

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

VERNON KEITH ROBINSON and
COURTNEY SMITH, on behalf of a
certified class,

Plaintiff,

v.

DES MOINES PUBLIC SCHOOLS,

Defendant.

Case No: LACL136651

AMENDED ANSWER TO SECOND
AMENDED PETITION

Defendant Des Moines Public Schools (“DMPS”) answers the Second Amended Petition filed by Plaintiff Vernon Keith Robinson and Courtney Smith, on behalf of a certified class, filed on February 24, 2023 (“Second Amended Petition”) below.

1. The District admits that the Second Amended Petition purports to challenge criminal background screening practices allegedly used by the District under the Iowa Civil Rights Act. The District denies liability and denies that Plaintiff or the certified class are entitled to any relief, and denies the remaining allegations in paragraph 1 of the Second Amended Petition.

2. Denied.

3. The District states that the Iowa Code and guidance from the Equal Employment Opportunity Commission speak for themselves, and deny the allegations in paragraph 3 of the Second Amended Petition to the extent they are inconsistent with them.

4. Denied.

5. Admitted.

6. Admitted.

7. The District lacks information sufficient to admit or deny the allegations in paragraph 7 of the Second Amended Petition and accordingly denies the same.

8. The District lacks information sufficient to admit or deny the allegations in paragraph 8 of the Second Amended Petition and accordingly denies the same.

9. The District states that Robinson's civil rights charge speaks for itself, and denies allegations in paragraph 9 of the Second Amended Petition that are inconsistent with his charge.

10. The District admits that it entered into tolling agreements related to specific claims alleged in Robinson's charge, and that Robinson obtained a right-to-sue from the Iowa Civil Rights Commission. The District denies the remainder of paragraph 10.

11. Admitted as to the date of the issuance of the certification orders; denied to the extent that this paragraph presumes class certification was appropriate.

12. The District states that the Court's certification order speaks for itself and denies any allegation inconsistent with its terms. The District also denies the presumption that class certification was appropriate.

13. The District states that the Court's certification order speaks for itself and denies any allegation inconsistent with its terms. The District also denies the presumption that class certification was appropriate.

14. The District states that the Court's certification order speaks for itself and denies any allegation inconsistent with its terms. The District also denies the presumption that class certification was appropriate.

15. The District admits it made a conditional offer of employment to Robinson, Smith, and other class members. The District lacks sufficient information to admit or deny the remaining allegations in paragraph 15.

16. The District states that it conducted a criminal background check, or attempted to conduct a criminal background check, on class members. Because it is unclear what “passing a criminal background check” means, DMPS cannot admit or deny the remainder of paragraph 16 and accordingly denies the same.

17. The District states that its deposition testimony speaks for itself and denies any allegation inconsistent with it.

18. The District admits that its standard procedure for background check processes includes obtaining a candidate’s consent to have a criminal background check run by a third-party agency. The District denies the remaining allegations in paragraph 18 of the Second Amended Petition.

19. The District admits that its procedure for background check processes includes review of the reports generated by the third-party agency. The District denies the remaining allegations in paragraph 19 of the Second Amended Petition.

20. The District admits that review of criminal convictions in a background report can be part of the background check review process, and that Robinson, Smith, and at least some other class members had some criminal convictions that appeared in the report generated by the third-party agency. The District denies the remaining allegations in paragraph 20 of the Second Amended Petition.

21. The District admits that it attempted to issue a pre-adverse action letter to Robinson, Smith, and the class members. The District denies the remaining allegations in paragraph 21 of the Second Amended Petition.

22. The District states that the pre-adverse action letters speak for themselves and denies any allegation inconsistent with their terms.

23. The District states that the pre-adverse action letters speak for themselves and denies any allegation inconsistent with their terms, as well as any presumption about any failure to consider rehabilitative or mitigating factors.

24. The District states that the pre-adverse action letters speak for themselves and denies any allegation inconsistent with their terms, as well as any presumption about any failure to consider rehabilitative or mitigating factors.

25. The District states that its deposition testimony speaks for itself and denies any allegation inconsistent with its testimony, as well as any presumption about any failure to consider rehabilitative or mitigating factors.

26. Defendant states that its application forms speak for themselves and denies any allegation inconsistent with its terms, as well as the presumption that there is a “practice of not considering information about rehabilitation.”

27. Defendant admits that five business days elapsed between the issuance of a pre-adverse action notice and review of the material gathered in the report generated by the third party, and that review generally followed the District’s screening policy. Defendant denies the remaining allegations in paragraph 27.

28. Denied.

29. Denied.

30. Denied.

31. The District admits that a candidate’s failure to be truthful and forthcoming in response to request for information about a candidate’s criminal background may have been a reason the

District decided against offering employment to the particular candidate. The District denies the remaining allegations in paragraph 31.

32. The District states that its policy speaks for itself and denies any allegation inconsistent with its terms.

33. The District states that its deposition testimony speaks for itself and denies any allegation inconsistent with its testimony.

34. Denied.

35. The District lacks information about the purpose of the Iowa Board of Educational Examiner's policies or practices, as well as information about the policies or practices of the Board over time, and accordingly denies the allegations in paragraph 35, including the presumption that the District does not consider rehabilitative efforts and mitigating circumstances.

