STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT

THE NEW MEXICAN, INC.,
d/b/a THE SANTA FE NEW MEXICAN, and
NEW MEXICO FOUNDATION FOR
OPEN GOVERNMENT,

Plaintiffs,

v. No. D-1329-CV-2022-00259

CITY OF RIO RANCHO and
DANIEL VALENZUELA,

Defendants.

DEFENDANTS' MOTION TO STRIKE IMPROPERLY PLEADED, IMMATERIAL, PREJUDICIAL, AND SPECULATIVE MATERIAL FROM PLAINTIFFS' COMPLAINT

Defendants City of Rio Rancho and Daniel Valenzuela ("City") hereby move the Court in accordance with NMRA Rule 1-012(F) for an order striking improperly pleaded, immaterial, prejudicial and speculative material from Plaintiffs' Complaint to Enforce the Inspection of Public Records Act ("Complaint"). The City specifically requests that paragraphs 2, 14, 16, 18, 20-24, 29, 31, and 34-48 of the Complaint be stricken and that Plaintiffs be ordered to redraft the Complaint to comply with the requirements of NMRA Rule 1-008.

Plaintiffs oppose this Motion.

Introduction

Plaintiffs' Complaint includes many prejudicial, immaterial, irrelevant, or scandalous statements—some of which are clearly calculated to be harmful—that violate well-established New Mexico pleadings standards and rules of evidence. The Complaint was deliberately crafted to bolster a media campaign Plaintiffs seem to want to wage against the City. The Complaint

reads, in sections, like a press release rather than a pleading drafted in compliance with the New Mexico Rules of Civil Procedure. Many paragraphs in the Complaint consist only of self-serving proclamations or speculative, harmful statements with no factual basis. These inappropriate "allegations," such as they are, make it impossible for the City to craft an accurate answer to the Complaint. Furthermore, some of the objectionable and highly inappropriate paragraphs in the Complaint serve no purpose aside from sensationalizing both the tragedy at the center of this case and other past tragedies. Therefore, the Court should grant this Motion to Strike all immaterial, prejudicial, speculative, and improper allegations from the Complaint.

Argument

A motion to strike is proper under Rule 1-012(F) when a complaint is replete with redundant, immaterial, impertinent and scandalous matter. *Peoples v. Peoples*, 1963-NMSC-067, ¶ 18, 72 N.M. 64. A party must demonstrate that it will "be prejudiced in [its] efforts to defend" to merit relief under the rule. *Id.* Matters improperly pleaded, or which have no bearing on the lawsuit, should be stricken. *Id.* ¶ 20. Further, it is inappropriate to provide evidence in the pleadings. *See, e.g., Cole v. Multnomah Cnty.*, 592 P.2d 221, 226 (Or. App. 1979) ("[P]arties are not required to plead their evidence; indeed, it is improper to do so.").

I. Plaintiffs Disregard New Mexico Standards for Pleading

Plaintiffs' Complaint contains numerous irrelevant and speculative or inflammatory statements, all of which violate the New Mexico pleading standards. The pleading standards in New Mexico are contained in Rule 1-008, which states that any claim for relief shall contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Rule 1-008(A)(2). The Rule contemplates that "[e]ach averment of a pleading shall be simple, concise and direct," Rule 1-008(E)(1), and that "[a]ll pleadings shall be so construed as to do substantial

justice," Rule 1-008(F); *see also Zamora v. St. Vincent Hosp.*, 2014-NMSC-035, ¶ 13, 335 P.3d 1243 (describing pleading standard in New Mexico). Rule 1-008's federal counterpart has been construed to require a complaint to be a short and plain statement of the plaintiff's claims, to avoid "'an unjustified burden on the court and the party who must respond to it because they are forced to select the relevant material from a mass of verbiage.'" *Salhuddin v. Cuomo*, 861 F.2d 40, 41-42 (2nd Cir. 1988) (citations omitted). "Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end." *Maty v. Grasselli Chemical Co.*, 303 U.S. 197, 200 (1938). Plaintiffs' Complaint defeats this goal.

The courts have interpreted this pleading standard to mean exactly what it says: necessary elements of the claim should be short and plain. *Peoples*, 1963-NMSC-067, ¶ 17. When a statement is "long, complicated, verbose, contains numerous allegations of rumors, suppositions, slurs and innuendos, and generally disregards the requirements of the rules" it must be stricken. *Id.*; *see also DiMatteo v. County of Dona Ana ex re. Bd. Of Cnty. Commr'rs*, 1989-NMCA-108, ¶¶ 19-20, 109 N.M. 374 ("matters improperly pleaded, or which have no bearing on the lawsuit, should be stricken by a motion to strike.") (Citation omitted.)

