

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARIA GALVEZ,
Plaintiff,

v.

CITY OF KATY,
CHARLES A. “CHUCK” BRAWNER, and
RUSSELL WILSON,
Defendant.

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C.A. NO. 4:18-CV-4221
JURY DEMANDED

**DEFENDANTS’ ORIGINAL ANSWER TO
PLAINTIFF’S SECOND AMENDED COMPLAINT**

Defendants City of Katy (the “City”), Mayor Charles A. Brawner (“Brawner”), and Fire Chief Russell Wilson (“Wilson”) (all collectively referred to as “Defendants”), appear under Fed. R. Civ. P. 8 to answer Plaintiff Maria Galvez’s (“Galvez”) Second Amended Complaint (hereinafter, the “Complaint”) and to assert affirmative defenses. In the following numbered paragraphs, the Defendants will respond to the correspondingly numbered paragraphs of the Complaint.

I. Summary.

Defendants admit that Plaintiff was employed as the Emergency Management Coordinator; that the City terminated her employment; that prior to termination she was placed on paid administrative leave pending an investigation into time card fraud and other policy violations. Defendants deny all of the remaining allegations in the “Summary” section of the Complaint.

II. Discovery Control Plan.

1-3. Defendants cannot admit or deny Paragraphs 1-3 of the Complaint, save and except to assert that the Texas Rules of Civil Procedure no longer apply in this federal case.

III. Parties.

4-7. Defendants admit the allegations of Paragraphs 4-7 of the Complaint.

IV. Jurisdiction & Venue.

8-9. Defendants admit that this Court has subject matter jurisdiction of the federal questions raised by the Plaintiff's claims, and that venue is proper in this Division and District.

V. Facts.

10. Defendants admit that Plaintiff is a resident of Katy; Defendants lack information sufficient to admit or deny whether her residence in Katy has been lifelong.

11-13. Defendants admit the allegations of Paragraphs 11-13 of the Complaint.

14-15. Defendants deny the allegations of Paragraphs 14-15 of the Complaint.

16. Defendants admit that on September 17, 2017 [not September 11, as alleged], Plaintiff sent a self-styled "Hostile Work Environment Complaint" to the City's HR Director, Angelina Tredway. The City asserts that the document speaks for itself, and Defendants deny the validity of the complaint.

17. Defendants admit that on January 22, 2018, Mayor Brawner placed Galvez on administrative leave with pay. Defendants deny all other allegations in Paragraph 17 of the Complaint and further deny the implication that Mayor Brawner's actions were motivated in any way by Plaintiff's "hostile work environment complaint" referenced in Paragraph 16 of the Complaint.

18. Defendants admit that Mayor Brawner justifiably accused Plaintiff of committing time card fraud during Hurricane Harvey and its aftermath. Defendants deny all other allegations in Paragraph 18 of the Complaint, in particular, the assertion that the Mayor's accusation was false.

19. Defendants admit that the Mayor's letter of January 22, 2018, to Plaintiff speaks for itself and says what it says.

20. Defendants deny the allegations in Paragraph 20 of the Complaint.

21. Paragraph 21 is denied – an outside investigation was and is still being conducted into the matter of Galvez’s time card fraud. The Defendants admit that the PIR referenced in the Complaint speaks for itself, but deny that it indicates that no outside investigation was conducted. Defendants admit that no money was paid by the City for the outside investigators (public law enforcement entities) to investigate the matter of the Plaintiff’s time card fraud.

22. Defendants deny Paragraph 22 of the Complaint insofar as it alleges that no investigation has been conducted. Defendants lack information whether Plaintiff was contacted by an outside investigator.

23. Defendants admit that Mayor Brawner contacted Plaintiff by telephone on or about March 14, 2018, to discuss with her the fact that Chief Wilson had discovered on the City’s Emergency Management tablet that Plaintiff had committed insubordination by contacting other city employees regarding the ongoing investigation into Plaintiff’s falsification of time sheets.

