

Discovery in this case is to be conducted under Level 2 unless otherwise ordered by the Court or agreed to by the parties.

PARTIES

Cross-Plaintiff, HECTOR GONZALES, is a resident of Cameron County, Texas.

Cross-Defendant, ROLANDO AGUILAR, is an individual who may be served with process pursuant to Rule 21 of the Texas Rules of Civil Procedure.

Cross-Defendant, JOE COLUNGA, is an individual who may be served with process pursuant to Rule 21 of the Texas Rules of Civil Procedure.

Cross-Defendant, RUBEN CORTEZ, is an individual who may be served with process pursuant to Rule 21 of the Texas Rules of Civil Procedure;

Cross-Defendant, RICK ZAYAS is an individual who may be served with process pursuant to Rule 21 of the Texas Rules of Civil Procedure.

FACTUAL ALLEGATIONS

On or about November 1, 2006, Cross-Plaintiff was employed as superintendent of schools for the Brownsville Independent School District. A true and correct copy of his contract is attached as Exhibit A. He has been an employee of the District for over 10 years. Over that period of time that Cross-Plaintiff has been the Chief Executive Officer of the District the district has earned a number of state and national distinctions bringing honor to the district. Beginning with the November 2008 elections, the Cross-Defendants began a concerted effort to oust the Cross-Plaintiff from his position as superintendent. Prior to this time Cross-Plaintiff had received excellent evaluations and had been given a \$20,000 raise in 2008. He had likewise been given a \$20,000 raise in 2007.

For reasons unknown to the Cross-Plaintiff, these Cross-Defendants in concert with the District=s school attorney began to seek the Cross-Plaintiff=s termination, to undermine his authority and to initiate a series of investigations, and monthly evaluations, which culminated in his suspension with pay on or about January 16, 2009. The actions of these board members were done with malice and intent to injure the Cross-Plaintiff=s reputation and in fact has damaged Cross-Plaintiff=s reputation for the foreseeable future.

The above members have accused the Cross-Plaintiff of wrongdoing in transactions involving the Special Services Division (Special Ed) of the district. Cross-Defendant Zayas has alleged that Cross-Plaintiff was guilty of being responsible for the loss of millions of dollars in the Special Services Division. No documents or information were ever provided to the Cross-Plaintiff of such accusations. Cross-Defendant Cortez has likewise stated that the Cross-Plaintiff has been involved in wrongdoing that he has divulged information from conversations in executive sessions of the Board of Trustees and that such breach of confidentiality was illegal. However, Cross-Plaintiff has steadfastly denied such accusations and in fact has informed individuals only of information that was being requested by the Board of Trustees. Cross-Defendants Aguilar and Colunga have likewise accused the Cross-Plaintiff of wrongdoing in divulging confidential information protected by federal and or state law.

These Cross- Defendants made such accusations on January 16, 2009 at a special called Board of Trustees' meeting. They continue to do so. Cross-Plaintiff requested that the Board conduct its meeting in open session in order for him and the general public to know what assertions were being made to cause his suspension as superintendent of schools. None of the board members had ever provided Cross-Plaintiff any evidence of these purported misdeeds. Cross- Plaintiff asked for an open session meeting on 1/16/09 however, he did not invite the defamatory allegations. The implication has been made by these board members that the Cross-Plaintiff has been engaged in illegal activities involved school funds, violating the confidences of executive session and divulging confidential information. All such allegations are without merit and are false.

DEFAMATION OF CHARACTER

Cross-Plaintiff sues the Cross-Defendants in their individual and representative capacity for defamation of his good reputation due to the publication of false and non-privileged statements made by the Cross-Defendants to third persons. Each and every statement made by the Cross-Defendants was made in reference to the Cross-Plaintiff=s occupation. Said defamatory statements by the Cross-Defendants were uttered with malice and bad faith for the purpose of causing injury to the Cross- Plaintiff. Cross-Defendants= publication of slander and slander per se was made with malice for the reason that the statements were made with the knowledge that they were false or with such recklessness as to indicate a disregard for the consequences and conscious indifference to the rights of the Cross-Plaintiff.

