

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

JORDAN MCDOWELL,

Plaintiff,

v.

NO. _____

ALLSUP'S CONVENIENCE STORES,

Defendants.

**COMPLAINT TO REMEDY NEW MEXICO HUMAN RIGHTS ACT
VIOLATIONS, AND FOR DAMAGES UNDER THE TORT CLAIMS ACT**

I. Introduction

1. On August 3, 2018, Defendant Allsup's Convenience Stores (Defendant or Allsup's) discriminated against Plaintiff, Jordan McDowell (Mr. McDowell or Plaintiff), on the basis of his race at the time he was shopping at Allsup's Convenience Store No. 366 in Santa Fe, New Mexico. Specifically, Plaintiff was watched by Defendant employees while he was shopping and ordered to leave the store while another employee called the Santa Fe Police Department and stated she wanted a police officer to come to the store because Plaintiff was "arrogant and Black." Plaintiff then left the store. Plaintiff brings this action pursuant to the New Mexico Human Rights Act (NMSA § 28-1-7(F)).

II. Parties and Jurisdiction

2. At all times material hereto Plaintiff, a pre-medical student at Xavier University in New Orleans, Louisiana, was visiting Santa Fe, New Mexico. Plaintiff is

African-American¹.

3. At all times material hereto Defendant Allsup's Convenience Stores was a New Mexico corporation with its principal place of business in Clovis, New Mexico. It conducted business in New Mexico in numerous convenience stores throughout the state, including several stores in Santa Fe, New Mexico, where consumers may purchase a wide variety of food items and other items.

4. Defendant's Store No. 366 was a public accommodation within the meaning of NMSA 1978 Section 28-1-7(F).

5. This action seeks money damages for the racially discriminatory conduct that Plaintiff was subjected to while shopping at Defendant's public accommodation in violation of his rights under NMSA 1978 Section 28-1-7(F).

6. Plaintiff filed a complaint with the New Mexico Human Rights Division on November 21, 2018 alleging violation of Section 28-1-7(F) on the basis of race. On September 3, 2019, the Human Rights Division issued a Determination of Probable Cause. On October 29, 2019, Plaintiff filed a Request for Waiver of Hearing with the Human Rights Division. On October 30, 2019, the Human Rights Division issued its Grant of Request for Waiver of Hearing and Notice of Waiver.

7. All jurisdictional requirements for the filing of this action have been met.

8. This Court has jurisdiction over this case and venue is proper in this District because the acts described in this Complaint occurred in this District and Defendant was a New Mexico corporation that was doing business in this District at all times material

¹ Plaintiff was discriminated against because of his race and color. Thus, when Plaintiff refers to discrimination because he of his African-American identity, it is inherently alleged that he was also discriminated against because of his Black appearance and identity.

hereto.

III. The Events of August 3, 2018.

9. During the summer of 2018, Plaintiff was visiting Santa Fe, New Mexico as a participant in a student academic program studying Pueblo history in the Southwest and visiting various Pueblos. Plaintiff, who knew no one in Santa Fe, was staying in a motel on Cerrillos Road in Santa Fe, during the duration of his program.

10. Plaintiff had no car. So, during the early evening of August 3, 2018, having nothing better to do, Plaintiff walked across the street to look for and buy snacks from Defendant's Store No. 366 which was located nearby his motel.

11. There were several other customers in the store, and none of them were African-American.

12. The Defendant Allsup's employees watched Plaintiff from the moment he walked into the store. Defendant's employees watched Plaintiff the way they watch "all" the Native Americans who come into the store.

13. Plaintiff walked around the store, and looked at various items and picked some of them up to get a closer look. He was inside the store for about 15-20 minutes. Plaintiff purchased some candy and then continued to look for additional items to buy.

14. One of Defendant's employees approached Plaintiff and told him that he was "looking sketchy" because he picked up items and put them back down. Several other persons shopping in the store who were not African-American were doing the same thing, but were not approached by Defendant's employees. Plaintiff understood that he was being singled out.

15. At some point, Defendant's employee, Ms. Ramirez, told Plaintiff something to the effect of: "You need to get that (the candy) and get out of here." Plaintiff asked her: "What do you mean 'get out of here'? I'm still looking. I want to get something else. I can't get something else?"

16. At that point, Defendant's employee told Plaintiff: "I'm calling the police" and then called the Santa Fe Police Department. Defendant's employee told the dispatcher that she wanted the police to come and remove Plaintiff from the store. When asked by the dispatcher to explain exactly what Plaintiff was doing, Defendant's employee stated: "***he's just being arrogant because he's Black.***" She further stated she wanted the police to come and remove Plaintiff from the store.

17. Plaintiff paid for the one item in his hand and then rather than go back to the aisles and purchase other snacks he wanted, left the store because of Defendant's employee's actions.

18. At this point, Plaintiff left the store and walked outside. Plaintiff saw a City of Santa Fe police officer and assumed that he had been sent in response to Defendant's call for an officer.

19. Before going into the store, the officer told Plaintiff that Ms. Ramirez was "mad." Plaintiff explained to Officer McDermott what had occurred inside the store and how Defendant had singled him out.

20. At no time during the 911 call to the Santa Fe City Police Department or during the time Officer McDermott was inside the store, did Ms. Ramirez or any other of Defendant's employees state that they suspected Plaintiff of criminal activity, such as preparing to shoplift or rob the store.

21. No action was taken against Plaintiff by the Santa Fe Police Department because the City Police Department determined there was no information that showed “any threat to the caller or other concerning circumstances.”

22. The decisions to “eyeball” and watch Plaintiff, to order Plaintiff to leave the store, and to call the police to come to investigate him were motivated, in whole or in part, by racial animus directed against him because he is African-American. These decisions were undertaken intentionally and/or with reckless disregard for Plaintiff’s statutory rights, and constituted discriminatory conduct that drew a distinction between the manner in which Anglo and Hispanic customers were treated at the public accommodation that was Defendant’s Store No. 366.

23. The conduct of Defendant intentionally and/or recklessly interfered with and/or impeded Plaintiff’s enjoyment of his right to the benefits, privileges and conditions of receiving services and/or goods from a public accommodation, in whole or in part, because of his race and/or color.

24. The conduct of Defendant described above was part of a pattern, practice and course of conduct engaged in at Defendant’s Store No. 366 to differentiate and/or make a distinction, directly and/or indirectly, in offering services or refusing to offer services and/or goods to persons who are not Anglo or Hispanic, including Native American citizens and African-American citizens.

COUNT I
Violation of the New Mexico Human Rights Act

25. Plaintiff incorporates the preceding paragraphs as though they were fully stated herein.

26. The conduct of Defendant violated NMSA § 28-1-7(F) of the New Mexico Human Rights Act.

Damages

27. As a direct and proximate result of being subjected to discrimination because he is African-American by Defendant, Plaintiff suffered and continues to suffer severe emotional distress and psychological pain and suffering and the violation of rights guaranteed to him under New Mexico law.

WHEREFORE Plaintiff prays for the following relief:

1. Actual and Compensatory damages;
2. Post judgment interest;
3. Reasonable attorneys' fees and costs; and
4. For such other and further relief as the Court deems just and proper.

Dated: 01/14/2020

Respectfully Submitted,

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