

**IN THE CHANCERY COURT OF THE FIRST JUDICIAL
DISTRICT OF HINDS COUNTY, MISSISSIPPI**

MISSISSIPPI FAIR COMMISSION

PLAINTIFF

VS.

CIVIL ACTION NO. G2015-1479 O/3

CITY OF JACKSON, MISSISSIPPI

DEFENDANT

**CITY OF JACKSON'S ANSWER AND AFFIRMATIVE DEFENSES
AND COUNTER-CLAIM FOR INJUNCTIVE RELIEF**

COMES NOW, the Defendant, City of Jackson, Mississippi ("City"), by and through the undersigned counsel, and pursuant to the Mississippi Rules of Civil Procedure and other applicable authority, specifically without waiving jurisdiction over the parties and subject matter, and files its Answer and Affirmative Defenses to the Complaint exhibited against it by the Plaintiff Mississippi Fair Commission ("Plaintiff"), as well as its Counter-Claim for Injunctive Relief against Plaintiff:

First Defense

The Complaint fails to state a claim upon which relief can be granted and should be dismissed with prejudice.¹

Second Defense

Plaintiff has failed to exhaust all of its administrative remedies available to it, and is in violation of City Ordinance 14-176, of the City of Jackson's Special Events

¹Plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." ***Bell Atl. Corp. v. Twombly***, 127 S. Ct. 1955,1965, 1974 (2007). "Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." ***Id.*** at 1965.

Ordinance, which governs the allegations contained in the Complaint

Third Defense

The City has not breached any duty owed to the Plaintiff, whether contractual, common law, state or federal statutory law.

Fourth Defense

The City owed no duty to the Plaintiff that was breached in this action.

Fifth Defense

The City reserves all statutory and/or indemnity rights it may have against all others whether parties to this action or not.

Sixth Defense

The City denies that any of its actions and/or omissions caused the Plaintiff harm or special harm.

Seventh Defense

The City's actions with the Plaintiff, if any, were conducted in good faith.

Eighth Defense

The City denies each and every allegation in which the Plaintiff seeks to impose liability upon them, whether expressly denied herein or not.

Ninth Defense

The Plaintiff's Complaint is barred by the doctrine of laches and should therefore be dismissed with prejudice.

Tenth Defense

The Plaintiff's Complaint is barred by the applicable statute of limitations and should therefore be dismissed with prejudice with all costs assessed against the Plaintiff.

Eleventh Defense

The sole proximate and/or contributing cause of the Plaintiff's damages, if any, were not caused or contributed to by any act or omission of the City, but such damages, if any, were caused and/or contributed to by the acts and/or omissions of others for which the City cannot be held liable.

Twelfth Defense

Any damages sustained by the Plaintiff were solely and proximately caused and/or contributed to by the unforeseeable, intervening or superseding causes and/or other causes attributable to persons, entities or events with respect to which the City had neither control, right to control, duty to control nor any other legal relationship whatsoever.

Thirteenth Defense

Without waiving any other affirmative defense, the City affirmatively pleads and allege that they are not responsible for the intentional acts, if any, by any agents, representatives or employees of the City or any other Defendant toward the Plaintiff and that any alleged intentional acts of any agent, representative or employee of City and/or any other Defendant, if any, were not reasonably foreseeable by the City.

Fourteenth Defense

The Plaintiff failed to comply with the requirements of Miss. Code Ann. § 11-46-11(3), and the Complaint should therefore be dismissed.

Fifteenth Defense

The City affirmatively asserts and invokes all substantive and procedural defenses available to it for which a good faith legal and/or factual basis exists or may exist in their favor pursuant to Miss. Code Ann. § 11-46-1 *et seq.* (the Mississippi Tort Claims Act, hereinafter "MTCA"), specifically including, but not limited to, Miss. Code Ann. § 11-46-5; § 11-46-7; § 11-46-9; § 11-46-11; § 11-46-13; § 11-46-15 and § 11-46-17 as to all Plaintiffs' claims, state and federal, if any. To the extent Plaintiff's Complaint, or any subsequently filed pleading may seek a trial by jury on state law claims against the City, then the City specifically moves this Court to strike any such jury demand on the basis that same is prohibited by the aforementioned statutes.

Sixteenth Defense

The Plaintiff failed to mitigate his damages.

Seventeenth Defense

The Complaint is barred by the doctrines of waiver and estoppel and should, therefore, be dismissed with prejudice with all costs assessed against the Plaintiff.

Eighteenth Defense

The Plaintiff's claims for intentional torts, if any, are barred by the applicable one-year statute of limitations.

