

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 Case No. 1:09-CV-00520-JB-RLP

4 ANTOINETTE GONZALES, CAROLL AUSTIN, SARAH CLOVER, and
5 ANNETTE MORA, and A CLASS OF SIMILARLY SITUATED CITY
6 EMPLOYEES,

7 Plaintiffs,

8 vs.

9 THE CITY OF ALBUQUERQUE, ED ADAMS, Chief
10 Administrative Officer, and ESTHER TENENBAUM,
11 Division Manager, in their individual and official
12 capacities,

13 Defendants.

14 DEPOSITION OF ANNETTE MORA

15 Thursday, October 14th, 2009
16 9:40 a.m.

17 CITY ATTORNEY'S OFFICE
18 One Civic Plaza, Northwest, Fourth Floor
19 Albuquerque, New Mexico 87102

20 PURSUANT TO THE FEDERAL RULES OF CIVIL
21 PROCEDURE, this deposition was:

22 TAKEN BY: MR. EDWARD W. BERGMANN
23 ATTORNEY FOR THE DEFENDANTS

24 REPORTED BY: MICHELE M. TRUJILLO, CCR No. 226
25 RUSSIN WILLIAMS REPORTING
1608 Fifth Street, Northwest
Albuquerque, New Mexico 87102

1 first question I think you asked --
 2 MR. BERGMANN: Yes.
 3 MR. LIVINGSTON: -- is covered in there --
 4 MR. BERGMANN: Fine.
 5 MR. LIVINGSTON: -- I wanted you to have
 6 that right away.
 7 MR. BERGMANN: Thank you. I appreciate
 8 that.
 9 MR. LIVINGSTON: And I do not have copies.
 10 MR. BERGMANN: Okay. We'll make a --
 11 MR. LIVINGSTON: If you can make --
 12 MR. BERGMANN: I think what I'll do --
 13 Do you want to make -- that's supposed to
 14 be attached to it. So do you want to just make,
 15 like, four copies of this? That's easier.
 16 MR. GARCIA: Okay.
 17 MR. BERGMANN: Okay. Why don't we go off
 18 the record for a minute.
 19 (Recess taken from 9:44 a.m. to 9:45 a.m.)
 20 Q. What are your duties as a Clerk General at
 21 Lockheed Martin?
 22 A. It's basically a call center. I answer
 23 calls for USCIS Immigration.
 24 Q. Is that an inbound call center?
 25 A. Yes, and we take calls throughout the

1 United States.
 2 Q. When did you start working at Lockheed
 3 Martin?
 4 A. April 27th, 2009.
 5 Q. And prior to working at Lockheed Martin, I
 6 see you worked at the Department of Workforce
 7 Solutions, for the State of New Mexico?
 8 A. Correct. That was a temporary position.
 9 Q. And you started in November and worked
 10 until February?
 11 A. February, correct.
 12 Q. I forgot to ask you, how many hours a week
 13 are you working at Lockheed Martin?
 14 A. Forty hours.
 15 Q. Forty hours.
 16 A. Uh-huh.
 17 Q. And during your period of time at the State
 18 of New Mexico, that was a 40-hour-a-week position,
 19 too?
 20 A. Correct.
 21 Q. When did you first start working for the
 22 City of Albuquerque?
 23 A. I believe -- it was in January, I believe.
 24 Q. Of what year, please?
 25 A. Of 2000- -- oh, gosh. I don't remember.

1 2005? 2005, I think. No, it wasn't
 2 January. It was May, May of 2005.
 3 Q. Was your first position at the 311 Contact
 4 Center?
 5 A. Yes. With the City, yes.
 6 Q. Did you go through a training when you
 7 started work at the 311 Contact Center?
 8 A. Yes.
 9 Q. About how long did that training last?
 10 A. Probably about six to eight weeks.
 11 Q. Prior to beginning work at the City of
 12 Albuquerque in May of 2005, where did you work?
 13 A. I worked for Comcast Digital Cable.
 14 Q. Was that a call center, too?
 15 A. Correct.
 16 Q. How long had you worked for Comcast?
 17 A. Eighteen years.
 18 Q. How did you happen to leave Comcast after
 19 all those years?
 20 A. I left Comcast after 18 years because of
 21 the stock market, for the retirement. So I thought I
 22 would come into the City for -- there was a better
 23 retirement plan, and that's why I left.
 24 Q. Their stock sort of tanked, I guess, and
 25 you decided to leave?

