FILED 1st JUDICIAL DISTRICT COURT
Santa Fe County
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KATHLEEN VIGIL CLERK OF THE COURT
Michael A Sena

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

CHRISTINE ROBERTSON,

Plaintiff,

v. **No. D-101-CV-2026-00527**

SANTA FE RAILYARD COMMUNITY CORPORATION,

Defendant.

FIRST AMENDED COMPLAINT FOR VIOLATIONS OF THE NEW MEXICO FRAUD AGAINST TAXPAYERS ACT AND STATUTORY AND COMMON LAW WHISTLEBLOWER RETALIATION

I. INTRODUCTION

1. Plaintiff Christine Robertson (**"Ms. Robertson"** or **"Plaintiff"**) brings this action under the New Mexico Fraud Against Taxpayers Act, NMSA 1978, §§ 44-9-1 *to* 44-9-14 (**"FATA"**), and under the common law of New Mexico as established in *Vigil v. Arzola*, 102 N.M. 682, 699 P.2d 613 (Ct. App. 1983), *rev'd in part on other grounds*, 101 N.M. 687, 687 P.2d 1038 (1984), for retaliatory discharge in violation of public policy.

2. Ms. Robertson was employed as Executive Director of the Santa Fe Railyard Community Corporation ("SFRCC" or "Defendant") under a five-year Employment Agreement effective July 1, 2024.

3. Plaintiff has filed a separate Demand for Arbitration dated February 19, 2026, asserting contractual claims arising under that Agreement.

4. **This Complaint asserts claims that arise independent of the Employment Agreement and from sources of duty external to it.** The FATA claim arises from statute and is triggered by SFRCC's receipt, management, and expenditure/retention of public funds. The retaliatory discharge claim arises from the common law duty not to terminate an employee for refusing to participate in conduct she reasonably believed to be unlawful or fraudulent and for reporting financial irregularities involving public funds and publicly owned assets.

5. Neither claim depends on interpretation, performance, breach, or enforcement of the Employment Agreement, and neither is subject to the arbitration provision contained therein.

II. JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over Plaintiff's FATA claim pursuant to NMSA 1978, § 44-9-5, which vests jurisdiction in the district court for actions brought under the Act. The FATA does not contain an arbitration provision, and FATA claims are not subject to contractual arbitration clauses because the Act creates rights and remedies that serve the public interest and cannot be waived by private agreement.

7. This Court has subject matter jurisdiction over Plaintiff's common law retaliatory discharge claim pursuant to NMSA 1978, § 38-3-1.1. A *Vigil v. Arzola* claim sounds in tort and arises from duties imposed by public policy, not from the Employment Agreement. Because the source of the duty is external to the contract, this claim is not subject to the contractual arbitration clause. *See Salazar v. Furr's, Inc.*, 629 F. Supp. 1403, 1408 (D.N.M. 1986) (recognizing the distinction between contract-based and tort-based employment claims for arbitrability purposes).

8. Venue is proper in Santa Fe County pursuant to NMSA 1978, § 38-3-1(A) because SFRCC is a New Mexico nonprofit corporation with its principal place of business in Santa Fe County, and the acts giving rise to this action occurred in Santa Fe County.

III. PARTIES

9. Plaintiff Christine Robertson is an individual residing in Santa Fe County, New Mexico. At all relevant times, she served as Executive Director of SFRCC.

10. Defendant Santa Fe Railyard Community Corporation is a New Mexico nonprofit corporation with its principal place of business at 332 Read Street, Santa Fe, New Mexico 87501. SFRCC manages public assets under an agreement with the City of Santa Fe and receives approximately $80,000 or more annually in public funding from the City of Santa Fe.

IV. FACTUAL ALLEGATIONS

A. SFRCC's Public Funding and Public Purpose

11. SFRCC operates under a Lease and Management Agreement with the City of Santa Fe to manage the Santa Fe Railyard, a publicly owned asset.

12. Pursuant to that agreement, the City of Santa Fe provides SFRCC with approximately $80,000 or more annually in public funding to support SFRCC's management and operations.

13. SFRCC is a “person” within the meaning of NMSA 1978, § 44-9-2(D), and the public funds it receives constitute “state money” or “state property” within the meaning of the FATA because they derive from a political subdivision of the State of New Mexico.

14. As the entity responsible for managing public assets and expending and retaining public funds, SFRCC has an obligation to maintain accurate financial records and to ensure the integrity of its financial reporting to the City of Santa Fe and the public.

15. The Lease and Management Agreement requires SFRCC to prepare and provide annual audited financial statements and related financial reporting to the City of Santa Fe concerning SFRCC’s management of the Railyard.

16. Accurate audited financial statements and financial reporting are material to the City’s oversight of SFRCC’s stewardship of public assets and public funds.

