

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

**THE RETIRED PUBLIC EMPLOYEES
OF NEW MEXICO,**

Plaintiff,

v.

No. 1:19-CV-00891-WJ-KK

**THE PUBLIC EMPLOYEES RETIREMENT
ASSOCIATION OF NEW MEXICO BOARD;
WAYNE PROPST, in his individual capacity,
and SUSAN PITTARD, in her individual capacity.**

Defendants.

**ANSWER TO COMPLAINT FOR DAMAGES FROM VIOLATIONS OF
THE UNITED STATES CONSTITUTION, 42 U.S.C. § 1983, THE NEW
MEXICO CONSTITUTION, AND NEW MEXICO COMMON LAW**

COME NOW Defendants Wayne Propst and Susan Pittard (hereinafter referred to collectively as “Individual Defendants” and individually as “Defendant Propst” and Defendant Pittard”) by and through their counsel Robles, Rael and Anaya P.C. (Charles Rennick and Douglas E. Gardner), and hereby submit their Answer to Complaint for Damages from Violations of the United States Constitution, 42 U.S.C. § 1983, the New Mexico Constitution, and New Mexico Common Law (“Complaint”) as follows:

I. INTRODUCTION

1. With regard to Paragraph 1 of the Complaint, Individual Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require Individual Defendants to answer or otherwise respond to the legal conclusions alleged therein. To the extent that Paragraph 1 of the Complaint alleges facts, Individual Defendants deny the allegations made therein.

2. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegation made in Paragraph 2 of the Complaint and therefore deny same.

3. Individual Defendants admit the allegations of Paragraph 3 of the Complaint that the Board is a duly organized New Mexico public entity, created and endowed with powers under New Mexico Statutes, but deny the remaining allegations of Paragraph 3 of the Complaint.

4. Individual Defendant Propst admits the allegations of Paragraph 4 of the Complaint.

5. Individual Defendant Pittard denies the allegations of Paragraph 5 of the Complaint.

6. Individual Defendants deny the allegations of Paragraph 6 of the Complaint.

7. Individual Defendants deny the allegations of Paragraph 7 of the Complaint.

8. Individual Defendants deny the allegations of Paragraph 8 of the Complaint.

II. FACTUAL ALLEGATIONS

9. With regard to the allegations made in Paragraph 9 of The Complaint, Individual Defendants incorporate all of their previous answers to the Complaint herein by reference.

10. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegation made in Paragraph 10 of the Complaint and therefore deny same.

11. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegation made in Paragraph 11 of the Complaint and therefore deny same.

12. With regard to the allegation in Paragraph 12 of the Complaint that “the PERA Board 2002 determination did not, at any time, address matters related to the compensation of PERA staff,” Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegation and therefore deny same. With regard to the remaining allegations in Paragraph 12 of the Complaint, Individual Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require Individual Defendants to answer or otherwise respond to the legal conclusions alleged therein.

13. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in Paragraph 13 of the Complaint and therefore deny same.

14. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegation made in Paragraph 14 of the Complaint and therefore deny same.

15. With regard to Paragraph 15 of the Complaint, Individual Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require Individual Defendants to answer or otherwise respond to legal conclusions alleged therein. To the extent that Paragraph 15 of the Complaint alleges facts, Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations and therefore deny same.

16. With regard to Paragraph 16 of the Complaint, Individual Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require Individual Defendants to answer or otherwise respond to legal conclusions alleged therein. To the extent that Paragraph 16 of the Complaint alleges facts, Individual Defendants have neither knowledge nor information sufficient

to form a belief as to the truth of the allegations and therefore deny same.

17. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 17 of the Complaint and therefore deny same.

18. With regard to Paragraph 18 of the Complaint, Individual Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require Individual Defendants to answer or otherwise respond to legal conclusions alleged therein. To the extent that Paragraph 18 of the Complaint alleges facts, Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations and therefore deny same.

19. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the Complaint and therefore deny same.

20. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint and therefore deny same.

21. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 21 of the Complaint and therefore deny same.

22. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 22 of the Complaint and therefore deny same.

23. With regard to the first sentence of Paragraph 23 of the Complaint, Individual Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require Individual Defendants to answer or otherwise respond to the legal conclusions alleged therein. To the extent that the first sentence of Paragraph 23 of the Complaint alleges facts, Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations and therefore deny same. With regard to the remaining allegations in Paragraph 23

of the Complaint, Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations and therefore deny same.