Nineteenth Defense

The City asserts all other affirmative defenses to which it may be entitled, including contributory negligence, estoppel, fraud, illegality, release, res judicata, collateral estoppel, statute of frauds and waiver.

Twentieth Defense

Plaintiffs' claims against the City are prohibited by prevailing Federal and State Law and all other applicable defenses thereto as is alleged to have arisen out of the acts, practices, policies or procedures, or omissions of a government entity.

Twenty-First Defense

The City hereby asserts the defenses of sovereign immunity, qualified immunity and any other immunity available under federal or state law.

Twenty-Second Defense

At all material times, herein, the City and its employees, agents, and servants, at all times relevant hereto, used the degree of care required of them under law and are not liable in damages to the Plaintiff.

Twenty-Third Defense

The actions or inactions on the part of the Plaintiff was the sole, proximate and only cause of the incident complained of and the alleged damages sustained by the Plaintiff, if any. In the alternative, the actions or inactions on the part of the Plaintiff amounted to an intervening cause and as such, constitute the sole, proximate cause and only cause of the incident complained of and the damages sustained by the Plaintiff, if any.

Twenty-Fourth Defense

If the actions or inactions on the part of the Plaintiff was not the sole, proximate cause of the incident complained of and the alleged damages sustained by the Plaintiff, if any, the actions or inactions on the part of the Plaintiff caused and contributed to the incident complained of and the damages sustained by the Plaintiff, if any, and any damages which the Plaintiff would otherwise be entitled, must be reduced in degree and to the proportion that the action or inaction of the Plaintiff caused or contributed to the incident.

Twenty-Fifth Defense

The City asserts any and all other defenses available to them under Miss Code Ann. § 85-5-7 and § 11-1-65.

Twenty-Sixth Defense

The City hereby gives notice that they intend to rely upon such other and further defenses that may become available or apparent during discovery in this civil action and reserves the right to amend its answer to assert any such defenses.

Twenty-Seventh Defense

Pursuant to F.R.C.P. 12(b)(7), 17 and 19, if the damages, or any part thereof, claimed by Plaintiff in the Complaint have been paid or provided by any person, corporation or party, including insurer, workers' compensation carrier, employer or governmental entity, which holds any rights of subrogation, assignment, loan receipt or

lien holder interest therefore as a result of such payment(s), then under F.R.C.P. 12(b)(7), 17 and 19, any and all such persons, corporations or parties whatever are real parties in interest herein, including for such subrogation, assignment, lien or otherwise, and must be joined as a party needed for just adjudication herein. If any such person, company or party exists, he, she or it should be joined by order of this court either as a Plaintiff or an involuntary Plaintiff. Further, pursuant to F.R.C.P. 12(b)(7), 17 and 19, any such person, corporation or party whatsoever who has paid or provided all or any part of Plaintiff's claimed damages, and thereby holds subrogation rights, assignment rights, loan receipt, lien holder rights, or rights otherwise arising from the accident is a real party in interest pursuant to F.R.C.P. 17, and for such payment and interest, the damages claimed in this action to the extent of such rights must be brought in the name of the subrogee, assignee, loan receipt holder, lien holder or other party whatsoever holding such interest; and Plaintiff has no further interest or right of recovery thereto.

Twenty-Eighth Defense

The City asserts all rights of credit, set off and/or contribution that it may have pursuant to the laws of the State of Mississippi.

Twenty-Ninth Defense

Plaintiff's claims, if any, against the City, that may be alleged to have possibly arisen from judicial and/or administrative inaction of the City, are prohibited by statute, where said allegations claim that City employees were acting within the scope of their employment for the City of Jackson.

Thirtieth Defense

Plaintiff's claims against the City are prohibited by statute because they are

alleged to have arisen from alleged failures of the City of Jackson and its employees to execute or perform a statute, ordinance, or regulation.

Thirty-First Defense

Plaintiff's claims against the City are prohibited because the City is immune from allegations based on the City's exercise or performance or the failure to exercise or perform a discretionary function or duty.

Thirty-Second Defense

Plaintiff's Complaint is barred because Plaintiff fails to properly plead: capacity, fraud, mistake, condition of mind, official document or act, judgment, and/or special damages as required by Rule 9 of the Mississippi Rules of Civil Procedure.

Thirty-Third Defense

The Complaint fails to join a necessary party for which total relief can be granted as required by Rule 19 of the Mississippi Rules of Civil Procedure and should, therefore, be dismissed with prejudice with all costs assessed against the Plaintiff.

