

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Case No. 10-cv-01045-MSK

TORI McMECHAN,

Plaintiff,

v.

TOWN OF NUNN,
BOARD OF TRUSTEES OF TOWN OF NUNN, and
JENNY JOHNSON,

Defendants.

**DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT
AND JURY DEMAND**

Defendants, **TOWN OF NUNN, BOARD OF TRUSTEES OF TOWN OF NUNN, and JENNY JOHNSON**, by and through their attorneys, **OVERTURF McGATH HULL & DOHERTY, P.C.**, and for their Answer to Plaintiff's Amended Complaint, state as follows:

PARTIES

1. Defendants are without sufficient knowledge and information to enable them to form a belief as to the veracity of the allegations contained in paragraph 1 of Plaintiff's Amended Complaint, and, as a result, deny the same.

2. Defendants admit the allegations contained in paragraph 2 of Plaintiff's Amended Complaint.

3. With regards to the allegations contained in paragraph 3 of Plaintiff's Amended Complaint, Defendants admit that the Board of Trustees is and was at all times relevant, the body in which the legislative and corporate authority of the Town of Nunn is vested, and further admit that the Board's address is 185 Lincoln Avenue, Nunn, Colorado 80548. Defendants deny the remaining allegations contained in paragraph 3 of Plaintiff's Amended Complaint.

4. With regards to the allegations contained in paragraph 4 of Plaintiff's Amended Complaint, Defendants admit that the Town of Nunn may only act through the Board. The remainder of the allegations contained in paragraph 4 of Plaintiff's Amended Complaint call for a legal conclusion, to which no response is required.

5. Defendants admit that Jenny Johnson ("Johnson") resides at 480 Washington Avenue, Nunn, Colorado 80648. Defendants further admit that Johnson was a member of the Board until the April 2010 elections. Defendants deny the remaining allegations contained in paragraph 5 of Plaintiff's Amended Complaint.

JURISDICTION AND VENUE

6. With regards to the allegations contained in paragraph 6 of Plaintiff's Amended Complaint, Defendant affirmatively state that this action has properly been removed to Federal Court pursuant to 28 U.S.C. §1441 and §1446.

7. With regards to the allegations contained in paragraph 7 of Plaintiff's Amended Complaint, Defendant affirmatively state that this action has properly been removed to Federal Court pursuant to 28 U.S.C. §1441 and §1446.

8. With regards to the allegations contained in paragraph 8 of Plaintiff's Amended Complaint, Defendant affirmatively state that this action has properly been removed to Federal Court pursuant to 28 U.S.C. §1441 and §1446.

GENERAL ALLEGATIONS

9. Defendants admit the allegations contained in paragraph 9 of Plaintiff's Amended Complaint.

10. Defendants admit the allegations contained in paragraph 10 of Plaintiff's Amended Complaint.

11. With regards to the allegations contained in paragraph 11 of Plaintiff's Amended Complaint, Defendants state that the terms of the Nunn Municipal Code are contained within the express provisions of that Code; however, Defendants affirmatively state that to the extent that Plaintiff's description of the terms vary, are taken out of context, or incomplete, Defendants deny the same.

FIRST CLAIM FOR RELIEF - REVIEW UNDER C.R.C.P. 106

12. Upon information and belief, Defendants admit the allegations contained in paragraph 12 of Plaintiff's Amended Complaint.

13. Defendants admit the allegations contained in paragraph 13 of Plaintiff's Amended Complaint.

14. Defendants admit the allegations contained in paragraph 14 of Plaintiff's Amended Complaint, but affirmatively state that the Notice of Hearing served on Plaintiff was the complete Notice.

15. With regards to the allegations contained in paragraph 15 of Plaintiff's Amended Complaint, Defendants admit that Plaintiff requested copies of the exhibits, and that Plaintiff requested to postpone the hearing. Defendants are currently without sufficient knowledge and information to enable them to form a belief as to the veracity of the allegations contained in paragraph 15 of Plaintiff's Amended Complaint, and, as a result, deny the same.

