

City Manager Stroud, Acting Clerk Melinda Knight, and Attorney Wiley (via phone) were also present.

OPENING PRAYER AND PLEDGE

City Manager Stroud gave the invocation and the Mayor and Council led the Pledge of Allegiance to the Flag.

CITIZENS AND GUESTS

Sign-In Sheet Attached.

APPROVAL OF AGENDA

Mayor Owens asked for a motion to approve the agenda. Councilman Palmer asked for a legal opinion from the city attorney for two individuals sitting at the table that are not councilmembers. Mayor Owens stated they [District 2] called the meeting and what he is asking for is a motion for the agenda to be approved. Councilmember Tucker stated she objects the participation of the two former councilmembers participating in the meeting and sitting with them. They have been removed from office by order of the superior court of Mitchell County and is in conformity with the City's Charter. In raising that objection to their participation, Councilmember Tucker presented the order for the record. A motion was made by Councilmember Tucker and seconded by Councilman Palmer to approve the agenda. Mayor Owens commented as Councilmember Tucker and Councilman Palmer pointed out as it relates to Councilman Pollard and Councilman Morgan, is there any other discussion. He stated it is his understanding there was a civil case outside the City of Camilla that involved two of their councilmembers, in their individual capacity. As part of that process, he knows there have been reports or something similar in local media relating to that particular civil procedure and what was conveyed to the public is the process was over. The process is not over and why the two men are up there. Mayor Owens asked Attorney Wiley to explain to the Council and the public why Councilmen Morgan and Pollard are sitting at the dais. Attorney Wiley stated they sent a memo out this morning and her apologies to Council if they have not received it yet. They were made aware of certain information this morning that occurred this morning that changed the nature of today's proceedings. Councilmember Tucker commented she does not have their email. Attorney

Wiley stated there was a petition for quo warranto filed sometime last November against the two city councilmembers, Messrs. Pollard and Morgan. The petition sought to declare those two individuals ineligible to hold office due to allegations they did not reside within the city limits of Camilla. It is their understanding on July 17th of this year there was a scheduled trial for determination by a jury as to whether the allegations of residency for each individual had merit; however, prior to the paneling of the jury the trial judge accepted a motion by petitioner's counsel to strike the answers of Messrs. Pollard and Morgan. The court granted the motion, struck the answers, and entered default judgment against the two individuals. As a result, the court followed up with a written order on July 20, 2023 establishing as a matter of law those two individuals were not allowed to remain in their elected offices of the city council of the City of Camilla. The following day, based upon court docket, each individual filed a notice of appeal of that decision to the Georgia Supreme Court. The court's order is still in effect and as a result of the July 23, 2023 order the individuals were removed from office, ousted from office, as a result of the court entering default judgment against them; however it is her understanding this morning, prior to today's meeting, in addition to the notice of appeal being filed on Friday, July 21st, this morning (July 27th), these individuals filed into the superior court clerk a sum representing the payment of all costs incurred at the trial court level. That is relevant for several reasons. Under Georgia law once an individual files a notice of appeal, which was done on July 21st and files a payment of costs incurred in the trial court which was done this morning, it stays the trial court's order of July 20, 2023. The effect of that particular order is suspended until final ruling by the Georgia Supreme Court. For purposes of today's meeting it means that councilmembers Morgan and Pollard have now been resumed to their lawfully and duly elected offices and allowed to resume their elected positions until final ruling by the Georgia Supreme Court or some other entity of the State. A quo warranto is nothing more than a civil proceeding as any other civil proceeding in the state of Georgia. Every civil litigant has the right to appeal to a higher court the trial court's order. They have filed the appeal and payment of the costs renders the trial court's order stayed or suspended and the rights, obligations, and duties of the individuals affected by the order are stayed. This allows the individuals to serve as lawful, duly elected members of council. Councilmember Tucker stated an effective order is in place that removed them from office on July 20 and a mandate in the order for them to turn over devices owned by the City (phone, iPads, etc.) within 48 hours and the only thing that would halt the order is Judge McCorvy issuing a stay and that has not occurred. A stay has not been granted by Judge McCorvy and she is in disagreement with just filing a notice of appeal, which is your intent you plan to appeal. They still have the right to appeal and the transcripts are not back in, from her understanding, for them to be able to file an appeal. What is on the table right now is an order by a senior superior court judge and they are prepared to proceed with what the Charter allows them to do with a vacancy. Councilman Palmer stated he disagreed with her [Attorney Wiley] opinion and wants to hear the superior court judge say they are allowed to continue as councilmembers and until that happens he considers this to be illegal. Attorney Wiley stated that Georgia law, O.C.G.A. Section 5-6-46(a) states in civil cases the notice of appeal filed shall serve as a supersedeas upon payment of all costs in the trial court by the appealing party. A supersedeas is nothing but a stay. The law does not require a separate or distinct order from the trial court. The trial court judge has been rested of any jurisdiction and it is concerning the

implementation of the order on July 20, 2023 that issue is now in the arms and the breast of the Georgia Supreme Court once the clerk of superior court submits that particular case file to the Georgia Supreme Court. It is her understanding from court information costs have been paid this morning, which makes all the difference. If costs had not been paid the notice of appeal would not have been sufficient. The General Assembly has said if an appealing party has filed a written notice of appeal and pays the payment of costs assessed by the clerk of superior court, the trial judge no longer has jurisdiction. That order is now held in abeyance with the filing of those two items and the notice of appeal and submission of payment of costs operates as a matter of law as a stay on the implementation and affect of the order. The order is suspended until further order by the Georgia Supreme Court or some other entity. Councilmember Tucker asked how an appeal can be filed when the transcript has not been prepared. She understands you are capable of paying the $421.71 but in order to file an appeal you also have to have the court documents and those have not been prepared yet. It is her understanding from the clerk of court, and she has not checked this morning, the only thing filed was a notice of appeal and therefore the judge's order stood. Mayor Owens stated as Councilmember Tucker pointed out she has not checked with the superior court clerk this morning. The transcript was prepared last night, delivered to the councilmen this morning, and the transcript was delivered to the superior court clerk along with court costs. Obviously if she had not checked she would not have known that. Councilmember Tucker stated nor did she get the email provided to the Council. Mayor Owens stated everyone needs to understand this was happening at the 9 o'clock hour and up against what was happening this morning. What they need to do in the city, the apparent anxiousness to do certain acts without conferring with himself or just asking questions before this kind of stuffs happens, could have been avoided. There could have been a conversation about the transcript is in the process of getting done and expected to be done yesterday. The expectation is that it will be delivered to the court this morning and there is an expectation that the costs will be paid this morning. Those conversations, the phone call, the simple questions could have avoided all of this. In the city right now they have children going to bed hungry, seniors in the community that need assistance, infrastructure that needs fixing. This should be the priority of this council – making sure our children are taken care of, our seniors are taken care of, and make sure we are moving this economy forward. When they are spending a tremendous amount of time on stuff that does absolutely nothing to move the city forward you end up with the kind of stuff you have this morning. He asks the people of Camilla, once again, if they are relying on their information as to what is happening in that room [council chambers] and what is happening within the functioning of their city on media outlets, newspapers to get their information, he cannot do anything about that. What he can express is if they want to know what is happening in the city and what is happening to move the city forward, come to the meetings or at the very least watch the live videos from Facebook. It is unfortunate that information that resembles the civil action was over and this is going to happen and they shouldn't have done this and cartoons of sharks and all the other stuff does absolutely nothing for their children and people of the community. He asks the members of the council to put their energy into moving the city forward. Councilmember Tucker commented that one of the priorities they need to stay focused on is that each of them are operating honorably and within the Charter. All of this ties back to the Charter, the fact there are requirements within the Charter that they can serve. There are means made in the Charter when

