

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

WILLIAM R. DOWNING, JR.

PLAINTIFF

v.

Case No. 4:15-CV-570-DPM

**DEPARTMENT OF FINANCE AND
ADMINISTRATION, An Agency of
the State of Arkansas; BOB HAUGEN,
in his Individual Capacity; JAMES
SUTTERFIELD, in his Official Capacity;
and DAVID JUSTICE, in his Individual
and Official Capacity**

DEFENDANTS

ANSWER TO PLAINTIFF'S AMENDED COMPLAINT

Defendants Arkansas Department of Finance and Administration (“DFA”), Bob Haugen, in his individual capacity, James Sutterfield, in his official capacity,¹ and David Justice, in his individual and official capacity, for their Answer to the Amended Complaint filed by Plaintiff William R. Downing, Jr., state:

1. Defendants are without sufficient information to either admit or deny the allegations in paragraph 1 of Plaintiff’s Amended Complaint regarding Plaintiff’s residence and citizenship and, therefore, deny those allegations. Defendants admit that Plaintiff formerly worked for DFA, and that DFA is an agency of the State of Arkansas. Defendants admit that Plaintiff brings this action under Title I of the ADA, § 504 of the Rehabilitation Act of 1973, and the FMLA of 1993, but Defendants deny that Plaintiff has stated a cognizable claim or that he is

¹ Bob Haugen is no longer employed by DFA or the State of Arkansas. James Sutterfield is his successor in office. Mr. Sutterfield is automatically substituted as a party in his official capacity pursuant to Rule 25(d) of the Federal Rules of Civil Procedure. The Clerk should update the style of the case accordingly.

entitled to any of the relief he seeks. Defendants admit that Haugen and Justice acted within the course and scope of their employment at all relevant times as managers of DFA. Defendants deny the remaining allegations contained in paragraph 1 of Plaintiff's Amended Complaint.

2. Defendants admit that Plaintiff was hired by DFA in or around October 2011 and that DFA receives federal funds as alleged in paragraph 2 of Plaintiff's Amended Complaint. The remaining allegations in paragraph 2 state legal conclusions to which no affirmative response is required.

3. Defendants deny the allegations contained in paragraph 3 of Plaintiff's Amended Complaint.

4. Defendants are without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 4 of Plaintiff's Amended Complaint regarding the onset and effect of Plaintiff's alleged hip condition and, therefore, deny those allegations. Defendants deny the remaining allegations contained in paragraph 4 of Plaintiff's Amended Complaint.

5. Defendants admit that Plaintiff requested leave in order to have his hips replaced as alleged in paragraph 5 of Plaintiff's Amended Complaint.

6. Defendants admit that Plaintiff was granted leave in order to have his hips replaced. Defendants deny that Plaintiff's job "required only 50 pounds lifting" and "did not require lifting more than 50 pounds." Defendants deny that Plaintiff's job was entitled Surplus Agent, Internet Sales. Defendants state affirmatively that Plaintiff's job was entitled Surplus Property Agent. Defendants state that Exhibit

A speaks for itself. Defendants deny the remaining allegations contained in paragraph 6 of Plaintiff's Amended Complaint.

7. The allegations contained in the first sentence of paragraph 7 of Plaintiff's Amended Complaint are not directed at Defendants and, therefore, no affirmative response is required. To the extent the first sentence of paragraph 7 makes any factual allegations against Defendants, Defendants deny those allegations. Defendants deny the remaining allegations contained in paragraph 7 of Plaintiff's Amended Complaint.

8. Defendants admit that Plaintiff was not allowed to return to work as a Surplus Property Agent when he was under restrictions to use a cane. Defendants deny the remaining allegations contained in paragraph 8 of Plaintiff's Amended Complaint and state that Exhibit A speaks for itself.

9. Defendants deny the allegations contained in paragraph 9 of Plaintiff's Amended Complaint and state that Exhibit A speaks for itself.

