

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
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CLERK-ALBUQUERQUE

SAMMY KIDD,

Plaintiff,

vs.

No. CIV-2004-1355 MCA/ACT

**CITY OF ALBUQUERQUE,
NEW MEXICO, MARTIN CHAVEZ,
Mayor, JAMES LEWIS, Chief Administrative
Officer, VALERIE VIGIL, Director of Family
And Community Services,**

Defendants.

**DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT FOR BREACH OF
EMPLOYMENT CONTRACT, WRONGFUL TERMINATION, DENIAL OF DUE
PROCESS, VIOLATIONS OF THE FAIR LABOR STANDARDS ACT,
AND MANDAMUS OR INJUNCTIVE RELIEF**

Defendants through Assistant City Attorney Paula I. Forney, answers Plaintiff's Complaint for Breach of Employment Contract, Wrongful Termination, Denial of Due Process, Violations of the Fair Labor Standards Act, and Mandamus or Injunctive Relief (hereinafter referred to as the Complaint) and affirmatively defends:

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint and therefore deny them.
2. Defendants admit the allegations contained in Paragraph 2 of the Complaint.
3. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint and therefore deny them.

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4. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint and therefore deny them.

FACTUAL ALLEGATIONS

5. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 and therefore deny them.

6. In response to the allegations contained in paragraph 6 of plaintiff's complaint, defendants admit that plaintiff worked under 40 hours per week. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore deny them.

7. In response to the allegations contained in paragraph 7 of plaintiff's complaint, defendants admit that plaintiff went to work at the Barelas Community Center. Defendants deny the remainder of the allegations in paragraph 7.

8. In response to the allegations contained in paragraph 8 of plaintiff's complaint, defendants admit that in 2001 plaintiff was transferred to the Jack Candelaria Community Center. Defendants deny the remaining allegations in paragraph 8.

9. In response to the allegations contained in paragraph 9 of plaintiff's complaint, defendants deny that plaintiff has worked for the City for more than 12 years without a break in service. Defendants admit the remaining allegations in paragraph 9.

10. Defendants deny the allegations contained in paragraph 10 of plaintiff's complaint.

11. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 and therefore deny them.

12. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 and therefore deny them.

13. Defendants admit the allegations contained in paragraph 13 of plaintiff's complaint.

14. In response to paragraph 14, defendants state that the cited document speaks for itself.

15. Defendants deny the allegations contained in paragraph 15 of plaintiff's complaint.

16. In response to the allegations contained in paragraph 16 of plaintiff's complaint, defendants state that the article in the August 6, 2004 Albuquerque Journal speaks for itself. Defendants deny the remaining allegations in paragraph 16.

17. In response to paragraph 17, defendants state that the cited document speaks for itself.

18. In response to the allegations contained in paragraph 18, defendants admit that no personnel hearing has been scheduled. Defendants deny the remaining allegations contained in paragraph 18.

19. In response to the allegations contained in paragraph 19 of plaintiff's complaint, defendants admit that plaintiff was a temporary employee and ineligible for benefits provided to regular, permanent City employees. Defendants deny the remaining allegations contained in paragraph 19.

LEGAL CONTENTIONS

20. The allegations contained in paragraph 20 of plaintiff's complaint are legal conclusions which therefore require no response. Further the cited document speaks for itself.

21. The allegations contained in paragraph 21 of plaintiff's complaint are legal conclusions which therefore require no response. Further the cited document speaks for itself.

22. The allegations contained in paragraph 22 of plaintiff's complaint are legal conclusions which therefore require no response. Further the cited document speaks for itself.

23. The allegations contained in paragraph 23 of plaintiff's complaint are legal conclusions which therefore require no response. Further the cited document speaks for itself.

24. In response to the allegations contained in paragraph 24 of plaintiff's complaint, the cited document speaks for itself.

COUNT 1 BREACH OF EMPLOYMENT CONTRACT

25. Defendants incorporate herein by reference their responses to the foregoing allegations.

26. The allegations contained in paragraph 26 are legal conclusions which therefore require no response.

27. Defendants deny the allegations contained in paragraph 27 of plaintiff's Complaint.

28. The allegations contained in paragraph 28 are legal conclusions which therefore require no response.

29. In response to the allegations contained in paragraph 29 of plaintiff's complaint, defendants admit plaintiff was an unclassified temporary or part time employee. The remaining allegations of paragraph 29 are legal conclusions which therefore require no response.

