

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ROBERT P. HILLMANN,)	
)	No. 04 C 6671
Plaintiff,)	
v.)	
)	Judge Andersen
CITY OF CHICAGO,)	
)	Magistrate Judge Valdez
Defendant.)	

NOTICE OF FILING

TO: Elizabeth A. Knight
Kathryn M. Reidy

PLEASE TAKE NOTICE that on December 16, 2005, I electronically filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, **Defendant’s Answers and Defenses to Plaintiff’s Second Amended Complaint**, a copy of which is attached hereto.

DATED at Chicago, Illinois, this 16th day of December, 2005.

Respectfully submitted,

s/Melanie Patrick Neely
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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ROBERT P. HILLMANN,)	
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Plaintiff,)	
vs.)	No. 04 C 6671
)	Judge Andersen
CITY OF CHICAGO, a municipal)	
corporation,)	Magistrate Judge Valdez
)	
Defendant.)	

**DEFENDANT’S ANSWERS AND DEFENSES TO PLAINTIFF’S SECOND AMENDED
COMPLAINT**

_____ Defendant City of Chicago ("Defendant" or "the City"), by its attorney, Mara S. Georges, Corporation Counsel for the City of Chicago, answers plaintiff’s second amended complaint as follows:

1. Robert Hillmann was employed by the City for twenty-nine (29) years and worked from June 1973 until his discharge on July 31, 2002. Prior to his discharge, Hillmann had his job duties changed, was demoted and transferred several times, denied six merit pay increases between July 2000 and June 2002, and had medical treatment withheld on numerous occasions. The City transferred, demoted, altered Hillmann’s job duties, denied him six merit pay increases and fired him in breach of contract and in violation of his rights under the First Amendment to the U.S. Constitution, which he seeks to enforce pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1983. The six denials of merit pay increases and Hillmann’s final discharge constitute unlawful discrimination and retaliation in violation of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. Hillmann also claims the City fired him and interfered with his medical benefits and pension rights in retaliation for his exercise of rights under the Illinois Workers’ Compensation Act.

ANSWER: Defendant denies that it hired plaintiff in June 1973. Defendant admits that plaintiff was employed by the City from June 1979 until his discharge on July 31, 2002. Defendant admits that plaintiff was denied six pay increases between July of 2000 and June of 2002. Defendant admits that plaintiff claims in his second amended complaint that the City fired him and interfered with his medical benefits and pension rights in retaliation for his exercise of rights under the Illinois Workers' Compensation Act. Defendant denies the remaining allegations contained in paragraph 1. Defendant further denies that it engaged in any unlawful conduct in violation of any state or federal laws, including but not limited to the Illinois Workers' Compensation Act and the Americans with Disabilities Act.

Factual Allegations

____ 2. Hillmann was an employee and the City was an employer within meaning of the laws of the State of Illinois prohibiting retaliatory discharge and within meaning of 42 U.S.C. § 12101 et seq. The City of Chicago is a local municipality under Illinois law and a "person" within meaning of 42 U.S.C. § 1983.

ANSWER: Defendant admits the allegations contained in paragraph 2. Defendant denies that it engaged in any unlawful conduct in violation of any state or federal laws, including but not limited to the Americans with Disabilities Act and 42 U.S.C. § 1983.

3. On February 23, 1995, Hillmann and the City entered into a settlement agreement, settling a prior claim of handicapped discrimination filed by the Plaintiff under the Illinois Human Rights Act and the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. (See Settlement Agreement attached as Ex. "A"). Pursuant to the agreement, Hillmann was assigned the position of Assistant to the Deputy Commissioner of the Bureau of Electricity in Streets & Sanitation. The position carried the job title of "Chief Timekeeper". William Bresnahan, Assistant Commissioner of Streets and Sanitation, was a party to this contract.

ANSWER: Defendant admits that it entered into a Settlement and General Release Agreement

with plaintiff in February of 1995 that would settle all of the claims and defenses between the parties, including but not limited to those matters raised in the proceedings in case numbers 92 CF 0729, 91 WC 57204, and 92 WC 63207, or which could have been raised therein. In exchange for the settlement and release of those claims, plaintiff agreed to accept appointment to the position that carried the job title of Chief Timekeeper. Defendant further admits that while holding this job title, plaintiff would perform duties as the Assistant to Deputy Commissioner of the Bureau of Electricity in the Department of Streets and Sanitation. Defendant denies that William Bresnahan was a party to the settlement agreement.

4. The settlement agreement was entered into with the understanding that the essential job functions for the position of Assistant to the Deputy Commissioner with a job title of Chief Timekeeper did not include any manual labor, heavy lifting, or activities which required repetitive and constant use of Hillmann's right arm. (See February 1, 1995, letter to City of Chicago's Corporation Counsel, attached as Ex. "B".) The February 1, 1995, letter also explains that Hillmann was assigned to the job of Assistant to the Deputy Commissioner and that the job would carry the title of Chief Timekeeper. (See id.)

ANSWER: Defendant admits that the essential job functions for plaintiff's acting position of Assistant to the Deputy Commissioner did not include heavy lifting, driving a truck, or activities which required repetitive and constant use of his right arm. Defendant admits that a letter dated February 1, 1995 from Kathryn Reidy addressed to Barbara Smith is attached to the Second Amended Complaint as Exhibit B. Defendant denies the remaining allegations of paragraph 4.

5. All the parties to contract agreed that Hillmann's position would be Assistant to the Deputy Commissioner, but the job would carry a title of Chief Timekeeper.

ANSWER: Defendant admits that pursuant to the Settlement Agreement, plaintiff was to act

as the Assistant to Deputy Commissioner Heffernan and that his title would be Chief Timekeeper. Defendant is without knowledge or information sufficient to form a belief as to truth of the remaining allegations in paragraph 5.

6. Hillmann performed all the terms and conditions of the settlement agreement and satisfactorily performed the duties of Assistant to the Deputy Commissioner, while carrying the title of Chief Timekeeper from 1995 until 2000.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of whether plaintiff performed all the terms and conditions of the Settlement Agreement. Defendant denies that there was a position within the Department of Streets and Sanitation titled Assistant to the Deputy Commissioner and is, therefore, without knowledge or information sufficient to form a belief as to the whether the duties of that position were ever defined.

