

**SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO**

No. CV-2010-13698

9 "E-SERIES" SUPERVISORS:
SAM AGUILAR, MICHAEL E. BARRERAS,
WILLIAM E. BUSCHARDT, STEPHEN CHACON,
FRANK R. GONZALES, JIMMY PADILLA, ARTHUR
SILVA, GENARO TAFOYA, and ABIE J. TRUJILLO,

and

A CLASS OF SIMILARY SITUATED CITY
EMPLOYEES,

Plaintiffs',

vs.

CITY OF ALBUQUERQUE,

and

AFSCME, LOCAL 3022, and
ANDREW PADILLA, President,

Defendants.

**DEFENDANT CITY OF ALBUQUERQUE'S ANSWER TO PLAINTIFFS'
COMPLAINT FOR DECLARATORY, INJUNCTIVE, EQUITABLE,
AND CLASS ACTION RELIEF**

Defendant City of Albuquerque, ("hereinafter Defendant City") by and through its counsels of record Rebecca E. Wardlaw, Michael I. Garcia, and Rachel Trafican, Assistant City Attorneys, hereby answer Plaintiffs' Complaint for Declaratory, Injunctive, Equitable, and Class Action Relief as follows:

1. As to the allegations contained in Paragraph 1 of Plaintiffs' Complaint, Defendant City admits the same.

2. As to the allegations contained in Paragraph 2 of Plaintiffs' Complaint, Defendant City denies the same.

3. As to the allegations contained in Paragraph 3 of Plaintiffs' Complaint, Defendant City is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

4. As to the allegations contained in Paragraph 4 of Plaintiffs' Complaint, Defendant City is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

5. As to the allegations contained in Paragraph 5 of Plaintiffs' Complaint, Defendant City admits the same.

6. As to the allegations contained in Paragraph 6 of Plaintiffs' Complaint, Defendant City is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

7. As to the allegations contained in Paragraph 7 of Plaintiffs' Complaint, Defendant City is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

8. As to the allegations contained in Paragraph 8 of Plaintiffs' Complaint, Defendant City is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

9. As to the allegations contained in Paragraph 9 of Plaintiffs' Complaint, Defendant City admits the same.

10. As to the allegations contained in Paragraph 10 of Plaintiffs' Complaint, Defendant City admits the same.

11. As to the allegations contained in Paragraph 11 of Plaintiffs' Complaint, Defendant City admits the same.

12. As to the allegations contained in Paragraph 12 of Plaintiffs' Complaint, Defendant City admits the same.

13. As to the allegations contained in Paragraph 13 of Plaintiffs' Complaint, Defendant City admits the same.

14. As to the allegations contained in Paragraph 14 of Plaintiffs' Complaint, Defendant City admits the same.

15. As to the allegations contained in Paragraph 15 of Plaintiffs' Complaint, Defendant City is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

16. As to the allegations contained in Paragraph 16 of Plaintiffs' Complaint, Defendant City is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

17. As to the allegations contained in Paragraph 17 of Plaintiffs' Complaint, Defendant City admits the same.

18. As to the allegations contained in Paragraph 18 of Plaintiffs' Complaint, Defendant City admits the same.

19. As to the allegations contained in Paragraph 19 of Plaintiffs' Complaint, Defendant City admits the same.

20. As to the allegations contained in Paragraph 20 of Plaintiffs' Complaint, Defendant City admits the same.

21. As to the allegations contained in Paragraph 21 of Plaintiffs' Complaint, Defendant City admits the same.

22. As to the allegations contained in Paragraph 22 of Plaintiffs' Complaint, Defendant City admits the same.

23. As to the allegations contained in Paragraph 23 of Plaintiffs' Complaint, Defendant City is without knowledge or information of the purported quote and therefore denies the same.

24. As to the allegations contained in Paragraph 24 of Plaintiffs' Complaint, Defendant City denies the same.

25. As to the allegations contained in Paragraph 25 of Plaintiffs' Complaint, Defendant City denies the same.

26. As to the allegations contained in Paragraph 26 of Plaintiffs' Complaint, Defendant City denies the same.

27. As to the allegations contained in Paragraph 27 of Plaintiffs' Complaint, Defendant City is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore denies the same.

28. As to the allegations contained in Paragraph 28 of Plaintiffs' Complaint, Defendant City denies the same.

29. As to the allegations contained in Paragraph 29 of Plaintiffs' Complaint, Defendant City denies the same.

COUNT I – INJUNCTIVE RELIEF

30. As to the allegations contained in Paragraph 30 of Plaintiffs' Complaint, Defendant City is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

31. As to the allegations contained in Paragraph 31 of Plaintiffs' Complaint, Defendant City admits the same.

32. As to the allegations contained in Paragraph 32 of Plaintiffs' Complaint, Defendant City admits the same.

33. As to the allegations contained in Paragraph 33 of Plaintiffs' Complaint, Defendant City admits the same.

34. As to the allegations contained in Paragraph 34 of Plaintiffs' Complaint, Defendant City admits the same.

35. As to the allegations contained in Paragraph 35 of Plaintiffs' Complaint, Defendant City admits the same.

36. As to the allegations contained in Paragraph 36 of Plaintiffs' Complaint, Defendant City denies the same.

37. As to the allegations contained in Paragraph 37 of Plaintiffs' Complaint, Defendant City denies the same.

COUNT II – DECLARATORY RELIEF

38. As to the allegations contained in Paragraph 38 of Plaintiffs' Complaint, Defendant City incorporates by reference its answers to Paragraphs 1 through 37 above.