16. Defendants admit the allegations contained in paragraph 16 of Plaintiff's Amended Complaint.

17. With regards to the allegations contained in paragraph 17 of Plaintiff's Amended Complaint, Defendants admit that the Town and the Board did not have specific rules in place governing the conduct of removal hearings, but affirmatively state that they followed a hearing process that met due process standards.

18. Defendants admit the allegations contained in paragraph 18 of Plaintiff's Amended Complaint.

19. With regards to the allegations contained in paragraph 19 of Plaintiff's Amended Complaint, Defendants admit that the attorney representing the Town attempted to call Plaintiff as the Town's first witness. Defendants further admit that Plaintiff's counsel refused to allow Plaintiff to testify, invoking the Fifth Amendment, but insisted that he may call Plaintiff later to rebut the evidence provided by the Town.

Defendants further admit that the Board ruled that if Plaintiff did not testify during the Town's case, she would not be permitted to testify at all, and Plaintiff as a result chose not to testify. Defendants deny the remaining allegations contained in Plaintiff's Amended Complaint.

20. Defendants admit the allegations contained in paragraph 20 of Plaintiff's Amended Complaint.

21. Defendants deny the allegations contained in paragraph 21 of Plaintiff's Amended Complaint.

22. Defendants admit the allegations contained in paragraph 22 of Plaintiff's Amended Complaint.

23. Defendants deny the allegations contained in paragraph 23 of Plaintiff's Amended Complaint.

24. Defendants deny the allegations contained in paragraph 24 of Plaintiff's Amended Complaint.

25. The allegations contained in paragraph 25 of Plaintiff's Amended Complaint appear to contain legal conclusions for which no answer is required.

SECOND CLAIM FOR RELIEF - RELIEF UNDER OPEN MEETINGS LAW

26. Defendants incorporate their answers set forth above as if fully set forth herein.

27. With regards to the allegations contained in paragraph 27 of Plaintiff's Amended Complaint, Defendants admit that the Board went into executive session

during the January 28, 2010 Board meeting, for the purpose of discussion pursuant to C.R.S. §24-6-402(4).

28. With regards to the allegations contained in paragraph 28 of Plaintiffs' Amended Complaint, Defendants admit that while Plaintiff was Town Clerk, she was permitted to be present during executive session by the Board. Defendants deny the remaining allegations contained in paragraph 28 of Plaintiff's Amended Complaint.

29. With regards to the allegations contained in paragraph 29 of Plaintiff's Amended Complaint, Defendants admit that after executive session during the meeting on January 28, 2010, upon returning to the general meeting, the Board approved charges against Plaintiff and set a hearing date.

30. Defendants deny the allegations contained in paragraph 30 of Plaintiff's Amended Complaint.

THIRD CLAIM FOR RELIEF - RELIEF UNDER THE OPEN RECORDS REQUEST

ACT

31. With respect to the allegations contained in paragraph 31 of Plaintiff's Amended Complaint, Defendants admit that on or about February 11, 2010, Plaintiff, through counsel, submitted a written request to the Town pursuant to the Colorado Open Records Request Act. A copy of this request was not attached to Plaintiff's Amended Complaint.

32. With respect to the allegations contained in paragraph 32 of Plaintiff's Amended Complaint, Defendants admit that on or about February 18, 2010, the Town,

through its attorney, submitted a response to Plaintiff's Open Records Request Act. A copy of this response was not attached to Plaintiff's Amended Complaint.

33. Defendants deny the allegations contained in paragraph 33 of Plaintiff's Amended Complaint.

34. Defendants deny the allegations contained in paragraph 34 of Plaintiff's Amended Complaint.

35. Defendants deny the allegations contained in paragraph 35 of Plaintiff's Amended Complaint.

36. With respect to the allegations contained in paragraph 36 of Plaintiff's Amended Complaint, Defendants state that they received correspondence from Plaintiff's counsel dated March 21, 2010. A copy of that correspondence was not attached as an exhibit to Plaintiff's Amended Complaint.