36. The District lacks information about other school districts' criminal background screening practices and accordingly denies the allegations in paragraph 36, including the presumption that the District does not consider rehabilitative efforts and mitigating circumstances.

37. The District lacks information sufficient to admit or deny the allegations in paragraph 37 of the Second Amended Petition and accordingly denies the same.

38. The District lacks information sufficient to admit or deny the allegations in paragraph 38 of the Second Amended Petition and accordingly denies the same.

39. Because the District cannot discern what "admission" is referred to in paragraph 39 of the Second Amended Petition, it cannot discern the accuracy of the statement and therefore must deny it.

40. Denied.

41. Because the District cannot discern what “admission” is referred to in paragraph 41 of the Second Amended Petition, it cannot discern the accuracy of the statement and therefore must deny it.

42. The District admits that it attempted to issue Robinson, Smith, and the class members a final adverse action letter.

43. The District incorporates and re-alleges its responses to paragraphs 1-42 above as if fully set forth herein.

44. Paragraph 44 of the Second Amended Petition seeks a legal conclusion to which no response is required. To the extent a response is required, the District states that the Iowa Supreme Court’s opinions speak for themselves and denies allegations inconsistent with them.

45. Paragraph 45 of the Second Amended Petition seeks a legal conclusion to which no response is required. To the extent a response is required, the District denies the allegations.

46. Admitted.

47. The District lacks information sufficient to admit or deny the allegations in paragraph 47 of the Second Amended Petition and accordingly denies the same.

48. Denied.

49. Because the District cannot discern what “admission” is referred to in paragraph 49 of the Second Amended Petition, it cannot discern the accuracy of the statement and therefore must deny it.

50. The District lacks knowledge sufficient to admit or deny the race of candidates excluded from employment and accordingly denies the same.

51. Denied.

52. The District lacks knowledge sufficient to admit or deny the race of candidates excluded from employment and accordingly denies the same.

53. The District states that its affirmative action and equal opportunity plan speaks for itself and denies allegations inconsistent with its terms.

54. Denied.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

To the extent the paragraph that follows paragraph 59 of the Second Amended Petition, beginning with “WHEREFORE,” requires a response, the District denies liability and denies that Plaintiff is entitled to any relief.

WHEREFORE, the District prays that the Court dismiss the Second Amended Petition and enter judgment in its favor and against Plaintiff, and for other further relief the Court deems appropriate.

Affirmative and Other Defenses

1. The Second Amended Petition fails to state a claim upon which relief may be granted.
2. Certification of the class was inappropriate and class-based relief is not proper or just under Iowa law.

3. The District's standards and selection criteria, including its criminal background check policy and practices associated with it, are job related and consistent with business necessity.

4. Plaintiff Robinson lacks standing as to some or all claims of the class.

5. Plaintiff Smith lacks standing as to some or all claims of the class.

6. To the extent Plaintiffs or any class members were subjected to adverse action more than three hundred days before the relevant charge was filed with the Iowa Civil Rights Commission, that claim is not administratively exhausted, and/or is time-barred and subject to dismissal under the statute of limitations.

7. A reasonable factor other than race was the reason for the alleged adverse action against Robinson, Smith, and the class members.

8. To the extent Plaintiffs or any member of the class has filed for bankruptcy and failed to disclose the instant claim in bankruptcy court, that person is judicially estopped from pursuing or obtaining relief for the claims.

9. The District may have reached the same decision in the absence of alleged impermissible conduct or practice.

10. The District acted in good faith.

11. The doctrines of waiver, estoppel, laches, or unclean hands bars the recovery of Robinson, Smith, or class members.

12. Plaintiff's damages, and any damages of the putative class members, must be reduced or the claim for damages barred to the extent of failure to act reasonably to mitigate damages.

13. Plaintiffs' conduct is the sole cause or a proximate cause of any injuries that Plaintiffs may have experienced.

14. To the extent that, after the imposition of any adverse employment action against Plaintiffs, Defendants have discovered or discover evidence in the course of the investigation or defense of this case that Plaintiffs engaged in conduct for which the District would not have hired Plaintiffs or would have terminated Plaintiffs' employment, Plaintiffs' right to recovery from the date of that discovery is barred.

15. The District is immune from the claims in Plaintiffs' Second Amended Petition, as provided for in Iowa Code Chapter 670.

16. Plaintiff's claims are barred because Defendants are immune from claims for the exercise or performance or the failure to exercise or perform a discretionary function or duty.

17. Defendants have qualified immunity because they exercised all due care to comply with the law.

18. Defendants have qualified immunity because their conduct did not violate a clearly established right, privilege, or immunity secured by law at the time of the alleged deprivation, or at the time of the alleged deprivation, the state of the law was not sufficiently clear that every reasonable employee would have understood that the conduct alleged constituted a violation of law.

Jury Demand

The Defendant hereby demands trial by jury of all issues in the above cause of action.

/s/ Frank B. Harty, AT0003356
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/s/ Brianna L. Long, AT0013958
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ATTORNEYS FOR DEFENDANT DES
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CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2023, I presented the foregoing document to the Clerk of the Court for filing and uploading into the EDMS system, which will send notification to the following EDMS system participants:

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