

TED NUGENT & SUSAN ANGEL,	§	IN THE DISTRICT COURT OF
<i>Plaintiffs</i>	§	
	§	
V.	§	GALVESTON COUNTY, T E X A S
	§	
CITY OF GALVESTON	§	
<i>Defendant</i>	§	56 <sup>TH</sup> JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION**

Plaintiffs, Ted Nugent and Susan Angel, hereby file their Original Petition against Defendant, City of Galveston (the "City"), as follows:

**I. DISCOVERY PLAN**

1. Discovery in this case is intended to be conducted under Level 2 of Rule 190 Tex. R. Civ. P.

**II. PARTIES**

2. Plaintiffs are citizens and residents of the State of Texas. They are employed as dispatchers for the Defendant.

3. Defendant is an incorporated municipality and may be served with process by serving Lyda Ann Thomas, Mayor, City Hall, 823 Rosenberg, Galveston, Texas 77553.

**III. JURISDICTION AND VENUE**

4. The subject matter in controversy is within the jurisdictional limits of this Court.

5. Venue in Galveston County is proper in this cause under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in Galveston County.

#### **IV. BACKGROUND FACTS**

6. On September 12, 2008 when Hurricane “Ike” was approaching Galveston, Texas, Plaintiffs were instructed by the City to leave their personal preparations and activities and come to work. Plaintiff, Ted Nugent, was in the process of boarding up the windows of his home, and Plaintiff, Susan Angel, was scheduled for a two-day vacation. Both Ted and Susan abandoned their personal activities and quickly went to work as instructed.

7. Plaintiffs are dispatchers for Defendant, and as such, they respond to calls from many sources, mostly emergency calls. They handle calls as needed and dispatch the appropriate agency, such as the police department, the fire department, coast guard, and the ambulance services, to the location of the emergency. When Ted and Susan were hired as dispatchers, they were required to sign an E-1 commitment. By the designation of E-1 or emergency personnel, employees are required to stay on Galveston Island (the “Island”) in a specified location during any and all emergencies.

8. When Plaintiffs were ordered to work on September 12, 2008, they were instructed to bring personal belongings to stay on the Island. They were required to stay at the San Luis Hotel and were not permitted to return to their homes, even to check on their family members.

9. When they arrived at work, the dispatchers were instructed to transfer all necessary equipment and working materials to the San Luis Hotel to set up a call-in center. They

had no computer for their work at the San Luis Hotel, as they were accustomed to using, and had to handle all reports by handwritten notes.

10. When Plaintiffs arrived at the San Luis Hotel, activities were in a confused state. They were immediately sent to work answering phones and were required to work long hours, much of the time without breaks. Plaintiffs were required to respond not only to the local police, fire, and emergency units, but also to beach patrols and out-of-town agencies which had sent personnel to assist, but who did not know the Island or any of the local procedures. It was sheer bedlam.

11. The calls fielded by Plaintiffs were not standard phone calls. Many were from citizens who were frantic, some who were trapped in water up to their chests with small children to care for, and some who had no way to escape. Elderly and disabled individuals called who had signed up to be transported off the Island, but who had been left behind. Plaintiffs were forced to tell some of the callers that emergency personnel had no way to reach them. The dispatchers hung up and cried because they had to tell some people that they were unable to help them. The emotional pain for Plaintiffs was at times almost unbearable, but they kept working.

12. When the hurricane hit, Plaintiffs issued a general broadcast that all police, fire, EMS, beach patrol, and all emergency personnel were to report to the San Luis Hotel for their safety. All of the emergency personnel were released from duty to shelter in for the storm. However, Plaintiffs and other dispatchers were never released from their duties. Plaintiffs answered phones during the entire time, except during the period when the eye of the storm passed over and power was lost temporarily. The dispatchers' call-in number was operational at all times.

13. After the hurricane passed, the dispatchers were instructed to transport all of the equipment and materials back to the regular dispatch center. They resumed their duties from the dispatch center, except that they had no food or water available. Other dispatchers brought over “meals ready to eat” or “MRE’s” that were provided by the Federal Emergency Management Agency (“FEMA”). Many dispatchers went without food and water for long periods of time while at work. Some dispatchers had no transportation to and from the dispatcher center, and other dispatchers had to ferry them back and forth. Other emergency personnel, such as police, fire, and EMS, received help from relief personnel coming in from outside the Island. However, the dispatchers were never relieved. In fact, due to lack of manpower, they had to cover for others and work double shifts, still working at times sixteen hours per day.

14. The living arrangements were atrocious during the period while Plaintiffs were forced to stay on the Island. There was no running water for the first five days and no electricity for at least three days. They had to bring water from the hotel pool to flush the commodes. The elevators at the hotel did not work, and after long hours of emotionally draining work, Plaintiffs had to climb long flights of stairs to finally get to bed. Some of the dispatchers were scared and cried during the night, and they had to comfort each other.