17. Compliance with the Lease’s financial reporting and audit requirements is material to SFRCC’s continued authority to manage the Railyard and to receive and retain public funds from the City of Santa Fe.

18. At various times, SFRCC maintained bank accounts that held funds derived from the City of Santa Fe and/or revenues generated from the management of the publicly owned Railyard.

B. Ms. Robertson's Employment and Performance

19. Ms. Robertson served as Executive Director of SFRCC under a five-year Employment Agreement effective July 1, 2024, with an annual salary of $132,000 (as adjusted effective July 1, 2025).

20. Prior to January 2026, Ms. Robertson received no written discipline or performance warnings. Her performance was satisfactory and she faithfully discharged her duties.

C. The Whistleblower and Fraud Reporting Policy

21. On January 11, 2022, SFRCC's Board of Directors adopted a Whistleblower and Fraud Reporting Policy (the "Whistleblower Policy"). The Whistleblower Policy establishes that all directors, employees, volunteers, and stakeholders have an "**obligation to report questionable or improper accounting or auditing matters**."

22. The Whistleblower Policy expressly provides that "[n]o director, employee, volunteer, or stakeholder who reports a concern in good faith shall be subject to retaliation or, in the case of an employee, adverse employment consequences."

23. The Whistleblower Policy further provides that "[a]ny volunteer or employee who retaliates against someone who has reported a concern in good faith is subject to discipline up to and including dismissal from the volunteer position or termination of employment."

24. The Whistleblower Policy requires the Finance Committee to "promptly investigate all reported Concerns."

D. Ms. Robertson's Protected Reporting Activity

25. In January 2026, Ms. Robertson was presented with audit representation letters and board meeting minutes that she reasonably believed contained material inaccuracies relating to SFRCC's financial reporting.

26. **Specifically, Ms. Robertson was repeatedly pressured by members of the executive committee of the Board of Directors of SFRCC—<u>Rosemary Romero, Michael Chamberlain, Ron Pacheco, and Oscar Rodriguez</u>—to sign off on and approve multiple fraudulent bank documents and sign off on fraudulent board of director corporate resolutions.**

27. The audit representation letters and audited financial statements at issue were part of SFRCC's annual reporting process required under the Lease and Management Agreement with the City of Santa Fe.

28. The bank documents and corporate resolutions Ms. Robertson was pressed to execute concerned banking authority over accounts that, at various times, held City of Santa Fe funds and/or revenues derived from the management of the publicly owned Railyard.

29. Ms. Robertson reasonably believed that certifying or executing materially inaccurate audit representations, financial statements, bank documents, or corporate resolutions could result in the creation or use of false or misleading records material to SFRCC's obligations to the City of Santa Fe, including its audit and financial reporting obligations under the Lease, and material to SFRCC's continued eligibility to receive or retain public funds.

30. Ms. Robertson subsequently copied the SFRCC attorney, Peter Dwyer, Esq., asking if he approved of what she rightly believed were criminally fraudulent actions, but Mr. Dwyer did not respond.

31. Consistent with her fiduciary duties as Executive Director, the mandatory reporting obligations established by SFRCC's Whistleblower Policy, and her obligations under applicable law, Ms. Robertson:

a. Refused to certify financial documents she reasonably believed to be inaccurate; and

b. Identified her specific concerns regarding financial inaccuracies in writing to SFRCC's Board.

32. Ms. Robertson's reporting activity was undertaken in good faith, based on her reasonable belief that SFRCC's financial documents contained material inaccuracies, and was required by SFRCC's own policies as well as her fiduciary obligations.

33. Ms. Robertson's refusal to certify documents she believed inaccurate, and her reporting of financial concerns, constituted protected activity under both the FATA and New Mexico public policy.

E. SFRCC's Retaliatory Conduct

34. Rather than initiating the investigation procedures required by its own Whistleblower Policy, SFRCC retaliated against Ms. Robertson.

35. No formal Finance Committee investigation was conducted. No compliance review was initiated. No remedial measures were undertaken in response to Ms. Robertson's reported concerns.

36. Instead, SFRCC placed Ms. Robertson on involuntary leave, stripped her of executive authority, and subsequently issued a sixty-day termination notice under Section 2 of the Employment Agreement.

37. The sequence is direct and establishes the causal connection between protected activity and adverse action: Ms. Robertson engaged in mandatory reporting, was immediately suspended, and was then terminated.

38. SFRCC's use of the Employment Agreement's without-cause termination provision was pretextual. The actual motivation for Ms. Robertson's suspension and termination was her refusal to certify documents she believed were inaccurate, and her good-faith reporting of financial concerns.

