

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

MADELINE GARCIA, et al

Plaintiffs

v.

MUNIPPIO DE VEGA ALTA, et al.

Defendants

CIVIL NO. 06-1302(PG)

ANSWER TO THE INTERVENER COMPLAINT

TO THE HONORABLE COURT:

COMES NOW defendants, Jose Colón and Victor Rey de la Cruz through the undersigned attorney, and respectfully submits his answers to the complaint as follows:

NATURE OF THE ACTION AND JURISDICTION

1. Averments 1 thru 3 are statements of plaintiffs regarding subject matter federal and supplemental jurisdiction of the Court for this claim. Thus, these paragraphs constitute a statement of legal conclusions; as such do not require a responsive pleading. On the alternative, they are denied

ADMINISTRATIVE PROCEEDINGS

2. Averments 4 thru 6 are statements that constitute factual background regarding the original complaint and the procedure before the EEOC. They do not require a responsive pleading from the appearing defendants since all causes of actions under Title VII against the appearing defendants were dismissed with prejudice. On the alternative, all of them are admitted.

3. The causes of actions included in Averments 8 and 9 were dismissed with prejudice in favor of the appearing defendants. They do not require a response from them.

PARTIES

4. Averments 9 thru 11 contain statements regarding the identity of the plaintiffs. They do not require a response from the appearing defendants. In the alternative they are admitted.
5. In averment 12 it is denied that the plaintiff Miranda was constructively discharged. It is admitted that plaintiff Miranda was a municipal officer until July 15, 2004. The rest of the averment refers to the identity of this plaintiff and therefore, does not require a response from the appearing defendants. In the alternative, the rest of the averment is admitted.
6. Averment 13 does not require a response from the appearing defendants. In the alternative it is denied.
7. In averment 14 it is admitted that José M. Colón Garcia is the former Major of Vega Alta. The rest of the averment is denied.
8. Averments 15 and 16 are denied.
9. In averment 17 it is admitted that codefendant Colón is sued only in his individual capacity since he is no longer the Major of Vega Alta. The rest of the averment is denied.
10. In averment 18 it is admitted that codefendant Rey de la Cruz is the former Commissioner of Vega Alta's Municipal Police. The fact that codefendant Rey de la Cruz is sued only in his personal capacity does not require a response from the appearing defendants. The rest of the averment is denied.
11. Averment 19 is admitted.

RELEVANT FACTS

12. The appearing defendants restate their responses to the previous averments.
13. In averment 21 it is admitted that Miranda began working at the Municipality in the year 2000. The rest of the averment is denied.
14. Averment 22 is denied.
15. In averment 23 it is admitted that all plaintiffs were employees of the Municipality of Vega Alta, the rest of the averment is denied.
16. In averment 24 it is admitted that codefendant Rey de la Cruz was appointed as Commissioner of the Municipal Police of Vega Alta, the rest of the averment is denied.
17. Averments 25 thru 48 are denied.

FIRST CAUSE OF ACTION

18. The appearing defendants restate all the responses to the previous averments.
19. Averments 50, 56 and 57 are denied. Furthermore, this cause of action was dismissed with prejudice as to the appearing defendants.

SECOND CAUSE OF ACTION

20. The appearing defendants restate all the responses to the previous averments.
21. Averments 59 and 60 are denied.

THIRD CAUSE OF ACTION

22. The appearing defendants restate all the responses to previous averments.
23. Averments 61 thru 64 are denied.

FOURTH CAUSE OF ACTION

24. The appearing defendants restate all the responses to previous averments.
25. Averments 65 thru 67 are denied.

TRIAL BY JURY

28. The appearing defendants restate in full all of their responses to the previous averments.
29. Regarding averment 68, it does not require a response from the appearing defendants since it is plaintiffs' request for a jury trial. If a response is required, it is denied.

AFFIRMATIVE DEFENSES

1. The complaint is time barred and/or barred by statute of limitations.
2. The appearing defendants are entitled to the "Qualified Immunity Defense".
3. The complaint fails to state a claim upon which a relief may be granted against the appearing defendants and/or cognizable under any applicable federal or state statute.
4. The Complaint fails to state specific acts of the appearing defendants which amount to a deprivation of any of plaintiff's constitutional rights and/or federally protected rights. At all time, defendant acted in compliance with his duty.
5. The Complaint fails to state a claim cognizable under 42 U.S.C. § 1983.
6. The appearing defendants are not liable under § 1983 because their conduct did not reflect a reckless disregard nor deliberate indifference to plaintiffs' constitutional rights, nor and the complaint fails to allege the type of evil motive or intent actionable under 42 U.S.C. § 1983.
7. Plaintiffs were not deprived of a property right therefore, they do not have a valid cause of action under § 1983 against the appearing defendants.
8. Co plaintiff Miranda resigned from his position in the Vega Alta Municipal Police because he was hired as municipal police officer by another municipality.
9. The appearing defendants, at all times, acted according to law and in the good faith performance of duties and within the framework of their authority and duties, and neither

acted negligently nor intentionally violated any of plaintiffs' constitutional and/or protected rights.

10. The complaint fails to state specific facts adequate to show that Plaintiffs suffered any damages because of the conduct of the appearing defendants.
11. There is no supervisor liability under 42 USCA § 1983.
12. Any damages suffered by plaintiffs were self-inflicted.
13. Any damages suffered by plaintiff are grossly exaggerated.
14. Plaintiffs have not mitigated the alleged damages.
15. The injuries claimed by the plaintiffs are speculative and non-existent.
16. Plaintiff cannot recover special damages, since they have not properly pleaded for them.
17. There is no causal connection between any acts or omissions, which may be attributed to the appearing defendants and the alleged damages claimed to have been suffered by plaintiffs.
18. This court does not have Supplemental Jurisdiction to entertain state law causes of actions.
19. The appearing defendants are not liable under Puerto Rico Act No. 100 because they are not "employers" by definition of said law.
20. Puerto Rico Act No. 115 is not applicable to the appearing defendants therefore, they cannot be deemed liable under said law.
21. Puerto Rico Act No. 69 is not applicable to the appearing defendants because they are not "employers" as per the definition under said law.
22. Plaintiffs are not entitled to attorney's fees.

23. Any and all damages allegedly suffered by plaintiffs were caused by their own conduct and/or negligence.
24. In the hypothesis that plaintiffs are entitled to any relief, which the appearing defendants deny, plaintiffs have failed to mitigate damages.
25. The appearing defendants reserve the right to amend the answers to the complaint before the conclusion of discovery proceedings and to raise additional affirmative defenses that arises as result of the discovery process.

WHEREFORE, the appearing defendants respectfully request that this Honorable Court take notice of this answer to the complaint.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this same date that on this same date I electronically filed the foregoing using the CM/ECF system which will send notification of such filing to all parties through their attorneys of record.

RESPECTFULLY SUBMITTED in San Juan, Puerto Rico on this 10th day of July of 2007.

ROBERTO SANCHEZ RAMOS
Secretary of Justice

VIVIAN GONZALEZ MENDEZ
Acting Deputy Secretary of Justice
For Litigation

FRANCISCO A. OJEDA DIEZ
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