15. During the period of September 15-25 after the hurricane had passed, the dispatchers asked if they could leave to check on their homes and family, since some had no idea whether they even had homes left. They were repeatedly told that they could not leave. One dispatcher had a disabled wife who had recently suffered a brain concussion from a fall right before the hurricane, but he was not permitted to leave to check on her safety. Plaintiffs were subjected to emotionally difficult circumstances, but they continued to work their shifts and remained on the Island as required.

16. When Plaintiffs initially were instructed to report for work, they asked their supervisors whether they would be paid for the time that they were required to remain on the Island. The supervisors stated that the dispatchers would be paid for the entire time. However, Plaintiffs were paid for only a portion of the time while they were required to remain on the Island, not permitted to return to their homes, and remained on call for work.

17. Plaintiffs were paid for twelve hours on Friday, September 12, and twenty-four hours for Saturday, September 13, the day the hurricane hit. Otherwise, they were paid only for the time while they were dispatching calls. When Plaintiffs requested payment for the entire time that they were required to stay on the Island, Defendant required them to submit a grievance, which they did. Then, Defendant later stated that the grievance filed on behalf of all dispatchers was not sufficient, that each dispatcher would have to re-submit individual grievances, which they did. It finally became clear that Defendant never intended to pay Plaintiffs what they were owed, and that the grievance mechanism was only a delay tactic.

18. Defendant has a specific policy which states that Plaintiffs, who were classified as “E-1” personnel, meaning emergency personnel, would be paid for the entire time they were required to stay at the San Luis Hotel. The policy states:

E-1 Employees who are required to remain in temporary shelter either at the San Luis, UTMB or Moody Gardens shall be compensated for all hours during which they report to or required to remain at the specified shelter.

*See Exhibit 1 attached, policy August 16, 2007.* Plaintiffs pointed out in their grievances that the City’s policy specifically requires that they be paid for the entire time while they were instructed to remain at the San Luis Hotel. The City never responded to that policy statement, but simply refused to pay the remainder due the Plaintiffs. Defendant consciously refused to follow its own policy.

19. Moreover, based on information and belief, other persons employed by Defendant were in fact paid for the entire time they were required to remain on the Island, such as administrative personnel and policemen. Yet, Plaintiffs, who were in similar if not identical circumstances, were denied equal treatment.

20. None of the salary due to Plaintiffs would come from City funds. Rather, as with the payment to the policemen, the funds would have been reimbursed to the City by FEMA, based on information and belief. Plaintiffs' supervisor had prepared the packet to FEMA for the reimbursement to the dispatchers, but the supervisor was instructed not to submit the request.

21. Plaintiffs seek equal treatment, payment that they are due under the City's stated policy, and the respect that they are due for their heroic efforts to help their fellow emergency personnel and stranded citizens when they were in peril.

## **V. BREACH OF CONTRACT CLAIM**

22. Plaintiffs reallege paragraphs 1-21 as stated herein verbatim.

23. Defendant's policy of August 16, 2007, Exhibit 1, constitutes a contract. Defendant breached that contract by failing to compensate Plaintiffs for all hours during which they reported to and were required to remain at the San Luis Hotel.

24. Defendant's breach of contract resulted in damages to the Plaintiffs.

## **VI. EQUAL PROTECTION CLAIM**

25. Plaintiffs reallege paragraphs 1-24 as stated herein verbatim.

25. Pursuant to the Defendant's official decision, Plaintiffs were required to stay on the Island during September 12-25, 2008 because of their job duties during and after the

hurricane. Defendant acted pursuant to a government policy since this was a decision officially adopted and promulgated by the Defendant's lawmaking officers. Further, pursuant to Defendant's official decision, Plaintiffs were denied the wages that they are due for the time during September 12-25, 2008. This policy served as the moving force behind the Constitutional violation, denial of equal protection.

26. Other city employees, police officers as well as administrative personnel, were required to stay at the San Luis Hotel because of their job duties during and after the hurricane, just as the Plaintiffs were. However, based on information and belief, the other city employees were paid for the entire time while at the San Luis Hotel, including their off time.

27. Plaintiffs were similarly situated to the other city employees, police officers and administrative personnel, yet Plaintiffs were treated differently in that they were not paid for the entire time while they were required to stay at the San Luis Hotel. This was a violation of the Texas Constitution, and specifically, a violation of the Equal Protection Clause, TEX. CONST. art. III, § 3.

28. Defendant created two classifications of similarly situated employees and treated them differently. Based on information and belief, Defendant paid the police officers and administrative personnel for the entire time that they were required to stay at the San Luis Hotel, but Defendant refused to pay Plaintiffs for the same time while they were required to stay at the San Luis Hotel.

