

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

|                               |   |                          |
|-------------------------------|---|--------------------------|
| DAVID P. GRIFFIN              | § |                          |
| PLAINTIFF,                    | § |                          |
|                               | § |                          |
| VS.                           | § | CAUSE NO. A-09-CV-107-LY |
|                               | § |                          |
| PUBLIC ACCESS COMMUNITY       | § |                          |
| TELEVISION ALSO KNOWN AS      | § |                          |
| CHANNEL AUSTIN; ITS BOARD OF  | § |                          |
| DIRECTORS, CATHY BEAUDOIN,    | § |                          |
| JACKIE GOODMAN, CELIA HUGHES, | § |                          |
| EMANUEL LIMUEL PALOMO,        | § |                          |
| DANIEL SCARDINO, AND          | § |                          |
| DEBORAH L. HILL,              | § |                          |
| DEFENDANTS.                   | § |                          |

**DEFENDANTS PUBLIC ACCESS COMMUNITY TELEVISION,  
CATHY BEAUDOIN, JACKIE GOODMAN, CELIA HUGHES, EMANUEL LIMUEL,  
DANIEL SCARDINO AND DEBORAH HILL'S RESPONSE TO PLAINTIFF'S  
MOTION FOR VOLUNTARY DISMISSAL WITHOUT PREJUDICE**

COME NOW, PUBLIC ACCESS COMMUNITY TELEVISION (herein after PACT), CATHY BEAUDOIN, JACKIE GOODMAN, CELIA HUGHES, EMANUEL LIMUEL, DAVID SCARDINO AND DEBORAH HILL, Defendants in the above-styled and numbered cause, and without waiving personal jurisdiction but rather insisting on the same and make this their special appearance in order to respond to Plaintiff's Request for Dismissal, and states as follows:

**I.  
PLAINTIFF'S REQUEST FOR DISMISSAL**

Defendants in this suit have pending with the Court Motions to Dismiss or, in the alternative Motions for Summary Judgment. On March 23, 2009, Plaintiff filed letter correspondence with the Court which contains a March 17, 2009, letter to the Court asking the Court to Dismiss the suit against all Defendants without prejudice. (Document Number 13). The

Court filed this as a Motion to Dismiss on March 24, 2009. On March 25, 2009, Plaintiff filed his Request For Dismissal. Plaintiff asks the Court to dismiss his claims, but rather without prejudice, so he can continue his litigation against the same defendants once again in state court in connection with the same operative facts, his employment.

Each of the Defendants herein have pending Motions to Dismiss for failure to state a cause of action and, in the alternative, Motions for Summary Judgment in the suit by Plaintiff. These Motions demonstrate that Plaintiff does not and cannot state a cause of action against these Defendants for age discrimination, any cause of action related to Plaintiff's employment or any other claim pled. The Court has already ruled that Plaintiff has failed to state a cause of action against two of the individual Defendants named in the suit. (Document Number 10). Based upon the similarity of the grounds, this is suggestive that these other Defendants' motions should also be granted. The Court should not permit Plaintiff to dismiss his suit without prejudice when these Defendants should be entitled to a dismissal with prejudice. The Court should rule upon the Defendant's pending motions prior to entertaining Plaintiff's Request for Dismissal.

In Plaintiff's Request for Dismissal (Document Number 18), Plaintiff states that "Plaintiff is withdrawing any claims of age discrimination or wrongful termination, stripping said claims to be within the jurisdiction of the instant court." Plaintiff is requesting that "such claims should be dismissed without prejudice." Granting Plaintiff's Request for Dismissal without prejudice would merely subject all Defendants to Plaintiff re-filing his claims against them in state court and subject the Defendants to additional expense. Plaintiff's Request for Dismissal should be denied or, following the Court's ruling on Defendants' pending motions, should be dismissed as moot.

**II.**  
**PLAINTIFF'S REQUEST TO DISMISS AGE AND WRONGFUL TERMINATION**  
**CLAIMS DOES NOT REMOVE FEDERAL JURISDICTION**

Plaintiff affirmatively states that he is withdrawing any claims of age discrimination or wrongful termination. Claims of age discrimination and employment related claims, including termination, would constitute the basis for the claims that Plaintiff is alleging in his "Verified Complaint." Whether Plaintiff withdraws those claims or not, Plaintiff cannot maintain such claims against these Defendants (see each Defendant's Motion to Dismiss or for Summary Judgment). Plaintiff should not be permitted to withdraw these claims merely to avoid a Court dismissal with prejudice. Even if Plaintiff's motives were honorable, such dismissal would not be fair to the Defendants. However, when faced with a clear case where Plaintiff is withdrawing his federal claims with the sole established intention that he would re-file litigation against the same Defendants in state court under the same operative facts and the same alleged causes of action (albeit in a format recast to decry federal jurisdiction, but nonetheless seeking to subject the Defendants to the same complaints) would cause injustice to the Defendants by granting such a motion.