39. As to the allegations contained in Paragraph 39 of Plaintiffs' Complaint, Defendant City admits the same.

40. As to the allegations contained in Paragraph 40 of Plaintiffs' Complaint, Defendant City admits the same.

41. As to the allegations contained in Paragraph 41 of Plaintiffs' Complaint, Defendant City admits the same.

42. As to the allegations contained in Paragraph 42 of Plaintiffs' Complaint, Defendant City denies the same.

43. As to the allegations contained in Paragraph 43 of Plaintiffs' Complaint, Defendant City denies the same.

44. As to the allegations contained in Paragraph 44 of Plaintiffs' Complaint, Defendant City admits that AFSCME Local 3022 is the union that represents certain supervisors but denies all remaining allegations or implications of that paragraph.

45. As to the allegations contained in Paragraph 45 of Plaintiffs' Complaint, Defendant City admits in part and denies in part, denying that there are disputed matter of law, that in the interests of the parties are not real and adverse or that the issues are ripe for determination.

COUNT III – CLASS ACTION RELIEF

46. As to the allegations contained in Paragraph 46 of Plaintiffs' Complaint, Defendant City incorporates by reference its answers to Paragraphs 1 through 45 above.

47. As to the allegations contained in Paragraph 47 of Plaintiffs' Complaint, Defendant City denies the same.

48. As to the allegations contained in Paragraph 48 of Plaintiffs' Complaint, Defendant City denies the same.

49. As to the allegations contained in Paragraph 49 of Plaintiffs' Complaint, Defendant City denies the same.

50. As to the allegations contained in Paragraph 50 of Plaintiffs' Complaint, Defendant City denies the same.

51. As to the allegations contained in Paragraph 51 of Plaintiffs' Complaint, Defendant City denies the same.

52. As to the allegations contained in Paragraph 52 of Plaintiffs' Complaint, Defendant City denies the same.

53. As to the allegations contained in Paragraph 53 of Plaintiffs' Complaint, Defendant City denies the same.

COUNT IV – EQUITABLE RELIEF

54. As to the allegations contained in Paragraph 54 of Plaintiffs' Complaint, Defendant City incorporates by references its answers to Paragraphs 1 through 53 above.

55. As to the allegations contained in Paragraph 55 of Plaintiffs' Complaint, Defendant City admits the same.

56. As to the allegations contained in Paragraph 56 of Plaintiffs' Complaint, Defendant City denies the same.

57. As to the allegations contained in Paragraph 57 of Plaintiffs' Complaint, Defendant City denies the same.

58. As to the allegations contained in Paragraph 58 of Plaintiffs' Complaint, Defendant City denies the same.

59. As to the allegations contained in Paragraph 59 of Plaintiffs' Complaint, Defendant City denies the same.

60. As to the allegations contained in Paragraph 60 of Plaintiffs' Complaint, Defendant City is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

61. As to the allegations contained in Plaintiffs' prayer, Defendant City denies that Plaintiffs are entitled to any relief under the facts and circumstances of this case.

62. Any allegations of Plaintiffs' Complaint not specifically admitted or denied above are hereby denied.

AFFIRMATIVE DEFENSE

1. Defendant City's immunity has not been waived under the New Mexico Tort Claims Act.

2. Plaintiffs' damages, if any, were due to an independent, intervening cause rather than to any actions on the part of Defendant City.

3. Defendant City breached no duty owed to the Plaintiffs.

4. Plaintiffs may have failed to exercise ordinary care and such failure proximately caused the damages claimed.

5. Individuals other than Defendant City failed to exercise ordinary care and such failure proximately caused the damages claimed.

6. Defendant City is entitled to all defenses available under the New Mexico Tort Claims Act, or the laws of the State of New Mexico.

7. Plaintiffs' Complaint fails to state a claim against the City upon which relief may be granted.

8. Plaintiffs have failed to mitigate their damages.

9. The purported agreement fails for lack of consideration and illegality.

10. Lawrence Torres did not have the authority to enter into an agreement as described by Plaintiffs .

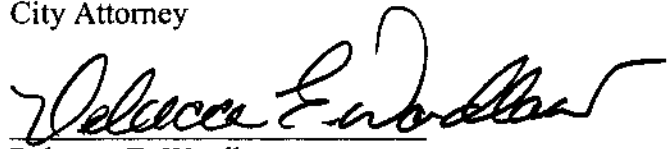
11. Plaintiffs failed to exhaust their administrative remedies.

WHEREFORE, having fully answered, Defendant City requests an Order of the Court dismissing Plaintiffs' Complaint as to the City of Albuquerque, and for such other and further relief as this Court deems just and proper in the premises.

Respectfully Submitted,

CITY OF ALBUQUERQUE

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City Attorney



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Assistant City Attorneys

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