24. With regard to the allegations in of Paragraph 24 of the Complaint, Individual Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require Individual Defendants to answer or otherwise respond to the legal conclusions alleged therein. To the extent that Paragraph 24 of the Complaint alleges facts, Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations and therefore deny same.

25. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 25 of the Complaint and therefore deny same.

26. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 26 of the Complaint and therefore deny same.

27. Individual Defendants deny the allegations in Paragraph 27 of the Complaint.

28. Individual Defendants deny the allegations in Paragraph 28 of the Complaint.

29. Individual Defendants deny the allegations in Paragraph 29 of the Complaint.

30. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 30 of the Complaint and therefore deny same.

31. Individual Defendants deny the allegations in Paragraph 31 of the Complaint.

32. Individual Defendants deny the allegations in Paragraph 32 of the Complaint.

33. Individual Defendants deny the allegations in Paragraph 33 of the Complaint.

34. Individual Defendants admit the allegation in Paragraph 34 of the Complaint that some PERA staff members received reclassifications, and by way of further explanation would

show that such reclassifications were performed according to lawful procedures. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 34 of the Complaint and therefore deny same.

35. Individual Defendants admit the allegations in Paragraph 35 of the Complaint.

36. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 36 of the Complaint and therefore deny same.

37. Individual Defendants deny the allegations in Paragraph 37 of the Complaint.

38. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 38 of the Complaint and therefore deny same.

COUNT 1

39. With regard to the allegation made in Paragraph 39 of The Complaint, Individual Defendants incorporate all of their previous answers to the Complaint herein by reference.

40. Individual Defendants deny the allegations in Paragraph 40 of the Complaint.

41. Individual Defendants deny the allegations in Paragraph 41 of the Complaint.

42. With regard to Paragraph 42 of the Complaint, Individual Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require Individual Defendant to answer or otherwise respond to legal conclusions alleged therein. To the extent that Paragraph 42 of the Complaint alleges facts, Individual Defendants deny the allegations made therein.

43. With regard to Paragraph 43 of the Complaint, Individual Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require Individual Defendant to answer or otherwise respond to legal conclusions alleged therein. To the extent that Paragraph 43 of the Complaint alleges facts, Individual Defendants deny the allegations made therein.

44. Individual Defendants deny the allegations in Paragraph 44 of the Complaint.

45. Individual Defendants deny the allegations in Paragraph 45 of the Complaint.

46. Individual Defendants deny the allegations in Paragraph 46 of the Complaint.

COUNT II

47. With regard to the allegations made in Paragraph 47 of the Complaint, Individual Defendants incorporate all of their previous answers to the Complaint herein by reference.

48. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 48 of the Complaint and therefore deny same.

49. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 49 of the Complaint and therefore deny same.

50. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 50 of the Complaint and therefore deny same.

51. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 51 of the Complaint and therefore deny same.

52. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 52 of the Complaint and therefore deny same.

53. With regard to Paragraph 53 of the Complaint, Individual Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require Individual Defendant to answer or otherwise respond to legal conclusions alleged therein. To the extent that Paragraph 53 of the Complaint alleges facts, Individual Defendants deny the allegations made therein.

54. With regard to the allegations in Paragraph 54 of the Complaint, Individual Defendants deny that retirement beneficiaries are represented by RPENM. With regard to the

remaining allegations in Paragraph 54 of the Complaint, Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations and therefore deny same.

55. Individual Defendants deny the allegations in Paragraph 55 of the Complaint.

56. Individual Defendants deny the allegations in Paragraph 56 of the Complaint.

57. Individual Defendants deny the allegations in Paragraph 57 of the Complaint.

COUNT III

58. With regard to the allegations made in Paragraph 58 of the Complaint, Individual Defendants incorporate all of their previous answers to the Complaint herein by reference.

59. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 59 of the Complaint and therefore deny same.

60. With regard to Paragraph 60 of the Complaint, Individual Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require Individual Defendant to answer or otherwise respond to legal conclusions alleged therein. To the extent that Paragraph 60 of the Complaint alleges facts, Individual Defendants deny the allegations made therein.

61. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 61 of the Complaint and therefore deny same.

