

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

STATE OF NEW MEXICO ex rel KENNETH GOMEZ,

Plaintiff,

vs.

No. CIV 10-00594 JP/LFG

ELEVENTH JUDICIAL DISTRICT COURT,

Defendant.

**ANSWER TO SECOND AMENDED COMPLAINT
TO VOID JUDGMENTS AND FOR WRIT OF QUO WARRANTO**

Defendant, Eleventh Judicial District Court, through its attorneys Robles, Rael & Anaya, P.C. (Luis Robles, Esq.), states the following for its Answer to Second Amended Complaint to Void Judgments and for Writ of Quo Warranto:

1. With regard to the first paragraph (pp. 1-2) of Plaintiff's Second Amended Complaint to Void Judgments and for Writ of Quo Warranto (*hereinafter* referred as "Plaintiff's Complaint"), Defendant affirmatively states that Federal Rule of Civil Procedure 8(b) does not require it to answer or otherwise respond to the legal conclusions alleged in the first paragraph (pp. 1-2) of Plaintiff's Complaint. To the extent that the first paragraph (pp. 1-2) of Plaintiff's Complaint alleges facts and not legal conclusions, Defendant denies all of the allegations made in first paragraph (pp. 1-2) of Plaintiff's Complaint.

I. Complaint

2. With regard to paragraph I a (p. 2) of Plaintiff's Complaint, Defendant affirmatively

states that Federal Rule of Civil Procedure 8(b) does not require it to answer or otherwise respond to the legal conclusions alleged in paragraph I a (p. 2) of Plaintiff's Complaint. To the extent that paragraph I a (p. 2) of Plaintiff's Complaint alleges facts and not legal conclusions, Defendant denies all of the allegations made in paragraph I a (p. 2) of Plaintiff's Complaint.

3. With regard to paragraph I b (p. 3) of Plaintiff's Complaint, Defendant affirmatively states that Federal Rule of Civil Procedure 8(b) does not require it to answer or otherwise respond to the legal conclusions alleged in paragraph I b (p. 3) of Plaintiff's Complaint. To the extent that paragraph I b (p. 3) of Plaintiff's Complaint alleges facts and not legal conclusions, Defendant denies all of the allegations made in paragraph I b (p. 3) of Plaintiff's Complaint.

4. With regard to paragraph I c (p. 3) of Plaintiff's Complaint, Defendant affirmatively states that Federal Rule of Civil Procedure 8(b) does not require it to answer or otherwise respond to the legal conclusions alleged in paragraph I c (p. 3) of Plaintiff's Complaint. To the extent that paragraph I c (p. 3) of Plaintiff's Complaint alleges facts and not legal conclusions, Defendant denies all of the allegations made in paragraph I c (p. 3) of Plaintiff's Complaint.

5. With regard to paragraph I d (p. 3) of Plaintiff's Complaint, Defendant affirmatively states that Federal Rule of Civil Procedure 8(b) does not require it to answer or otherwise respond to the legal conclusions alleged in paragraph I d (p. 3) of Plaintiff's Complaint. To the extent that paragraph I d (p. 3) of Plaintiff's Complaint alleges facts and not legal conclusions, Defendant denies all of the allegations made in paragraph I d (p. 3) of Plaintiff's Complaint.

6. With regard to paragraph I d (1) (pp. 3-4) of Plaintiff's Complaint, Defendant affirmatively states that Federal Rule of Civil Procedure 8(b) does not require it to answer or

otherwise respond to the legal conclusions alleged in paragraph I d (1) (pp. 3-4) of Plaintiff's Complaint. To the extent that paragraph I d (1) (pp. 3-4) of Plaintiff's Complaint alleges facts and not legal conclusions, Defendant denies all of the allegations made in paragraph I d (1) (pp. 3-4) of Plaintiff's Complaint.

7. With regard to paragraph I d (2) (p.4) of Plaintiff's Complaint, Defendant affirmatively states that Federal Rule of Civil Procedure 8(b) does not require it to answer or otherwise respond to the legal conclusions alleged in paragraph I d (2) (p. 4) of Plaintiff's Complaint. To the extent that paragraph I d (2) (p.4) of Plaintiff's Complaint alleges facts and not legal conclusions, Defendant denies all of the allegations made in paragraph I d (2) (p.4) of Plaintiff's Complaint.

8. With regard to paragraph I e (p. 4) of Plaintiff's Complaint, Defendant affirmatively states that Federal Rule of Civil Procedure 8(b) does not require it to answer or otherwise respond to the legal conclusions alleged in paragraph I e (p. 4) of Plaintiff's Complaint. To the extent that paragraph I e (p. 4) of Plaintiff's Complaint alleges facts and not legal conclusions, Defendant denies all of the allegations made in paragraph I e (p. 4) of Plaintiff's Complaint.

II. Jurisdiction

9. With regard to paragraph II a (p. 4) of Plaintiff's Complaint, Defendant affirmatively states that Federal Rule of Civil Procedure 8(b) does not require it to answer or otherwise respond to the legal conclusions alleged in paragraph II a (p. 4) of Plaintiff's Complaint. To the extent that paragraph II a (p. 4) of Plaintiff's Complaint alleges facts and not legal conclusions, Defendant denies all of the allegations made in paragraph II a (p. 4) of Plaintiff's Complaint.