Cross-Plaintiff would further allege that at all material times the Cross-Defendants acted with heedless and reckless disregard for whether the information was false and without factual foundation.

Cross-Plaintiff asserts that the actions by the Cross-Defendants constitute extreme and outrageous conduct, was intentional and reckless whose purpose was to cause the infliction of emotional distress of a severe nature to the Cross-Plaintiff. Cross-Defendants' actions have caused Cross-Plaintiff to suffer mental anguish as well as physical pain, loss of sleep and extreme anxiety. As a result of the Cross-Defendants= actions, Cross-Plaintiff has suffered damages in amounts which exceed the minimum jurisdictional requirements of this Court.

NO AUTHORITY TO SUSPEND

Cross- Plaintiff would show that the Cross-Defendants in fact have no legal authority to suspend Cross-Plaintiff while it seeks to have an investigation@ conducted. Neither the Texas Education Code nor any statute or code nor any BISD board policy provide for the suspension of the superintendent with or without cause. Further, Cross-Plaintiff=s contract does not provide for his suspension with or without cause. As a result, the Cross-Plaintiff is seeking injunctive relief and after notice and hearing that he be reinstated to his position as superintendent. Cross-Plaintiff would further show that the Cross-Defendants' actions in suspending him constitute a breach of his written contract.

WHISTLEBLOWER ACTION

Cross-Plaintiff has reported wrongdoing of administrative employees to the Board of Trustees as well as the actions of one board member to the Brownsville Independent School District's Police Department and the Brownsville Police Department. The Board of Trustees have opted to take no action against employees who have committed illegal activities and have instead decided to cover up such illegal activities. The Cross-Plaintiff reported such actions to proper law enforcement agencies and the board has as a result suspended the Cross-Plaintiff for such actions.

ANTICIPATORY BREACH OF CONTRACT

Cross-Plaintiff would further show that the actions of the Cross-Defendants constitute an anticipatory breach of contract and that such actions by the Cross-Defendants have caused the Cross-Plaintiff damages in excess of the minimum jurisdictional limits of the court.

EXCLUSION OF FEDERAL CLAIMS

Cross-Plaintiff hereby gives notice to all that he only alleges state claims in this suit and specifically excludes, and does not intend to litigate herein, any federal cause of action. The only causes of action, which he intends to litigate in this Court, are those concerning rights arising under the laws of the sovereign State of Texas.

ACTUAL AND EXEMPLARY DAMAGES

As a result of the incidents described above, that have made the basis of this suit, Cross-Plaintiff has suffered mental pain and anguish. In all reasonable probability, Cross-Plaintiff will continue to suffer such mental pain and anguish for a long time into the future, if not for the balance of his natural life. Cross-Plaintiff has further been injured by the defamatory statements made against him. Such injury to his reputation will continue for the remainder of his professional lifetime. Cross-Plaintiff has further been caused a loss of earnings and a loss of earning capacity and in all reasonable probability this loss of earnings will continue long into the future. Cross-Defendants acted with malice and/or reckless disregard to the rights of the Cross-Plaintiff. Cross-Plaintiff further requests that exemplary damages be awarded against the Cross-Defendants.

JURY TRIAL REQUESTED

Cross-Plaintiff requests that a jury be convened in order that issues the basis of this lawsuit be tried.

WHEREFORE, PREMISES CONSIDERED Cross-Plaintiff, Hector Gonzales respectfully prays that upon a final hearing of the cause, judgment be entered for him and against Cross-Defendants, in their individual and official capacities, jointly and severally, for damages in the amount of TEN MILLIONS DOLLARS (\$10,000,000.00); for damages to his loss of reputation due to the defamation by the Cross-Defendants; loss of earning capacity, loss of retirement benefits, mental anguish and physical pain and suffering, pre-judgment and post judgment interest at the legal rate, attorney's fees, costs of court, and such other and further relief to which the Cross-Plaintiff may be entitled at law or in equity.

Respectfully submitted,

By: /s/ Ruben R. Pena
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Cross-Plaintiff=s Original Petition was on the 10th day of February, 2009 forwarded pursuant to Rule 21a to the following:

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/s/ Ruben R. Pena
RUBEN R. PENA