7. As the Assistant to the Deputy Commissioner of the Bureau of Electricity, Hillmann prepared reports regarding bureau employees and documented where and what job they were performing. Hillmann maintained the Bureau's database, reviewed the monthly Automobile Mileage reimbursements for the Bureau and would report to the Deputy Commissioner on the various research projects he performed. These research projects and reports required review of various governmental, technical and trade journals for articles and studies relevant to the Bureau of Electricity and Chicago Emergency Telephone System Board. Hillmann also attended all 911 Board meetings and all project work regarding the Chicago Emergency Telephone System was given to Hillmann to read, archive, copy and disseminate to Board members. Pursuant to his duties as Assistant to the Deputy Commissioner, Hillmann attended a seminar for Strategic

Computing & Telecommunications in the Public Sector at the John F. Kennedy School of Government, Harvard University. On a daily basis the Deputy Commissioner would assign Hillmann projects dealing with all aspects of the Bureau of Electricity's operations. None of Mr. Hillmann's job duties as Assistant to the Deputy Commissioner involved heavy lifting, excessive writing, typing, or data entry.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7.

8. In late spring and summer of 2000, after a new Deputy Commissioner was named, and Patrick Slattery was named the Director of Staff Services in Streets and Sanitation, Hillmann's job duties radically changed and the City required him to perform numerous clerical assignments, massive data entry assignments, and heavy lifting of documents which were irrelevant to his position of Assistant to the Deputy Commissioner or the job title of Chief Timekeeper. This constant handwriting, data entry and lifting in excess of medical restrictions was in breach of the settlement agreement and resulted in new physical injuries.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the whether plaintiff's duties as Assistant to the Deputy Commissioner were ever defined and whether those duties changed. Defendant denies the remaining allegations in paragraph 8.

9. When Hillmann informed his supervisors of the medical restrictions due to his physical impairment (cervical spondylosis, multilevel disc disease, cervical radiculopathy, brachial plexopathy, and arthritis) the City ignored Hillmann's request for compliance with the settlement agreement and the prior reasonable accommodation for Plaintiffs disability.

ANSWER: Defendant denies the allegations in paragraph 9.

10. In response to Hillmann's request for enforcement of the prior agreed upon reasonable accommodation, the City embarked on a series of retaliatory and malicious actions including denial of six merit increases, medical treatment, transfers and demotions which culminated in the unlawful and retaliatory discharge of the Plaintiff on July 31, 2002.

ANSWER: Defendant denies the allegations in paragraph 10.

11. The series of discriminatory and retaliatory actions by the City in response to Hillmann's report of a new injury, request for compliance with the ADA and the settlement agreement and because Hillmann lacked a political sponsor included all of the following:

ANSWER: Defendant denies the allegations in paragraph 11.

Denial of Merit Pay Increases

_____ 12. On July 1, 2000, after the City assigned Hillmann work it knew he was unable to perform and after he requested compliance with the settlement agreement the City denied Hillmann a merit pay increase. This was done despite the fact that Hillmann never had been subjected to a reprimand, suspension or negative job evaluation. Between July 1, 2000 and Hillmann's termination, the City denied Plaintiff a total of six merit pay increases. The denial of pay increases occurred on July 1, 2000, October 1, 2000, October 1, 2001, January 1, 2002, March 1, 2002, and June 1, 2002.

ANSWER: Defendant admits that plaintiff's work history reflects that he was denied merit pay increases on July 1, 2000, October 1, 2000, October 1, 2001, January 1, 2002, March 1, 2002, and June 1, 2002. Defendant denies the remaining allegations in paragraph 12. Defendant further denies that it engaged in any unlawful conduct in violation of any state or federal laws, including but not limited to the Americans with Disabilities Act.

13. Between July 1, 2000 and until May 16, 2005, Plaintiff was completely unaware that he was denied these merit pay increases.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13.

14. The City of Chicago fraudulently altered Hillmann's Work History to hide this information. Indeed, on December 9, 2002, during the IDHR investigation of Hillmann's Charge of Discrimination, Assistant Commissioner Hennessy, who was a licensed attorney at the time, submitted an altered Work History to the IDHR, in which five merit pay increase denials were expunged and the sixth denial was altered in such a way that it indicated Hillmann had received a pay increase, when in fact he was denied the pay increase. (See Work History, Hennessy submitted to the IDHR as Ex. "C").

ANSWER: Defendant denies the allegations in paragraph 14.

15. Hillmann first discovered he was denied these merit increases on May 16, 2005, when the City of Chicago produced a new version of Hillmann's Work History in the City's Answers to Plaintiffs First Set of Interrogatories in this pending lawsuit. (See Work History attached as Ex. "D").

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15.

16. Upon discovery of this fraudulent concealment of six denials of merit pay increases, Plaintiff filed a new charge of discrimination with the EEOC on July 5, 2005. Plaintiff received a right-to-sue letter from the U.S. Department of Justice- Civil Rights Division on October 3, 2005. (See July 5, 2005 Charge of Discrimination and Right-to-Sue Letter attached as Ex. "E").

ANSWER: Defendant denies that it engaged in any fraudulent or unlawful conduct in violation of any state and federal laws. Defendant admits that plaintiff filed a charge of

discrimination with the EEOC on July 5, 2005. Defendant is without knowledge or information sufficient to form a belief as to when plaintiff received a right to sue letter from the U.S.

Department of Justice.

Alteration of Job Duties and Transfers

____ 17. On or about August 8, 2000, one day after Plaintiff reported his new injury from the alteration of his job duties; Plaintiff was advised that one of "the bureau timekeepers" would be transferred and that Mr. Hillmann would be demoted to the Supervising Timekeeping position.

ANSWER: Defendant denies that it engaged in any unlawful or retaliatory acts in violation of any state or federal laws, including the ADA and Illinois Worker's Compensation Act.

Defendant denies that plaintiff was demoted at any time. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 17.

18. Plaintiff informed the City of Chicago in writing that these new job duties violated the prior ADA settlement agreement and requested that the City accommodate his physical impairments.

ANSWER: Defendant denies that plaintiff informed the City of Chicago in writing that his new job duties violated the prior settlement agreement. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 18.

19. On August 16, 2000, Barb Smith, a city attorney, who was a party to the 1995 settlement agreement, called Assistant Commissioner Hennessy and informed her pursuant to the

1995 contract that Hillmann had been accommodated and did not have to perform repetitive work with the right arm.

ANSWER: Defendant admits that Barb Smith was a Special Assistant Corporation Counsel with Defendant's Law Department. Defendant denies that Smith was a party to the 1995 Settlement Agreement. Defendant neither admits nor denies the remaining allegations as this response would disclose confidential attorney-client privileged communication.

20. Despite Hillmann's request for an accommodation and being informed by Barb Smith of the 1995 settlement agreement, Assistant Commissioner Hennessy authorized the alteration of Hillmann's job duties on August 18, 2000, to include the following new job duties: "Mr. Hillmann will also be responsible for maintaining a 249-employee payroll; receiving and entering 30-35 edits per day in the Kronos system; performing a mass edit in Kronos for 90 employees who work in the field; entering exceptions into the Kronos system; entering daily activity onto time rolls; maintaining 300 Cards; and maintaining the Employee File Maintenance Module for said payroll." Hillmann was the only Chief Timekeeper for the City whose job duties and job description was changed on August 18, 2000.

