

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

**No. CV-2003-2215**

**NEW MEXICO TRANSPORTATION UNION, et al.,**

**Plaintiffs,**

**vs.**

**CITY OF ALBUQUERQUE, et al.,**

**Defendants,**

**MOTION FOR DEFAULT JUDGMENT  
PURSUANT TO RULES 1-037(B) AND 1-037(D)**

Plaintiffs, a City of Albuquerque labor union, members of the bargaining unit represented by the Union, and its Chairman, present the following Motion for judgment by default and to hold Defendants in contempt of Court, pursuant to Rules 1-037(B) and 1-037(D), of the New Mexico Rules of Civil Procedure, stating as grounds:

1. A Rule 1-016 Pretrial Scheduling Order in this case entered on December 7, 2004, set the deadline for completion of “(a)ll pretrial discovery” for July 1, 2005, stating that “(i)nterrogatories . . . and requests for production shall be considered timely only if the responses are due prior to this deadline.
2. The Scheduling Order also provided that trial of this case would be held on September 6 and September 7, 2005.

3. Plaintiffs' counsel delivered two sets of Interrogatories, one to the City and one to City Chief Administrative Officer James Lewis, and a set of Requests for Production to Deputy City Attorney Randy Autio on May 27, 2005. Pursuant to the New Mexico Rules of Civil Procedure, Defendants' responses to Plaintiffs' discovery requests were due 30 days later, on or before Monday, June 27, 2005.

4. Defendants failed to file any responses to Plaintiffs' discovery requests, and on July 5, 2005, Plaintiffs filed a motion to compel and for sanctions pursuant to Rule 37(D), N.M. R. Civ. Proc.

5. On July 12, 2005, at a hearing on another matter, the Court ordered Defendants to respond to Plaintiffs' discovery requests no later than July 18, 2005. The Order resulting from the July 12, 2005, hearing stated that: 1) Defendants' motion to enforce and for extension of time be and hereby is denied; 2) Plaintiffs' motion to compel be and hereby is granted and defendants are compelled to provide responses to plaintiffs' discovery requests on or before July 18, 2005; 3) the parties be and hereby are required to exchange proposed factual stipulations on or before August 10, 2005.

6. On July 18, 2005, Defendants submitted their discovery responses to Plaintiffs. The responses were incomplete, misleading, evasive, and untruthful.

7. On August 3, 2005, a hearing was held on Plaintiffs' Motion to Compel. At that time the Court again ordered Defendants to respond fully to Plaintiffs' discovery requests no later than August 5, 2005.

8. Defendants' August 5, 2005, discovery supplementation added almost no useful information and produced few additional documents responsive to Plaintiffs' discovery requests.

9. Rule 1-037(B)(2) provides that when a party fails to comply with an order compelling answers to interrogatories and responses to requests for production the Court may render "a judgment by default against the disobedient party," hold the party in contempt of Court, and "shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure.":

10. Rule 1-037 (D) provides that if a party fails to serve answers or objections to interrogatories or fails to serve a written response to a request for production of documents, the Court may enter an Order "rendering a judgment in default against the disobedient party."

11. Defendants have violated both Rule 1-037(D) by failing to respond to Plaintiffs' discovery requests without excuse or justification, and Rule 1-037(B) by failing to adequately respond to discovery requests when ordered to do so by the Court and by failing to supplement the inadequate responses when again ordered to do so.

12. Defendants' failures to properly respond to discovery requests have prejudiced and damaged Plaintiffs by making it impossible for Plaintiffs to present full and complete evidence in support of their claims at the trial scheduled for September 6

and 7, 2005. Because there is only one week left before the scheduled trial date, and Plaintiffs cannot fully and fairly prepare for trial and present evidence to support their claims at trial in the time remaining, Plaintiffs are asking the Court to hear and decide their Motion for a judgment by default and to hold Defendants in contempt, pursuant to Rules 1-037(B) and (D).

13. Plaintiffs' counsel has contacted the City's attorneys, and they do not concur in the motion.

14. A memorandum in support of this motion accompanies the motion.

WHEREFORE, Plaintiffs request that the court hold Defendants in default and find them in contempt of Court or, in the alternative, order Defendants to Show Cause why judgment by default should not be taken against them in accordance with Rules 1-037(B) and (D) and why they should not be held in contempt of court for their willful failures to comply the Rules of Civil Procedure and the Court's Orders. In addition, the Defendants should be required to pay reasonable expenses, including attorney's fees, caused by their failures to comply with the rules and the orders of the Court.

Respectfully submitted,

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I hereby certify that a copy of the foregoing Motion to Compel and for Sanctions was faxed and/or e-mailed to Assistant City Attorney Michael I. Garcia on August 29, 2005.

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Paul Livingston