Further, the New Mexico Rules of Evidence preclude Plaintiffs from using their Complaint as a vehicle to introduce evidence before the supposed evidence has been subjected to the Court's determinations of relevance, authenticity, completeness, prejudice, confusion, foundation, etc. *See* Rules 11-104, 11-401 through 11-403 NMRA. The current standard of "notice pleading" contemplates that "the facts would be developed during discovery proceedings and the theory of the case set forth in the pretrial memorandum." *Malone v. Swift Fresh Meats Co.*, 1978-NMSC-007, ¶ 10, 91 N.M. 359 (citation and quote omitted). The notice standard promulgated by federal

and most state courts, including New Mexico's, does not contemplate that supposed evidence be submitted in the pleadings. *Cole*, 592 P.2d at 226; *see, e.g., Ragner Tech. Corp. v. Berardi*, 324 F.Supp.3d 491, 507 (D.N.J. 2018) (in weighing a motion to dismiss under FRCP 12(b)(6), the court is to determine whether the plaintiff *may later offer evidence* to support the claim (emphasis added)).

Plaintiffs are pleading evidence and allegations of rumors, suppositions, slurs and innuendos before such purported evidence has been properly scrutinized and admitted for consideration pursuant to the New Mexico Rules of Evidence. The Complaint, as presently submitted, as well as many allegations of speculated fact, are inadmissible and not properly before the Court or the public. Accordingly, all of the improper suppositions, slurs and innuendos included within this Complaint must be stricken.

A. Plaintiffs' Misleading Hearsay Evidence, Speculative Comments, and Innuendos Should be Stricken from the Complaint

Because the City will be substantially prejudiced in its efforts to accurately respond to the Complaint as written the offending portions should be stricken under Rule 12(F). Where "there is present abuse and practical impropriety … 'calculated to be harmful'" the offending language of the Complaint should be stricken. *Peoples,* 1963-NMSC-067 at ¶19.

1. The Entirety of Paragraphs 29, 31, and 44 through 48 of the Complaint Should be Stricken as Irrelevant, Hearsay, Speculation, Innuendo, Supposition, Conjecture, and are Calculated to be Harmful

Plaintiffs attack the City's position as "unpalatable as a matter of public policy," which is not a short and concise statement that they are entitled to relief. (Complaint, ¶44). The next two paragraphs of the Complaint are simply shocking in Plaintiffs' transparent efforts to sensationalize this proceeding. Plaintiffs invoke the tragic deaths of Omaree Varela, Victoria Martens and Jeremiah Valencia. (*Id.* ¶45). These three cases are without a doubt the most tragic, violent and

gruesome deaths of children in recent New Mexico history. None of those cases are in any way relevant to whether or not Plaintiffs are entitled to relief for their request under IPRA for the City's records related to this case. Paragraph 45 is plainly calculated to be harmful for implicit in its inclusion in the Complaint is a clear insinuation that Mr. and Mrs. Harmon are somehow responsible for the death of their son in the same way the parents of Omaree, Victoria, and Jeremiah were so found. (*See also, Id.* ¶ 31). Plaintiffs make this allegation with absolutely no support or even a good faith belief that this allegation might be appropriate. The irresponsibility of this insinuation is highlighted by the recent article dated April 8, 2022, in the Albuquerque Journal by Matthew Reisen in which he reports that the tragic death of the Harmon's two-year-old child may have been due to an accident at the hands of his four-year-old sibling. Plaintiffs' rank speculation and innuendo can be seen as nothing more than an attempt to sensationalize this case, damage the reputation of the Harmons and accuse the City, law enforcement in general, and child welfare agencies for the death of this child. Paragraphs 44 and 45 must be stricken in their entirety.

Plaintiffs then continue and insinuate that there must have been child abuse or neglect in the Harmon's home for there to have been a delinquent act. (*Id.* ¶46). Plaintiffs make this insinuation earlier in their Complaint. (*Id.* ¶ 29). Presumably, Plaintiffs will retort that they intended no such innuendo. This leads one to ask, rhetorically, why Plaintiffs would have seen fit to include such a speculative and slanderous allegation in their Complaint. This paragraph in no way supports Plaintiffs' claim they are entitled to relief under the IPRA statute. Again, this paragraph must be stricken in its entirety.