ANSWER: Defendant admits that Assistant Commissioner Hennessy authorized the written notification to plaintiff that his job duties as Chief Timekeeper would be modified consistent with the change in technology to the Kronos timekeeping system to include the duties contained in paragraph 20. Defendant denies that plaintiff ever performed any of those duties. Defendant is without knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 20.

21. Assistant Commissioner Hennessy authorized the alteration of Hillmann's job duties and the alteration of the job description of Chief Timekeeper so the City could claim Plaintiff was unable to perform the essential functions of the job.

ANSWER: Defendant denies the allegations in paragraph 21.

22. On August 21, 2000, Hennessy ordered Hillmann to report to the offices of Dr. Barry L. Fisher for a "Fitness for Duty Evaluation", rather than an examination for the job related injury that Plaintiff had reported on August 7, 2000. Hennessy's order was an intentional violation of the Illinois Workers' Compensation Act in order to interfere with Mr. Hillmann's medical treatment required under the Act.

ANSWER: Defendant admits that Assistant Commissioner Hennessy scheduled plaintiff for a Fitness for Duty examination on August 23, 2000 with U.S. Occupational Health, Inc. to determine plaintiff's ability to perform the essential functions of his job title of Chief Timekeeper. Defendant denies the remaining allegations of paragraph 11(d) and further denies that defendant engaged in any unlawful conduct in violation of any state or federal laws, including but not limited to the Illinois Workers Compensation Act.

23. On August 23, 2000, following an examination by Dr. Fisher, a doctor the City requested Mr. Hillmann to see, he recommended Hillmann for the position of Chief Timekeeper, but noted Plaintiff had limited use of the right arm and limited ability to lift and reach.

ANSWER: Defendant admits that Dr. Barry Fisher signed a written recommendation that plaintiff continue working in the job assignment of Chief Timekeeper with limited use of his right arm for data input and limited reaching and lifting.

24. On August 24, 2000, Hennessy intentionally instructed, Hugh Donlan, not to provide Mr. Hillmann with the necessary authorization to obtain medical care for his work related injury reported on August 7, 2000, and which he was entitled to under Illinois Workers' Compensation law.

ANSWER: Defendant denies the allegations in paragraph 24.

25. On September 1, 2000, Hillmann filed a workman's compensation complaint with the Illinois Industrial Commission.

ANSWER: Defendant admits that on September 1, 2000, plaintiff, by his attorney, filed a workman's compensation claim with the Illinois Industrial Commission.

26. On or about September 1, 2000, Hillmann was further demoted and transferred from his position as Assistant to the Deputy Commissioner to answering phones in the Bureau of Electricity, Construction Division.

ANSWER: Defendant denies that plaintiff was demoted . Defendant admits that on or about September 1, 2000, plaintiff was placed in the Department of Streets and Sanitation's Bureau of Electricity, Construction Division, where his job duty was to answer telephones with his left hand in order to accommodate his restrictions.

27. On September 13, 2000, Hennessy ordered Hillmann to report for a "Functional Capacity Evaluation" (FCE) for the position of Chief Timekeeper. The job description sent to the Rehabilitation Specialist contained Hillmann's newly added duties from August 18, 2000, which entailed massive writing and data entry duties. The FCE that Hennessy demanded Hillmann to undergo was not job-related to the position of Assistant to the Deputy Commissioner or the official job description for Chief Timekeeper.

ANSWER: Defendant denies that Hennessy "ordered" plaintiff to report for a Functional Capacity Evaluation ("FCE") on September 13, 2000. Defendant affirmatively states that on September 6, 2000, it scheduled plaintiff for an FCE to determine if he could perform the essential physical duties of his titled position of Chief Timekeeper. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that the job description sent to the Rehabilitation Specialist contained plaintiff's added duties from August 18, 2000. Defendant denies the remaining allegations in paragraph 27.

28. Following Hillman's demotion, a non-disabled employee, assumed the duties of Assistant to the Deputy Commissioner.

ANSWER: Defendant denies the allegations in paragraph 28.

29. On December 21, 2000, Hennessy ordered Hillmann not to return to work, without pay and without explanation of his job status, because he did not have a political sponsor and in direct retaliation for his request for an accommodation under the ADA and because he sought to enforce the terms of the settlement agreement. The City also retaliated against Plaintiff for filing the workman's compensation claim.

ANSWER: Defendant denies the allegations in paragraph 29.

30. On January 23, 2001, Robert Serafin, Director of Workers' Compensation for the City, ordered Hillmann to undergo medical tests at Mercy Hospital allegedly based on a referral from Dr. Arnold of Mercy Works. Prior to January 26, 2001, Dr. Arnold had never seen Hillmann and Dr. Arnold did not refer Hillmann for any medical testing.

ANSWER: Defendant denies that plaintiff was "ordered" to undergo medical tests at Mercy Hospital. Defendant admits that on January 23, 2001, a letter was sent to plaintiff from Robert Serafin, Director of Committee on Finance, informing him that he was scheduled for medical testing at Mercy Hospital on January 26, 2001. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 30.

31. On January 24, 2001, before Hillmann had ever been examined by a Mercy Works' physician or any testing had been done by Mercy Hospital, Robert Serafin sent a letter to the Plaintiff denying medical care payments and liability under the Illinois Workers' Compensation Act because Hillmann's injury was - according to Serafin - not work related.

ANSWER: Defendant admits that a letter dated January 24, 2001 signed by Stephen Murray,

Chief Administrative Officer, Committee on Finance, was sent to plaintiff. The letter indicated that defendant denied liability for plaintiff's medical payments because plaintiff was not exposed to an occupational disease or sustained accidental injuries which arose out of and in the course of his employment. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 31.

32. On January 29, 2001, Dr. Arnold of Mercy Works determined that Hillmann's injury was indeed work related. Despite this finding, Serafin intentionally and maliciously continued to deny Plaintiff all medical care and treatment.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that on January 29, 2001, Dr. Arnold determined that plaintiff's injury was work-related. Defendant denies the remaining allegations in paragraph 32 and affirmatively states that plaintiff was awarded Temporary Total Disability for the period from February 5, 2001 until March 1, 2001.

33. On March 1, 2001, the City ordered Hillmann to return to work without explanation as to his wrongful layoff. Upon Hillmann's return to work he was instructed to report to the Central Auto Pound, located on lower Wacker Drive, where he was told to assist the guard. Hillmann's duties included opening and closing a heavy gate at the facility, which caused further injury and was a significant demotion from the job of Assistant to the Deputy Commissioner/Chief Timekeeper. He remained in the Auto Pound until his discharge.