62. Individual Defendants deny the allegation in Paragraph 62 of the Complaint that RPENM has a cognizable property interest for purposes of the Just Compensation Clause. With regard to the remaining allegations in Paragraph 62 of the Complaint, Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations and therefore deny same.

63. Individual Defendants deny the allegations in Paragraph 63 of the Complaint.

64. Individual Defendants deny the allegations in Paragraph 64 of the Complaint.

COUNT IV

65. With regard to the allegations made in Paragraph 65 of the Complaint, Individual Defendants incorporate all of their previous answers to the Complaint herein by reference.

66. With regard to Paragraph 66 of the Complaint, Individual Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require Individual Defendant to answer or otherwise respond to legal conclusions alleged therein. To the extent that Paragraph 66 of the Complaint alleges facts, Individual Defendants deny the allegations made therein.

67. With regard to Paragraph 67 of the Complaint, Individual Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require Individual Defendant to answer or otherwise respond to legal conclusions alleged therein. To the extent that Paragraph 67 of the Complaint alleges facts, Individual Defendants deny the allegations made therein.

68. With regard to Paragraph 68 of the Complaint, Individual Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require Individual Defendant to answer or otherwise respond to legal conclusions alleged therein. To the extent that Paragraph 68 of the Complaint alleges facts, Individual Defendants deny the allegations made therein.

69. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 69 of the Complaint and therefore deny same.

70. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 70 of the Complaint and therefore deny same.

71. Individual Defendants deny the allegations in Paragraph 71 of the Complaint.

72. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 72 of the Complaint and therefore deny same.

73. Individual Defendants deny the allegations in Paragraph 73 of the Complaint.

74. Individual Defendants deny the allegations in Paragraph 74 of the Complaint.

75. Individual Defendants deny the allegation of Paragraph 75 of the Complaint that monies were diverted by Individual Defendants. With regard to the remaining allegation of Paragraph 75 of the Complaint, Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 75 of the Complaint and therefore deny same.

76. Individual Defendants deny the allegations in Paragraph 76 of the Complaint.

77. Individual Defendants deny the allegations in Paragraph 77 of the Complaint.

COUNT V

78. With regard to the allegations made in Paragraph 78 of the Complaint, Individual Defendants incorporate all of their previous answers to the Complaint herein by reference.

79. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 79 of the Complaint and therefore deny same.

80. With regard to Paragraph 80 of the Complaint, Individual Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require Individual Defendant to answer or otherwise respond to legal conclusions alleged therein. To the extent that Paragraph 80 of the Complaint alleges facts, Individual Defendants deny the allegations made therein.

81. Individual Defendants deny the allegations in Paragraph 81 of the Complaint.

82. Individual Defendants deny the allegations in Paragraph 82 of the Complaint.

83. Individual Defendants deny the allegations in Paragraph 83 of the Complaint.

84. Individual Defendants deny the allegations in Paragraph 84 of the Complaint.

85. Individual Defendants deny the allegations in Paragraph 85 of the Complaint.

COUNT VI

86. With regard to the allegations made in Paragraph 86 of the Complaint, Individual Defendants incorporate all of their previous and subsequent answers to the Complaint herein by reference.

87. With regard to Paragraph 87 of the Complaint, Individual Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require Individual Defendant to answer or otherwise respond to legal conclusions alleged therein. To the extent that Paragraph 87 of the Complaint alleges facts, Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations therein and therefore deny same.

88. With regard to Paragraph 88 of the Complaint, Individual Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require Individual Defendant to answer or otherwise respond to legal conclusions alleged therein. To the extent that Paragraph 88 of the Complaint alleges facts, Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations therein and therefore deny same.

89. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 89 of the Complaint and therefore deny same.

90. With regard to Paragraph 90 of the Complaint, Individual Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require Individual Defendant to answer or otherwise respond to legal conclusions alleged therein. To the extent that Paragraph 90 of the

Complaint alleges facts, Individual Defendants deny the allegations made therein.

91. With regard to Paragraph 91 of the Complaint, Individual Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require Individual Defendants to answer or otherwise respond to legal conclusions alleged therein. To the extent that Paragraph 91 of the Complaint alleges facts, Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations therein and therefore deny same.

92. Individual Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations in Paragraph 92 of the Complaint and therefore deny same.