FOURTH CLAIM FOR RELIEF - BREACH OF CONTRACT AS TO WAGES

37. With respect to the allegations contained in paragraph 37 of Plaintiff's Amended Complaint, Defendants admit that at the time Plaintiff commenced her employment, the Town had an oral agreement with Plaintiff pursuant to which the Town agreed to pay Plaintiff for her work. Upon information and belief, Defendants further admit that the initial agreement provided that the Town would pay Plaintiff \$14.00 per hour, that that Plaintiff would be allowed vacation time, sick time, and a personal day. Defendants are currently without sufficient knowledge and information to enable them to form a belief as to the veracity of the allegations contained in paragraph 37 of Plaintiff's Amended Complaint, and, as a result, deny the same.

38. Defendants deny the allegations contained in paragraph 38 of Plaintiff's Amended Complaint.

39. Defendants deny the allegations contained in paragraph 39 of Plaintiff's Amended Complaint.

40. Defendants deny the allegations contained in paragraph 40 of Plaintiff's Amended Complaint.

FIFTH CLAIM FOR RELIEF - VIOLATIONS OF FAIR LABOR STANDARDS ACT

41. Defendants deny the allegations contained in paragraph 41 of Plaintiff's Amended Complaint.

42. Defendants deny the allegations contained in paragraph 42 of Plaintiff's Amended Complaint.

SIXTH CLAIM FOR RELIEF - UNJUST ENRICHMENT

43. With respect to the allegations contained in paragraph 43 of Plaintiff's Amended Complaint, Defendants admit that Plaintiff performed work for the Town. Defendants are without sufficient knowledge and information to enable them to form a belief as to the veracity of the remaining allegations contained in paragraph 43 of Plaintiff's Amended Complaint, and therefore deny the same.

44. Defendants deny the allegations contained in paragraph 44 of Plaintiff's Amended Complaint.

45. Defendants deny the allegations contained in paragraph 45 of Plaintiff's Amended Complaint.

SEVENTH CLAIM FOR RELIEF - BREACH OF CONTRACT AS TO GOOD FAITH

AND NON-WAGE ISSUES

46. Defendants deny the allegations contained in paragraph 46 of Plaintiff's Amended Complaint.

47. Defendants deny the allegations contained in paragraph 47 of Plaintiff's Amended Complaint.

48. Defendants admit the allegations contained in paragraph 48 of Plaintiff's Amended Complaint.

49. Defendants admit the allegations contained in paragraph 49 of Plaintiff's Amended Complaint.

50. Defendants admit the allegations contained in paragraph 50 of Plaintiff's Amended Complaint.

51. Defendants deny the allegations contained in paragraph 51 of Plaintiff's Amended Complaint.

52. Defendants deny the allegations contained in paragraph 52 of Plaintiff's Amended Complaint.

53. Defendants deny the allegations contained in paragraph 53 of Plaintiff's Amended Complaint.

54. Defendants deny the allegations contained in paragraph 54 of Plaintiff's Amended Complaint.

55. Defendants deny the allegations contained in paragraph 55 of Plaintiff's Amended Complaint.

56. Defendants deny the allegations contained in paragraph 56 of Plaintiff's Amended Complaint.

57. With respect to the allegations contained in paragraph 57 of Plaintiff's Amended Complaint, Defendants admit that it hired a Town Clerk in March 2010, and a Town Treasurer in April 2010. Defendants deny the remaining allegations contained in paragraph 57 of Plaintiff's Amended Complaint.

58. Defendants deny the allegations contained in paragraph 58 of Plaintiff's Amended Complaint.

59. Defendants deny the allegations contained in paragraph 59 of Plaintiff's Amended Complaint.

EIGHTH CLAIM FOR RELIEF - 42 U.S.C. §1983

60. The allegations contained in paragraph 60 of Plaintiff's Amended Complaint call for a legal conclusion, to which no response is required.

