

STATE OF NEW MEXICO
COUNTY OF TORRANCE
IN THE SEVENTH JUDICIAL DISTRICT COURT

ERNIE LOPEZ,
Plaintiff,

vs.

THE TOWN OF MOUNTAINAIR,
A MUNICIPALITY EXISTING UNDER THE
LAWS OF THE STATE OF NEW MEXICO,
Defendant.

No. D-722-CV-2022-00101

Murdock, Shannon

CIVIL COMPLAINT UNDER THE NEW MEXICO TORT CLAIMS ACT
AND THE NEW MEXICO CIVIL RIGHTS ACT

COMES NOW, Plaintiff Ernie Lopez, by and through his undersigned attorney Eric D. Dixon, Attorney and Counselor at Law, P.A., Portales, New Mexico, and for his Civil Complaint Under the New Mexico Tort Claims Act and the New Mexico Civil Rights Act states:

FACTS APPLICABLE TO ALL COUNTS

1. Plaintiff is a resident of the Town of Mountainair, New Mexico, and at all times material hereto was an elected member of the Town Council.
2. The Town of Mountainair is a municipality existing under the laws of the State of New Mexico. The Town of Mountainair, New Mexico may be served with summons through Town Clerk, Dennis Fulfer, 105 East Broadway, Mountainair, New Mexico, 87036.

3. On or about May 25th, 2022, Kim Vallez from KRQE requested via a text message that the Town of Mountainair Mayor Peter Nieto, make a statement regarding the resignation of Brent Woodard from the Town of Mountainair Police Department. Reyes texted back “[w]e do not publically(sic) comment on personnel matters. Last night, the Town of Mountainair accepted the resignation of Sergeant Woodard. We wish him well in his future endeavors.”

4. The Town of Mountainair by its agents and employees improperly disclosed an internal confidential employee grievance against the Town to Kim Valles of KRQE in late May 2022 in violation of the Town’s own policies and procedures.

5. On June 1st, 2022, Kim Vales texted Mayor Peter Nieto “Hello, I got some ipras (sic) back on the sexual harassment allegations. Not all are you willing to go in Camera/do an interview about that?” Nieto texted that he was out of town but instructed her to state in her report “[p]lease don’t say I want to sit down. Maybe say you reached out to me and are awaiting response. Then I’ll reach out when I get back.”

6. On June 2nd, 2022, Nieto texted Valles “[d]id you IPRA the meeting minutes and review the audio of the meeting from when he tried to get the female officer fired? I’d also recommend IPRA’ing(sic) any emails requesting to be placed on agenda by him. Nieto referred Valles to minutes of April 20th, 2022, and May 4th, 2022, where Plaintiff in his capacity as a Town Council member requested an

executive session regarding a police department employee. Nieto falsely claimed that Plaintiff's actions was "a campaign to discredit her and fire her. Clear retaliation for her not wanting to date him."

7. On June 7th, 2022, Nieto disclosed what actions Plaintiff took in a closed executive session in violation of the Defendant's own policies and procedures.

8. The Town of Mountainair Chief of Police Juan Reyes (aka Juan DeReyes, John Reyes, Juan De Reyes, and Juan Reyes Jr.), has continuously made statements to third parties that Plaintiff is a "drug runner" that he is a "criminal" that he and his family are "criminals" that he brings "drugs to Town on the railway." All these statements have no basis in fact and are false, have been made by Reyes as statements of fact and were believed as true by various third parties and have damaged Plaintiff's reputation.

9. Reyes in concert and agreement has conspired with Nieto to engage in a continuous campaign of threats, intimidation, and retaliation against Plaintiff because of the positions and votes Plaintiff has taken as a Town Councilor. This retaliation has including the fact that Plaintiff has raised questions regarding the Chief of Police Juan Reyes's truthfulness in filing out applications for employment, and his ability to serve as Chief of Police for the Town of Mountainair, because he was arrested for aggravated assault against a household member and false imprisonment to which he plead no contest plea and received a

conditional discharge under the name of Juan De Reyes in Bernalillo District Court Cause Number D-202-CR-200003307, on or about January 18th, 2001.

COUNT I-VIOLATION OF THE NEW MEXICO CIVIL RIGHTS ACT

10. The allegations contained above and below are incorporated herein by reference as if set forth in full.

11. On July 1st, 2021, the New Mexico Civil Rights Act became effective in New Mexico having been enacted and signed into law during the 2021 New Mexico Legislative Session.