1 A. Well, with the stock market -- we were on a
 2 401(k). So I was losing a lot of money. So I
 3 thought it would be better to come to a more stable
 4 retirement.
 5 Q. Sure.
 6 Do you remember, when you started work at
 7 the 311 Contact Center, who was your first
 8 supervisor?
 9 A. My first supervisor?
 10 Q. Yeah, if you can remember, if you can
 11 remember who that was.
 12 A. I know Michael Padilla was the director.
 13 As for my supervisor, gosh, I don't -- I don't
 14 remember. I'm sorry.
 15 Q. Tell me the first supervisor you can
 16 remember working for at the 311 Contact Center.
 17 A. Carol McCoy. I know Carol McCoy was my
 18 supervisor. Let's see. Jay Michael, I think his
 19 name was, and then Antoinette was my supervisor.
 20 Q. And how long was Antoinette your
 21 supervisor?
 22 A. Oh, not very long. Maybe two months, three
 23 months.
 24 Q. And that was Antoinette Gonzales, for the
 25 record.

1 A. Antoinette.
 2 Q. Antoinette.
 3 A. Right.
 4 Q. If I can keep that straight, "Annette" and
 5 "Antoinette," I will be fine, and remind me if I
 6 somehow mess it up.
 7 A. Okay.
 8 Q. Thank you.
 9 So Antoinette Gonzales, was she your last
 10 supervisor there?
 11 A. Yes.
 12 Q. And was --
 13 A. No, she wasn't. I'm sorry. It was Jay
 14 Michael.
 15 Q. Jay Michael was. So Antoinette was your
 16 supervisor for about two months?
 17 A. Right.
 18 Q. What shift were you working when she was
 19 your supervisor?
 20 A. 8:00 to -- no.
 21 I only worked morning shift, so it was
 22 either -- 8:00 to 5:00 was Carol McCoy. 8:00 to 5:00
 23 was Jay Michael, and probably hers, the same.
 24 Q. And did these supervisors go over your work
 25 performance with you, at times?

1 A. Oh, yes.
 2 Q. Was that a fairly regular thing?
 3 A. Very regular.
 4 Q. And if you had an issue or a problem at
 5 work, would you be apt to go to your supervisor?
 6 A. Yes.
 7 Q. Did you do that, in fact, at times?
 8 A. If I had an issue, yes.
 9 Q. Sure. If you had an issue, you might go to
 10 your supervisor. Obviously, if you didn't, you
 11 wouldn't?
 12 A. Correct.
 13 Q. Did you ever have any discipline issues at
 14 work?
 15 A. No, never.
 16 (Mora Exhibit 1 marked.)
 17 Q. I'll show you a couple of documents that
 18 have been marked as Mora Deposition Exhibit 1. They
 19 both are Absence Requests covering different dates.
 20 Do you recognize those documents?
 21 A. Yeah.
 22 Q. And would you tell -- tell me, for the
 23 record, what those documents represent.
 24 A. Absence Request for vacation.
 25 Q. Do you know whether that Absence Request

1 occurred during a time when Antoinette Gonzales was
 2 your supervisor?
 3 A. My supervisor was Diana Diasci.
 4 Q. Diane Diasci was your supervisor then?
 5 A. Uh-huh.
 6 Q. Do you know why Antoinette Gonzales signed
 7 the request?
 8 A. Because Diana wasn't there, because at that
 9 time she probably had gone to 911. And it had to be
 10 signed by two supervisors, so Antoinette and David
 11 signed it.
 12 Q. I see, on the first page, there was a
 13 change of the dates. Do you have any recollection of
 14 why those dates were changed?
 15 A. No. I don't remember, but --
 16 Q. Would you have given this document to
 17 Antoinette Gonzales?
 18 A. Uh-huh.
 19 Q. Okay.
 20 MR. LIVINGSTON: Did you want page two of
 21 this to be attached?
 22 MR. BERGMANN: Yes.
 23 MR. LIVINGSTON: Okay. Even though you
 24 didn't ask any questions about it?
 25 MR. BERGMANN: I mentioned it to her.