29. The classifications have no rational relationship to any legitimate governmental objective. The distinctions were arbitrary.

30. The City stated that the policemen were paid for the entire time because the policemen's collective bargaining agreement required such payment. However, based on

information and belief, the policemen's collective bargaining agreement would have given the officers pay only for hours worked.

31. The City has never given Plaintiffs any reason for treating them differently from the administrative personnel who were paid for the entire time they stayed at the San Luis Hotel.

32. Because of these Constitutional violations, Plaintiffs have suffered damages.

## **VII. DAMAGES**

33. Plaintiffs reallege paragraphs 1-32 as if set forth herein verbatim.

34. Plaintiffs sustained the following damages as a result of the wrongful actions and/or omissions of Defendant as described above:

- a. Actual damages for lost wages;
- b. Mental anguish in the past and the future; and
- c. Loss of enjoyment of life in the past and in the future.

## **VIII. PUNITIVE DAMAGES**

35. Plaintiffs reallege paragraphs 1-34 as if set forth herein verbatim.

36. The acts and omissions of Defendant were committed knowingly or reckless indifference to the rights of Plaintiffs. In order to punish Defendant for engaging in the unlawful practices and to deter such actions and/or omissions in the future, Plaintiffs seeks recovery from Defendant for punitive damages for the Constitutional violation of equal protection.

## **IX. ATTORNEY'S FEES AND EXPENSES**

37. Plaintiffs reallege paragraphs 1-36 as if set forth herein verbatim.



38. Plaintiffs have been forced to retain the legal services of the undersigned law firm and are incurring reasonable and necessary attorney's fees to pursue their causes of action. Plaintiffs are entitled to recovery of their attorney's fees pursuant to their claims for breach of contract. Plaintiffs have given the proper notice to Defendant.

39. Further, Plaintiffs request recovery of court costs and experts' expenses associated with having to pursue this matter in Court.

## **X. PRAYER**

WHEREFORE, Plaintiffs request that Defendant be cited to appear and answer the above allegations, and that on final trial this Court enter its Judgment in favor of the Plaintiffs and against Defendant awarding the Plaintiffs the following:

- a. Actual damages as outlined above;
- b. Punitive damages;
- c. Pre-judgment interest at the maximum legal rate;
- d. Post-judgment interest at the maximum legal rate;
- e. Attorney's fees;
- f. Costs of court;
- g. Experts' expenses; and
- h. Any other further relief to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

TUCKER, VAUGHAN, GARDNER & BARNES, P.C.

By: *Barbara J. Gardner*

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Counsel for Plaintiff

**JURY REQUEST**

Plaintiff hereby requests a trial by jury on all issues in this case.

*Barbara J. Gardner*

Counsel for Plaintiff

**From:** Mack, Kenneth  
**Sent:** Friday, August 17, 2007 5:00 PM  
**To:** GPD - All Personnel  
**Cc:** Carolyn Cox  
**Subject:** Declared Emergency Event Compensation Policy

Attention All Personnel:

The policy below is copied verbatim from a hard copy of same presented this morning by the city manager.

Memorandum

To: All Department Heads

From: Steve LeBlanc, City Manager

Date: August 16, 2007

Re: Compensation for Employees in the event of a declared emergency by the Mayor/City Council

Employees classified as "E-1" (Essential):

1. E-1 Employees are those with specific responsibilities who remain in the City on the job during an emergency. E-1 employees exempt and non-exempt shall be compensated for all hours worked. Hours over 40 shall be compensated at time and one-half.
2. E-1 Employees who are required to remain in temporary shelter either at the San Luis, UTMB or Moody Gardens shall be compensated for all hours during which they report to or are required to remain at the specified shelter. Since employees shall be compensated for all hours, all employees are expected to comply with all City policies governing standards of conduct applicable to a normal workday.

Employees classified as "E-2" - Evacuation Program

1. All Employees required to participate in the Evacuation and Emergency Shelter program in Austin shall be compensated for all hours from the time that they board the buses in Galveston until the buses return to Galveston.
2. All hours over 40 shall be compensated at time and one-half. Since employees shall be compensated for all hours, all employees are expected to comply with all City policies governing standards of conduct applicable to a normal workday.

Police and Fire Collective Bargaining Employees

1. Employees covered by collective bargaining contracts shall be compensated according to the provisions of their contract.
2. Employees shall be compensated for all hours that they are required to remain at their designated temporary. Since employees shall be compensated for all hours, all employees are expected to comply with all City policies governing standards of conduct applicable to a normal workday.

Department Heads and City Council appointees shall be compensated at straight time for all hours that they are required to remain in a temporary shelter.

Non-essential employees when released by their supervisor must leave work and shall be allowed to use accumulated vacation or compensatory time or be on a no-pay status.