someone is removed by a superior court judge that there are procedures to follow. They need to make sure they are upholding, and they all took an oath they would follow the Charter and the Constitution, and adhering to what the Charter says. There was a removal by a superior court judge and what ensues is a special election or an appointment if you have less than twelve months on your term. She contends she cannot name one time in the two years she has served on the council that the Mayor asked her for input. Even when that input might have been she had thirty years experience in that topic. There is not a lot of communication in seeking out information. What they have before them and allowed a week to go by was a court order that was signed by the judge with direct order. When asked had the order been followed the city manager had no response to acknowledging the order had been followed. They had to go on what they had, an order. She commented to Attorney Wiley they have to be conscious to the fact she spoke with Mr. Denmark about this subject last November and needed confirmation that in no way would Denmark and Fincher be incurring any costs on behalf of the City with relationship to the civil law suit that was against two individual councilmembers on their own. He assured her the City would have no costs whatsoever because it would be not ethical for the Denmark Fincher firm to be involved in this. She is hoping they can continue to adhere to that because she does not think the citizens in Camilla should be paying legal fees on behalf of two councilmembers on this decision. Mayor Owens stated he wanted to make sure the record was clear if she was suggesting or just. Councilmember Tucker replied Mr. Denmark assured her and she told him she trusted his word. Mayor Owens replied the language she is using is becoming dangerously reckless. His question is if she is accusing their city attorney of assisting in the trial. Councilmember Tucker stated Mr. Denmark made it clear to her that it would be unethical and she told Mr. Denmark she is faced with a number of constituents that feel like their fees are being paid. She said no and trusts the city attorney at his word. What she is saying is for them to not let that become something they are being billed for at this point. Mayor Owens stated the bill from the city attorney comes in every month and to his knowledge, he does not remember seeing anything billing for the civil case that is the subject of the meeting today. From his perspective the implication and conversation are moot. Councilman Palmer asked who is paying for them this morning. Mayor Owens stated they [District 2] called the meeting. Councilman Palmer said they are discussing those two gentlemen [Morgan and Pollard]. Mayor Owens replied that is literally the subject of their agenda. Councilman Palmer asked again who is paying for it. Mayor Owens replied the City. Attorney Wiley stated the comment made to her [Councilmember Tucker/Mr. Denmark] is honored and every member of the firm has honored that comment. Their firm has not represented an individual interest of either councilmembers who are subject of a petition for quo warranto. They have not engaged in any discovery, conversation, never spoken to the gentlemen, or made any contact whosoever. The memo that was drafted before her regarding the events that led up to this particular meeting dealt with the composition of the governing authority of the City of Camilla. The client that Fincher Denmark represents is the governing authority of the City of Camilla. When there are potentially two vacancies or allegations of vacancies it is their legal duty and obligation as the City's attorney to the City of Camilla to advise the governing authority who is lawfully part of the city council. The citizens of Camilla need to understand that and the council and mayor needs to understand that. To that extent they acted appropriately, ethically and lawfully in providing a legal assessment who can

lawfully serve on the governing authority of the City of Camilla. That is what they have done and is all they have done. The implications of the order, the implications of the notice of appeal, and the implications of the payment of the costs as it relates to who can lawfully sit as elected member of the city council of Camilla. Councilman Palmer asked if her firm drew up the appeal filed this morning. Attorney Wiley stated her office has not drafted a single piece of paper that has been filed on the quo warranto petition. They received the order from the petitioner's counsel last week that alerted them to the filing of the order. They are allowed to go on the public site to see if a notice of appeal had been filed. As lawyers with over fifty years experience in this area they understand the implications of a notice of appeal and payment of costs. They had publically recorded documents that allowed them to make the legal assessments provided this morning. Councilman Morgan stated he looks forward to continuing the business of the city. He pointed out to the community to be alert and aware they have people in the area and on the council trying to make decisions for their area that they did not make themselves. He thinks it is outrageous the called meeting was called by members of District 2 for matters that are happening in District 1. Mayor Owens pointed out per the law and opinion of the attorney there are no vacant elected posts on the city council for the City of Camilla. Voting in favor of approving the agenda via roll call: Councilmember Tucker and Councilmen Collins and Palmer. Voting in opposition: Councilmen Burley, Morgan and Pollard. The Mayor voted no and the motion to approve the agenda failed by a 4-3 vote.

ADJOURNMENT

On motion by Councilman Burley the meeting adjourned at 1:32 p.m.

BY: _____ ATTEST: _____

KELVIN M. OWENS, MAYOR CHERYL FORD, CLERK

CITY OF CAMILLA, GEORGIA ~ SIGN-IN SHEET

DATE: JULY 27 2023 TIME: 10:00 ☒ A.M. ☐ P.M.

MEETING: ☒ COUNCIL ☐ WORK SESSION ☒ OTHER: CALLED

	NAME	ADDRESS	SPEAKER NO	SPEAKER YES	TOPIC OF DISCUSSION
1	Jamie Hays		✓		
2	Judy Palmer		✓		
3	Beth Williamson		✓		
4	Janet Crane		✓		
5	Mary Nagworth		✓		
6			✓		
7					
8	Boyd Goodwin		✓		
9	Rhonette Williford		✓		
10	Lanene Dawson				
11	Lizzie Hawkins				
12	Mattie Patterson		✓		
13	Judy Bidsong		✓		
14	Walter Anderson				
15	Earl Silvia				
16	Joe Bostick				
17	Clair Adams		✓		

CITY OF CAMILLA, GEORGIA ~ SIGN-IN SHEET

DATE: JULY 27 2023 TIME: 10:00 ☒ A.M. ☐ P.M.

MEETING: ☒ COUNCIL ☐ WORK SESSION ☒ OTHER: CALLED

	NAME	ADDRESS	SPEAKER NO	SPEAKER YES	TOPIC OF DISCUSSION
1	Julie Tucker		✓		
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IN THE SUPERIOR COURT OF MITCHELL COUNTY
STATE OF GEORGIA

DAVID COOPER and JOE BOSTICK,

Petitioners/Plaintiffs,

vs.

VENTERRA POLLARD and COREY B. MORGAN,

Respondents/Defendants.