1 MR. LIVINGSTON: Okay. I'm sorry.
 2 MR. BERGMANN: Let me just go back and ask
 3 her.
 4 Q. Look at the second page of the document,
 5 for the record. Sorry. There you go.
 6 A. Okay.
 7 Q. And, again, that's one of the supervisors
 8 signing. That is Antoinette Gonzales?
 9 A. Correct.
 10 Q. And that's a request for, it looks like,
 11 two days off?
 12 A. For vacation, correct.
 13 Q. And you would have submitted that to one of
 14 those supervisors?
 15 A. Correct, who was ever on the bridge.
 16 Q. Okay. You just mentioned who was "on the
 17 bridge." Could you tell me a little bit about what
 18 "the bridge" is?
 19 A. "The bridge" is where the supervisor sat,
 20 and we sat on this side of the floor, and the -- it
 21 was just a long table like this, where the supervisor
 22 sat.
 23 Q. Was the bridge elevated, above where you
 24 were sitting?
 25 A. Yes, uh-huh.

1 due to stress and mental anguish" -- do those all
 2 relate to the time period after you left employment
 3 at the City of Albuquerque?
 4 A. Correct.
 5 Q. When you were terminated at the City -- by
 6 the way, did you understand the reason that you were
 7 terminated?
 8 A. I was terminated -- my understanding is I
 9 was terminated, because I didn't heal fast enough to
 10 get back to work because I was on workman's comp.
 11 It --
 12 Q. So your -- you were off longer than the
 13 allotted time. Is that your understanding?
 14 A. More than the 960 hours, correct.
 15 Q. And the 960 hours, was that 480 for FMLA
 16 and then 480 for workers' comp?
 17 A. I never signed up for FMLA, so I don't know
 18 what that -- no.
 19 Q. It --
 20 A. This is just workers' comp.
 21 Q. But it was nine -- you had exhausted 960
 22 hours?
 23 A. Correct.
 24 Q. When did you first become aware that you
 25 were an unclassified employee?

1 Q. So you had all of the same benefits --
 2 A. Uh-huh.
 3 Q. -- meaning like insurance and vacation and
 4 that, and the only difference was you made more
 5 money?
 6 A. Exactly.
 7 Q. Did you -- did the subject of being
 8 unclassified versus classified ever come up again
 9 after the training?
 10 A. Not that I'm aware of.
 11 Q. I want to have you look at page six,
 12 please.
 13 A. Yes.
 14 Q. You're already there. Okay.
 15 A. Uh-huh.
 16 Q. I see the first statement -- the first two
 17 statements seem to refer to what you were told in
 18 training.
 19 A. Correct.
 20 Q. The third statement says, "311 employees
 21 were told not to talk to the union." Did that occur
 22 during training, or when did that occur?
 23 A. That -- I'm sorry. That was after
 24 training, and that was because a union representative
 25 was supposed to come to the call center, but they

1 A. Probably during training.
 2 Q. So that was in your initial training that
 3 you mentioned to me earlier?
 4 A. Correct, because we asked what the
 5 difference was between a classified and unclassified.
 6 And Michael Padilla was in there, and he said that
 7 the only difference was the wages. We would get --
 8 we get more money as being unclassified, as opposed
 9 to being classified.
 10 Q. Did Michael Padilla explain why that was
 11 true, that you got more money because you were
 12 unclassified?
 13 A. That it was what?
 14 Q. Well, I mean, why -- why was it that
 15 being -- did he explain to you why being unclassified
 16 would mean that you would get more money? What --
 17 did he explain to you what it was about being
 18 unclassified that meant you got more money in that
 19 status?
 20 A. Well, the way I took it is, just being
 21 unclassified, as we would make more money, but we
 22 were still a City employee and had all of the
 23 benefits, everything as a regular, normal City
 24 employee. It was just a term, classified and
 25 unclassified.

