

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

PAUL GESSING and CARE NET OF
ALBUQUERQUE, INC.,

Plaintiffs,

v.

Case No.: D-202-CV-2023-00316

STEPHANIE YARA, in her official capacity as
director of finance and administration for the
City of Albuquerque; CAROL M. PIERCE, in
her official capacity as director of family and
community services of the City of
Albuquerque; and ROCKY MOUNTAIN
PLANNED PARENTHOOD, INC. d/b/a
PLANNED PARENTHOOD OF THE ROCKY
MOUNTAINS, INC.,

Defendants.

AMENDED ANSWER AND COUNTERCLAIM

Pursuant to Rule 1-015(A) NMRA, Defendant Rocky Mountain Planned Parenthood, Inc.,
d/b/a Planned Parenthood of the Rocky Mountains, Inc. (“PPRM”), files as a matter of course this
Amended Answer and Counterclaim.

ANSWER

Pursuant to Rule 1-010(C) NMRA, PPRM, incorporates and adopts by reference
Paragraphs 1 through 50 of its Answer filed on March 10, 2023.

COUNTERCLAIM

1. PPRM states its claim under the Declaratory Judgment Act, NMSA 1978, §§ 44-6-1 through -15 seeking a Declaration by the Court that a certain contract between the City of Albuquerque and PPRM is lawful, valid, and enforceable, particularly under Article IX, Section 14 of the New Mexico Constitution.

2. PPRM is a non-profit corporation organized under the laws of Colorado with physical locations in New Mexico, and which provides certain sexual and reproductive health care and education services in New Mexico.
3. Paul Gessing and Care Net of Albuquerque, Inc. are residents of New Mexico and have brought a claim against PPRM in this Case No. D-202-CV-2023-00316.
4. While no claim is stated against the City by PPRM, and PPRM seeks no relief from the City, the City is a Party to this lawsuit therefore the Declaration which PPRM seeks may be provided without interfering with the City's contract. NMSA 1978, § 44-6-12.
5. This Court has jurisdiction over PPRM's claim, the Parties named, and venue is proper in Bernalillo County.
6. The City of Albuquerque has entered an "Agreement" with PPRM, and a true and accurate copy of that Agreement is attached to the Complaint filed January 17, 2023.
7. The Agreement calls for PPRM to provide certain services to third parties, and the City will pay for the services provided to third parties up to \$250,000 over two years.
8. Article IX, Section 14 of the New Mexico Constitution provides in part

Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation or in aid of any private enterprise for the construction of any railroad except as provided in Subsections A through G of this section.
9. Because under the Agreement the City is compensating PPRM for services rendered to third persons, the Agreement is lawful under Article IX, Section 14 of the New Mexico Constitution.
10. Based on the facts set forth in Paragraphs 5-9 of this Counterclaim, the Agreement has the elements of a valid, enforceable contract – "offer, an acceptance, consideration, and mutual assent," UJI 13-801, and the Agreement is valid and enforceable.

Claim 1 – Declaratory Judgment

11. An actual controversy exists between PPRM and Count-Defendants Gessing and Care Net as those two persons have sued PPRM to declare the Agreement unlawful.

12. The Declaratory Judgment Act provides this Court the power to declare affirmatively the rights of PPRM to contract with the City, and to declare the “legal relations” between PPRM and the City to be that of a lawful, valid, and enforceable contract. NMSA 1978, §§ 44-6-2 through -5.
13. The Agreement between PPRM and the City is lawful, valid, and enforceable based on the facts set forth in Paragraphs 5-9 of this Counterclaim.
14. A declaration by the Court that the Agreement is lawful, valid, and enforceable would terminate the controversy. NMSA 1978, § 44-6-7. A declaration by the Court would “afford relief from uncertainty and insecurity with respect to rights, status and other legal relations,” meeting the purpose of the Act. NMSA 1978, § 44-6-14.

Prayer for Relief

15. PPRM prays for the following relief:
 - a. A declaration with the “force and effect of a final judgment or decree,” NMSA 1978, Section 44-6-2, stating that the Agreement between PPRM and the City is lawful, valid, and enforceable.
 - b. PPRM’s costs related to both its counter-claim, and the claim by Gessing and Care Net. NMSA 1978, § 44-6-12.
 - c. Such other relief as the Court may provide.

Respectfully submitted,

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By: /s/ Chandler R. Farnworth

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served to counsel of record via the court's Odyssey File & Serve System as well as via e-mail this 30th day of March, 2023:

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By: /s/ Chandler R. Farnworth

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