CIVIL ACTION FILE NO.: 22CV159

ORDER GRANTING PETITIONERS MOTION AND RENEWED MOTION TO STRIKE RESPONDENTS' ANSWERS AND DEFENSES, MOTION FOR DEFAULT JUDGMENT, AND ENTERING FINAL JUDGMENT

WHEREAS, on July 17, 2023, the Court held a hearing on the Petitioners' Consolidated Emergency Motion and Brief in Support of Renewed Motion to Strike Respondents' Answers and Defenses;

WHEREAS, the Court has considered the arguments of all parties and exhaustively reviewed all pleadings of record as well as the discovery requests and responses provided within this action as well as the deposition testimony of the Respondents;

WHEREAS, the entry of this written order follows the Court's oral pronouncement of its ruling striking the Respondents' Answers and Defenses and Granting the Petitioners' Motion for Default Judgment on July 17, 2023 at 1:30 p.m.;

WHEREAS, this Court issues the following findings of fact and conclusions of law and further enters final judgment in this matter as set forth herein:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The instant matter is a Petition for Quo Warranto seeking the ouster of Respondents Morgan and Pollard from public office. Respondents Morgan and Pollard, both now, and at the time that this Petition was initiated, were serving as City Councilmembers for District 1 of the City of Camilla. The Petitioners initiated this proceeding by filing an Application for Leave of Court to File an Information in the Nature of a Petition for Writ of Quo Warranto on November 21, 2023. *See Petitioners/Plaintiffs' Application for Leave of Court to File an Information in the Nature of a Petition for Quo Warranto.* The Application was considered by Judge Lanier who, after consideration of the Application as well as the Verified Petition for Quo Warranto which was filed simultaneously with the Application, granted the Application, and entered an Order Granting Petitioners' Request to Proceed with a Quo Warranto Inquiry on November 22, 2023. *See Order Granting Request to Proceed with a Quo Warranto Inquiry.* After granting the Application, Judge Lanier recused herself from these proceedings. The undersigned was subsequently assigned to serve as the presiding judge over this matter.

The Verified Petition for Quo Warranto ("the Petition") presented a claim for Quo Warranto seeking the removal of Respondents Pollard and Morgan as City of Camilla Councilmembers on the basis that they did not meet the residency/domicile requirements of Georgia law as well as the City Charter for the City of Camilla. *See Petition.* The Petition alleged that the Respondents were not domiciled in the respective districts for which each was elected in the City of Camilla for several years. Additionally, the Petition specifically alleged that Pollard

established his domicile/permanent residence in Albany, Georgia and that Morgan established his domicile/permanent residence in Pelham, Georgia.

The Petition further sought relief as to "Pollard and Morgan's ability to serve as elected City Council Members" pursuant to O.C.G.A. § 9-4-1, et. seq. and O.C.G.A. § 9-6-60, et. seq.. *See Petition*, ¶ 53. Moreover, the Petition specifically alleged the following and sought the following relief from this Court:

> As required by Georgia law and the Charter of the City of Camilla Article II, Section 2.11, the councilmembers of the City of Camilla must have been a resident of the City of Camilla for at least twelve (12) months before election, and continue to remain a resident of the City of Camilla during the duration of their service.
>
> As the evidence shows, Pollard is domiciled and resides in Albany, Dougherty County, and therefore does not meet the requirements to hold office as a City of Camilla Councilmember.
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> Likewise, as the evidence shows, Morgan is domiciled and resides in Pelham, Mitchell County, and therefore does not meet the requirements to hold office as a City of Camilla Councilmember.
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> The taxpayers and citizens of the City of Camilla have the right to enforce the law and ordinances of the City of Camilla and are authorized to petition for the removal of city councilmembers who fail to meet the residency requirements.
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> Upon proper review and consideration, Plaintiffs request that the Court declare Pollard and Morgan are not residents of the City of Camilla and therefore cannot and are not councilmembers of the City of Camilla.
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> As such, Plaintiffs request that the Court hold and issue a judgment that the positions held by Pollard and Morgan as vacant.
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> *Id. at ¶¶ 55-60.*
>
> Grant declaratory relief affirming Pollard and Morgan do not have any proper authority as Councilmembers of the City of Camilla;

Grant a declaration and judgment in Quo Warranto that the city councilmember seats held by Pollard and Morgan are vacant;

Id. at Prayer for Relief, ¶¶ 1, 3.

The Petitioners also presented a claim for attorneys' fees and expenses of and from the Respondents pursuant to O.C.G.A. § 13-6-11. However, the Petitioners voluntarily dismissed that claim (while reserving the right to pursue a claim for attorneys' fees and expenses pursuant to O.C.G.A. § 9-15-14) on July 16, 2023.

It should be noted that the Petitioners immediately sought discovery of and from the Respondents in this matter. Written interrogatories and requests for the production of documents were served upon Respondent Pollard on November 28, 2023 at his apartment in Albany, Georgia. *See Joseph Blake Farmer's Affidavit of Service.* Likewise written interrogatories and requests for the production of documents were served upon Respondent Morgan at Watson Spence LLP in Albany, Dougherty County, Georgia. *See Lee Wilson's Affidavit of Service.*

The written discovery served upon the Respondents sought discovery of evidence bearing upon whether or not the Respondents actually maintained their domicile in Camilla, Georgia and further bearing upon whether or not the Respondents had established their domicile in Albany (Pollard) and Pelham (Morgan). On December 20, 2022 Respondents Morgan and Pollard submitted responses to the written discovery which relied upon numerous improper and boilerplate objections and which provided little to no response to nearly every single discovery request submitted. *See Petitioners' Motion to Compel Discovery.* Additionally, the Respondents' interrogatory responses were not submitted under oath. The Petitioners appropriately sought to

confer with the Respondents concerning the deficiency of their discovery responses and sent a lengthy letter to the Respondents in conformity with USCR 6.4 seeking for the Respondents to amend their deficient discovery responses. *See Petitioners' Motion to Compel Discovery, Exhibits 7 & 8.* The Respondents did not respond to the Petitioners' good faith efforts to resolve the discovery dispute. As such, the Petitioners appropriately filed their Motion to Compel Discovery on January 25, 202.