1 never showed up, is what I thought.
 2 Q. And who told you that the 311 employees
 3 were not to talk to the union? Do you remember
 4 someone telling you that?
 5 A. It was just talk in the call center. I
 6 don't know specifically who it was.
 7 Q. Was that the same, about the -- all
 8 classified wages would be lower?
 9 A. Uh-huh.
 10 Q. So that was just talk to the call center?
 11 A. That was talk to the call center, right.
 12 Q. And you can't remember who said it?
 13 A. Not specifically, no.
 14 Q. Do you recall? Was it talk among
 15 employees?
 16 A. Yes.
 17 Q. Is that how you picked it up?
 18 A. Yes.
 19 Q. Did you ever look at any City policies
 20 relative to the difference between being classified
 21 or unclassified?
 22 A. The only policies that I've ever looked at
 23 were the ones that they sent me with my letters,
 24 first of all, one letter stating that I've exhausted
 25 and I was going to go to -- I don't know what the

1 term was, but they sent me something with policy.
 2 And then, when I was terminated, they sent me the
 3 same thing regarding policy. But other than that,
 4 no.
 5 Q. So when the first letter came and it said
 6 you had exhausted your FMLA and other benefits -- you
 7 received that letter first; is that correct?
 8 A. Right.
 9 THE WITNESS: Well, do you have a copy of
 10 that?
 11 MR. LIVINGSTON: I'm not supposed to answer
 12 anything.
 13 THE WITNESS: Oh.
 14 Q. You did receive two letters?
 15 A. Yes, I received two letters.
 16 MR. BERGMANN: You know, why don't we, if
 17 we have that -- can we take a couple of minutes?
 18 (Recess taken from 10:09 a.m. to 10:17 a.m.)
 19 (Mora Exhibits 3 and 4 marked.)
 20 Q. I've shown you a couple of documents, one
 21 marked as Mora Deposition Exhibit 3, a letter dated
 22 October 10th, 2007, and then the second one, Mora
 23 Deposition Exhibit 4, a letter dated January 29th,
 24 2008. Do you recognize those letters?
 25 A. Yes.

1 Q. Now, the Deposition Exhibit 4 has policy
 2 attached to it.
 3 A. Correct.
 4 Q. To your knowledge, was the same policy
 5 attached to Exhibit 3?
 6 A. Correct.
 7 Q. Okay.
 8 At the time you received the letter dated
 9 October 10th, were you aware that you had exhausted
 10 all of your leave time?
 11 A. Nope.
 12 Q. You weren't?
 13 A. Huh-uh.
 14 Q. So that was the first time that you were
 15 aware that you had exhausted leave time?
 16 A. Yes.
 17 Q. Did you contact anyone about having
 18 exhausted your leave time?
 19 A. I believe I contacted Cathy Garcia, in
 20 claims, because, to me, it was workman's comp. And I
 21 didn't know it had anything to do with this, so I --
 22 I don't know.
 23 Q. So you contacted Cathy Garcia, and was that
 24 around the time you received Deposition Exhibit 3?
 25 A. Yes.

1 Q. And tell me, as nearly as you can recall,
 2 what you said and what Cathy Garcia said.
 3 A. I just asked her what -- what did this
 4 mean, and then she tried to explain the difference
 5 between the layoff and worker's compensation, that it
 6 was a different something. I have it written -- I
 7 didn't bring it with me, but I wrote down what we
 8 said. But I don't know exactly without my notes.
 9 Q. Oh, so you did write down what she said to
 10 you?
 11 A. Uh-huh.
 12 Q. And that -- you haven't brought that. You
 13 didn't bring that with you, your notes?
 14 A. Correct.
 15 Q. Do you have any other notes about
 16 conversations with City employees at home?
 17 A. No.
 18 Q. Just that note?
 19 A. Just this, because of -- I was -- it was
 20 concerning my job.
 21 Q. Could you provide that to your attorney,
 22 Mr. Livingston?
 23 A. Yes.
 24 MR. BERGMANN: And then we would make a
 25 request for it.

1 MR. LIVINGSTON: Okay. I'm not sure.
 2 Did you provide it to me previously?
 3 THE WITNESS: I think I did.
 4 MR. LIVINGSTON: Okay. Because you copied
 5 what she provided to me, so you may have it.
 6 Q. We did not see it.
 7 A. Okay.
 8 MR. LIVINGSTON: Okay.
 9 Q. So just to be on the safe side --
 10 A. Okay.
 11 Q. -- if it's not too much trouble, could you
 12 do it again?
 13 A. Sure.
 14 Q. Thank you very much.
 15 After your conversation with Cathy Garcia,
 16 did you have any conversations with anyone else in
 17 the City?
 18 A. No.
 19 Q. Now, then you received the letter dated
 20 January 29th, 2008, from also -- well, it -- from
 21 Mary Scott, and did you talk to anyone about that
 22 letter?
 23 A. I don't think so.
 24 Q. Did you read the policy that was attached
 25 to both of these letters?