93. Individual Defendants deny the allegations in Paragraph 93 of the Complaint.

94. Individual Defendants deny the allegations in Paragraph 94 of the Complaint.

DAMAGES

95. With regard to the allegations made in Paragraph 95 of the Complaint, Individual Defendants incorporate all of their previous and subsequent answers to the Complaint herein by reference.

96. With regard to the allegations in Paragraph 96 of the Complaint, Individual Defendants deny that RPENM or its members are entitled to damages in the form of lost retirement benefits.

97. With regard to Paragraph 97 of the Complaint, Individual Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require Individual Defendant to answer or otherwise respond to legal conclusions alleged therein. To the extent that Paragraph 97 of the Complaint alleges facts, Individual Defendants deny the allegations made therein.

98. Individual Defendants deny the allegations and relief requested in Paragraph 98.

99. Individual Defendants deny the allegations and relief requested in Paragraph 99.

100. Individual Defendants deny the allegations and relief requested in Paragraph 100.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiff's members have not suffered an "injury in fact" and cannot establish the injury of which they complain was caused by the Defendants' actions and as a result, none of Plaintiff's individual members would have standing to pursue the claims in Counts I-VI on their own and Plaintiff therefore, lacks associational standing to pursue such claims on behalf of its members.

Second Affirmative Defense

Plaintiff's federal civil rights claims in Counts I-III are not ripe for adjudication.

Third Affirmative Defense

Individual Defendants are entitled to qualified immunity on Plaintiff's federal civil rights claim in Counts I-III.

Fourth Affirmative Defense

Plaintiff's substantive due process claim in Count II fails to state a claim for which relief can be granted and the claim is precluded based on Plaintiff's more specific claim under the Fifth/Fourteenth Amendment Takings Clause.

Fifth Affirmative Defense

The New Mexico Legislature has not waived sovereign immunity to liability for monetary damages caused by the intentionally tortious conduct and state constitutional violations alleged in Counts IV-VI, and thus, the Individual Defendants are immune from liability pursuant to the New Mexico Tort Claims Act, NMSA (1978), § 41-4-4.

Sixth Affirmative Defense

With respect to the intentional and constitutional torts in Counts IV-VI, Plaintiff has failed to comply with the 90-day notice requirement of the New Mexico Tort Claims Act, NMSA (1978), § 41-4-16 and, as a result, is barred from pursuing these claims.

Seventh Affirmative Defense

To the extent the conduct of which Plaintiff complains in Counts IV-VI is predicated on acts or omissions occurring before September 25, 2017, Plaintiff's claims are time-barred pursuant to New Mexico Tort Claims Act, NMSA (1978), § 41-4-15.

Eighth Affirmative Defense

To the extent the conduct of which Plaintiff complains in Counts I-III is predicated on acts or omissions occurring before September 25, 2016, Plaintiff's claims are time-barred for purposes of 42 U.S.C. § 1983. *See Asociacion de Suscripcion Conjunta del Seguro de Responsabilidad Obligatorio v. Juarbe-Jimenez*, 659 F.3d 42, 50 (1st Cir. 2011) (noting that "Section 1983 does not contain its own statute of limitations; instead, the courts apply the state's personal injury statute of limitations to all § 1983 claims, regardless of the underlying law on which the claim is based.") (citing *Owens v. Okure*, 488 U.S. 235, 240-41 (1989); *see also* NMSA 1978, § 37-1-8 (imposing a three-year statute of limitations for personal injury claims)).

Ninth Affirmative Defense

Plaintiff has failed to join indispensable parties, to wit, all retired and active members of PERA who are not dues-paying members of RPENM and as a result, Plaintiff's claims are subject to dismissal pursuant Rule 19 of the Federal Rules of Civil Procedure.

Tenth Affirmative Defense

Plaintiff has failed to state a claim for relief based on a takings and for deprivation of procedural due process and as a result, these claims are subject to dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

WHEREFORE, Individual Defendants respectfully request that this Court dismiss the Complaint, award Individual Defendants their attorneys' fees and costs, and for all other relief this Court deems just and proper.

Respectfully submitted,

ROBLES, RAEL & ANAYA, P.C.

By: /s/ Charles Rennick
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I hereby certify that the foregoing was electronically served through the CM/ECF system on this 25th day of October 2019 to:

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