30. Defendants deny the allegations contained in paragraph 30 of plaintiff's complaint.

31. Defendants deny the allegations contained in paragraph 31 of plaintiff's complaint.

32. Defendants deny the allegations contained in paragraph 32 of plaintiff's complaint.

COUNT 2 VIOLATION OF RIGHT TO DUE PROCESS

33. Defendants incorporate herein by reference their responses to the foregoing allegations.

34. Defendants deny the allegations contained in paragraph 34 of plaintiff's complaint.

35. Defendants deny the allegations contained in paragraph 35 of plaintiff's complaint.

36. Defendants deny the allegations contained in paragraph 36 of plaintiff's complaint.

37. Defendants deny the allegations contained in paragraph 37 of plaintiff's complaint.

38. Defendants deny the allegations contained in paragraph 38 of plaintiff's complaint.

39. Defendants deny the allegations contained in paragraph 39 of plaintiff's complaint.

COUNT 3 WRONGFUL TERMINATION

40. Defendants incorporate herein by reference their responses to the foregoing allegations.

41. Defendants deny the allegations contained in paragraph 41 of plaintiff's complaint.

42. Defendants deny the allegations contained in paragraph 42 of plaintiff's complaint.

COUNT 4 FAIR LABOR STANDARDS ACT

43. Defendants incorporate herein by reference their responses to the foregoing allegations.

44. The allegations contained in paragraph 44 are legal conclusions which therefore require no response.

45. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 of the complaint and therefore deny them.

46. Defendants deny the allegations contained in paragraph 46 of plaintiff's complaint.

COUNT 5 INJUNCTIVE OR EXTRAORDINARY RELIEF

47. Defendants incorporate herein by reference their responses to the foregoing allegations.

48. Defendants deny the allegations contained in paragraph 48 of plaintiff's complaint.

49. Defendants deny the allegations contained in paragraph 49 of plaintiff's complaint.

50. Defendants deny the allegations contained in paragraph 50 of plaintiff's complaint.

51. All allegations of the plaintiff's complaint not specifically admitted or denied above are hereby denied.

52. As to the allegations contained in plaintiff's prayer, defendants deny that plaintiff is entitled to any relief under the facts and circumstances of this case.

AFFIRMATIVE DEFENSES

1. All activities of these defendants were lawful, in good faith and in the exercise of governmental functions.

2. Defendants breached no duty owed to plaintiff.

3. At all times relevant hereto, the actions of defendants were reasonable, proper and legal.

4. Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

5. Plaintiff is not entitled to any injunctive relief under the facts and circumstances of this case.

6. All activities of the defendants were lawful, in good faith and in the proper exercise of governmental functions.

7. Plaintiff failed to mitigate his alleged damages.

8. Plaintiff failed to comply with the provisions of the New Mexico Tort Claims Act, N.M.Stat. Ann. §§ 41-4-1 through 41-4-27 (1978 Comp.), which bars recovery.

9. Plaintiff has failed to mitigate damages.

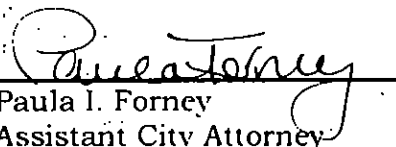
10. Plaintiff has waived the rights he claims and/or is estopped from making such claims.

11. Plaintiff's claims are barred by the statute of limitations.
12. The individual defendants are entitled to qualified immunity.
13. Plaintiff did not suffer any detriment or damages as a result of the incidents alleged in the complaint.
14. Pursuant to N.M.Stat. Ann. § 41-4-19(B) of the New Mexico Tort Claims Act, defendants are not liable for exemplary or punitive damages.
15. Plaintiff was given all process to which he was due.
16. Plaintiff is not entitled to declaratory or injunctive relief because plaintiff has an adequate remedy at law.
17. Defendants did not breach any contract of employment with plaintiff.
18. At all times relevant hereto, defendants complied with the provisions of the Fair Labor Standards Act and plaintiff is not entitled to damages.

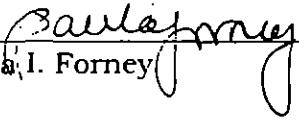
WHEREFORE, having full answered and affirmatively defended, Defendants request an Order of this Court dismissing plaintiff's complaint in its entirety, assessing the defendants' costs to the plaintiff and for such further relief this Court deems fair and just.

Respectfully submitted:

CITY OF ALBUQUERQUE
Robert M. White
City Attorney


Paula I. Forney
Assistant City Attorney
P.O. Box 2248
Albuquerque, NM 87102
(505) 768-4500

I hereby certify that a true and correct copy of the foregoing was mailed to :
Paul Livingston, Attorney for Plaintiff, P.O. Box 250, Placitas, NM 87043
On the 9th day of December, 2004.



Paula I. Forney