1 A. Yes.
 2 Q. Did you understand the policy?
 3 A. No.
 4 Q. But you didn't call anybody at the City to
 5 explain it to you?
 6 A. Huh-uh.
 7 Q. Look at Deposition Exhibit 4, and look at
 8 the second page of the policy attachment. It says,
 9 at the bottom -- at the top, I'm sorry,
 10 "Page 300-17"? That's the second page of the
 11 document.
 12 A. Okay.
 13 Q. All right. In the first paragraph, the
 14 second sentence of the first paragraph, it says,
 15 "Unclassified, temporary, seasonal or students are
 16 not eligible for physical layoff." Did you notice
 17 that statement?
 18 A. I -- probably. I think they highlighted
 19 that for me.
 20 Q. So you were aware that that statement was
 21 there?
 22 A. Uh-huh.
 23 Q. Do you remember having any conversations
 24 with Esther Tenenbaum about coming back to work after
 25 your medical or reapplying for work at the City

1 after, you know, your medical procedures were over?
 2 A. Yes, I went and talked to Esther.
 3 Q. Can you tell me about when that was?
 4 A. I don't know the exact date.
 5 Q. Was that before you actually stopped
 6 working?
 7 A. Probably before, yes.
 8 Q. Tell me, as nearly as you can recall, what
 9 you said during the conversation and what Esther
 10 Tenenbaum said.
 11 A. We talked about the way that the time was
 12 being done. We talked a little bit about -- because
 13 I was going to have surgery. Esther told me that I
 14 would always have a job with 311. That's about it.
 15 Q. Did she tell you that, once -- or did she
 16 suggest to you that, once your -- you were done with
 17 all your surgery, that you should get back in touch
 18 with her or with someone at the 311 Center?
 19 A. No.
 20 Q. She didn't say that?
 21 A. No. She just said I always had a job
 22 with 311. I -- I -- she did tell me that.
 23 Q. So, after you received the second letter,
 24 Deposition Exhibit 4, the January 29th letter, did
 25 you call Esther Tenenbaum to say, "Gee, what's going

1 on?" or --
 2 A. No.
 3 Q. I'm going to show you another document,
 4 which is the complaint that was originally filed in
 5 state court and then was removed to federal court.
 6 Are you familiar with this document?
 7 A. Yes.
 8 Q. Have you -- you've seen it before, I take
 9 it?
 10 A. I've seen it, yes.
 11 Q. Look at page six of the complaint, please.
 12 A. Okay.
 13 Q. It looks like you're already there.
 14 A. Yes.
 15 Q. Okay. Starting with paragraph 23 --
 16 MR. LIVINGSTON: Is that for me?
 17 MR. BERGMANN: Oh, yeah. Sure, that's --
 18 if you want.
 19 MR. LIVINGSTON: Yes.
 20 MR. BERGMANN: Yes, that's fine.
 21 Q. It looks like paragraph 23, 24, and 25
 22 apply to you; is that correct?
 23 A. Correct.
 24 Q. Now, in paragraph 25, it talks about not
 25 being allowed any recourse. You could have called

1 Esther Tenenbaum, couldn't you have?
 2 A. I could have.
 3 Q. Yes, but you -- you did not?
 4 MR. LIVINGSTON: Well --
 5 A. Well --
 6 MR. LIVINGSTON: -- I have an objection to
 7 that, Mr. Bergmann. She could have done a lot of
 8 things.
 9 MR. BERGMANN: I understand.
 10 MR. LIVINGSTON: And she didn't do a lot of
 11 things, and that has nothing to do with anything
 12 relative to that paragraph that you're quoting from.
 13 MR. BERGMANN: I understand.
 14 MR. LIVINGSTON: That's not relief --
 15 MR. BERGMANN: Right, but the question --
 16 MR. LIVINGSTON: -- calling Esther
 17 Tenenbaum.
 18 MR. BERGMANN: I understand that, but the
 19 question has been asked.
 20 Q. You could have done that?
 21 A. I could have.
 22 Q. Yes.
 23 A. But it's stated on the letter itself that I
 24 was no longer needed and my employment would be
 25 terminated, "will be terminated." So, in my mind,