ANSWER: Defendant admits that in an effort to accommodate his restrictions, plaintiff was told to report to William Bresnahan, Deputy Commissioner of Bureau of Traffic Services, on March 2, 2001 for his new job assignment, at which time Bresnahan explained to plaintiff that he would be assigned to the Central Auto Pound, located on lower Wacker Drive. At that time,

plaintiff was informed that his job duties would be to observe and verify that the security guards at the pound were properly handling the paperwork for the release of cars in the pound and that the proper cars were being released to the proper car owners. Defendant denies that plaintiff's job duties at the Auto Pound included opening and closing a heavy gate. Defendant affirmatively states that it was explained to plaintiff that he was not to, under any circumstances, open/and or close the gate at the auto pound, as this was the duty of the security guard. Defendant admits that plaintiff worked at the Auto Pound until his discharge. Defendant denies the remaining allegations in paragraph 33.

34. On March 28, 2001, Hillmann filed a charge of discrimination with the EEOC based on the City's retaliation and discrimination of assigning him the job of assisting the guard at the Central Auto Pound.

ANSWER: Defendant admits that on March 28, 2001, plaintiff filed a charge of discrimination with the EEOC, where he alleged retaliation and discrimination based on his alleged disability. Defendant denies that it retaliated or discriminated against plaintiff on the basis of any alleged disability or any other unlawful basis in violation of any state or federal law.

35. During the months of January, February, March and April of 2002 the City continued to unlawfully deny Hillmann the medical coverage and care he was entitled to under Illinois law.

ANSWER: Defendant denies the allegations in paragraph 35.

36. On July 1, 2002, William Bresnahan informed Mr. Hillmann that his position was eliminated due to lack of funds.

ANSWER: Defendant admits that on July 1, 2002, plaintiff was informed in a letter given to him by Deputy Commissioner William Bresnahan that his position was eliminated because of a reduction-in-force due to lack of funds.

37. The City discharged Hillmann because of his disability and because he exercised his rights under state and federal laws and because he lacked a political sponsor.

ANSWER: Defendant denies the allegations in paragraph 37.

38. The City's representation that it discharged Hillmann as part of a reduction in force (RIF) due to lack of funds is pretext for discrimination and retaliation for several reasons: first, the City later changed its position and said Hillmann's position of Chief Timekeeper was eliminated in the RIF because technological change rendered the position of Chief Timekeeper obsolete; second, the City only eliminated one Chief Timekeeper, all the other Chief Timekeepers remained employed, even though their positions were rendered obsolete; third, Mr. Hillmann was in the Auto Pound at the time of the RIF. Finally, after the elimination of his title, Chief Timekeeper, from the budget, a non-disabled, politically sponsored employee performed the Department's Chief Timekeeping duties, as they existed prior to Hennessy's alteration of the job duties on August 18, 2000. In order to disguise this discrimination, the City merely assigned this non-disabled, politically connected employee with a different job title and pay code. The position of Assistant to the Deputy Commissioner of the Bureau of Electricity was never made part of the RIF and remained occupied by a non-disabled, politically sponsored employee.

ANSWER: Defendant admits that plaintiff was assigned to the Auto Pound at the time of the

July, 2002 RIF. Defendant denies that there was ever a budgeted position titled Assistant to the Deputy Commissioner of the Bureau of Electricity. Defendant further denies the remaining allegations in paragraph 38.

39. Catherine Hennessy and Managing Deputy Commissioner Sullivan made the decision to eliminate the Chief Timekeeper position from Streets and Sanitation, as part of the alleged RIF.

ANSWER: Defendant denies that Assistant Commissioner Catharine Hennessy made the decision to eliminate the title of Chief Timekeeper from the Department of Streets and Sanitation, as part of the RIF. Defendant admits that Managing Deputy Commissioner John Sullivan made the recommendation to remove the position of Chief Timekeeper from the Streets and Sanitation budget, as part of the RIF.

40. Plaintiff filed a timely charge of discrimination with the Illinois Department of Human Rights/ EEOC on September 10, 2002, and received a right- to- sue letter on September 9, 2004. Plaintiff filed suit in the Circuit Court of Cook County on September 24, 2004. On October 15, 2004, the City removed the case to this Court based on Counts II and IV of the complaint alleging violations of the ADA, 42 U.S.C. § 12101 et seq.

ANSWER: Defendant admits that plaintiff cross-filed a charge with the Illinois Department of Human Rights and the EEOC on September 10, 2002. Defendant admits that plaintiff filed a complaint on September 24, 2004 in the Circuit Court of Cook County. Defendant admits that on defendant's petition, the case was removed to federal court on October 15, 2004 on the basis that plaintiff alleged in his complaint violations of the ADA, 42 U.S.C. §§ 12112, 12203.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 40.

Count I Breach of Contract

____ 41. Plaintiff reasserts the allegations contained in paragraphs 1 through 40 of this Complaint as if alleged herein.

ANSWER: Defendant restates its answers to paragraphs 1 through 40 as though they were fully stated herein.

42. The City entered into a settlement agreement with Hillmann in February 1995, settling a prior ADA and Illinois Human Rights Complaint and Workers' Compensation Claim. (See Ex. "A"). William Bresnahan, Assistant Commissioner of Streets and Sanitation, was a party to the contract. Pursuant to this settlement agreement, Hillmann was assigned the position of Assistant to the Deputy Commissioner of the Bureau of Electricity and the essential job functions of this position would not include any manual labor, heavy lifting, or activities which required repetitive and constant use of Plaintiff's right arm.

ANSWER: Defendant admits that it entered into a Settlement and General Release Agreement with plaintiff in February of 1995 and that plaintiff agreed to accept appointment to the position and job title of Chief Timekeeper. Defendant admits that while holding this job title, plaintiff would perform duties as the Assistant to Deputy Commissioner of the Bureau of Electricity in the Department of Streets and Sanitation. Defendant admits that the essential job functions for plaintiff's duties as Assistant to the Deputy Commissioner did not include heavy lifting, driving a truck, or activities which required repetitive and constant use of his right arm. Defendant denies that William Bresnahan was a party to the contract and further denies the remaining allegations in paragraph 42.

43. Hillmann performed all his obligations under the 1995 settlement agreement and fully and adequately performed his job as Assistant to Deputy Commissioner of the Bureau of Electricity, with a job title of Chief Timekeeper.

ANSWER: Defendant admits that plaintiff held the job title of Chief Timekeeper. Defendant is without knowledge or information sufficient to form a belief as to the truth of whether plaintiff fully performed all the terms and conditions of the Settlement Agreement. Defendant denies that there was a position within the Department of Streets and Sanitation titled Assistant to the Deputy Commissioner and is, therefore, without knowledge or information sufficient to form a belief as to the whether the duties of that position were ever defined for the purpose of assessing plaintiff's job performance. Defendant denies the remaining allegations in paragraph 43.