On February 13, 2023, the Court held a hearing on the Petitioners' Motion to Compel Discovery and likewise heard from the Respondents. Notably, the Respondents in their response to the motion to compel argued against having to produce discovery because they had "no burden to prove the allegations of the Petitioners/Plaintiffs in this case". *See Pollard and Morgan's Responses in Opposition to Motion to Compel Discovery.* During the hearing, the Court explained to the parties that Georgia's Civil Practice Act provided parties with a right to conduct discovery and furthermore expressed to the Respondents that a failure to provide discovery could result in sanctions as severe as having one's answer and defenses stricken.[1]

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[1] Indeed, the Court stated as follows to the parties:

> In civil cases, which is where one person is suing another, nobody is accused of a criminal act, the Civil Practice Act was enacted, and part of it is the discovery process. It provided that each side asks certain questions of the other side to try to narrow the issues and facilitate settlements, really. It's really pretty broad. It doesn't necessarily have to ask about evidence that could be used as long as the question is designed to lead to evidence. The answer that was given could be used by the questioner to discovery, to do some more research and get some discoverable evidence.
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> *February 13, 2023 Hearing Transcript, p. 25:21-26:08.*

During this first hearing, the Court noted the hostility displayed by the Respondents toward counsel for the Petitioners as well as attempts to attack the character and integrity of such counsel as well as that of the Petitioners. Respondents, during this first hearing, were advised by the Court that it would be better if they had an attorney trained in civil cases in Georgia, but Respondents continued to choose to be "*pro se* litigants" and asserting that phrase in later depositions as if it entitled them to exemption from the rules of discovery. The Respondents asserted that counsel for the Petitioners was motivated to file the proceeding because Respondent Morgan had campaigned against such counsel and helped defeat him in his bid for an office in Dougherty County, Georgia; responded further tried to introduce evidence from social media concerning one or both of the Petitioners' comments about Respondents' performance on the City of Camilla city council, causing the Court to have to admonish the Respondents concerning such attacks as being irrelevant to the issue of discovery.

After conducting the hearing on Petitioners' Motion to Compel, the Court issued 2 orders (one with respect to Pollard and one with respect to Morgan) on February 20, 2023 sustaining certain objections of the Respondents and overruling numerous others. *See February 20, 2023 Orders.* With respect to Pollard, the February 20, 2023 Order overruled Pollard's objections to

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I wish to caution you that the law does provide that in the event that the Court rules that your responses were not adequate, and compels you to answer or provide more specific answers, that if you do not do that, then the Court can, it is not required to, but can strike your answer, so that there would be nothing before the Court except what they say. You see what I'm saying? I have done that before, not on the basis of discovery, but on the basis of what's called spoliation of evidence.
Id. at 59:10-19.

Interrogatories 2, 3, 9, 10, and 12 and further compelled him to answer such interrogatories under oath. The interrogatories which Pollard was compelled to answer were as follows:

2. Identify all banks, savings and loans, lending or financial institutions, brokerage firms, or any other entity where you have a checking, savings or other depository or brokerage account in your name including the date on which each account was opened. For each entity identified, provide the address of the entity as well as the address which you have listed with such entity for purposes of maintaining your account and/or receiving mail and/or bank statements.

3. Identify each company and/or service provider with whom you have had an account for which you are financially responsible for the past 24 months. For each such company and/or service provider, identify how long you have maintained such account as well as any address which you have listed with such company and/or service provider for purposes of maintaining your account and/or receiving mail and/or account statements.

9. Identify each and every person who actually lives at 70 Dogwood Street, Camilla Georgia and your familial and/or personal relationship to such person.

10. To the extent that you contend that you maintain and/or contend that you maintain a residence at 70 Dogwood Street, Camilla, Georgia, identify the following:

a. When you established 70 Dogwood Street, Camilla, Georgia as your residence and/or domicile;

b. What steps you took to establish 70 Dogwood Street, Camilla, Georgia as your residence and/or domicile;

c. What mail, if any, you have ever received at 70 Dogwood Street, Camilla, Georgia;

d. The address from which you claim that you moved in order to establish 70 Dogwood Street, Camilla, Georgia;

e. The longest period of time (inclusive of dates) in which you claim that you continuously physically resided at 70 Dogwood Street, Camilla, Georgia;

f. What room located at 70 Dogwood Street, Camilla, Georgia you primarily resided in;

g. Each date that you actually stayed and slept at 70 Dogwood Street, Camilla, Georgia;

h. What personal belongings, if any, which you maintain at 70 Dogwood Street, Camilla, Georgia;

i. What expenses, if any, which you pay and which are associated with your claimed residence at 70 Dogwood Street, Camilla, Georgia; and

j. For the past 60 days, identify each date wherein you contend that you spent the night at 70 Dogwood Street, Camilla, Georgia.

12. Identify any and all documents which you filled out with the United States Postal Service which indicate that you chose to receive mail at your apartment in Albany, Georgia.

Additionally, the Court overruled Pollard's objections with respect to numerous document requests and compelled Pollard to produce the following documents:

1. A copy of all utility bills, including electric, water, trash, etc., associated with the apartment located at 419 Westover Blvd, Albany, Georgia for the six months next preceding the date on which the notice to produce was served on Respondent Pollard.

2. A copy of the lease agreement for the apartment located at 419 Westover Blvd, Albany, Georgia.

3. A copy of all utility bills, including electric, water, trash, etc., associated with 70 Dogwood Street, Camilla, Georgia and which are or were titled in your name and/or for which you claim to be financially responsible.

4. All paycheck stubs or other documents given to you by your employer(s), including the City of Camilla, for the past two (2) years.

5. Photographs of the room in which you sleep at 70 Dogwood Steet, Camilla, Georgia AND photographs of the room in which you sleep at 419 Westover Blvd., Albany, Georgia.

6. Photographs of all personal items and belongings you keep at 70 Dogwood Street, Camilla, Georgia, AND photographs of all personal items and belongings you keep at 419 Westover Blvd.. Albany, Georgia.

7. A copy of any documents evidencing any payments made by you towards any expenses associated with 70 Dogwood Street, Camilla, Georgia.

With respect to Morgan, the February 20, 2023 Order likewise overruled Morgan's

objections to Interrogatories 2, 3, 9, 10, and 12 and further compelled him to answer such interrogatories under oath. The interrogatories which Morgan was compelled to answer were as follows:

2. Identify all banks, savings and loans, lending or financial institutions, brokerage firms, or any other entity where you have a checking, savings or other depository or brokerage account in your name including the date on which each account was opened. For each entity identified, provide the address of the entity as well as the address which you have listed with such entity for purposes of maintaining your account and/or receiving mail and/or bank statements.

3. Identify each company and/or service provider with whom you have had an account for which you are financially responsible for the past 24 months. For each such company and/or service provider, identify how long you have maintained such account as well as any address which you have listed with such company and/or service provider for purposes of maintaining your account and/or receiving mail and/or account statements.

9. Identify each and every person who actually lives at 74 Sunset Circle, Camilla, Georgia and your familial and/or personal relationship to such person.

10. To the extent that you contend that you maintain and/or contend that you maintain a residence at 74 Sunset Circle, Camilla, Georgia, identify the following:

a. When you established 74 Sunset Circle, Camilla, Georgia as your residence and/or domicile;

b. What steps you took to establish 74 Sunset Circle, Camilla, Georgia as your residence and/or domicile;

c. What mail, if any, you have ever received at 74 Sunset Circle, Camilla, Georgia;

d. The address from which you claim that you moved in order to establish 74 Sunset Circle, Camilla, Georgia as your residence and/or domicile;

e. The longest period of time (inclusive of dates) in which you claim that you continuously physically resided at 74 Sunset Circle, Camilla, Georgia;

f. What room located at 74 Sunset Circle, Camilla, Georgia you primarily resided in;

g. Each date that you actually stayed and slept at 74 Sunset Circle, Camilla, Georgia;

h. What personal belongings, if any, which you maintain at 74 Sunset Circle, Camilla, Georgia;

i. What expenses, if any, which you pay and which are associated with your claimed residence at 74 Sunset Circle, Camilla, Georgia; and

j. For the past 60 days, identify each date wherein you contend that you spent the night at 74 Sunset Circle, Camilla, Georgia.