10. Defendants admit that Haugen and Justice had been trained on ADA and FMLA issues as alleged in paragraph 10 of Plaintiff's Amended Complaint. Defendants admit there was no "light duty" work available in the essential functions of Plaintiff's position and that he was to provide a "fit for duty" statement from his doctor stating he was able to return to work and perform all essential job duties. Defendants deny that DFA has or had "a 100% healed policy." Defendants state that Exhibit A speaks for itself. Defendants deny the remaining allegations contained in paragraph 10 of Plaintiff's Amended Complaint.

11. Defendants admit that Haugen and Justice had been trained on ADA and FMLA issues. Defendants deny the remaining allegations contained in paragraph 11 of Plaintiff's Amended Complaint.

12. Defendants admit that the essential functions of Plaintiff's job required him to work one week of primarily web duties and responsibilities, followed by a week of primarily warehouse responsibilities. Defendants state affirmatively that Plaintiff's essential job functions were subject to change based on the needs of the warehouse. Defendants admit that Plaintiff protested the warehouse work requirement. Defendants deny the remaining allegations contained in paragraph 12 of Plaintiff's Amended Complaint.

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

14. Defendants admit that Haugen and Justice had been trained on ACRA, ADA, and FMLA issues. Defendants deny the remaining allegations contained in paragraph 14 of Plaintiff's Amended Complaint.

15. In response to paragraph 15 of Plaintiff's Amended Complaint, Defendants re-allege and re-assert their answers to the foregoing paragraphs of the Amended Complaint as if stated word-for-word herein.

16. The allegations contained in the first sentence of paragraph 16 of Plaintiff's Amended Complaint are not directed at Defendants and, therefore, no affirmative response is required. To the extent the first sentence of paragraph 16 makes any factual allegations against Defendants, Defendants deny those

allegations. DFA admits it receives federal financial aid. The remaining allegations in paragraph 16 state legal conclusions to which no affirmative response is required.

17. Defendants deny the allegations contained in paragraph 17 of Plaintiff's Amended Complaint.

18. Defendants admit that Plaintiff requested leave. Defendants deny the remaining allegations contained in paragraph 18 of Plaintiff's Amended Complaint.

19. Paragraph 19 states legal conclusions, not factual allegations, and therefore no affirmative response is required. To the extent paragraph 19 makes any factual allegations against Defendants, Defendants deny those allegations.

20. Defendants admit that Plaintiff was granted leave. Defendants state that any documents referenced in paragraph 20 of Plaintiff's Amended Complaint speak for themselves. Defendants deny the remaining 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 deny 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. In response to paragraph 24 of Plaintiff's Amended Complaint, Defendants re-allege and re-assert their answers to the foregoing paragraphs of the Amended Complaint as if stated word-for-word herein.

25. Defendants admit that DFA is an employer under the FMLA, ADA, § 504, and the ACRA. Defendants admit that Plaintiff was eligible for FMLA leave. Defendants deny the remaining allegations contained in paragraph 25 of Plaintiff's Amended Complaint.

26. Defendants admit that Plaintiff started working for DFA in 2011 and that he was eligible for FMLA leave during the relevant period. The remaining allegations contained in paragraph 26 of Plaintiff's Amended Complaint state legal conclusions to which no affirmative response is required.

27. Defendants admit the allegations contained in paragraph 27 of Plaintiff's Amended Complaint.

28. Defendants admit the allegations contained in the first three sentences of paragraph 28 of Plaintiff's Amended Complaint. Defendants deny the allegations contained in the last sentence of paragraph 28.

29. Defendants admit that Plaintiff gave notice of his need for FMLA leave. Defendants are without sufficient information or knowledge to either admit or deny the allegations about Plaintiff's medical treatment contained in paragraph 29 of Plaintiff's Amended Complaint and, therefore, deny those allegations. Defendants deny the remaining allegations contained in paragraph 29 of Plaintiff's Amended Complaint.

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

31. The first sentence of paragraph 31 states a legal conclusion to which no affirmative response is required. Defendants deny the remaining allegations contained in paragraph 31 of Plaintiff's Amended Complaint.

32. Defendants deny the allegations contained in paragraph 32 of 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. Defendants deny the allegations contained in paragraph 36 of Plaintiff's Amended Complaint.

