

FIRST AMENDMENT PROJECT

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David Greene
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April 20, 2011

VIA FAX AND FEDERAL EXPRESS

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City Clerk, City of Albuquerque
One Civic Plaza NW
Albuquerque, NM 87102

Marshall Katz
Chief of Police, Albuquerque Aviation Police Department
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Robert Kidd
Acting City Attorney, City of Albuquerque
One Civic Plaza NW
4th Floor, Room 4015
Albuquerque, NM 87102

Re: New Mexico Tort Claims Act Notice — Claims of Phillip Mocek
Date of incident: November 15, 2009

Greetings:

We have been retained to represent Phillip Mocek. The purpose of this letter is to give notice, pursuant to the New Mexico Tort Claims Act, NMSA 1978, § 41-4-16(A), of claims against the City of Albuquerque and the Albuquerque Aviation Police Department, pursuant to the provisions of NMSA 1978, § 41-4-1 *et seq.*

Mr. Mocek anticipates filing claims for injury and damages for the negligence and intentional torts, including false arrest, of Albuquerque police officers. Mr. Mocek also anticipates that claims will be presented under the Civil Rights Act, 42 U.S.C. § 1983, against the defendants. These claims arise from a deprivation of Mr. Mocek's rights under the Constitution, and will include assertions that Albuquerque police officers deprived Mr. Mocek of the First Amendment right to record his encounter with them and that the officers' actions were calculated to prevent Mr. Mocek from disseminating his newsworthy video to the public.

Mr. Mocek's encounter with the aviation police took place on November 15, 2009, at the Albuquerque airport. Mr. Mocek had approached a Transportation Security Administration ("TSA") checkpoint with a boarding pass that stated his correct name but with no other documentary form of identification. When asked by a TSA security guard for documentation of

his identity, Mr. Mocek informed the guard that he had no such documentation. When Mr. Mocek began videorecording their interaction, the security guard attempted unsuccessfully to take Mr. Mocek's camera, then told Mr. Mocek that photography and videotaping was prohibited at the checkpoint. The security guard contacted the Albuquerque Aviation Police Department and multiple police officers arrived shortly thereafter.

Involvement by the Albuquerque Aviation Police included the following:

- Officer **Robert F. Dilley** was the lead arresting officer and authored an incident report in which he claimed that Mr. Mocek caused a disturbance by disorderly conduct, refused to identify himself, and was issued a criminal trespass order, with which Mr. Mocek refused to comply. Officer Dilley claimed that Mr. Mocek raised his voice, causing the disturbance.

Officer Dilley warned Mr. Mocek that unless he complied with the instructions of TSA staff, he would be escorted out of the airport. Officer Dilley told Mr. Mocek that photography and videotaping were prohibited at the checkpoint. Officer Dilley informed Mr. Mocek that he was being investigated for disturbing the peace, that he was required to present documentation of his identity, and that he would be escorted out of the airport.

- Officer **Landra Wiggins** authored a supplemental incident report in which Officer Wiggins claimed that Mr. Mocek was talking in a loud tone of voice and that his behavior caused bystanders to stop and take notice. Officer Wiggins told Mr. Mocek that photography and videotaping were prohibited at the checkpoint, issued commands to Mr. Mocek, and threatened to arrest him.
- Officer **Julio De La Pena** also authored a supplemental incident report in which Officer De La Pena claimed that he observed Mr. Mocek yelling "I know my rights" in a loud voice and that Mr. Mocek was ordered to leave the airport and repeatedly refused.

Mr. Mocek cooperated when ordered by officers to proceed for the exit and was walked to the airport police station, where he was locked in a holding cell. A search of Mr. Mocek's bags, undertaken without his consent, did not turn up documentation of his identity.

Video footage taken by Mr. Mocek contradicts the law enforcement officers' accounts and reveals that Mr. Mocek throughout did not raise his voice and did not refuse to obey any order to leave the airport. Law enforcement officers who had seized Mr. Mocek's camera had attempted to erase its contents; however, the footage was recovered and provided as evidence in the criminal proceedings against Mr. Mocek.

In his criminal trial in Bernalillo County Metropolitan Court, Mr. Mocek was acquitted of the four charges against him: disorderly conduct, criminal trespass, refusal to obey a lawful order, and concealing identity. All information learned during the investigation and prosecution of the criminal case against Mr. Mocek is incorporated hereinto.

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Mr. Mocek was acquitted on January 21, 2011. This letter is thus timely and complies with the notice provisions of NMSA 1978, § 41-4-16(A).

If you are interested in discussing prefiling resolution of these claims, please have your counsel contact us at this office. Otherwise, we will pursue our remedies available at law.

Sincerely,

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A handwritten signature in cursive script, appearing to read "Lowell Chow".

By: Lowell Chow

cc: Phillip Mocek