10. With regard to paragraph II b (p. 4) of Plaintiff's Complaint, Defendant affirmatively states that Federal Rule of Civil Procedure 8(b) does not require it to answer or otherwise respond to the legal conclusions alleged in paragraph II b (p. 4) of Plaintiff's Complaint. To the extent that paragraph II b (p. 4) of Plaintiff's Complaint alleges facts and not legal conclusions, Defendant denies all of the allegations made in paragraph II b (p. 4) of Plaintiff's Complaint.

11. With regard to paragraph II c (p. 5) of Plaintiff's Complaint, Defendant affirmatively states that Federal Rule of Civil Procedure 8(b) does not require it to answer or otherwise respond to the legal conclusions alleged in paragraph II c (p. 5) of Plaintiff's Complaint. To the extent that paragraph II c (p. 5) of Plaintiff's Complaint alleges facts and not legal conclusions, Defendant denies all of the allegations made in paragraph II c (p. 5) of Plaintiff's Complaint.

12. With regard to paragraph II d (p. 5) of Plaintiff's Complaint, Defendant affirmatively states that Federal Rule of Civil Procedure 8(b) does not require it to answer or otherwise respond to the legal conclusions alleged in paragraph II d (p. 5) of Plaintiff's Complaint. To the extent that paragraph II d (p. 5) of Plaintiff's Complaint alleges facts and not legal conclusions, Defendant denies all of the allegations made in paragraph II d (p. 5) of Plaintiff's Complaint.

13. With regard to paragraph II e (pp. 5-6) of Plaintiff's Complaint, Defendant affirmatively states that Federal Rule of Civil Procedure 8(b) does not require it to answer or otherwise respond to the legal conclusions alleged in paragraph II e (pp. 5-6) of Plaintiff's Complaint. To the extent that paragraph II e (pp. 5-6) of Plaintiff's Complaint alleges facts and not legal conclusions, Defendant denies all of the allegations made in paragraph II e (pp. 5-6) of Plaintiff's Complaint.

14. With regard to paragraph II f (p. 6) of Plaintiff's Complaint, Defendant affirmatively states that Federal Rule of Civil Procedure 8(b) does not require it to answer or otherwise respond to the legal conclusions alleged in paragraph II f (p. 6) of Plaintiff's Complaint. To the extent that paragraph II f (p. 6) of Plaintiff's Complaint alleges facts and not legal conclusions, Defendant denies all of the allegations made in paragraph II f (p. 6) of Plaintiff's Complaint.

III. Parties

15. With regard to paragraph III a (p. 6) of Plaintiff's Complaint, Defendant affirmatively states that Federal Rule of Civil Procedure 8(b) does not require it to answer or otherwise respond to the legal conclusions alleged in paragraph III a (p. 6) of Plaintiff's Complaint. To the extent that paragraph III a (p. 6) of Plaintiff's Complaint alleges facts and not legal conclusions, Defendant has neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph III a (p. 6) of Plaintiff's Complaint and, therefore, denies these allegations.

16. Defendant admits the allegations made in paragraph III b (p. 6) of Plaintiff's Complaint.

IV. Relief demanded under 42 U.S.C. §§ 1983, 1985, 1980, and 1994

17. Defendant denies all of the allegations made in paragraph IV 1 a (p. 7) of Plaintiff's Complaint.

18. Defendant denies all of the allegations made in paragraph IV 1 b (p. 7) of Plaintiff's Complaint.

19. Defendant denies all of the allegations made in paragraph IV 1 c (p. 7) of Plaintiff's Complaint.

20. Defendant denies all of the allegations made in paragraph IV 2 (p. 7) of Plaintiff's Complaint.

21. Defendant denies all of the allegations made in paragraph IV 3 (pp. 7-8) of Plaintiff's Complaint.

22. Defendant denies all of the allegations made in Plaintiff's Complaint which Defendant did not specifically admit.

AFFIRMATIVE DEFENSES

First Affirmative Defense

None of the actions described in Plaintiff's Complaint constitutes a violation of his constitutional rights.

Second Affirmative Defense

The actions of Defendant's employees involved in this case were objectively reasonable under the circumstances and authorized by the clearly established law, entitling them to qualified immunity.

Third Affirmative Defense

Plaintiff alleged a number of causes of action which fail to state a claim for which relief may be granted. See Fed.R.Civ.P. 12(b)(6). Shortly, Defendant will file a motion in support of this affirmative defense.

Fourth Affirmative Defense

Plaintiff's claims against the Defendant are barred by the Eleventh Amendment to the United States Constitution.

Fifth Affirmative Defense

Defendant does not meet the definition of a “person” under 42 U.S.C. §§ 1983.

Sixth Affirmative Defense

Plaintiff failed to mitigate his damages.

WHEREFORE, Defendant respectfully requests that this Court dismiss Plaintiff’s Second Amended Complaint to Void Judgments and for Writ of Quo Warranto, award Defendant its attorney’s fees and costs, and for all other relief this Court deems just and proper.

Respectfully submitted,

ROBLES, RAEL & ANAYA, P.C.

By: /s/ Luis Robles
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I hereby certify that on this
28th day of June 2010, the
foregoing was electronically
served through the CM/ECF
system to the following:

Kenneth Gomez
4 CR 5095
Bloomfield, NM 87413

/s/ Luis Robles
Luis Robles