

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

WILLIAM M. SCULLY, III,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1516-CV01366
)	Division 11
HICKMAN MILLS C-1 SCHOOL DISTRICT,)	
)	
Defendant.)	

DEFENDANT’S ANSWER TO PLAINTIFF’S PETITION FOR DAMAGES

COMES NOW Defendant Hickman Mills C-1 School District (“School District”), by and through its counsel of record, and, for its Answer to Plaintiff’s Petition for Damages, states as follows:

PARTIES

1. Defendant admits that Plaintiff was employed by the School District. To the extent any further response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding Plaintiff’s present residence address. Defendant denies the remaining allegations contained in paragraph 1.

2. Defendant admits the allegations contained in paragraph 2.

3. Defendant objects to the allegations contained in paragraph 3 to the extent they call for a legal conclusion or opinion. To the extent any further response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 3 and therefore denies them.

4. Defendant admits that it is organized and exists at least in part for the purpose of educating elementary, middle school and high school age children residing within the boundaries of the School District. To the extent any further response is required, Defendant is without

knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 4 and therefore denies them.

5. Defendant objects to the allegations contained in paragraph 5 to the extent they call for a legal conclusion or opinion. To the extent any further response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 5 and therefore denies them.

6. Defendant objects to the allegations contained in paragraph 6 to the extent they call for a legal conclusion or opinion. To the extent any further response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 6 and therefore denies them.

Jurisdiction and Venue

7. Defendant objects to the allegations contained in paragraph 7 to the extent they call for a legal conclusion or opinion. To the extent any further response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 7 and therefore denies them.

8. Defendant objects to the allegations contained in paragraph 8 to the extent they call for a legal conclusion or opinion. To the extent any further response is required, Defendant denies the remaining allegations contained in paragraph 8.

9. Defendant objects to the allegations contained in paragraph 9 to the extent they call for a legal conclusion or opinion. To the extent any further response is required, Defendant denies the remaining allegations contained in paragraph 9.

Background Facts and Exhaustion of Administrative Remedies

10. Defendant objects to the allegations contained in paragraph 10 to the extent they

call for a legal conclusion or opinion. To the extent any further response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 10 and therefore denies them.

11. Defendant objects to the allegations contained in paragraph 11 to the extent they call for a legal conclusion or opinion. To the extent any further response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 11 and therefore denies them.

12. Defendant objects to the allegations contained in paragraph 12 to the extent they call for a legal conclusion or opinion. To the extent any further response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 12 and therefore denies them.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 and therefore denies them.

14. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 and therefore denies them.

15. Defendant denies the allegations contained in paragraph 15.

16. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 and therefore denies them.

17. Defendant admits that in March of 2013 Interim Superintendent Barbara Tate provided a memorandum to numerous administrators, including Plaintiff, indicating they were being non-renewed and that all were welcome to reapply for positions with the School District. To the extent any further response is required, Defendant denies the remaining allegations contained in paragraph 17.

18. Defendant denies the allegations contained in paragraph 18.

19. Defendant denies the allegations contained in paragraph 19.

20. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 and therefore denies them.

21. Defendant denies the allegations contained in paragraph 21.

22. Defendant denies the allegations contained in paragraph 22.

23. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 and therefore denies them.

24. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 and therefore denies them.

25. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 and therefore denies them.

26. Defendant objects to the allegations contained in paragraph 26 to the extent they call for a legal conclusion or opinion. To the extent any further response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 26 and therefore denies them.

27. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 and therefore denies them.

COUNT I - DISCRIMINATION

28. Defendant incorporates by reference its responses to the allegations contained in paragraphs 1 through 27 of Plaintiff's Petition.

29. Defendant denies the allegations contained in paragraph 29.

30. Defendant denies the allegations contained in paragraph 30.

31. Defendant denies the allegations contained in paragraph 31.
32. Defendant denies the allegations contained in paragraph 32.
33. Defendant denies the allegations contained in paragraph 33.
34. Defendant denies the allegations contained in paragraph 34.
35. Defendant denies the allegations contained in paragraph 35.
36. Defendant denies the allegations contained in paragraph 36.
37. Defendant denies the allegations contained in paragraph 37.
38. Defendant denies the allegations contained in paragraph 38.
39. Defendant denies the allegations contained in paragraph 39.
40. Defendant denies the allegations contained in paragraph 40.
41. Defendant denies the allegations contained in paragraph 41.

WHEREFORE, Defendant Hickman Mills C-1 School District respectfully prays that Plaintiff's Petition for Damages be dismissed with prejudice and judgment be entered in favor of Defendant and against Plaintiff, that Defendant be awarded its costs, expenses and attorney fees incurred herein, and for such other and further relief as the Court deems just and proper.

COUNT II - RETALIATION

42. Defendant incorporates by reference its responses to the allegations contained in paragraphs 1 through 41 of Plaintiff's Petition.
43. Defendant denies the allegations contained in paragraph 43.
44. Defendant denies the allegations contained in paragraph 44.
45. Defendant denies the allegations contained in paragraph 45.
46. Defendant denies the allegations contained in paragraph 46.
47. Defendant denies the allegations contained in paragraph 47.