44. The City maliciously and intentionally violated the terms of the agreement when it demoted Plaintiff, denied Plaintiff six merit pay increases, altered his job description and required Hillmann to perform job duties which it knew he was unable to perform.

ANSWER: Defendant denies the allegations in paragraph 44.

45. The alteration of Hillmann's job duties in the summer of 2000 was a direct violation of the settlement agreement. This alteration of job duties was done with the malicious intent that it would injure Hillmann and indeed it did result in further injury to Hillmann's back, neck and upper right arm.

ANSWER: Defendant denies that it violated the 1995 settlement agreement between it and plaintiff and further denies that it engaged in any unlawful conduct in violation of any state or federal law. Defendant further denies the remaining allegations in paragraph 45.

46. Without any legal justification, the City breached the settlement agreement on December 21, 2000, when Hennessy ordered Hillmann not to return to work, without pay.

ANSWER: Defendant denies the allegations in paragraph 46.

47. On March 1, 2001, without any explanation of why Hillmann was put out of work, the City ordered Hillmann to report to the Central Auto Pound for his new job duties of assisting the guard at the Central Auto Pound. The new duties, one of which was to open and close a heavy gate at the facility, caused Hillmann further injury and was a significant demotion from the job of Assistant to the Deputy Commissioner of the Bureau of Electricity/Chief Timekeeper. These new job duties constituted a breach of the 1995 settlement agreement. Hillmann remained in the Auto Pound until he was notified of his discharge due to an alleged RIF because of lack of funds.

ANSWER: Defendant incorporates by reference its answer to paragraph 33. Defendant denies that it breached the 1995 settlement agreement.

48. On July 31, 2002, Hillmann was unlawfully discharged even though he repeatedly requested the City to comply with the settlement agreement.

ANSWER: Defendant denies the allegations in paragraph 48.

49. As a direct result of the City's intentional and malicious breach of the settlement agreement, Hillmann has sustained injuries of a personal, permanent and pecuniary nature.

ANSWER: Defendant denies the allegations in paragraph 49.

WHEREFORE, the Plaintiff, Robert P. Hillmann, seeks damages, reinstatement, and restoration of health benefits, retirement benefits, pension benefits, back pay, front pay, and prejudgment interest and any other relief this Court deems just.

ANSWER: Defendant denies that plaintiff is entitled to any of the above-requested relief.

COUNT II
Discrimination under the Americans with Disabilities Act

50. Plaintiff reasserts the allegations contained in paragraph 1 through 49 of this Complaint as if alleged herein.

ANSWER: Defendant restates its answers to paragraphs 1 through 49 as though they were fully stated herein.

51. The Americans with Disabilities Act ("ADA") prohibits any "covered entity" from discriminating against a qualified individual with a disability on the basis of that disability. 42 U.S.C. § 12112(a). The Defendant is a covered entity because it employs fifteen or more employees. *Id.* at § 12111(5).

ANSWER: Defendant admits that the Americans with Disabilities Act ("ADA") prohibits any covered entity from discrimination, as defined by the Act, against a qualified individual with a disability because of that disability in regard to employment as it is defined by the Act.

Defendant admits that it is a "covered entity" as defined by the statute.

52. Hillmann's physical impairments of back, nerve, neck and upper right arm injury (cervical spondylosis, multilevel disc disease, herniated discs, cervical radiculopathy, brachial plexopathy, arthritis and carpal tunnel syndrome) substantially limits one or more of his major life activities. Hillmann's physical impairments substantially limit him in major life activities that most people in the general population can perform because there are a broad range of activities Plaintiff can not perform such as heavy lifting, all manual labor, full time clerical or massive data entry work, and virtually all sporting activity that involves constant use of the right arm or puts pressure on the neck or back. At other times, Hillmann is substantially limited in performing common activities such as walking for more than a block, climbing stairs or a driving a car, due to his physical impairments. However, Hillmann is a qualified individual with a disability because he can and did perform the job of Assistant to the Deputy Commissioner of the Bureau of Electricity/Chief Timekeeper without any accommodation from 1995 to 2000.

ANSWER: Defendant denies that plaintiff did not receive an accommodation from 1995 to 2000. Defendant further denies that plaintiff performed the job duties of Chief Timekeeper

without any accommodation from 1995 to 2000. Defendant affirmatively states that plaintiff did not and indicated that he could not perform the job duties of Chief Timekeeper from 1995 to his discharge in 2002. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 52.

53. Hillmann has a record of, and the City perceived him as having, physical impairments that substantially limit him. The combination of nerve, neck, back and right arm injuries is undisputed and recorded by doctors Hillmann was referred to by the City. Moreover, these same doctors that the City referred Plaintiff to, placed lifting, writing and repetitive use restrictions on the Plaintiff due to Hillmann's physical impairments.

ANSWER: Defendant admits that medical documentation reflects that various doctors, including those referred by defendant, placed restrictions plaintiff's lifting, writing, and repetitive use of his right arm at work. Defendant denies the remaining allegations of paragraph 53.

54. The City acknowledged this impairment when it entered into the 1995 contract, assigning Plaintiff the job of Assistant to the Deputy Commissioner, to settle a prior ADA claim filed by Hillmann under the federal and Illinois disability statutes.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 54, as the undefined terms "acknowledged" and "this impairment" are vague and ambiguous. Defendant denies that it "assigned" plaintiff the job of Assistant to the Deputy Commissioner. Defendant affirmatively states that it entered into the Settlement Agreement in 1995 to avoid the uncertainty of litigation and pursuant to the agreement, plaintiff was provided the job title of Chief Timekeeper and position of assistant to Deputy Commissioner Heffernan.

55. Pursuant to the settlement agreement, the City provided Hillmann with the accommodated work of Assistant to Deputy Commissioner from February 1995 until the summer of 2000. Hillmann performed all the essential functions of the job during this time period.

ANSWER: Defendant incorporates by reference its responses to paragraph 42.

Defendant affirmatively states that on or about September 1, 2000, plaintiff was placed in the Department of Streets and Sanitation's Bureau of Electricity, Construction Division where his job duty was to answer telephones with his left hand in order to accommodate his restrictions.

Defendant denies the remaining allegations of paragraph 55.

56. In the summer of 2000 Hillmann was demoted from his duties of Assistant to the Deputy Commissioner/Chief Timekeeper and required to assume the duties of a subordinate position. Plaintiff was demoted and his job duties changed for no reason other than to discriminate against and harm the Plaintiff. No other Chief Timekeeper for the City had their job duties or job description changed in the summer of 2000.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of whether any other Chief Timekeeper had their job duties or description changed in the summer of 2000. Defendant denies the remaining allegations in paragraph 56.

57. Hillmann was further harassed and denied equal benefits because of his disability when the City willfully and maliciously denied Hillmann access to medical care and coverage provided to other City employees without disabilities.

ANSWER: Defendant denies the allegations in paragraph 57.