F. The Underlying Financial Concerns Involve Public Funds

39. The financial documents Ms. Robertson refused to certify, and the concerns she reported, related to SFRCC's financial reporting and accounting practices—practices that directly implicate the stewardship of public funds received from the City of Santa Fe.

40. Accurate financial reporting by SFRCC is essential to the public interest because SFRCC manages publicly owned assets and expends and retains public funds. Inaccurate audit representations and board meeting minutes, if certified and submitted, could constitute false claims or false records material to obligations owed to the City of Santa Fe and the State of New Mexico.

COUNT I

Retaliation in Violation of the Fraud Against Taxpayers Act

(NMSA 1978, § 44-9-4(G))

41. Plaintiff incorporates by reference all preceding paragraphs.

42. SFRCC receives public funds from the City of Santa Fe, a political subdivision of the State of New Mexico, in an amount of approximately $80,000 or more per year. SFRCC is therefore subject to the requirements and prohibitions of the FATA.

43. NMSA 1978, § 44-9-4(G) provides:

"Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under [the FATA], including investigation for, initiation of, testimony for or assistance in an action filed or to be filed under [the FATA], shall be entitled to all relief necessary to make the employee whole."

44. Ms. Robertson's conduct constituted "lawful acts" in furtherance of the purposes of the FATA, including:

a. Refusing to certify financial documents she reasonably believed contained material inaccuracies relating to SFRCC's use, management, and reporting of public funds;

b. Reporting concerns regarding potential false claims, false records, or fraudulent financial representations material to SFRCC's obligations to the City of Santa Fe;

c. Investigating and identifying specific financial inaccuracies in audit representation letters and board meeting minutes; and

d. Taking steps to protect the integrity of financial reporting related to public funds.

45. The audit representations, financial statements, and bank certifications at issue were material to the City of Santa Fe's oversight of public assets and public funds and to SFRCC's compliance obligations under the Lease, and therefore material to SFRCC's continued eligibility to receive and retain public funding and to manage the publicly owned Railyard.

46. Because of these lawful acts, SFRCC discharged, suspended, and otherwise discriminated against Ms. Robertson in the terms and conditions of her employment.

47. Ms. Robertson is entitled to all relief necessary to make her whole, including but not limited to:

a. Reinstatement to the same or equivalent position;

b. Two times the amount of back pay with interest;

c. Compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees; and

d. Such other relief as may be just and equitable.

48. **This claim arises from the FATA, a statute of general application that imposes obligations independent of any contract between the parties.** The FATA's anti-retaliation provision creates a statutory right of action that exists regardless of whether Ms. Robertson had an Employment Agreement with SFRCC. The duty not to retaliate is imposed by the legislature, not by the Employment Agreement. This claim therefore does not "arise under" the Employment Agreement and is not subject to its arbitration provision.

COUNT II

Retaliatory Discharge in Violation of Public Policy

(*Vigil v. Arzola*, 102 N.M. 682 (Ct. App. 1983))

49. Plaintiff incorporates by reference all preceding paragraphs.

50. New Mexico recognizes a common law tort claim for retaliatory discharge when an employer terminates an employee in violation of a clear mandate of public policy. *Vigil v. Arzola*, 102 N.M. 682, 699 P.2d 613 (Ct. App. 1983), *rev'd in part on other grounds*, 101 N.M. 687, 687 P.2d 1038 (1984); *Chavez v. Manville Prods. Corp.*, 108 N.M. 643, 777 P.2d 371 (1989).

51. New Mexico public policy, as expressed in its statutes and regulatory framework, clearly mandates:

a. That employees shall not be terminated for refusing to participate in activity they reasonably believe to be fraudulent or unlawful;

b. That employees shall not be terminated for reporting suspected fraud, financial irregularities, or misuse of public funds;

c. That persons who manage public assets and public funds shall maintain accurate financial records and reporting; and

d. That the integrity of audit representations, financial statements, and board proceedings shall be protected.

52. These public policies are expressed in, among other sources: the Fraud Against Taxpayers Act (NMSA 1978, §§ 44-9-1 *to* 44-9-14); the Governmental Conduct Act (NMSA 1978, §§ 10-16-1 *to* 10-16-18); the Whistleblower Protection Act (NMSA 1978, §§ 10-16C-1 *to* 10-16C-6); the Nonprofit Corporation Act (NMSA 1978, §§ 53-8-1 *to* 53-8-99); and the common law fiduciary duties owed by officers and directors of nonprofit corporations that manage public assets.

53. SFRCC terminated Ms. Robertson because she:

a. Refused to certify financial documents she reasonably believed to contain material inaccuracies;

b. Reported her concerns regarding financial irregularities in writing to SFRCC's Board; and

c. Acted in good faith to protect the integrity of financial reporting related to the management of public assets and public funds.

