

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

SAMMY KIDD,

Plaintiff,

vs.

CIV 04-1355 MCA/ACT

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

Defendants,

DEFENDANT CITY OF ALBUQUERQUE'S RESPONSE TO FIRST AMENDED  
AMENDED CLASS ACTION COMPLAINT FOR DENIAL OF CONSTITUTIONAL RIGHTS  
AND DECLARATORY JUDGMENT AND AFFIRMATIVE DEFENSES

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Defendant City of Albuquerque (hereinafter the city), by and through its undersigned attorneys, responds to plaintiffs' first amended class action complaint and affirmatively defends.

INTRODUCTION

The city denies any and all allegations contained in the unnumbered paragraph entitled "Introduction."

PARTIES AND JURISDICTION

1. The city is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 and therefore denies them.
2. The city is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 and therefore denies them.
3. The city admits the allegations contained in paragraph 3.

4. The city is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 and therefore denies them.

5. The city denies the allegations contained in paragraph 5 of the complaint.

FACTUAL ALLEGATIONS

6. The city denies the allegations contained in paragraph 6 of the complaint.

7. In response to the allegations contained in paragraph 7, the city admits that Plaintiff Kidd worked less than 40 hours per week, but denies the remaining allegations contained in paragraph 7.

8. In response to the allegations contained in paragraph 8 of the complaint, defendants admit that Plaintiff Kidd went to work at the Barelas Community Center. Defendants deny the remainder of the allegations in paragraph 8.

9. In response to the allegations contained in paragraph 9 of the complaint, defendants admit that in 2001 Plaintiff Kidd was transferred to the Jack Candelaria Community Center. Defendants deny the remaining allegations in paragraph 9.

10. The city admits the allegations contained in paragraph 10 of the complaint.

11. In response to the allegations contained in paragraph 11 of the complaint, the city admits that Plaintiff Kidd was a seasonal or temporary employee and that he was paid \$7.00 per hour. The city denies the remaining allegations contained in paragraph 11.

12. The city admits the allegations contained in paragraph 12 of the complaint.

13. In response to the allegations contained in paragraph 13 of the complaint, the city states that the document speaks for itself.

14. The city denies the allegations contained in paragraph 14 of the complaint.

15. In response to the allegations contained in paragraph 15 of the complaint, the city states that the article speaks for itself.

16. In response to the allegations contained in paragraph 16 of the complaint, the city admits that other employees were terminated at the same time as Plaintiff Kidd. The city denies the remaining allegations contained in paragraph 16.

17. In response to the allegations contained in paragraph 17 of the complaint, the city states that the document speaks for itself.

18. The city denies the allegations contained in paragraph 18 of the complaint.

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

20. The city denies the allegations contained in paragraph 20 of the complaint.

21. In response to the allegations contained in paragraph 21, the city admits that these plaintiffs were not entitled to further benefits under the city's Merit Systems Ordinance. The city denies the remaining allegations contained in paragraph 21.

#### LEGAL CONTENTIONS

22. In response to the allegations contained in paragraph 22, the city states that the ordinance speaks for itself.

23. In response to the allegations contained in paragraph 23, the city states that the ordinance speaks for itself.

24. In response to the allegations contained in paragraph 24, the city states that the ordinance speaks for itself.

25. In response to the allegations contained in paragraph 25, the city states that the regulation speaks for itself.

26. In response to the allegations contained in paragraph 26, the city states that the report speaks for itself.

27. The city denies the allegations contained in paragraph 27 of the complaint.

28. The city is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 and therefore denies them.

29. The city denies the allegations contained in paragraph 29 of the complaint.

30. The city denies the allegations contained in paragraph 30 of the complaint.

31. The city is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 and therefore denies them.

COUNT I

VIOLATION OF THE CONSTITUTIONAL RIGHT  
TO DUE PROCESS AND EQUAL PROTECTION

32. The city incorporates herein by reference its responses to the foregoing allegations.

33. In response to the allegations contained in paragraph 33 of the complaint, the city states that the document speaks for itself. The remaining allegations are legal conclusions which therefore require no response.

34. The city denies the allegations contained in paragraph 34 of the complaint.

35. The city denies the allegations contained in paragraph 35 of the complaint.

36. The allegations contained in paragraph 36 are legal conclusions which therefore require no response.

37. The city denies the allegations contained in paragraph 37 of the complaint.

38. The city denies the allegations contained in paragraph 38 of the complaint.

39. The city denies the allegations contained in paragraph 39 of the complaint.

40. The city denies the allegations contained in paragraph 40 of the complaint.

## COUNT II

### DECLARATORY JUDGMENT

41. The city incorporates herein by reference its responses to the foregoing allegations.

42. In response to the allegations contained in paragraph 42, the city states that the statute speaks for itself.

43. In response to the allegations contained in paragraph 43, the city states that the statute speaks for itself.

44. The city is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 and therefore denies them.

45. The city is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 and therefore denies them.

46. The city is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46 and therefore denies them.

47. The city denies that plaintiffs are entitled to any relief requested in the prayer.

48. Any allegations not addressed in this answer are hereby specifically denied.

AFFIRMATIVE DEFENSES

A. All activities of defendant were lawful, in good faith and in the exercise of governmental functions.

B. Defendant breached no duty owed to plaintiffs.

C. At all times relevant hereto, the actions of defendant were reasonable, proper and legal.

D. Plaintiffs' Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

E. Plaintiffs are not entitled to any equitable relief under the facts and circumstances of this case.

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

G. Plaintiffs failed to mitigate their alleged damages.

H. Plaintiffs failed to comply with the provisions of the New Mexico Tort Claims Act, N.M.S.A. §§ 41-4-1 through 41-4-27 (1978 Comp.), which bars recovery.

I. Plaintiffs have failed to mitigate damages.

J. Plaintiffs have waived the rights they claim and/or are estopped from making such claims.

K. Plaintiffs' claims are barred by the statute of limitations.

L. Plaintiffs did not suffer any detriment or damages as a result of the incidents alleged in the complaint.

M. Pursuant to N.M.S.A. § 41-4-19(B) of the New Mexico Tort Claims Act, the city is not liable for exemplary or punitive damages.

N. Plaintiffs were given all process to which they were due.

O. Plaintiffs are not entitled to declaratory or injunctive relief because plaintiffs have an adequate remedy at law.

P. Defendants did not breach any contract of employment with plaintiffs.

Q. At all relevant times, plaintiffs were treated the same as similarly situated individuals.

P. At all relevant times, if plaintiffs were treated differently, there were legitimate, non-discriminatory reasons for such treatment.

WHEREFORE, having full answered and affirmatively defended, Defendant City requests that this Court dismiss plaintiffs' complaint in its entirety, assessing the defendant's costs to the plaintiffs and for such further relief this Court deems fair and equitable.

ELECTRONICALLY FILED

Respectfully submitted,

CITY OF ALBUQUERQUE  
Robert M. White  
City Attorney

/s/ Paula I. Forney  
Assistant City Attorney  
Attorney for Defendants  
P. O. Box 2248  
Albuquerque, New Mexico 87103  
(505) 768-4500

I hereby certify that a true copy of the foregoing was mailed to the following:

Paul Livingston  
Attorney for Plaintiff  
P.O. Box 250  
Placitas, NM 87043  
(505) 771-4000

on this 21<sup>st</sup> day of February, 2007.

/s/ Paula I. Forney