58. During the time period 2000 to 2002 the City intentionally refused to reasonably accommodate Hillmann and finally transferred the Plaintiff to the City Auto Pound with the duties of opening and closing the heavy entrance gate to the facility for no other reason than to discriminate and retaliate against the Plaintiff based upon Hillmann's impairment and exercise of his rights.

ANSWER: Defendant denies the allegations in paragraph 58.

59. The City willfully and maliciously assigned Mr. Hillmann to job duties with the knowledge that the assigned work would further injure and harm Plaintiff.

ANSWER: Defendant denies the allegations in paragraph 59.

60. At all relevant times during his employment with the City, Hillmann gave notice to the City that transfers, demotions and reassignment of job duties violated the terms of the settlement agreement and that his requests for a reasonable accommodation had not been met.

ANSWER: Defendant denies the allegations in paragraph 60.

61. The City discriminated against Plaintiff due to his disabilities in violation of the ADA when it denied him six merit pay increases between July 1, 2000 and July 2, 2002, even though Hillmann never had been subjected to a reprimand, suspension or negative job evaluation during his entire 29 years of employment with the City. Moreover, other non-disabled employees during this same time period received merit pay increases.

ANSWER: Defendant admits that other employees received merit pay increases between July 1, 2000 and July 2, 2002. Defendant denies the remaining allegations in paragraph 61.

62. The denial of six merit pay increases constitute separate and intentional violations of the Americans with Disabilities Act, and culminated in Plaintiff's wrongful discharge on July 31, 2002, based upon his disability and exercise of his rights.

ANSWER: Defendant denies the allegations in paragraph 62. Defendant further denies that it engaged in any unlawful conduct in violation of state or federal law, including the Americans with Disabilities Act.

63. As a direct result of the City's intentional and malicious discrimination against Hillmann based on his disability, the Plaintiff has sustained injuries of a personal, permanent and

pecuniary nature.

ANSWER: Defendant denies the allegations in paragraph 63.

WHEREFORE, the Plaintiff, Robert P. Hillmann seeks compensatory damages, reinstatement, and restoration of health benefits, retirement benefits, pension benefits, back pay, front pay, and prejudgment interest and any other relief this Court deems just, pursuant to FRCP 54(c). Mr. Hillmann also seeks costs, including disbursements and attorneys fees, pursuant to 42 U.S.C. § 12101 et seq.

ANSWER: Defendant denies that plaintiff is entitled to the above-requested relief.

COUNT III ADA Retaliation Claim

64. Plaintiff reasserts the allegations contained in paragraph 1 through 63 of Plaintiff's Complaint as if alleged herein.

ANSWER: Defendant restates its answers to paragraphs 1 through 63 as though they were fully stated herein.

65. The City retaliated against Hillmann for engaging in the protected activity of making repeated requests for accommodation under the ADA and pursuant to the settlement agreement and for exercising his rights under the ADA.

ANSWER: Defendant denies the allegations in paragraph 65.

66. The ADA makes it "unlawful to coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of or on account of his or her having exercised or enjoyed,... any right granted or protected by this chapter." 42 U.S.C. § 12203(b).

ANSWER: Defendant admits that the language quoted in paragraph 66 is a portion of the text of 42 U.S.C. § 12203(b).

67. After each request by Hillmann in person or through legal counsel for a reasonable accommodation for his disability the City proceeded to retaliate against Hillmann by denying him six merit pay increases, transferring him or creating new job duties that further injured the Plaintiff. The retaliation culminated in the City firing Hillmann because of his requests for accommodation and for his exercise of rights under the ADA.

ANSWER: Defendant denies the allegations in paragraph 67.

68. As a direct result of the City's malicious intent to retaliate against Mr. Hillmann based on his protected activity of requesting a reasonable accommodation and excising his rights under law, the Plaintiff has sustained injuries of a personal, permanent and pecuniary nature.

ANSWER: Defendant denies the allegations in paragraph 68.

WHEREFORE, the Plaintiff, Robert P. Hillmann, seeks reinstatement, and restoration of health benefits, retirement benefits, pension benefits, back pay, front pay, and prejudgment interest and any other relief this Court deems just, pursuant to FRCP 54(c). Mr. Hillmann also seeks costs, including disbursements and attorneys fees, pursuant to 42 U.S.C. § 12101 et seq.

ANSWER: Defendant denies that plaintiff is entitled to any of the above-requested relief.

COUNT IV

First Amendment Violations

69. Plaintiff reasserts the allegations contained in paragraph 1 through 68 of Plaintiffs Complaint as if alleged herein.

ANSWER: Defendant restates its answers to paragraphs 1 through 68 as though they were fully stated herein.

70. The City of Chicago is a local municipality under Illinois law and a "person" within meaning of 42 U.S.C. § 1983.

ANSWER: Defendant admits the allegations in paragraph 70.

71. The City of Chicago through the Office of Intergovernmental Affairs ("IGA"), which was a division within the Office of the Mayor of the City, had a policy and custom of making unconstitutional employment decisions based on the political sponsorship of City employees. The unconstitutional policy and custom was carried out by final policymakers such as John Sullivan, Robert Sorich, Timothy McCarthy, and Patrick Slattery acting under color of law and resulted in the deprivation of Hillmann's First Amendment Rights under the U.S. Constitution.

ANSWER: Defendant denies the allegations in paragraph 71. Defendant further denies that John Sullivan, Robert Sorich, Timothy McCarthy, or Patrick Slattery are final policymakers.

72. The City of Chicago had the responsibility of establishing policies and criteria to ensure that inappropriate political affiliations would not serve as a factor in selecting its employees for termination in the reduction in force in 2002. The City completely failed to establish any policies or criteria, written or verbal for the department heads, including for John Sullivan in the Department of Streets and Sanitation.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 72, as the undefined terms "responsibility," and "policies and criteria," and "department heads" are vague and ambiguous because they are subject to varying interpretations. Defendant denies that it failed to establish any policies or criteria for its departments.

73. The needs for a prohibition of using political affiliation for the selection of employees for termination was patently obvious to the City in 2002 and for many years prior to the 2002 reduction in force.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to

the truth of this allegation, as the allegation does not distinguish between the different classifications of employees and further is vague, ambiguous and subject to varying interpretations.

74. The City knew of numerous prior instances of inappropriate, politically based employment decisions made by its department heads, including John Sullivan prior to the implementation of the decision to terminate employees in the 2002 reduction in force. John Sullivan, the final decision and policy maker for the selection of Department of Streets and Sanitation employees to be terminated in the RIF had color-coded lists referencing employees' political affiliations which were used to make employment decisions, including the decision to terminate the Plaintiff.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to whether John Sullivan had color-coded lists referencing employees' political affiliations which were used to make employment decisions, but admits that such allegations have been made by the U.S. Attorney's Office and an indictment was brought. Defendant denies that John Sullivan is a final decision and policymaker for the selection of Department of Streets and Sanitation employees to be terminated in the reduction in force. Defendant further denies the remaining allegations in paragraph 74.