48. Defendant denies the allegations contained in paragraph 48.

49. Defendant denies the allegations contained in paragraph 49.

50. Defendant denies the allegations contained in paragraph 50.

WHEREFORE, Defendant Hickman Mills C-1 School District respectfully prays that Plaintiff's Petition for Damages be dismissed with prejudice and judgment be entered in favor of Defendant and against Plaintiff, that Defendant be awarded its costs, expenses and attorney fees incurred herein, and for such other and further relief as the Court deems just and proper.

DENIAL

Defendant denies each and every allegation contained in Plaintiff's Petition for Damages which is not specifically admitted herein. In addition, Defendant specifically denies any allegations contained in any heading or unnumbered paragraph of Plaintiff's Petition for Damages.

DEMAND FOR JURY TRIAL

Defendant hereby demands a trial by jury on all issues so triable on all counts.

AFFIRMATIVE DEFENSES AND AVERMENTS

1. Plaintiff's Petition fails to state a claim upon which relief can be granted.
2. Plaintiff's Petition is barred by the statute of limitations.
3. Plaintiff's Petition is barred by the doctrine of laches.
4. Any and all damages the Plaintiff may have suffered were as a result of other parties to this litigation and/or unnamed parties who have not yet been determined, and are not the result of any action of Defendant. Therefore, some or all the fault should be apportioned to these other parties or unnamed parties and not to Defendant, and any liability of Defendant should be proportionately reduced.
5. Plaintiff's Petition is barred by the doctrines of accord, satisfaction, waiver and

estoppel.

6. Any harm that Plaintiff may have suffered has been the result of an intervening act or superseding event caused by some person or entity other than Defendant, and Defendant cannot be held responsible for such intervening acts and superseding events.

7. Plaintiff's claims are barred or limited by the doctrines of sovereign immunity, official immunity, qualified immunity, R.S.Mo. § 537.600, *et seq.*, and the public duty doctrine.

8. Defendant is not jointly or severally liable for any damages caused to Plaintiff, and any law which allows joint and several liability is unconstitutional and violates public policy and the right of due process and equal protection guaranteed by the Fifth and Fourteenth Amendments of the Constitution of the United States.

9. Defendant is entitled to a credit for any settlement or award Plaintiff may obtain from any other tortfeasor, and any such credit should reduce any liability Defendant may have to Plaintiff.

10. Plaintiff has failed to mitigate his damages. Among other things, Plaintiff has failed to pursue employment opportunities and he has failed to maintain employment in other positions. Plaintiff has also failed to maximize the income and benefits available to him. Further, Plaintiff has not suffered any emotional distress and if he has then he has failed to take advantage of corrective opportunities available to him. Further, Plaintiff has publicized his termination and not Defendant.

11. Defendant states that while it denies the allegations, matters and averments made or contained in Plaintiff's Petition, any and all acts or omissions committed by Defendant were discretionary in nature and taken in good faith and in its capacities as public officials, and thus Defendant is protected from liability by the doctrines of qualified immunity, official immunity,

absolute immunity and/or judicial immunity.

12. Defendant states it acted reasonably under the circumstances then existing, and its conduct was justified and/or privileged.

13. Defendant states that to the extent Plaintiff's Petition attempts to seek or obtain injunctive or equitable relief, such relief is not available on the grounds that Plaintiff lacked standing and fails to present a justiciable claim. Further, Plaintiff has adequate remedies at law available to him.

14. Defendant states that Plaintiff is not entitled to any punitive damages for any or more of the following reasons:

a. The standards by which Defendant's conduct are to be determined as alleged by Plaintiff are vague and wholly arbitrary, and as such deny due process in violation of the Fifth and Fourteenth Amendments of the United States Constitution;

b. The standards for determining the amount and/or subsequent imposition of punitive damages are vague, supply no notice to Defendant of the potential repercussions of its alleged conduct and are subject to the unbridled discretion of the fact finder, thereby denying due process under the Fifth and Fourteenth Amendments of the United States Constitution;

c. Plaintiff's request for punitive damages is criminal in nature and the rights given defendants in criminal proceedings under the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United State Constitution are applicable;

d. Plaintiff's request for punitive damages constitutes a request for and/or imposition of excessive fines in violation of the Eighth Amendment of the United States Constitution;

e. Plaintiff's request for punitive damages constitutes cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution;

f. Plaintiff's request for punitive damages constitutes a denial of equal protection of the law in violation of the Fifth and Fourteenth Amendments of the United States Constitution in that Defendant's wealth or net worth may be considered by a fact finder in determining the award of damages in a punitive damages award;

g. Plaintiff's request for punitive damages cannot protect Defendant against multiple punishments for the same alleged wrong, thereby denying due process under the

Fifth and Fourteenth Amendments of the United States Constitution;

h. An award of punitive damages would violate Defendant's due process under the United States Constitution as well as in violation of the United States Supreme Court's decision in *Pacific Mutual Insurance Co. v. Haslip*; and

i. To the extent Defendant is being sued in its representative and/or official capacities, Plaintiff is not entitled to any punitive damage award against it.

