

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

AMY EBER,

Case No. D-101-CV-2018-01176

Plaintiff,

v.

STATE OF NEW MEXICO, NEW MEXICO
GENERAL SERVICES DEPARTMENT,
CITY OF SANTA FE, APIC SOLUTIONS, INC.,
CAPITOL BUILDINGS PLANNING
COMMISSION, CAPITOL BUILDINGS
IMPROVEMENT COMMISSION,
and JOHN DOES 1-10 and JANE DOES 1-10,

Defendants.

COMPLAINT TO RECOVER DAMAGES FOR PERSONAL INJURY

COMES NOW Plaintiff, Amy Eber, by and through her attorneys PRINCE,
SCHMIDT, KORTE & BACA LLP (D. Maria Schmidt) and the LAW OFFICES OF
ERIKA E. ANDERSON (Erika E. Anderson) and for her Complaint against Defendants
state as follows:

JURISDICTION AND VENUE

1. Plaintiff brings this Complaint under the New Mexico Tort Claims Act
(hereinafter "NMTCA") for injuries inflicted upon Plaintiff by Defendants.
2. The Court has jurisdiction of this action and of the parties.

3. Venue is proper in this judicial district as the incident complained of occurred in this district and the Capitol Building (hereinafter “the Capitol”) is located there as well.
4. Notice has been provided within the meaning to the NMTCA, NMSA § 41-4-16.
5. Immunity granted under the NMTCA has been waived pursuant to NMSA § 41-4-6 with regard to Defendant, State of New Mexico, Capitol Commissions, New Mexico General Services Department (hereinafter “State Defendants”) and any John or Jane Does who worked for State Defendants that may be identified in the future.

PARTIES

6. At all material times to this Complaint, Plaintiff Amy Eber (hereinafter, “Plaintiff Eber”), was a resident of the State of California.
7. APIC Solutions, Inc. (hereinafter “APIC”) is a business organized under the laws of the State of New Mexico, and APIC operates in Santa Fe, New Mexico and its office is located in Albuquerque, New Mexico.
8. APIC is or was a contractor for the State of New Mexico and was contracted to perform improvements or maintenance at the Capitol Building at all times material to this Complaint.
9. Defendant the State of New Mexico is a governmental entity organized under the laws of the State of New Mexico and operates in Santa Fe, New Mexico.
10. The Capitol or the “Round House” is the building located in Santa Fe, New Mexico and houses the New Mexico State legislature. The Legislature is the legislative department of the State of New Mexico.

11. The Capitol Buildings Improvement Commission is vested with the care, custody and maintenance of the Capitol. *See* NMSA §2-3-4.
12. New Mexico General Services Department (hereinafter “GSD”) is the governmental body that contracts with contractors for the maintenance and improvements of State buildings.
13. The City of Santa Fe is the capital of New Mexico and its governmental bodies are organized under the laws of New Mexico. The Capitol is located in Santa Fe, New Mexico.
14. The true names or capacities of Defendants John Does and Jane Does 1-10 (hereinafter “John and Jane Does 1-10”), including but not limited to the employees, agents and administrators for State Defendant or Defendant APIC. Plaintiff will amend the Complaint for Damages and Personal Injury to show John and Jane Does 1-10’s true names and capacities when the same has been ascertained. Plaintiffs are informed, believe and therefore allege that all John and Jane Does 1-10 sued herein are in some manner responsible for the acts, omissions and injuries alleged herein.

STATEMENT OF FACTS

15. On April 13, 2016, Plaintiff and her husband were touring the Capitol in Santa Fe, New Mexico.
16. As Plaintiff and her husband entered the building, they walked near the main entrance and stopped at the reception/visitors desk where they were given information about touring the building, but were not warned about any noise or

other hazardous conditions. They then proceeded towards the central area of the building, passing near the security desk in the lobby as they did so.