Thirty-Third Defense

AND NOW, without waiver of any other defense contained herein, the City of Jackson Defendants respond to the allegations of Plaintiff's Complaint, paragraph by paragraph, as follows:

This first unnumbered paragraph appears introductory in nature, and therefore does not require a response. To the extent that this introductory, unnumbered paragraph commencing with the words "The Plaintiff, . . .," seeks to impose liability on the City, the City denies same and demands strict proof thereof.

1. The City admits that it may be served with process on its City Clerk.
2. The City denies that jurisdiction is proper and further denies that Plaintiff has standing to bring this action.
3. The City admits that the Plaintiff is seeking preliminary injunction with notice, as well as permanent injunction.
4. The City of Jackson Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 4 of the Complaint, however the City of Jackson Defendants denies any allegations in said paragraph which directly or indirectly imply any liability for any acts and/or omissions on the part of the City of Jackson or its employees.
5. The City denies the allegations contained in Paragraph 5 of the Complaint.
6. The City denies the allegations contained in Paragraph 6 of the Complaint and strictly denies that it is withholding services intentionally.
7. The City denies the allegations contained in Paragraph 7 of the Complaint.
8. The City denies the allegations contained in Paragraph 8 of the Complaint.
9. The City denies the allegations contained in Paragraph 9 of the Complaint.
10. The City denies the allegations contained in Paragraph 10 of the Complaint.

The City denies the allegations contained in the last unnumbered paragraph of the Complaint commencing with the words "WHEREFORE, PREMISES CONSIDERED, . . ." The City specifically denies that the Plaintiff is entitled to any relief whatsoever against the City and demands strict proof thereof.

AND NOW, having fully answered the Plaintiff's Complaint, the City files its Counter-Claim for Injunctive Relief against Plaintiff.

**CITY OF JACKSON'S COUNTER-CLAIM
FOR INJUNCTIVE RELIEF**

COMES NOW the City of Jackson, by and through counsel and submits this counter-claim against the Mississippi Fair Commission for injunctive relief, and in support thereof would show unto this Court the following:

INTRODUCTION

1. The Mississippi Fair Commission (the "Commission") is seeking legal action to force the City of Jackson to provide unbudgeted police presence for two-week period on the outside perimeter of the Mississippi State Fair. The Mississippi State Fair, a State-sponsored event, is held from October 7, 2015 through October 18, 2015. In the past, the City of Jackson has absorbed the overtime costs for additional Jackson Police officers that supplied security and traffic-management to the area surrounding the Mississippi Fairgrounds.

2. However, this fiscal year, the City is undergoing budget cuts and furloughs of its employees. The Jackson Police Department does not have any extra expenditures its budget to pay overtime compensation to its officers to man this State-sponsored event. To require the City of Jackson to pay this amount of unbudgeted overtime will

violate Mississippi State law which requires the City to operate with a balanced budget and could potentially expose Jackson Police Chief Vance to individual liability.

ARGUMENT

3. In determining the propriety of issuing an injunction, a chancellor must balance four factors: (1) the substantial likelihood that plaintiff will prevail on the merits; (2) whether the injunction is necessary to prevent irreparable harm; (3) whether the threatened harm to the applicant outweighs the harm the injunction might do to the respondents; and (4) whether entry of the injunction is consistent with the public interest." ***Am. Legion Post # 134 v. Miss. Gaming Comm'n***, 798 So. 2d 445, 454 (Miss. 2001).

4. The City brings this Counter-Claim for Injunctive Relief because the Plaintiff is attempting to force the City to expend funds that are not budgeted, thereby forcing the Jackson Police Department to operate with an unbalanced budget. There is no doubt that the City will prevail on the merits of this Counter-Claim. As discussed *infra*, well established statutory authority strictly prohibits a municipality from operating without a balanced budget. Should the City be forced to pay overtime compensation to JPD officers, this expenditure would create a deficit and cause the Jackson Police Department to operate without a balanced budget. The proposed overtime for officers working a State-sponsored event was not anticipated in the budget for fiscal year 2016, and was not a consideration during budget hearings. The City of Jackson's fiscal year 2016 budget is devoid of any appropriation absorbing security costs from the Mississippi State Fair. The City of Jackson does not have the authority to

expend such funds because state law prohibits expenditures in excess from that which is budgeted.