24. Defendants admit that a written notice of Plaintiff’s insubordination speaks for itself and further provides for Plaintiff to respond to the new allegation on March 16, 2018; otherwise, Defendants deny the allegations in Paragraph 24 of the complaint, as stated.

25. Defendants deny the allegations in Paragraph 25 of the Complaint.

26. Defendants admit the allegations in Paragraph 26 of the Complaint.

27. Defendants admit that Plaintiff and Mayor Brawner met briefly on March 16, 2016. Plaintiff stayed only momentarily, before any questioning could occur, and left in a fit of anger. Defendants deny the remainder of the allegations in Paragraph 25 of the Complaint.

28-31. Defendants deny the allegations in Paragraphs 28-31 of the Complaint.

32. Defendants admit the allegations in Paragraph 32 of the Complaint.

- 33. Defendants deny the allegations in Paragraph 33 of the Complaint.
- 34. Defendants admit the allegations in Paragraph 34 of the Complaint.
- 35. Defendants deny the allegations in Paragraph 35 of the Complaint.
- 36-37. Defendants deny as stated the allegations in Paragraphs 36-37 of the Complaint.
- 38-40. Defendants deny the allegations in Paragraphs 38-40 of the Complaint.
- 41-42. Defendants deny as stated the allegations in Paragraphs 41-42 of the Complaint.
- 43. Defendants admit Paragraph 43.
- 44. Defendants admit that the City's charter speaks for itself but deny Paragraph 44

where it states that the Mayor is the relevant final policymaker.

45. Defendants are not sure what conditions precedent are being referred to by Paragraph 45 of the Complaint; therefore, Paragraph 45 is denied.

VI. Invasion of Privacy Claim Against City.

- 46. Defendants admit Paragraph 46.
- 47-51. Defendants deny Paragraphs 47-51.

VII. Section 1983 Claims Against City and Wilson.

- 52-59. Defendants deny Paragraphs 52-59.

VIII. Claims under 18 U.S.C. § 2707 Against Wilson.

- 60. Defendants admit Paragraph 60.
- 61. Defendant Wilson denies that he accessed Plaintiff's Facebook Messenger page; rather, Plaintiff had programmed the home page of a City work computer to open to her Facebook Messenger page, and thus, the access to that page was automatically granted by Plaintiff to anyone who opened the City computer. When Defendant Wilson opened the computer for work-related purposes,

messages being directed to Plaintiff in real time opened on the screen of the City computer. Defendant denies all other allegations in Paragraph 61 as stated.

62-65. Defendants deny all allegations in Paragraphs 62-65 of the Complaint.

IX. Jury Demand.

66. Defendants admit that Plaintiff has made a timely jury demand.

X. Damages.

67. Defendants deny that any of their actions caused any of the damages alleged, and further deny that Plaintiff suffered any damages.

XI. Affirmative Defenses.

1. Defendants Brawner and Wilson are qualifiedly immune from this suit, because their conduct in question was objectively reasonable and none of the actions of which they are accused violated any clearly established rights of Plaintiff.

2. The City enjoys governmental immunity from suit and liability.

3. Exemplary damages are not recoverable from the City.

4. Plaintiff was an at-will employee; therefore, she has no right of reinstatement.

5. Plaintiff consented to the City having access to messages that she made accessible through the City's work computer.

6. Plaintiff has failed to exhaust administrative remedies pertaining to any claim for retaliation.

7. Plaintiff is barred by the collateral estoppel effect of the Texas Employment Commission Appeal Tribunal decision that she was fired for timecard fraud – lying to her employer, the City, in order to gain payments to which she was not entitled.

* * * * *

Accordingly, Defendants request that the Court, upon dispositive motion or trial on the merits, dismiss this action with prejudice and award Defendants any other and further relief to which they may be entitled, including costs of court.

Respectfully submitted,

VIADA & STRAYER

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ATTORNEYS FOR DEFENDANTS
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CERTIFICATE OF SERVICE

I certify that all counsel of record listed below have been served a true and correct copy of this document by electronic submission for filing and service through the Electronic Case Files System of the Southern District of Texas on May 6, 2019.

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