17. Defendant APIC, an employee, agent or contractor of APIC was using an industrial tool on a flat metal plate at that security desk.
18. Upon information and belief, Defendant APIC was installing IT equipment in the lobby-entrance of the Capitol.
19. Defendant APIC is a local Electrical contractor specializing Low Voltage, and security systems. Defendant APIC was working under State contract (CES) 2013-027.
20. Defendant APIC was employed to install the equipment needed to house a computer monitor and related equipment. This equipment was installed in the security desk area of the Round House Lobby entrance area.
21. An employee of Defendant APIC began using a tool to cut or drill through a metal desktop. The tool, making contact with the metal, caused a noise that was so unbearable that Plaintiff and husband fled to another part of the building. Plaintiff and her husband reported the noise to the Governor's assistant on the third floor of the same building.
22. The APIC employee continued using this tool in the Capitol, despite a request by the Governor's assistant to stop.
23. Plaintiff suffered injury to her ears and hearing immediately. At the time of the incident, Plaintiff's pain was at a seven (7) or eight (8) out of ten (10).
24. After the incident, Plaintiff suffered terrible ear pain and diminished hearing for the remainder of her visit in New Mexico. Six (6) days after her injury at the

Capitol, Plaintiff sought evaluation and treatment in California at Diablo Valley Ear, Nose & Throat. Plaintiff had an audiogram, which revealed asymmetrical borderline sensorineural loss in her left ear.

25. Plaintiff was then referred to a specialist at Stanford University Medical Center (hereinafter "SUMC"). Plaintiff was also referred to a pain specialist at SUMC who prescribed a neuropathy drug for pain associated with her ear injury. This particular drug made Plaintiff violently ill. As a result, Plaintiff missed her aunt's funeral. Currently, Plaintiff takes homeopathics for the pain instead, which provide her with minor relief.
26. As a result of the incident at the Capitol, Plaintiff suffers from tinnitus, ear pain, severe sound sensitivity, posttraumatic otalgia and hearing loss. Although her left ear was more severely affected by the injury causing noise, Plaintiff suffered injury in both ears. The pain in Plaintiff's left ear is a stabbing, needling pain, which can last one (1) hour, but as much as twenty-four (24) hours. Plaintiff's pain not only severely aches, but leaves her feeling exhausted after an episode.
27. Plaintiff, a long time volunteer for a wildlife refuge, has diminished ability to handle the raptors. She is unable to wear ear protection while working with the raptors because she needs to hear to ensure her safety, her colleagues safety, and the bird's safety. The screeches by the birds leads to pain in her ears while she is working with them.
28. Plaintiff also experiences sharp or stabbing pain in her ears when in the presence of simple noises, like those emitted from a hair drier or vacuum. She must now wear ear protection in rooms with loud equipment or appliances. In addition, she

often misses instructions in loud rooms unless the person speaking is directly in front of her.

29. Plaintiff's pain has affected her life to the extent that it has reduced her social and recreational activities. At present, Plaintiff's symptoms have not subsided.

**COUNT I
NEGLIGENCE
(APIC)**

30. Plaintiff realleges in full each of the allegations of the foregoing paragraph as set forth herein.

31. Defendant APIC had a duty to protect Plaintiff and other visitors from noise.

32. Defendant APIC was negligent during work performed at Capitol Building.

33. John and Jane Does 1-10 who worked for Defendant APIC at the time of the incident, had a duty to stop, intervene or report Defendant APIC's unlawful conduct toward Plaintiff.

34. As a direct and proximate result of the negligence of Defendant APIC, Plaintiff sustained serious injuries.

**COUNT II
VIOLATION OF OCCUPATION SAFETY AND HEALTH ADMINISTRATION
(hereinafter "OSHA") STANDARDS
(APIC)**

35. Plaintiff realleges in full each of the allegations of the foregoing paragraph as set forth herein.

36. The noise level was well above what OSHA has set as Permissible Exposure Limit. *See* 29 CFR1910.95, Appendix A.

37. Defendant APIC should have been aware that applying the industrial tool to metal in the Capitol would create a noise in violation of OSHA standards.

38. Defendant APIC had a duty to comply with OSHA standards.
39. Defendant APIC's failure to comply with OSHA standards caused Plaintiff's injuries.
40. As a direct and proximate result of the injury inflicted upon Plaintiff, Plaintiff requires medical treatment presently and in the future.