37. In response to paragraph 37 of Plaintiff's Amended Complaint, Defendants re-allege and re-assert their answers to the foregoing paragraphs of the Amended Complaint as if stated word-for-word herein.

38. Defendants admit 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 admit that Plaintiff took leave from work for a medical condition. Defendants are without sufficient information or knowledge to either admit or deny the remaining allegations about Plaintiff's medical treatment contained in paragraph 40 of Plaintiff's Amended Complaint and, therefore, deny those allegations.

41. Defendants admit that Plaintiff requested FMLA leave and reinstatement. Defendants deny the remaining allegations contained in paragraph 41 of Plaintiff's Amended Complaint.

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

43. Defendants deny the allegations contained in paragraph 43 of Plaintiff's Amended Complaint.

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

45. Defendants admit that Plaintiff has requested a trial by jury. Defendants also request a trial by jury to the extent that there are any issues to try. Defendants deny the remaining allegations in the "wherefore" clause of Plaintiff's Amended Complaint. Defendants further deny that Plaintiff is entitled to the damages or relief sought in the "wherefore" clause of Plaintiff's Amended Complaint.

46. Defendants deny each and every allegation that was not specifically admitted herein.

47. Defendants reserve the right to supplement or amend this answer and to plead further, including the right to assert additional defenses and affirmative defenses, as discovery is conducted.

Defenses and Affirmative Defenses

48. Plaintiff's Amended Complaint should be dismissed for lack of subject-matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

49. Plaintiff's Amended Complaint should be dismissed for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

50. Defendants reserve defenses of lack of personal jurisdiction pursuant Rule 12(b)(2) of the Federal Rules of Civil Procedure, insufficiency of process pursuant to Rule 12(b)(4) of the Federal Rules of Civil Procedure, insufficiency of service of process pursuant to Rule 12(b)(5) of the Federal Rules of Civil Procedure, and failure to join a party under Rule 19 pursuant to Rule 12(b)(7) of the Federal Rules of Civil Procedure.

51. Plaintiff's claims are barred by the doctrine of sovereign immunity.

52. Plaintiff's claims are barred by the doctrine of qualified immunity.

53. Plaintiff's claims are barred by the doctrine of statutory immunity.

54. Defendants Haugen and Justice state that injunctive relief is not available against them in their individual capacities.

55. Defendants state that Plaintiff's claims against them in their official capacities for monetary damages are barred by Arkansas V, Section 20 of the Arkansas Constitution.

68. Defendants acted at all times in good faith.

69. Plaintiff failed to mitigate damages.

70. Plaintiff failed to exhaust his administrative remedies.

71. Plaintiff is not entitled to the damages, including but not limited to compensatory damages and punitive damages, and other relief sought against Defendants.

72. Plaintiff's claims may be barred, in whole or in part, by the doctrine of laches or equitable estoppel.

73. Plaintiff's claims may be barred, in whole or in part, by the doctrine of unclean hands.

74. Plaintiff's claims may be barred, in whole or in part, by the after-acquired evidence defense as recognized in *McKennon v. Nashville Banner Publishing Co.*, 513 U.S. 352 (1995) and *Sellers v. Mineta*, 358 F.3d 1058 (8th Cir. 2004).

75. The accommodations requested by Plaintiff would constitute an undue burden on the Defendants requiring a fundamental alteration in the nature of a service, program, or activity or in undue financial or administrative burdens.

76. The employment decisions with regard to Plaintiff were based on non-discriminatory and non-retaliatory reasons, and the business-judgment rule applies.

WHEREFORE, Defendants Arkansas Department of Finance and Administration, Bob Haugen, in his individual capacity, James Sutterfield, in his official capacity, and David Justice, in his individual and official capacity, request that the Plaintiff's Amended Complaint be dismissed and for all other just and appropriate relief.

Respectfully submitted,

LESLIE RUTLEDGE
Attorney General

By: /s/ Jennifer L. Merritt

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I Jennifer L. Merritt, hereby certify that on May 6, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which shall send notification of such filing to the following:

Luther Oneal Sutter
luthersutter.law@gmail.com

/s/ Jennifer L. Merritt _____
Jennifer L. Merritt