5. Section 21-35-15 of the Mississippi Code Annotated mandates that a municipality must function with a balanced budget at all times, and that the budget must be reconciled each fiscal year. Section 21-35-15 states that “[t]he governing authorities shall at all times keep within the sums named in their said budget and within the annual revenue.” The statute further states, in pertinent part, that:

The amount appropriated and authorized to be expended for any item contained in such budget, except for capital outlay, election expenses, and payment of emergency warrants and interest thereon, must not exceed the amount actually estimated for such item, and the total amount appropriated and authorized to be expended from any fund, except for capital outlay, election expenses and payment of emergency warrants and interest thereon, shall not exceed the total amount actually estimated for all purposes. The total expenditures authorized to be made from any fund shall not exceed the aggregate cash balance, in such fund at the close of the fiscal year immediately preceding, plus the amount of estimated revenues to accrue to such fund, as determined and fixed in the manner provided by this chapter, and the amount which may be raised for such fund by a lawful tax levy during the current fiscal year.

Id.

6. Further, irreparable harm will be sustained by Jackson Police Chief Vance should it be forced to pay for security for a State-sponsored event. Pursuant to Section 21-35-17 of the Mississippi Code Annotated, a department head may not make expenditures in excess of the budget outlined and adopted by the City Council. This statute states that should an official make or incur such expenditure that is in excess of the budget, that official “shall be liable therefore personally and upon his official bond.” Miss. Code. Ann. §21-35-17. The statute further holds that “governing authorities shall not approve any claim and the city clerk shall not issue any warrant for any expenditure

in excess of said detailed budget appropriations as finally adopted, or as revised under the provisions of this chapter, except upon an order of a court of competent jurisdiction or for an emergency, as provided in this chapter.” *Id.*

7. Jackson Police Chief Vance is the official charged with the duty of creating and implementing a budget for the Jackson Police Department. As previously stated, the additional expense that the Plaintiff is demanding that the City absorb is not a budgeted expense. To force Chief Vance to make this expenditure in excess of the approved budget will expose Chief Vance to personal liability and the likelihood of irreparable harm.

8. Furthermore, there is no statutory authority that will allow the City to issue funds to cover the Commission’s request that JPD act as its private security and traffic personnel. Section 21-35-19 of the Mississippi Code addresses emergency expenditures, and states (in pertinent part) that such expenditures may be made:

Upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, epidemic, riot or insurrection, or caused by any inherent defect due to defective construction, or when the immediate preservation of order or of public health is necessary, or when the restoration of a condition of usefulness of any public building which has been destroyed by accident appears advisable or in order to settle lawful claims for personal injuries or property damage where such municipality is liable therefore under law.

Miss. Code Ann. §21-35-19.

9. Finally, the City is entitled to injunctive relief against the Commission because the threatened harm to the City outweighs the harm the injunction might do to the Commission. The Commission has been on notice for months that the City of Jackson does not have the funds to pay for the costs of extra personnel at this State-

sponsored event. Now, on the eve of the event, the Commission is requesting the Jackson Police Department order an unspecified amount of police officers to work security and traffic for a two-week time frame. Not only does this request create a logistical concern as far as staffing needs, but should JPD have to use its man-power to provide security to the Commission, the citizens of the City of Jackson would suffer.

10. As previously stated, the City of Jackson is undergoing budget cuts and furloughs to its employees. In order to operate within its budget and still provide the Commission with security personnel, other officers from other precincts will be pulled from their daily duties to attend this special event. This puts the safety of the citizens of Jackson at risk because precincts will be understaffed and unable to meet the daily needs in securing the safety of other precincts city-wide.

RELIEF REQUESTED

11. The City of Jackson requests this Court to enter an order enjoining the Commission from requesting the City to expend funds that exceed the City's fiscal budget. The City of Jackson Police Department has not budgeted expenditures for overtime compensation that would be incurred should JPD officers provide security and traffic personnel for a State-sponsored event.

12. This is a State-sponsored event for which the State has a duty to provide security and personnel to its patrons. The Commission has been placed on notice for months that the City of Jackson is not able to provide additional resources; however, the Commission failed to make any provisions to secure police personnel for their event. Should the City now be forced to provide for and pay officers overtime to work this

event, the City will be irreparably harmed because state law requires that a municipality operate with a balanced budget.

13. For these reasons, the City requests that this Court grant injunctive relief against the Mississippi Fair Commission.

Respectfully submitted, this the 5th day of October 2015.

THE CITY OF JACKSON, MISSISSIPPI

By: /s/ Claire Barker
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CERTIFICATE OF SERVICE

I, Claire Barker, one of the attorneys for the Defendants, do hereby certify that I have served this day via the Electronic Filing System and United States Mail, postage prepaid, a true and correct copy of the above and foregoing ***Answer, Affirmative Defenses and Counter-Claim for Injunctive Relief*** on the following:

John C. Corlew
CORLEW MUNFORD & SMITH, PLLC
Post Office Box 16807
Jackson, MS 39236-6807

So certified, this the 5th day of October 2015.

/s/Claire Barker
Claire Barker