61. Defendants deny the allegations contained in paragraph 61 of Plaintiff's Amended Complaint.

62. Defendants admit the allegations contained in paragraph 62 of Plaintiff's Amended Complaint.

63. Defendants deny the allegations contained in paragraph 63 of Plaintiff's Amended Complaint.

64. Defendants deny the allegations contained in paragraph 64 of Plaintiff's Amended Complaint.

65. Defendants deny the allegations contained in paragraph 65 of Plaintiff's Amended Complaint.

66. Defendants deny the allegations contained in paragraph 66 of Plaintiff's Amended Complaint.

67. Defendants deny the allegations contained in paragraph 67 of Plaintiff's Amended Complaint.

NINTH CLAIM FOR RELIEF - INTERFERENCE WITH CONTRACT
(As to Johnson)

68. Defendants deny the allegations contained in paragraph 68 of Plaintiff's Amended Complaint.

69. Defendants deny the allegations contained in paragraph 69 of Plaintiff's Amended Complaint.

70. Defendants deny the allegations contained in paragraph 70 of Plaintiff's Amended Complaint.

71. Defendants deny the allegations contained in paragraph 71 of Plaintiff's Amended Complaint.

72. Defendants deny the allegations contained in paragraph 72 of Plaintiff's Amended Complaint.

73. Defendants deny the allegations contained in paragraph 73 of Plaintiff's Amended Complaint.

TENTH CLAIM FOR RELIEF - INTERFERENCE WITH CONTRACT
(As to Johnson)

74. Defendants deny the allegations contained in paragraph 74 of Plaintiff's Amended Complaint.

75. Defendants deny the allegations contained in paragraph 75 of Plaintiff's Amended Complaint.

76. Defendants deny the allegations contained in paragraph 76 of Plaintiff's Amended Complaint.

77. Defendants deny the allegations contained in paragraph 77 of Plaintiff's Amended Complaint.

ELEVENTH CLAIM FOR RELIEF - DEFAMATION
(As to Johnson)

78. Defendants deny the allegations contained in paragraph 78 of Plaintiff's Amended Complaint.

79. Defendants deny the allegations contained in paragraph 79 of Plaintiff's Amended Complaint.

80. Defendants deny the allegations contained in paragraph 80 of Plaintiff's Amended Complaint.

81. Defendants deny the allegations contained in paragraph 81 of Plaintiff's Amended Complaint.

82. Defendants affirmatively deny any allegation not specifically admitted to herein.

AFFIRMATIVE DEFENSES

1. Plaintiff's Amended Complaint fails to state a claim upon which relief may be granted.
2. Plaintiff's claims are frivolous and groundless, entitling Defendants to their reasonable costs and attorney's fees incurred in defending this suit.
3. Plaintiff's claims against Jenny Johnson may be barred, as Ms. Johnson may be entitled to qualified immunity.
4. Plaintiff's claims are barred or reduced by Plaintiff's comparative negligence/fault.
5. Any alleged negligence on the part of these Defendants was not the proximate cause of Plaintiff's alleged damages, injuries and losses.
6. Plaintiff's claims are barred or reduced by Plaintiff's failure to take reasonable steps to minimize or mitigate her alleged losses or damages.
7. Plaintiff's claims are barred by the doctrines of release, waiver, estoppel, unclean hands, and/or laches.
8. Some or all of Plaintiff's claims may be barred by the applicable statute of repose and/or statute of limitations.
9. Plaintiff's claims may be barred or reduced by operation of compromise, release, accord and satisfaction, and/or waiver.
10. Plaintiff's claims are limited or barred by Plaintiff's failure to complete a condition precedent to Defendants' obligations.

11. Plaintiff's claims are barred or limited by the provisions of the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*

12. Plaintiff has failed to exhaust all administrative remedies and prerequisites prior to filing her Amended Complaint.

PRAYER FOR RELIEF

WHEREFORE, Defendants, having answered Plaintiff's Amended Complaint, prays that the same be dismissed, with prejudice, and that Defendants be awarded their cost of suit, attorney's fees, and all further relief deemed appropriate by the Court.

JURY DEMAND

Defendants hereby demand a trial to a jury of six persons on all issues so triable.

Dated: May 14, 2010.

Respectfully submitted,

**OVERTURF MCGATH
HULL & DOHERTY P.C.**

By s/Meredith L. McDonald

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT** was served via the CM/ECF system this 14th day of May, 2010, which serves the following:

Mark Cohen, Esq.
The Cohen Law Firm
110 Snyder Street, 2nd Floor
PO Box 617
Nederland, CO 80466

/s/ Michelle A. Capdeville