15. Punitive and/or exemplary damages are barred by Missouri statute section 537.610.

16. Plaintiff's claims are barred by the Coverdell Act and any claims for damages and/or punitive damages are also barred by the Coverdell Act. See 20 U.S.C. § 6731, *et seq.*

17. Defendant states that Plaintiff has failed to give adequate notice of his claim as required by law and has failed to exhaust any and all administrative remedies. Among other things, Plaintiff has declined the opportunity for a hearing or other administrative procedures and has not taken advantage of administrative and appeal procedures available under local or state law including, but not limited to, the Missouri Administrative Procedures Act. Further, Plaintiff failed to file his administrative charges of discrimination within the time period set forth under Missouri and federal law. Plaintiff also failed to file his lawsuit within the applicable time limit after issuance of the "right to sue" letters.

18. Defendant states this Court lacks personal jurisdiction over it, that proper service of process has not been obtained on it, and, further, the venue is not proper in this judicial district.

19. The claims against Defendant are without basis such that Defendant is entitled to an award of fees and costs of defense.

20. Defendant states that if Plaintiff has suffered damages, then such damages should be apportioned to other causes or stressors in his life other than any action or inaction by Defendant.

21. Plaintiff's Petition is barred due to a failure of consideration.

22. Plaintiff's Petition is barred as the alleged contract would be illegal and void.

23. Plaintiff's Petition is barred due to the statute of frauds.

24. Plaintiff's Petition is barred as his exclusive remedy is workers' compensation and any recovery is also barred due to the fellow servant rule.

25. Plaintiff's Petition seeks to hold Defendant liable on a theory of *respondeat superior*, which cannot operate to impose liability under the applicable law.

26. Plaintiff's claims are barred, as Plaintiff's exclusive remedy lies under Title VII and/or the Americans with Disabilities Act ("ADA") and/or the Age Discrimination in Employment Act ("ADEA") and the federal government has preempted this field of law by enacting Title VII and/or the ADA and/or the ADEA.

27. If Plaintiff demonstrates any harassment, then Defendant still has no liability as reasonable oversight was provided and Plaintiff unreasonably failed to take advantage of corrective opportunities.

28. Should Defendant be found partially at fault for causing any of Plaintiff's damages, then the trier of fact should be allowed to apportion by percentages the damages attributable to Defendant and those damages caused by a source or sources other than Defendant.

29. Any statements made regarding Plaintiff were protected due to the truth or fair comment of the statements and any such statements were made by supervisors, co-workers or other persons in the workplace such that any such statements were privileged and Defendant is protected from suit due to such privilege or immunity, including, but not limited to, intra-corporate immunity, and such statements were not published or publicized by Defendant. Further, Defendant has a qualified and absolute privilege due to the interest or duty in making any such statement and there is no evidence of malice or harm to reputation. Further, Plaintiff is a public figure and must

meet a higher burden of proof.

30. Any alleged claim by Plaintiff for breach of contract, promissory estoppel or otherwise is barred due to the illegality of any such contract with a public entity and/or its employees and the failure of any such contract or agreement to comply with the requirements of R.S.Mo. § 432.070, *et seq.*, and the failure of any such contract or agreement to be authorized by law or executed by duly authorized representatives as well as other requirements under the law.

31. Any claim for fraud or misrepresentation is barred by the failure to plead such a claim with particularity and the failure to allege any material misrepresentation or justifiable reliance.

32. Any claim for breach of contract is barred by the failure to allege and meet all conditions precedent and evidence of any such contract is also barred by the parol evidence rule. In any event, Plaintiff was an employee at-will who had no rights in his employment and no exception to this doctrine exists.

33. Any actions taken by Defendant would have been the same regardless of Plaintiff's gender, age, race or any other protected category.

34. Plaintiff's claims are barred, in whole or in part, by the after-acquired evidence doctrine.

35. Defendant is entitled to a set off for any amounts owing to Defendant by Plaintiff including, but not limited to, any funds or property converted by Plaintiff. Accordingly, any recovery by Plaintiff should be reduced and off set. Defendant is also entitled to equitable recoupment and any other equitable remedy to avoid unjust enrichment.

36. Defendant reserves the right to plead and assert additional affirmative defenses as such affirmative defenses become known and available to it in the future.

WHEREFORE, based upon the above and foregoing, Defendant Hickman Mills C-1 School District respectfully prays Plaintiff's Petition for Damages be dismissed with prejudice, that judgment be entered in favor of Defendant and against Plaintiff, that Defendant be awarded its costs and expenses incurred herein, and for such other and further relief as the Court deems just and appropriate.

ENSZ & JESTER, P.C.

/s/ *Brandon D. Mizner*

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2015, the foregoing was filed with the Clerk of the Court using the electronic filing system which will provide notice and service to all counsel of record.

/s/ *Brandon D. Mizner*

ATTORNEYS FOR DEFENDANT