12. Identify any and all documents which you filled out with the United States Postal Service which indicate that you chose to receive mail at your apartment in Pelham, Georgia.

Additionally, the Court overruled Morgan's objections with respect to numerous document requests and compelled Morgan to produce the following documents:

1. A copy of all utility bills, including electric, water, trash, etc., associated with the apartment located at 202 Hand Avenue, Apt C, Pelham, Georgia for the six months next preceding the date on which the notice to produce was served on Respondent Morgan.

2. A copy of the lease agreement for the apartment located at 202 Hand Avenue, Apt C, Pelham, Georgia.

3. A copy of all utility bills, including electric, water, trash, etc., associated with 74 Sunset Circle, Camilla, Georgia and which are or were titled in your name and/or for which you claim to be financially responsible.

4. All paycheck stubs or other documents given to you by your employer(s), including the City of Camilla, for the past two (2) years.

5. Photographs of the room in which you sleep at 74 Sunset Circle, Camilla, Georgia AND photographs of the room in which you sleep at 202 Hand Avenue, Pelham, Georgia.

6. Photographs of all personal items and belongings you keep at 202 Hand Avenue, Pelham, Georgia, AND photographs of all personal items and belongings you keep at 74 Sunset Circle, Camilla, Georgia.

7. A copy of any documents evidencing any payments made by you towards any expenses associated with 74 Sunset Circle, Camilla, Georgia.

On March 9, 2023, Pollard and Morgan reconstituted their discovery responses and submitted verified interrogatory responses and documents to counsel for the Petitioners. Of particular note at the hearing and later in their compelled depositions, were Pollard and Morgan's productions of photographs purportedly from the homes in Camilla where Pollard and Morgan claimed to live. The Petitioners contend that these photographs were staged and manipulated pieces of evidence created after the February 20, 2023 Order Compelling Discovery in order to make it look as if Pollard and Morgan had maintained personal belongings at the residences where they claimed to live in Camilla, Georgia. The Petitioners further contended and the deposition testimony of the Respondents' established that they possessed numerous photographs of the homes where the Petitioners contended that the Respondents actually domiciled themselves, but that the Respondents spoliated such evidence and never produced same. The Court had the opportunity to observe the demeanor of the Respondents on the portions of the video deposition played for the Court and noted the same hostility demonstrated in the courtroom hearings in this case. The Court assessed the credibility of the Respondents with respect to all issues, especially the issue of spoliation, based upon such observations and attitudes displayed in the Courtroom.

After receiving the updated discovery responses, the Petitioners sought to take the depositions of the Respondents in order to examine the responsiveness of the Respondents to the discovery requests which they were compelled to provide and further regarding the factual issues bearing upon their residency/domicile. *See Petitioners May 5, 2023, Motion to Strike Answer and Defenses and Brief in Support.* On March 21, 2023, counsel for the Petitioners wrote to the Respondents as follows:

Dear Mssrs. Morgan and Pollard

We are writing to schedule your depositions for April 12, 2023 at our law office at the address below. We would like to take the deposition of Mr. Pollard at 10:00 am and Mr. Morgan at 2 pm. I will forward here shortly notices of deposition which will confirm the time, date, and place of deposition. ***If you have a scheduling conflict for that day, please let us know the nature of your conflict and provide an alternative date for purposes of scheduling.***
Most Respectfully,

CSC

Id., Exhibit 1, (emphasis supplied).

Counsel for the Petitioners' paralegal transmitted deposition notices to the Respondents. *Id. at Exhibit 2.* Following the transmission of the deposition notices, the following day (March 22, 2023), the Respondents transmitted nearly identical "Motion[s] to Quash Notice of Video Deposition". In Respondent Pollard's Motion to Quash, Pollard acknowledged service of the Notice of Deposition, and also raised an issue with the certificate of service in the Notice of Deposition.[2] Counsel for the Petitioners immediately re-issued Amended Notices of Deposition to address the technical issue raised by Respondent Pollard and had those amended notices re-transmitted to the Respondents on March 22, 2023 at 4:24 pm. *See May 5, 2023 Motion to Strike, Exhibit 3.*

Between March 22, 2023 and April 12, 2023, the Respondents did not request a hearing

[2] The certificate of service mistakenly stated that the "Notice of Video Deposition of Corey B. Morgan" had been served upon Respondent Pollard when it should have stated "Notice of Video Deposition of Venterra Pollard". Regardless, Pollard acknowledged receipt and counsel for the Petitioners immediately amended the deposition notices and re-transmitted them to the Respondents to eliminate any potential confusion.

with the Court. The Respondents did not obtain a ruling from the Court excusing them from their depositions. The Respondents further did not provide any alternative dates for the deposition date which was duly noticed. The Respondents did not seek a protective order with respect to the amended notices of deposition which were re-issued on March 22, 2023 and which re-confirmed the time, date, and places for their depositions. Rather, the Respondents again asserted that they should not have to be deposed because:

> This Defendant is becoming increasingly concerned that the "burden" of this case is shifting to him. Nothing in the background of this case-particularly at this stage and for this purpose suggests that the extraordinary step of calling this Defendant to attend a video deposition must be exercised.
>
> *See Defendant's Motion to Quash Notice of Video Deposition of Corey Morgan*[3]
> *See Defendant's Motion to Quash Notice of Video Deposition of Venterra Pollard*

Having received no communication from the Respondents regarding alternative dates and having received no Court ruling excusing the Respondents from their depositions, the Petitioners proceeded with the duly noticed depositions of the Respondents pursuant to the Amended Notices of Deposition.[4] Counsel for the Petitioners prepared for the deposition and made arrangements for a court reporter and a videographer to be present to take the Respondents' video-taped depositions. On April 12, 2023, the Respondents did not attend their depositions. The Court Reporter

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[3] Though Mr. Morgan's "Motion to Quash" was transmitted on March 22, 2023, it was not actually filed until April 5, 2023. Mr. Pollard's "Motion to Quash" was actually filed on March 22, 2023. Both contain the same identical quote referenced hereinabove.