54. SFRCC's termination of Ms. Robertson was motivated by her protected activity and violates the clearly mandated public policies identified above.

55. As a proximate result of SFRCC's retaliatory discharge, Ms. Robertson has suffered and will continue to suffer compensatory damages, including but not limited to lost wages and benefits, emotional distress, and reputational harm.

56. SFRCC's conduct was willful, wanton, and in reckless disregard of Ms. Robertson's rights, entitling her to an award of punitive damages.

57. **This claim sounds in tort and arises from duties imposed by public policy, not from the Employment Agreement.** The duty not to terminate employees in retaliation for good-faith reporting of suspected financial irregularities exists independent of any contract. A *Vigil v. Arzola* claim does not require a contractual relationship and is not dependent on the terms of any employment agreement. *See Gandy v. Wal-Mart Stores, Inc.*, 117 N.M. 441, 872 P.2d 859 (1994) (*Vigil* claim exists independent of contract and cannot be preempted by contractual remedies). This claim therefore does not "arise under" the Employment Agreement and is not subject to its arbitration provision.

V. STATEMENT REGARDING CONCURRENT ARBITRATION

58. On February 19, 2026, Plaintiff served upon Defendant a Demand for Arbitration pursuant to Section 10 of the Employment Agreement. That arbitration asserts contractual claims for breach of the implied covenant of good faith and fair dealing, breach of contract based on violation of incorporated employment policies, breach of contract for unauthorized suspension, and termination in violation of public policy to the extent arbitrable.

59. The claims asserted in this Complaint are distinct from the claims asserted in arbitration. The arbitration claims arise from the Employment Agreement and allege violations of contractual duties. The claims in this Complaint arise from statute (FATA) and common law tort (*Vigil v. Arzola*) and allege violations of duties imposed by law independent of the Employment Agreement.

60. Specifically:

a. **Different sources of duty.** The arbitration claims are founded on the Employment Agreement and SFRCC's incorporated employment policies. This Complaint's claims are founded on the FATA (a statute of general application) and the common law duty recognized in *Vigil* (a tort duty arising from public policy). Neither source of duty requires or references the Employment Agreement.

b. **Different elements of proof.** The contractual claims require proof of a valid contract, contractual duties, and breach. The FATA claim requires proof of public funds, protected activity in furtherance of the Act, and retaliatory adverse action. The *Vigil* claim requires proof of a clear mandate of public policy, a causal connection between protected activity and termination, and resulting damages. Neither statutory nor tort claim requires interpretation or enforcement of the Employment Agreement.

c. **Different remedies.** The contractual claims seek compensatory damages measured primarily by the unexpired term of the Employment Agreement. The FATA claim provides for reinstatement, double back pay with interest, special damages, litigation costs, and attorney's fees under § 44-9-4(G). The *Vigil* claim supports compensatory damages (including emotional distress), punitive damages, and attorney's fees—remedies that are unavailable in the contractual arbitration.

61. To the extent any overlap exists between the factual predicates of the arbitration claims and the claims in this Complaint, Plaintiff will take all reasonable steps to coordinate proceedings and avoid duplicative recovery. However, the statutory and tort claims asserted herein cannot be waived by, or subsumed into, the contractual arbitration.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Christine Robertson respectfully prays that this Court enter judgment in her favor and against Defendant Santa Fe Railyard Community Corporation, and award the following relief:

As to Count I (FATA):

a. Reinstatement to the position of Executive Director, or front pay in lieu thereof;

b. Two times the amount of back pay, with interest, pursuant to NMSA 1978, § 44-9-4(G);

c. Compensation for special damages sustained as a result of the retaliation;

d. Litigation costs and reasonable attorney's fees pursuant to NMSA 1978, § 44-9-4(G);

As to Count II (Vigil v. Arzola):

e. Compensatory damages for lost wages, lost benefits, emotional distress, and reputational harm;

f. Punitive damages in an amount sufficient to deter Defendant and others from similar conduct;

g. Reasonable attorney's fees and costs of suit;

As to All Claims:

h. Pre-judgment and post-judgment interest as permitted by law;

i. Such other and further relief as this Court deems just and equitable.

Respectfully submitted,

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VERIFICATION

STATE OF NEW MEXICO)

) ss.

COUNTY OF SANTA FE)

I, Christine Robertson, being first duly sworn, state that I am the Plaintiff in the above-entitled action, that I have read the foregoing First Amended Complaint, and that the facts stated therein are true to the best of my knowledge, information, and belief.

Christine Robertson

Subscribed and sworn to before me this 23 day of February, 2026.

MARIE HEINSEN
Notary Public
State of New Mexico
Comm. # 2007772
My Comm. Exp. Oct 22, 2029