75. The failure to provide any policies or criteria to department heads including to John Sullivan was an act of deliberate indifference on the part of the Defendant City and its failure to provide any policies, criteria or subsequent review of the decision to terminate the Plaintiff and others, permitted, condoned and ratified John Sullivan's use of color-coded lists and political affiliation as a criteria in selecting the Plaintiff for termination in 2002.

ANSWER: Defendant denies the allegations in paragraph 75.

76. The failure of the City to provide any policies or criteria to department heads or any subsequent review of the decision making process for terminating the Plaintiff was the direct and moving force behind the Constitutional violation of Plaintiff's First Amendment rights.

ANSWER: Defendant denies the allegations in paragraph 76.

77. The City of Chicago in its Response to the Questionnaire from the IDHR regarding Hillmann's charge of discrimination stated John Sullivan, Managing Deputy Commissioner of the Department of Streets and Sanitation made the recommendation and decision to eliminate Hillmann's title from the department in the 2002 RIF. John Sullivan, as Managing Deputy Commissioner, was the final policymaker within Streets and Sanitation.

ANSWER: Defendant admits that it stated in its Response to the Questionnaire filed with the IDHR on December 9, 2002 that John Sullivan, Managing Deputy Commissioner of the Department of Streets and Sanitation, made the recommendation and decision to eliminate the position of Chief Timekeeper from the department in the 2002 RIF. Defendant denies that John Sullivan was the final policymaker within the Department of Streets and Sanitation.

78. Prior to the indictment of John Sullivan, being reported in the press in late September 2005, Hillmann had no knowledge that Sullivan made employment decisions, such as transfers, promotion, pay increases and firings based on whether employees were contributors or members of organizations such as the Hispanic Democratic Organization ("HDO"), or other organizations led by Robert Sorich, Patrick Slattery, Daniel Katalinic and John Sullivan.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to truth of the allegations in paragraph 78.

79. The City employed an illegal custom and practice of hiring, re-assignment, promotion, denial of pay increases, and terminations in Streets and Sanitation, in which the predominant criteria for hiring, promotion, re-assignment, pay increases and firing was

predicated on the political sponsorship of an employee and whether they contributed money to political organizations such as the Hispanic Democratic Organization ("HDO") or other organizations led by Robert Sorich, Patrick Slattery, Daniel Katalinic and John Sullivan.

ANSWER: Defendant denies the allegations contained in paragraph 79.

80. Before taking any personnel action, John Sullivan, after consulting with other final policymakers from the IGA, determined who the political sponsor of an employee was, by examining his color-coded list, and made personnel decisions, based not on merit, but rather on illegal political affiliation grounds.

ANSWER: Defendant denies that John Sullivan or any employees from the IGA are final policymakers with respect to employment matters. Defendant is without knowledge or information sufficient to form a belief as to truth of the remaining allegations in paragraph 80.

81. Hillmann had no political sponsor, and was not a contributor to or member of HDO or any organizations led by Sorich, Slattery, Katalinic or Sullivan.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to truth of the allegations in paragraph 81.

82. Because Plaintiff did not have political sponsorship and did not contribute to HDO or organizations led by Sorich, Slattery, Katalinic or Sullivan, the City proceeded to create grotesque working conditions for Hillmann. The abuse and injuries Plaintiff sustained as a result of not being a preferred employee on Sullivan's color-coded list included the following: altering his job duties to include duties they specifically knew he was unable to perform; assigning work to Hillmann with the intent to cause harm, causing physical injury to Hillmann from the assigned work and then denying him access to Mercy Works doctors for examination and treatment; transferring Hillmann to various bureaus in the department to answer phones and then not providing a phone or place for Hillmann to sit; and telling Hillmann not to return to work, without pay, four days before Christmas, because the City allegedly was no longer able to accommodate Hillmann's medical restrictions in the title he held Chief Timekeeper. Without explanation of the December 21st firing, the City ordered Hillmann to report to the Central Auto Pound for his new assignment of assisting the guard at the gate. His duties as assistant to the

guard included opening and closing the gate. Hillmann remained in this job until he was terminated in the July 2002 RIF, after twenty-nine years of service as a City of Chicago employee.

ANSWER: Defendant denies the allegations in paragraph 82.

83. John Sullivan and Catharine Hennessy told the IDHR that Hillmann's title Chief Timekeeper was eliminated in the 2002 RIF because the Chief Timekeeper position was rendered obsolete by Kronos. Hillmann was the only employee in Streets and Sanitation who held the title of Chief Timekeeper. However, Sullivan and Hennessy both admitted to the IDHR that Hillmann never performed the duties of Chief Timekeeper.

ANSWER: Defendant admits that plaintiff was the only employee in the Department of Streets and Sanitation that held the title of Chief Timekeeper in 2002. Defendant admits that Sullivan and Hennessy informed the IDHR that one of the reasons that plaintiff's title of Chief Timekeeper was eliminated in the 2002 RIF was because the Chief Timekeeper position was rendered obsolete by Kronos and plaintiff never performed never performed the duties of Chief Timekeeper.

84. Although the City took the position at the IDHR that the Chief Timekeeper duties were rendered obsolete by Kronos, a contributor to the HDO, Gil Lopez, performed the duties of Chief Timekeeper in Streets and Sanitation at the time of the 2002 RIF and until at least 2005, while holding the title of Coordinator of Special Projects. Because Gil Lopez had a political sponsor and was a contributor to HDO his position was not eliminated in the 2002 RIF even though Lopez was the person actually performing the duties of Chief Timekeeper and Kronos allegedly rendered the Chief Timekeeper duties obsolete.

ANSWER: Defendant admits that Gil Lopez held the title of Coordinator of Special Projects at the time of the 2002 RIF to date. Defendant denies the remaining allegations in paragraph 84.

85. The City's stated reasons for eliminating Hillmann's title in the 2002 RIF are

pretextual and were given to hide the predominant reason that he was fired because he lacked a political sponsor.

ANSWER: Defendant denies the allegations in paragraph 85.

86. Hillmann's title of Chief Timekeeper and duties as assistant to the guard at the auto pound and assistant to the Deputy Commissioner were all non-policymaking jobs. Similarly, Hillmann was never entrusted with any policy-making authority while employed with the City and none of the duties he performed ever had the potential for making discretionary political judgments. Accordingly, terminating Hillmann because he lacked a political sponsor violated his rights under the First Amendment to the U.S. Constitution which he seeks to enforce through 42 U.S.C. § 1983.