[4] It is important to note that even though a "Motion to Quash" is the improper vehicle for purposes of attacking a deposition notice of a party, the Respondents did not file a motion to quash, any objection, and/or any motion for protective order with respect to the re-issued notices of deposition.

documented their failure to appear. *See May 5, 2023 Motion to Strike, Exhibits 4 & 5.*

Following the Respondents' refusal to attend their depositions, the Petitioners filed their May 5, 2023 Motion to Strike Respondents' Answers and Defenses and sought a hearing on the matter. The Respondents filed Responses to the Petitioners' Motion to Strike. The Court notes that much of the argument presented by the Respondents in response to the Motion to Strike relied upon and injected irrelevant political arguments, and attacks on the Petitioners for their alleged participation in certain political organizations. However, the Respondents again asserted that they should not have to provide a deposition:

> The value of any testimony that might be sought is *de minimus* at best and substantially outweighed by the burden of haling this Defendant to presumably answer questions that have essentially already been answered.
>
> *See Morgan and Pollard's Responses to May 5, 2023 Motion to Strike Answer and Defenses.*

Further of note, neither Respondent offered any legal defense or justification as to why they failed to appear at their duly noticed depositions.

On June 28, 2023 the Court held a hearing on the Respondents' Motion to Strike the Respondents' Answers and Defenses. The Court re-emphasized that the Civil Practice Act provides civil litigants with a right to discovery and to conduct depositions and again, for at least the second or third time, cautioned the Respondents about proceeding *pro se* and encouraged them to hire a lawyer. The Court further heard from all parties. The Petitioners contended that the Respondents' Answers and Defenses should be stricken due to a willful refusal to provide discovery which stood in addition to the Respondents' obfuscatory behavior with respect to

responding to written discovery requests. Ultimately, the Court issued another order compelling the depositions of Morgan and Pollard and withholding decision on the issue of whether sanctions would be issued based upon the discovery violations that had already occurred. The Court's Order was issued the same day as the hearing and provided as follows in relevant parts:

> The legislature, when enacting the Civil Practice Act, was aware of the Quo Warranto proceedings as the same had long existed under Georgia law and specifically provided in O.C.G.A. 9-11-81 the following:
>
> "This chapter (Civil Practice) ***shall apply to all special statutory proceedings*** except to the extent that specific rules of practice and procedure in conflict herewith are expressly prescribed by law."
>
> An action seeking a writ of quo warranto is one of the special statutory proceedings referenced in O.C.G.A. 9-11-81. [Footnote omitted]
>
> OCGA continues after the excerpt set forth in paragraph 5 hereinabove as follows:
>
> But, ***in any event, the provisions of this chapter governing...discovery and depositions...shall apply to such proceedings."***

This Court finds that the legislature contemplated and adopted the meaning of "forthwith" as being "within a reasonable time under the circumstances" as the definition for trial courts to follow in setting an order, given the expressed intention of the legislature to allow the parties discovery rights, including depositions, as set forth hereinabove. The latest expression of legislative intent must prevail.

[Footnote omitted]

***

IT IS FURTHER ORDERED WITH RESPECT TO PETITIONERS/PLAINTIFFS' MOTION TO STRIKE as follows:

1) Petitioners/Plaintiffs shall, if either or both so desire, notify Respondents/Defendants, either or both, of the taking of such Respondents/Defendants' deposition(s) under the applicable rules of discovery under the Civil Practice Act and any other Georgia law, such date of deposition to be prior to July 15, 2023; and,

2) Respondents/Defendants shall attend any deposition or depositions for which either or both receive a proper notice and answer questions propounded in accordance with Georgia law, and counsel for the Plaintiffs/Petitioners shall conduct the deposition in accordance with Georgia law and further shall provide notice of the deposition(s) to the Court so that the Court can be available to rule on any matters which may arise; and,

3) The Court reserves the right to more fully impose sanctions as provided by Georgia law and this ruling in no way limits the Court's authority to impose any and all sanctions against any party or counsel for violations of this order or Georgia law regarding discovery.

See June 28, 2023 Order.

Thereafter, the Petitioners again noticed the depositions of the Respondents. The

depositions were set for July 11, 2023 (six days before trial). Subsequent to the June 28, 2023 Order, the Court issued an order setting this matter for trial on July 17, 2023. *See July 5, 2023 Order*. On July 11, 2023, the Petitioners attempted to conduct the depositions of the Respondents. It should be noted that prior to entering this order, that the Court not only conducted a lengthy hearing on this matter, but that it further reviewed portions of Respondents' deposition testimony which the Petitioners submitted in support of their most recent Emergency Consolidated Motion and Brief in Support of Renewed Motion to Strike Answers and Defenses of the Respondents.

During the deposition of Pollard, Pollard repeatedly, while answering questions posed to him, reviewed documents which he had in front of him and which contained his discovery responses along with certain handwritten notes. When counsel for the Petitioners requested to review the documents, Respondent Pollard refused to provide same to counsel. Counsel for the Petitioners initiated a phone call to the Court and the Court telephonically (and on the record) informed Respondent Pollard that he had to provide the documents to which he was referring to counsel for the Petitioners. However, more importantly, the Court reminded the parties that the issue of sanctions had not been decided and that it was the intent of the Court to evaluate whether or not sanctions and/or striking the answers and defenses of the Respondents would be ordered in light of their overall lawful participation with the depositions which the Court had compelled. Counsel for the Petitioners further informed the Court on the record of his position that the Respondents were obfuscating the deposition process. The Court admonished the parties to conduct themselves appropriately.

Following the depositions of Pollard and Morgan, counsel for the Petitioners (the next day)

filed the Petitioners' Emergency Consolidated Motion and Brief in Support of Renewed Motion to Strike Respondents' Answers and Defenses. In support of same, the Petitioners asserted as follows:

1. The Respondents have deleted/spoliated photographs demonstrating their acts of residing at the homes which the Petitioners allege that the Respondents actually live at and which are outside of the city limits of Camilla;

2. The Respondents refuse/evade to provide testimony regarding their spoliation/deletion of evidence;

3. The Respondents manufactured evidence to be produced in response to this Court's Order Compelling Discovery which would appear as authentic photographs of the homes where they claim to live and their personal belongings;

4. The Respondents likewise spoliated/deleted the photographic evidence which electronically stored the dates, times, and places of the photographs which the Respondents manufactured and produced in hard copy form;

5. Respondents collectively refused to answer numerous questions and otherwise evaded with non-responsive answers numerous questions bearing upon the issue of their residence and numerous other critical/foundational issues such as who assisted them in the preparation of their discovery responses;

6. Respondents failed to produce critical documents which are indisputably responsive to the Petitioners' discovery requests and which were compelled by this Court to be provided.

The Court reviewed portions of the Respondents' video deposition testimony in court and had the opportunity to review not only their answers, but further their demeanors in responding to questions which were lawfully posed to them. With respect to the Respondents' deposition testimony, the Court finds as follows:

1. Both Respondents repeatedly evaded and refused to answer critical and relevant questions pertaining not only to the issue of their domicile, but further with respect to the admitted spoliation of photographs which both the Respondents admitted that they had in their possession, custody, and control (on their phones) of the homes where the Petitioners have alleged that the Respondents established their domiciles.