12. The Town of Mountainair is defined by the Civil Rights Act as a public body.

13. The New Mexico Civil Rights Act prohibits a public body from subjecting or causing to be subjected any resident of New Mexico or person within the State to deprivation of any rights, privileges or immunities secured by the New Mexico Constitution including its bill of rights.

14. The New Mexico Civil Rights Act prohibits the use of the defense of qualified immunity.

15. The New Mexico Bill of Rights protects “inherent and inalienable rights, among which are the rights of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of seeking and obtaining safety and happiness. (N.M. Const. Art. 2, §4)

16. New Mexico's Bill of Rights contains sections prohibiting denial of due process (N.M. Const. Art.2, §18); and freedom of speech (N.M. Const. Art. 2 §17).

17. Pursuant to N.M. Const. Art. 2 §23 "[t]he enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people."

18. Each and every one of these New Mexico Constitutional Rights enumerated above have been violated by the Defendant, and its officers, and agents as described above in the preceding paragraphs.

19. The actions of Defendant outlined above have deprived Plaintiff of his rights, privileges, and immunities pursuant to the Bill of Rights of the Constitution of New Mexico due to acts and/or omissions of Defendant and/or persons acting on behalf of, under color of or within the course and scope of the authority of the Defendant.

20. The Defendants agents and employees have conspired to and have deprived Plaintiff of his civil rights under the New Mexico Constitution including but not limited to his right to free speech, his right of association, his right to petition the Defendant for redress of grievances, his right to liberty, procedural and substantive due process rights and have otherwise defamed Plaintiff in retaliation for Plaintiff exercising his constitutional rights under the New Mexico constitution.

21. Plaintiff has been damaged by the acts and/or omissions of Defendant.

22. Plaintiff is entitled to injunctive relief under the New Mexico Civil Rights Act as outlined above.

**COUNT II-VIOLATION OF THE NEW MEXICO TORT CLAIMS
ACT FOR ABUSE OF PROCESS, DEFAMATION, AND VIOLATION
OF PROPERTY RIGHTS**

COMES NOW, Plaintiff and for Count II-Violation of the New Mexico Tort Claims Act for Abuse of Process, Defamation, and Violation of Property Rights, States:

23. The allegations contained above and below are incorporated herein by reference as if set forth in full herein.

24. The New Mexico Tort Claims Act allows a State Agency to be sued for negligent and intentional acts pursuant to NMSA 1978 Section 41-4-12.

25. The Town of Mountainair Police Department and its Chief of Police Juan Reyes Jr. (aka Juan Reyes, aka Juan DeReyes, aka Juan De Reyes, aka John Reyes) enforce criminal laws and Town ordinances and thus be definition the Defendant and agents including Juan Reyes Jr. are law enforcement officials under the New Mexico Tort Claims Act.

26. Defendant and its agents were acting in the scope of their duties at all times material to this lawsuit including the wrongful conduct directed at Plaintiff.

27. The Defendant abused process when it through its agent deliberately and falsely released confidential internal complaints.

28. The Defendant, its officers, agents, and employees knew their actions were taken solely as a punitive and retaliatory action against Plaintiff.

29. Plaintiff has been damaged by Defendant's violation of the New Mexico Tort Claims Act.

30. Immunity has been waived for the Defendant pursuant to the New Mexico Tort Claims Act, not only as a law enforcement agency but in other manners.

REQUEST FOR RELIEF:

Wherefore, Plaintiff asks for judgment against Defendant for:

- A. All damages sustained;
- B. Punitive damages as allowed by law;
- C. Costs of bringing this lawsuit;
- D. Attorney's fees as allowed by law;
- E. Pre-judgment and post-judgment interest as allowed by law;
- F. Such further and additional relief as the Court deems appropriate.

Respectfully Submitted:

/s/ Eric D. Dixon

ERIC D. DIXON, ESQUIRE

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Attorney for Plaintiff

FILED
7th JUDICIAL DISTRICT COURT
Torrance County
8/5/2022 8:37 AM
SUSAN ROSSIGNOL
CLERK OF THE COURT
Erica Smith

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JURY DEMAND

ERNIE LOPEZ, by and through his undersigned counsel, demands a trial by a six-person jury of all issues triable of right by jury and hereby tenders the sum of \$150.00 for jury fee.

Respectfully Submitted:

/s/ Eric D. Dixon
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