**COUNT III
RES IPSA LOQUITUR
(APIC)**

41. Plaintiff realleges in full each of the allegations of the foregoing paragraph as set forth herein.
42. The injury inflicted on Plaintiff normally does not occur without negligence.
43. The incident was caused by an instrumentality under the control of Defendant APIC.
44. As a direct and proximate cause of Defendant APIC's conduct, Plaintiff sustained damages.

**COUNT IV
PREMISES LIABILITY
(STATE DEFENDANTS AND CITY DEFENDANTS)**

45. Plaintiff realleges in full each of the allegations of the foregoing paragraph as set forth herein.
46. The Capitol is a public building owned and operated by the State of New Mexico.
47. State Defendants and/or City Defendant had a duty to exercise reasonable care in the operation or maintenance of the Capitol.

48. State Defendants and/or City Defendant knew, or should have known, that drilling the metal table in the vicinity of visitors, created a dangerous condition to visitors of the Capitol like Plaintiff.
49. State Defendants and/or City Defendant should have undertaken measures to protect visitors from the risk by conducting that work outside of the Capitol or away from common areas of the Capitol or implementing some other measure to prevent creating a dangerous situation at the Capitol.
50. As a proximate result of the acts alleged herein, Plaintiff suffered harm, entitling her to damages in an amount to be proven at trial.

**COUNT V
VIOLATION OF THE NEW MEXICO TORT CLAIMS ACT
(STATE DEFENDANTS AND CITY DEFENDANTS)**

51. Plaintiff realleges in full each of the allegations of the foregoing paragraph as set forth herein.
52. State Defendants and/or City Defendant had a duty to safely maintain the Capitol.
53. State Defendants and/or City Defendant breached this duty by subjecting its visitors to a dangerous condition.
54. State Defendants and/or City Defendant's conduct constitutes a tort for which immunity has been waived by NMSA 1978, § 41-4-6 (1977).
55. John and Jane Does 1-10 working for State Defendants and/or City Defendants had a duty to stop, intervene or report State Defendants' and/or City Defendants' unlawful conduct toward Plaintiff.
56. As a result of State Defendants' and/or City Defendants' actions, Plaintiff suffered damages.

57. As a direct and proximate result of the negligent acts and omissions of the State Defendants and/or City Defendants, Plaintiff suffered physical, emotional, and economic damages.

COUNT VI
LIABILITY BASED UPON *RESPONDEAT SUPERIOR*
(STATE DEFENDANTS)

58. Plaintiff realleges in full each of the allegations of the foregoing paragraph as set forth herein.

59. State Defendants were and are responsible for the contracting Defendant APIC.

60. Defendant APIC was a contractor or employee of the State of New Mexico at the time of the incident.

61. Defendant APIC was not engaged in activities outside the scope of its employment at the time of the events alleged in the Complaint.

62. State Defendants are responsible to Plaintiff for any harm caused by its employees or agents acting within the course and scope of their employment or agency including, but not limited to, the acts or omissions of Defendant APIC.

63. State Defendants are responsible to Plaintiff for any harm caused by its employees or agents acting within the course and scope of their employment or agency including, but not limited to, the acts or omissions of Defendant APIC.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests judgment against Defendants and for such order and further relief as requested below:

- a) Actual and compensatory damages in an amount to be determined at trial for physical injuries and harm, pain and suffering, loss of enjoyment and medical expenses incurred;
- b) Actual and compensatory damages in an amount to be determined at trial, including but not limited to, loss of future earning capacity, loss of enjoyment of life, including social and recreational activities, and damages for the nature, extent and duration of her injuries;
- c) Any punitive damages allowed under the law;
- d) Attorney's fees and costs associated with this action against all Defendants and allowable by law;
- e) Appropriate pre-judgment and post-judgment interest at the statutory rate; and
- f) Any further relief as the Court deems just and proper as allowed by law.

Respectfully submitted,

PRINCE, SCHMIDT, KORTE & BACA,
LLP

By /s/ D. Maria Schmidt

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