2. Respondent Morgan refused to answer numerous and repeated questions regarding who participated in the preparation of his interrogatory responses. The Court notes that a party is entitled to inquire as to the identity of any person that assists in the preparation of one's interrogatory responses. The Court notes that counsel for the Petitioners repeatedly conducted inquiry on this matter and further that Respondent Morgan purposefully refused to answer and evaded all questioning of this topic, which was highly material. A party is entitled to discover the identity of any person that contributed and/or assisted in the preparation of discovery responses. Such is a basic component of discovery. The materiality of this line of questioning was further highlighted by Morgan's own behavior during his deposition where he was observed having to review his interrogatory responses in order to answer simple questions regarding his living/sleeping arrangements. If someone other than Morgan contributed and/or assisted in the preparation of Morgan's interrogatory responses, then the Petitioners were entitled to discover

same. However, Morgan's refusal to provide this testimony wholly foreclosed the potential discovery of these facts. The Court further finds that this refusal to provide discovery was both willful and intentional and that it occurred after numerous warnings from the Court.

3. Both Morgan and Pollard consistently refused to answer and in fact provided evasive, nonresponsive "answers" to numerous critical and relevant questions bearing upon the issue of whether or not they had taken steps which effectively established their domicile outside of the City of Camilla. This was evidenced repeatedly by both Morgan and Pollard refusing to answer direct questions regarding their memory of certain events and Morgan and Pollard, in almost identical fashion at times, repeating that they simply did not keep records of where they stayed as opposed to answering the questions which were asked of them. When counsel for the Petitioners reminded them that he was not asking that he was not asking about whether or not the Respondents kept records, but rather if they remembered staying at a particular residence at a particular time, the Respondents maintained their positions by refusing to answer or by presenting a wholly non-responsive answer to the question. Indeed, the Petitioners' counsel was observed asking numerous repeated relevant questions again and again and further professionally reminding the Respondents' that the answers that were being provided were not answering the questions that were being posed.

4. Counsel for the Petitioners conducted extensive questioning regarding the authenticity of the photos which were ultimately produced by the Respondents in their discovery responses and aimed at determining whether or not such photographs had existed prior to the Court's Order compelling discovery. The Respondents repeatedly evaded, refused to answer,

and/or provided non-responsive responses to these inquiries. Both Respondent Pollard and Morgan admitted during their deposition testimony that they had photographs of the homes (which the Petitioners' contended constituted their domiciles outside of the City of Camilla) on their phone as well as the photographs of the Camilla residences (which the Respondents were claiming to be their domicile and which they produced in hard copy form) on their phone. Both Respondent Pollard and Respondent Morgan testified that they no longer had these photographs and either refused to answer and/or wholly evaded questioning directed at their spoliation of this evidence. This issue was of critical importance for a variety of reasons. First, the Respondents did not produce any photographs of the homes where the Petitioners alleged the Respondents were domiciled in discovery. The sole photographs which they produced were of a few personal belongings which the Respondents asserted were of the homes which they contended represented their Camilla domiciles. The Court further notes that Respondent Morgan, when questioned about the location of the few photographs that he produced, had to review his discovery responses in order to provide the answer that one of the disputed photographs was a "picture of the room where I sleep" (referring to the home where he claimed to be domiciled in Camilla). Respondent Pollard refused to answer any questions regarding whether or not he had deleted the photographs which he had produced and repeatedly stated that he simply no longer had the photographs on his phone. Respondent Morgan testified that the pictures which he previously had of the home which the Petitioners contended was his domicile were on another phone and that he had gotten a new phone. Again, none of these photographs were produced and Morgan similarly stated that he no longer had any of the photographs on his phone which were produced and which represented where

Morgan claimed to live. In this regard, the Court finds that the Respondents intentionally deleted and/or otherwise spoliated critical evidence which the Court had compelled to be produced in discovery. Moreover, the Court finds that this evidence was highly material to the questions of fact in this matter and that the spoliation of this evidence was not only a violation of the Respondents' duty to maintain/preserve such evidence, but further a direct violation of the Court's previous order compelling discovery of same. It is difficult to imagine a medium of evidence more probative of where someone is actually domiciled than photographs which are often ordinarily maintained on one's phone. Pictures of family gatherings, birthday parties, personal belongings, one's bedroom, gatherings of friends, and activities which are traditionally conducted at one's domicile are highly probative of an individual's intent to establish a residence as their actual domicile. The Court finds that the Respondents not only spoliated this evidence, but further refused to answer numerous questions and/or provided wholly evasive answers to Petitioners' entire line of questioning in this regard. The Court further finds that the Respondents' spoliation of evidence was intentional and willful, that such was an intentional violation of the Court's prior order compelling discovery, and furthermore that Respondents' non-answers and wholly evasive answers provided in their compelled depositions constitute separate violations of the Court's second order compelling discovery as well as a refusal to provide discovery. It should be further noted that by failing to maintain and/or deleting the photographs which the Respondents did actually produce in hard copy form in discovery (and which depicted what the Respondents claimed to be their personal belongings in the homes where they claimed to be domiciled), the Respondents eliminated any possibility for the Petitioners to have such electronic evidence

analyzed so as to determine when and where the photographs were actually taken. This was material because the request for production of documents sought photographs which were in their possession, custody, and control at the time that discovery was served in November of 2022. Respondents, by deleting this evidence, foreclosed any analysis as to whether or not they indeed manufactured the photographs after this Court's order compelling discovery. This again served to prejudice the Petitioners.

5. The Court further finds that the Respondents both collectively intentionally evaded and refused to answer numerous questions bearing directly upon the issue of where they were domiciled. The Court notes that the establishment of a "domicile" is a mixed question of law and fact and that by refusing to answer and/or providing repeated evasive answers to counsel for the Petitioners' questions, the Respondents willfully refused to provide discovery and were further in violation of the Court's order compelling their depositions. This pattern of behavior further prejudiced the Petitioners by eliminating discovery of critical facts which bear upon the issues in this litigation. Perhaps the most offensive, obtuse, and contemptuous conduct was the offered "answer" to questioning as follows: "I'm a *pro se* litigant who has never changed residence (domicile) from Camilla, Georgia." (or words to that effect).

Severe sanctions are warranted in this case based on the Respondents' express defiance of this Court's Orders as well as their willful and intentional discovery violations. The Respondents have breached their obligations not to spoliate evidence, violated the Court's order compelling discovery of photographic evidence, and further violated the Court's order compelling their depositions. The sanctions granted herein are justified by virtue of numerous and overlapping

statutory authorities which prohibit the campaign of knowing and intentional discovery violations in which the Respondents engaged in this matter. O.C.G.A. § 9-11-37(a)(3) and O.C.G.A. § 9-11-37(b) provides as follows in relevant parts:

> (3) Evasive or incomplete answer. For purposes of the provisions of this chapter which relate to depositions and discovery, **an evasive or incomplete answer is to be treated as a failure to answer**; and
>
> ***
>
> (b) *Failure to comply with order.*
>
> ***
>
> (1) Sanctions by court in which action is pending. **If a party** or an officer, director, or managing agent of a party or a person designated under paragraph (6) of subsection (b) of Code Section 9-11-30 or subsection (a) of Code Section 9-11-31 to testify on behalf of a party **fails to obey an order to provide or permit discovery, including an order made under subsection (a) of this Code section or Code Section 9-11-35, the court in which the action is pending may make such orders in regard to the failure as are just and, among others, the following**:
>
> ***
>
> (C) An **order striking out pleadings or parts thereof**, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, **or rendering a judgment by default against the disobedient party**;

(emphasis supplied).