ANSWER: Defendant admits that plaintiff was not a policymaker during his employment with the City. Defendant denies that plaintiff was laid off in the reduction in force because he lacked a political sponsor or for any unlawful reason in violation of state and federal laws, including the First Amendment.

WHEREFORE, the Plaintiff, Robert P. Hillmann, seeks a declaratory judgment that the City violated the First Amendment; equitable relief, including reinstatement and restoration of benefits, as well as lost wages, prejudgment interest, and compensatory damages, and any other relief this Court deems just, pursuant to FRCP 54(c). Costs, including disbursements and attorneys fees, pursuant to 42 U.S.C. § 1988 are also sought.

ANSWER: Defendant denies that plaintiff is entitled to any of the above-requested relief.

COUNT V
State Law Workers' Compensation Retaliation

87. Plaintiff reasserts the allegations contained in paragraph 1 through 81 of Plaintiffs Complaint as if alleged herein.

ANSWER: Defendant restates its answers to paragraphs 1 through 81 as though they were fully stated herein.

88. Plaintiff filed a Workman's Compensation claim on September 1, 2000, as a result of job related injuries he sustained from the alteration of his job duties in 2000.

ANSWER: Defendant admits that plaintiff, by and through his attorney, filed a workman's compensation claim on September 1, 2000. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 88.

89. In response to the filing of his Workman's Compensation claim, the City denied Plaintiff medical care and treatment he was entitled to under the Illinois Workers' Compensation Act and punished Hillmann by assigning him and keeping him in the Auto Pound and eventually terminating him on July 31, 2002.

ANSWER: Defendant denies the allegations in paragraph 89.

90. On July 31, 2002, the City wrongfully discharged Hillmann because he had exercised his right granted by the Illinois Workman's Compensation Act to pursue a claim for his work-related injury.

ANSWER: Defendant denies the allegations in paragraph 90.

91. The action of the City in discharging Plaintiff and interfering with his medical benefits constitutes an intentional tort and criminal act under Section 26 of the Illinois Workers' Compensation Act:

Any willful neglect, refusal or failure to do the things required to be done by any section, clause or provision of this Act, on the part of the persons herein required to do them, or any violation of any of the provisions or requirements hereof, or any attempt to obstruct or interfere with any court officer, or any other person charged with the duty of administering or enforcing this Act, is a petty offense. (820 ILCS 305/26).

ANSWER: Defendant denies the allegations in paragraph 91.

92. The Illinois Workers' Compensation Act states that the laws "shall apply automatically and without election" by the employer and therefore the City had no discretion under the Act. See 820 ILCS 305/3. See also 720 ILCS 5/33-3 (under the Illinois Official Misconduct Statute it is a felony for a public official or employee to intentionally or recklessly fail to perform a mandatory duty required by law).

ANSWER: Defendant admits that the language quoted in paragraph 92 is a portion of the text of 820 ILCS 305/3. Defendant denies the remaining allegations in paragraph 92.

93. ¹The City's and Robert Serafin's denial of medical coverage for Mr. Hillmann's work related injury, when a City physician, Dr. Arnold of Mercy Works diagnosed a work-related injury on January 29, 2001, and its intentional interference with Dr. Arnold's medical recommendations in June and July of 2001, further demonstrates the City's pretextual reasons for the discharge. This interference by Robertⁿⁿⁿⁿⁿ¹ affected Plaintiffs health benefits and pension rights, which should have become effective July 28, 2004.

ANSWER: Defendant denies the allegations in paragraph 93, including those included in footnote 1 in paragraph 93.

94. The City's stated reason for the discharge, namely a reduction in force ("RIF") due to lack of funds, was pretextual and offered for the sole purpose of covering up its illegitimate and unlawful discharge of the Plaintiff

ANSWER: Defendant denies the allegations in paragraph 94.

¹Robert Serafin has a history of interfering with Mr. Hillmann's medical records and benefits. In the prior AD A/workers' compensation case filed by Mr. Hillmann and settled in 1995, Serafin altered Dr. Samo's medical report and findings that an MRI revealed an osteophyte of a degenerative nature. In the original report created by Dr. Samo his signature appeared on page 4. On the fraudulently altered report that Serafin sent to Mr. Hillmann's attorney, Dr. Samo's signature appeared on page 3.

95. As a direct result of the City's intentional and unlawful actions Hillmann has sustained injuries of a personal, permanent and pecuniary nature, for which he seeks damages.

ANSWER: Defendant denies the allegations in paragraph 95.

96. Alternatively, Hillmann requests that this Court issue a Writ of Mandamus under Illinois law to command the City to reinstate Hillmann to the position of Assistant to the Deputy Commissioner/Chief Timekeeper, and to command restoration of health benefits, pension benefits and back pay. Mandamus is a proper remedy under Illinois law when the Plaintiff has alleged and established fraud, unfair or illegal dealings. See Court St. Steak House v. County of Tazewell, 163 Ill. 2d 159, 643 N.E.2d 781, 784 (1994). Moreover, the Tort Immunity Act, 745 ILCS 10/2-101 is not a bar to a claim for Mandamus because reinstatement, back pay, and restoration of health and pension benefits is not a claim for damages. Rizzi v. City of Chicago, 2003 WL 23023847 (1st Dist. 2003).

ANSWER: Defendant denies that plaintiff is entitled to any of the above-requested relief.

WHEREFORE, the Plaintiff, ROBERT P. HILLMANN demands judgment in his favor and against the Defendant, the City of Chicago, and seeks compensatory damages, equitable relief, including reinstatement, restoration of benefits, as well as lost wages and prejudgment interest and other appropriate relief pursuant to FRCP 54(c).

ANSWER: Defendant denies that plaintiff is entitled to any of the above-requested relief.

ADDITIONAL DEFENSES

1. To the extent that plaintiff relies on events occurring more than 300 days prior to the filing of his IDHR/EEOC charges, plaintiff's claims under the ADA based on these events are time-barred.

2. Defendant made a good faith effort to reasonably accommodate plaintiff within the Department of Streets and Sanitation, inter alia, by assigning him to the Bureau of Electricity-Construction Division and the Auto Pound.
3. The Tort Immunity Act bars plaintiff's untimely breach of contract and worker's compensation retaliation claims.
4. Plaintiff is not entitled to a Writ of Mandamus, as there is no reasonable explanation for the delay in filing his complaint and mandamus is not available as relief for the exercise of discretionary acts.
5. Plaintiff's ADA retaliation and certain discrimination claims are beyond the scope of his EEOC charge.

Respectfully submitted,

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CERTIFICATE OF SERVICE

_____ I certify that I have electronically filed a true and correct copy of Defendant's Answers and Defenses to Plaintiff's Second Amended Complaint with the Clerk of the Court where notice was electronically sent to the individual named below:

Elizabeth Knight

Kathryn Reidy

s/Melanie Patrick Neely

_____ MELANIE PATRICK NEELY