**III.**  
**BY PLAINTIFF'S OWN ADMISSIONS HE IS FORUM SHOPPING HIS LAWSUIT**

As Plaintiff stated: "once I realized what the order meant and knowing how difficult Federal Court will be, I agreed with my learned opponent and have requested this case dismissed." "I also understand that the Federal Court is more interested in procedure than getting to the facts." (Document Number 13, page three). "I can request dismissal of the instant action and a completely new suit in the State Court that follows the guidelines of jurisdiction." "For your convenience, I am enclosing a copy of the new lawsuit I intend to file in the State Court for your perusal." (Document Number 13 page three).

In Plaintiff's Request for Dismissal (Document Number 18.) Plaintiff states, "Plaintiff is withdrawing any claims of age discrimination or wrongful termination stripping said claims from the jurisdiction of the instant court."

Despite Plaintiff's assertions that he is withdrawing claims of age discrimination or wrongful discharge, a review of the Plaintiff's Original Petition submitted to the Court (Document Number 13, pages 4 through 8) demonstrates that the lawsuit which Plaintiff will file against the same Defendants in state court arise in connection with his employment with PACT and his working environment. (Some of the paragraphs mirror Plaintiff's petition currently before this Court.) Despite Plaintiff's allegation that he is withdrawing his claims of age discrimination or wrongful discharge, he complains of "discrimination practices" (paragraph 17) and "Plaintiff's wrongful termination by PACT." (paragraph 18).

Plaintiff's Request for Dismissal against these Defendants is nothing more than seeking permission to subject the same Defendants to the same claims in state court by disguising his complaints as unrelated to age discrimination or wrongful discharge, but rather wrongs that occurred during his employment and by his employer. Plaintiff's new state court petition no more states a cause of action against any of these Defendants than did the petition currently before the Court (the one that the Court has already found fails to state a cause of action against these Defendants).

Being a *Pro Se* litigant does not give Plaintiff license (under the guise of lack of legal counsel or disability) to abuse the legal system by repeatedly causing these Defendants to incur costs and effort to defend themselves against unfounded suits which fail to state a cause of action. Defendants ask that the Court deny Plaintiff's Request for Dismissal as moot after granting Defendant's pending motions and admonish Plaintiff from further abuses of the legal

system against the named Defendants.

**IV.**  
**DISMISSAL OF ENTIRE SUIT**

In the alternative only, should the Court not grant the Motions to Dismiss or for Summary Judgment of Defendants, in light of Plaintiff's Motion, the Court should Dismiss this suit against all Defendants and assess costs against Plaintiff.

WHEREFORE, PREMISES CONSIDERED, Defendants Public Access Community Television, Cathy Beaudoin, Jackie Goodman, Celia Hughes, Emanuel Limuel, David Scardino and Deborah Hill, request that Plaintiff's Motion for Dismissal without prejudice be denied; that Plaintiff take nothing by reason of his action; that Defendants recover their costs; that Judgment be granted in favor of Defendants and that they be granted any and all other relief to which they may be entitled.

Respectfully submitted,

Of Counsel:  
PLUNKETT & GIBSON, INC.

  
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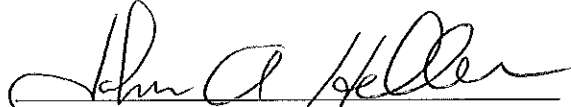
ATTORNEY FOR DEFENDANTS-  
PUBLIC ACCESS COMMUNITY TELEVISION,  
CATHY BEAUDOIN, JACKIE GOODMAN,  
CELIA HUGHES, EMANUEL LIMUEL, DAVID  
SCARDINO AND DEBORAH HILL,

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing has been furnished to the following, as indicated, this 2<sup>nd</sup> day of April 2009:

David Griffin  
15406 Ullman Rd  
Austin, Texas 78734

*via certified mail and electronic mail*

  
John A. Heller