The Court finds based upon the foregoing, that the Respondents knowingly and intentionally violated the Court's prior orders compelling discovery as well as their depositions. The Respondents were warned repeatedly and advised by the Court of the potential consequences for refusing and/or failing to provide discovery in this matter. Yet, the Court finds that the Respondents persisted on a course of action designed to refuse to provide discovery and/or

meaningful deposition testimony and further that the Respondents knowingly spoliated evidence critical to the instant litigation. Furthermore, it should be noted that the Respondents' behavior in refusing to provide answers at their depositions and providing wholly evasive answers came at a critical time. The Respondents depositions were noticed in compliance with the Court's order compelling their depositions on July 11, 2023 which was six (6) days before the trial of this matter. By refusing to provide answers to questions posed and repeatedly evading questions posed, the Respondents sought to benefit their respective litigation positions by denying the Petitioners the ability to further develop their factual positions before trial and with very little time to seek redress from the Court.

Moreover, it should be noted that the Court was already justified in imposing the sanction of striking the Respondents' answers and defenses based upon the Respondents' prior refusal to attend their own duly noticed depositions. The Court further finds that the Respondents' prior refusal to attend their previously scheduled depositions was a knowing and intentional refusal to provide discovery which is separately justified by O.C.G.A. § 9-11-37(d)(1) which provides as follows:

> (d) *Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection.*
>
> (1) If a party or an officer, director, or managing agent of a party or a person designated under paragraph (6) of subsection (b) of Code Section 9-11-30 or subsection (a) of Code Section 9-11-31 to testify on behalf of a party fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers or objections to interrogatories submitted under Code Section 9-11-33, after proper service of the interrogatories, or fails to serve a written response to a request for inspection submitted under Code Section 9-11-34, after proper service of the request, the

court in which the action is pending on motion may make such orders in regard to the failure as are just; and, among others, it may take any action authorized under subparagraphs (b)(2)(A) through (b)(2)(C) of this Code section. In lieu of any order, or in addition thereto, the court shall require the party failing to act or the attorney advising him, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(2) The failure to act described in the provisions of this chapter which relate to depositions and discovery may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by subsection (c) of Code Section 9-11-26.

It was the intention of the Court to incentivize appropriate behavior and deposition testimony of and from the Respondents by compelling their depositions and withholding a ruling on the issue of sanctions until their depositions were complete. However, the Respondents did not heed the Court's warnings and moreover engaged in deposition behavior where they intentionally refused to provide answers to relevant and material questions and otherwise provided repeated and numerous evasive answers. The Court further finds that the Respondents' refusal to attend their originally scheduled depositions was both knowing and intentional and that the Respondents did not seek a protective order and further did not advance any legally cognizable basis for a protective order in their Motions to Quash Video Depositions. Rather, the Respondents have as the Court has found previously "resisted discovery from the outset of this proceeding" and essentially asserted that they should not have to sit for depositions. That is not the law. Discovery is a basic right of civil litigants and the Civil Practice Act applies to quo warranto proceedings. As such, the Court, separate and distinct from the discovery violations which were complained of in the Petitioners' Consolidated Emergency Motion and Brief in Support of Renewed Motion to Strike

Respondents' Answers and Defenses (and which separately support the sanctions granted herein), finds and imposes the striking of the Respondents' Answers and Defenses for their refusal to attend their depositions.

ORDER AND FINAL JUDGMENT

WHEREFORE, based upon the foregoing, the Court hereby ORDERS as follows:

1. The Petitioners' Motion to Strike Answers and Defenses filed May 5, 2023 is GRANTED based upon the Respondents' knowing and intentional refusal to attend their duly noticed depositions;

2. The Petitioners' Consolidated Emergency Motion and Brief in Support of Renewed Motion to Strike Respondents' Answers and Defenses is separately GRANTED based upon the Respondents' knowing and intentional refusal to provide discovery in this matter and based upon the Respondents' knowing and intentional violations of this Court's Orders compelling discovery;

3. The Petitioners' Consolidated Emergency Motion and Brief in Support of Renewed Motion to Strike Respondents' Answers and Defenses is separately GRANTED based upon the Respondents' spoliation of evidence of residency or lack thereof in Camilla, Georgia,;

4. The Respondents' Answers and Defenses are hereby ORDERED stricken;

5. The Petitioners' Motion for Default Judgment which followed the Court's oral pronouncement that it was granting the Petitioners' Motions to Strike Answers and Defenses is hereby GRANTED as was further pronounced by the Court in its oral ruling on July 17, 2023 at 1:30 pm;

6. Having stricken the Respondents' Answers and Defenses and having granted

default judgment against the Respondents, the Court hereby enters Final Judgment against the Respondents as follows:

a. It is hereby declared and adjudicated that Respondent Morgan is not a resident of the City of Camilla and therefore cannot serve as a councilmember for the City of Camilla;

b. It is hereby declared and adjudicated that Respondent Pollard is not a resident of the City of Camilla and therefore cannot serve as a councilmember for the City of Camilla;

c. It is hereby declared and adjudicated that Respondent Morgan does not have any proper authority to act in the capacity as a councilmember for the City of Camilla;

d. It is hereby declared and adjudicated that Respondent Pollard does not have any proper authority to act in the capacity as a councilmember for the City of Camilla;

e. It is hereby ORDERED that the position of Camilla City Councilmember which is currently held by Respondent Morgan is hereby declared VACANT;

f. It is hereby ORDERED that the position of Camilla City Councilmember which is currently held by Respondent Pollard is hereby declared VACANT;

g. O.C.G.A. § 9-6-66 requires as follows:

Whenever the right to any office is decided, the judgment fixing the right shall further provide for the delivery to the person held to be entitled to the office of all the books and papers of every sort belonging to the office, which judgment shall be enforced as decrees in equity are enforced.

As such, the Court having declared the offices previously held by Respondents Pollard and Morgan vacant, the Court further ORDERS that Respondents Pollard and Morgan shall return all books, papers, electronic devices, and/or other tangible things which they have in their possession and which belong to the City of Camilla to the City Manager for the City of Camilla within 48 hours of the entry of this ORDER.

h. The Court further determines that there is no just reason for delay and that this judgment should be entered immediately. As such, the Court directs the clerk to enter judgment in favor of the Petitioners and against the Respondents. Court costs of $421.71 are hereby awarded to the Petitioners and taxed against the Respondents.

SO ORDERED this 20th day of July, 2023, at 4:58 p.m.

Honorable Gary C. McCorvey
Senior Judge, Superior Courts of Georgia
Presiding by Order and Designation as Judge,
Superior Court of Mitchell County, Georgia

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