Next, Plaintiffs accuse, with no basis other than speculation, that the City is acting to protect a police officer from public scrutiny. (*Id.* ¶ 47). They provide no basis for this assertion. Setting aside the fact that this allegation, like the previous paragraphs, does not support their claim

for relief, Plaintiffs' innuendo is undercut by the very case law they cited previously. Plaintiffs rightly point out that "[t]he policy that exempts abuse and neglect proceedings from the requirement that government records be open exists to protect the child and the family." *In re George F.*, 1998-NMCA-l 19, ¶ 17 n.l. (*Id.* ¶45). Plaintiffs then incorporate the preceding paragraphs into their conclusion in paragraph 48. Plainly, none of Plaintiffs' statements in paragraphs 44 through 48 comply with New Mexico's pleading requirements. They all contain long, complicated, verbose allegations, containing rumors, suppositions, slurs and innuendoes which are clearly calculated to be harmful to not only the City, but to the Harmons, law enforcement, and child welfare agencies. This sort of abusive pleading is not acceptable under the Rules of Civil Procedure and all of these paragraphs should be stricken.

2. Other Paragraphs in the Complaint Should be Stricken as Prejudicial Supposition, Innuendo, and Conjecture, Irrelevant Narrative, Compound Allegations, and Reference to Hearsay Evidence

Plaintiffs' have also stacked the Complaint with suppositions, irrelevant narrative, hearsay evidence and compound allegations intended to prejudice the City and these provisions should also be stricken for the reasons established above. As examples:

a. Paragraph 2 contains six separate statements of opinion, none of which support Plaintiffs' claim they are entitled to relief. Moreover, these statements are impermissible supposition, conjecture, and prejudicial contentions and should therefore be stricken.

b. Paragraphs 14, 16, 18, and 20-24 violate Rule 1-008's requirement that each allegation shall be "a short and plain statement of the claim showing that the pleader is entitled to relief," and that each such allegations shall be "simple, concise and direct." Therefore, they should be stricken.

c. Paragraphs 34-44 consist of irrelevant narratives and recitations containing speculation and argument, rather than statements in support of Plaintiffs' claim for relief. They should also be stricken.

II. Plaintiffs Failed in Their Duty of Diligence in Pleading and Candor to the Court by Presenting Supposition, Innuendo, Conjecture, and Allegations Calculated to be Harmful

Plaintiffs engaged in irresponsible speculation and innuendo when they included the allegations contained in Paragraphs 29, 31, and 44 through 48 in their Complaint. Plaintiffs were obligated to satisfy themselves that they had good grounds for doing so. *Rivera v. Brazos Lodge Corp.*, 1991-NMSC-030, ¶ 15, 111 N.M. 670, quoting *Boone v. Superior Ct. in & for Maricopa Cnty.*, 700 P.2d 1335 (Ariz. 1985). The *Rivera* court went on to further interpret this to require "honesty and good faith in pleading." *Id.* Plaintiffs were required to exercise diligence and candor in their submissions to the Court. *Landess v. Gardner Turf Grass Inc.*, 2008-NMCA-159, ¶ 16, 145 N.M. 372, citing *Rangel v. Save Mart, Inc.*, 2006-NMCA-128, ¶ 11, 140 N.M. 395 (interpreting this duty to require a "good ground" to continue to proceed on a claim). As set forth in Part I(A)(1), *supra,* Plaintiffs included in their Complaint damaging presumptions regarding the City, the Harmons, law enforcement, and child welfare agencies that in no way support their claim. This was not mere oversight. Plaintiffs had choices to make. They were and are in control of what they did and did not include in their publicly filed Complaint. Their decision to include the damaging and sensational paragraphs as outlined above does not reflect an exercise of diligence and circumspection.

The City should not have to address misinformation, improper and speculative allegations such as those which required this motion and which demonstrating the obvious and avoidable improprieties and deficiencies in the Complaint.

Conclusion

Therefore, the City respectfully requests that all of the paragraphs specified in this Motion be stricken from the Plaintiffs' Complaint, that Plaintiffs be ordered to redraft the Complaint to comply with Rule 1-008, and that the City be accorded the same time for response as would be the case under Rule 1-015 NMRA when an amended complaint is filed.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2022, I filed the foregoing electronically through the Court's E-File system, which caused all counsel of record to be served by electronic means, via the Court's electronic service system.

/s/ Randy S. Bartell
Randy S. Bartell