

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

DAVID P. GRIFFIN	§	
PLANTIFF	§	
	§	
VS.	§	
	§	CAUSE NO. A-09-CV-107-LY
PUBLIC ACCESS COMMUNITY	§	
TELEVISION, ALSO KNOWN AS 4	§	
CHANNEL AUSTIN; ITS BOARD OF	§	
DIRECTORS, CATHY BEAUDOIN,	§	
JACKIE GOODMAN, CELIA HUGES,	§	
EMANUEL LIMUEL, PALOMO,	§	
DANIEL SCARDINO, AND	§	
DEBORAH L. HILL,	§	
DEFENDANTS.	§	

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

COMES NOW, Plaintiff in the above-styled and numbered cause and replies to Defendants PUBLIC ACCESS COMMUNITY TELEVISION, CATHY BEAUDON, JACKIE GOODMAN, CELIA HUGHES, EMANUEL LMUE, DANIEL SCARDINO AND DEBORAH HILL’S Response to Plaintiff’s Motion for Voluntary Dismissal without prejudice, and states as follows:

1. The facts as stated by defendants in paragraph I are correct save and except that defendants claim that Plaintiff has failed to state a cause of action against defendants for age discrimination and wrongful termination is incorrect. Plaintiff was not aware that the cause of actions of wrongful termination and age discrimination fell into the federal jurisdiction. Plaintiff does have a cause of action against said defendants based on these allegations but withdrew his claims specifically addressing those issues, not because they were not valid claims, but the fact that Plaintiff is pro se and became aware of the difficulty of a pro se litigant to pursue his claims in the Federal Court. Once the action was removed to this Court without a hearing, the rules changed and Plaintiff was put into a position of playing leap frog with defendants’ counsel; not knowing the rules and causing Orders to be issued without a day in Court. Therefore Plaintiff agreed to dismiss the instant action without prejudice in order that he may correct his procedural mistakes and pursue his claims in the State Court. Plaintiff does agree that employer and defendants are the same but that there are additional causes of action that are within the State Court’s jurisdiction which are permissible, permitting Plaintiff to have his day in Court with regards to the treatment and actions he suffered at the hands of Defendants that to this day has caused Plaintiff undue emotional stress and prevented Plaintiff from seeking employment.

Plaintiff further asserts that Defendants' pending Motion to Dismiss is based upon Plaintiff's failure to properly serve said Defendants. However, Plaintiff did indeed serve said Defendants, and each of them, prior to the ex parte Order removing the state action to the instant Court. Again, Plaintiff was operating on that his lawsuit in the State Court was still valid as the Clerk of the Travis Court did indeed direct service of said Defendants and the Sheriff of Travis County did in fact serve each of the Defendants. The Clerk of the Travis Court accepted the service of the Sheriff. Each time the Plaintiff went to file his pleadings with the State Court, at no time was he told that his pleadings were of no use. There was no Order of Removal in the State court's files. He was in fact preparing to file Default Judgment against Defendant Wilkison when he received the Order removing the state action to the federal court.

2 - In responding to paragraph II, Plaintiff reasserts his response to paragraph I and takes objection to Defendants suggestion that Plaintiff is not being honorable in his request to dismiss this action without prejudice. Rather than proceeding to a discovery phase permitting Plaintiff to provide the Court with documentation proving his case of age discrimination and wrongful termination, Plaintiff's claims were summarily being dismissed with prejudice and without a hearing. Plaintiff indicates that if there has been any injustice, it is at the hands of Defendants who are using this Court as a chess game, and taking advantage of a pro se litigant by summarily dismissing the action without hearing by this Court. Now Defendants not only want to dismiss the action, but with prejudice, barring Plaintiff from seeking his legal remedies available to him by law.

3 – In responding to paragraph III, Plaintiff objects to Defendants' assertion that he is "forum shopping his lawsuit." That is not the case. As previously stated by this litigant, Plaintiff intends to remove the federal allegations and concentrate on emotional and monetary damages caused by Defendants' actions and inactions. Plaintiff does intend to conduct substantial discovery so that the Court may be apprised of all the facts and evidence to support Plaintiff's claims. If the instant action were to be dismissed with prejudice, the Court would in essence be barring Plaintiff from his civil rights. No evidence or facts have ever been disputed in this case. The only real fact that has been established is that Defendant PACT has 14 employees. Therefore, without the process of discovery being made available to Plaintiff, it will be difficult to prove the stated causes of action as Defendants are holding the entire deck of cards.

4. In responding to paragraph IV, the claims that Plaintiff intends to pursue in the State Court are not the same claims that come under the jurisdiction of the Federal Court but do, however, involve the same parties and involve the actions and inactions of Defendant, which actions and inactions caused Plaintiff undue harm financially and emotionally. By dismissing this action with prejudice, is this Court siding with Defendants with the intention of depriving Plaintiff his rights to pursue his legal remedies? If the court would like to set guidelines of what Plaintiff can and cannot file suit on, he will be happy to follow them.

5. Plaintiff continues to assert that he has been wronged by Public Access Television and its Board of Directors by its actions and inactions and has caused great emotional and

financial distress, which distress is a contributing factor to the failure of a 27-year long marriage. Their slanderous behavior is preventing Plaintiff from seeking further employment in his chosen field of work.

6. Plaintiff continues to allege that he was terminated due to being a “whistle blower” because he caught the Defendants, his employer and representatives, misappropriating funds for their own personal gains. He would like to ask the Court’s protection under the whistle blowing act because shortly after addressing these actions with his employer, he was terminated.

7. Since there has been no discovery to date, Plaintiff’s allegations are just as fragile as Defendants’ denials.

8. Plaintiff denies that he has failed to state a cause of action. If Plaintiff has been amiss in explaining his case, he looks to the Court for direction. If he has inadvertently made allegations that pertain to Federal jurisdiction, he will gladly remove them. The fact is that Plaintiff has been damaged and that without discovery and a hearing of the action, Plaintiff will be unduly prejudiced.

9. Plaintiff denies Defendants allegations that he is attempting to abuse the system but asserts that he is only looking for justice.

WHEREFORE, PREMISES considered, Plaintiff requests that his Motion for Dismissal be granted without prejudice, permitting Plaintiff to proceed with his claims against Defendants and each of them in the State Court, and that Judgment be granted in favor of Plaintiff and against Defendants and that he be granted any and all other relief to which he may be entitled.

Respectfully Submitted,

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PRO SE FOR PLAINTIFF –
DAVID P. GRIFFIN

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 _____ day of April, 2009:

Via

David P. Griffin