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Attorneys for Bluffdale City
and Mayor Natalie Hall

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

JEFFREY D. GASTON,

Plaintiff,

vs.

JASON HALL, an individual, NATALIE
HALL, an individual, GEORGE
SCHLIESSER, an individual, WOODCRAFT
MILL & CABINET, INC., a Utah corporation,
and BLUFFDALE CITY, a municipality of the
State of Utah,

Defendants.

**MOTION TO DISMISS WITH
PREJUDICE**

Civil No. 230905528

Judge Chelsea Koch

Defendants Bluffdale City (sometimes, the “City”) and Natalie Hall in her official capacity as Bluffdale City Mayor (“Mayor Hall”) respectfully file this Motion to Dismiss with Prejudice all claims in the Second Amended Complaint against the City and Mayor Hall under rules 12(b)(1) and 12(b)(6) of the Utah Rules of Civil Procedure for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted, respectively. The Second Amended Complaint fails to confer jurisdiction on the Court to hear claims against Mayor Hall because the notice of claim it served on the City under the Utah Governmental Immunity Act (“UGIA”) is deficient. And the Second Amended Complaint fails to stake a claim against Bluffdale City

because the City is immune under the UGIA from liability for the torts alleged in the complaint, all of which are based on intentional conduct.

INTRODUCTION

Plaintiff Jeffrey D. Gaston (“Gaston”) has brought claims against Bluffdale City and Mayor Hall for false light (third cause of action), intentional infliction of emotional distress (fourth cause of action), and civil conspiracy (fifth cause of action). Gaston’s false light claim alleges that Mayor Hall used her “official Bluffdale Mayor account on social media” to publish falsehoods about Plaintiff. *See* Second Amended Complaint (“Complaint”) at ¶¶ 126, 235–254.

Gaston’s intentional infliction of emotional distress claim alleges that Bluffdale, its mayor, and its employees intended to cause Gaston emotional distress by engaging in unlawful conduct toward him, “including harassment and intimidation of Gaston, portraying Gaston in a false light, impeding the investigation into the threats against Gaston, committing battery against Gaston, and assaulting Gaston, including through the communication of numerous death threats directed to Gaston at both his public office as well as his home.” *See id.* at ¶¶ 255–254 (¶ 256).

Gaston’s civil conspiracy claim alleges Bluffdale City and the other defendants “had a common objective to cause injury to Gaston in the manner described herein, which included but was not limited to, causing Gaston severe emotional distress and mental anguish, civil assault, and casting Gaston in a false light.” *See id.* at ¶¶ 263–270 (¶ 265).

Gaston served a notice of claim under the UGIA “against Bluffdale,” not Mayor Hall, by delivering the notice of claim to the Bluffdale City Recorder and Bluffdale’s City Attorney on July 25, 2023. Nowhere in the notice of claim does it say a claim is being pursued against Mayor Hall.

LEGAL STANDARD

“A complaint states a claim upon which relief can be granted if it alleges the facts and sets forth the legal basis for an available legal remedy.” *Simmons Media Group, LLC v. Waykar, LLC*, 2014 UT App 145, ¶ 15, 335 P.3d 885 (quotation simplified). Courts “assume the truth of the factual allegations in the complaint and draw all reasonable inferences therefrom in the light most favorable to the plaintiff.” *Fehr v. Stockton*, 2018 UT App 136, ¶ 8, 427 P.3d 1190 (quotation simplified). However, courts need not accept legal conclusions couched as facts as true. *See Osguthorpe v. Wolf Mountain Resorts, L.C.*, 2010 UT 29, ¶ 11, 232 P.3d 999. Courts “may also consider outside documents of which [they] would be entitled to take judicial notice, such as public records.” *Pierucci*, 2015 UT App 80 at ¶ 7.

ARGUMENT

Putting aside the lack of merit inherent in Gaston’s claims, his claims against Mayor Hall and the City must be dismissed. As explained below, the notice of claim did not specify Mayor Hall as a potential defendant and therefore this Court lacks jurisdiction to hear any claims of any sort against her in her official capacity as Mayor. Also, the complaint fails to state a claim upon which relief can be granted against the City, as governmental entities are immune from liability related to torts based on intentional conduct rather than negligence.

I. THE NOTICE OF CLAIM IS DEFICIENT.

The Court lacks subject matter jurisdiction to hear Plaintiff’s claims against Mayor Hall. Unless a plaintiff strictly complies with the notice provisions of the UGIA, courts lack the required subject matter jurisdiction to hear the plaintiff’s claims. *See Wheeler v. McPherson*, 2002 UT 16, ¶ 9, 40 P.3d 632 (citations omitted) (“Compliance with the UGIA is a prerequisite to

vesting a district court with subject matter jurisdiction over claims against governmental entities.”).

The UGIA “governs all claims against governmental entities or against their employees or agents arising out of the performance of the employee’s duties, within the scope of employment, or under color of authority.” Utah Code § 63G-7-101(2)(b). The UGIA sets forth procedures that must be followed “before maintaining an action” against a governmental entity or its employees. *Id.* at 63G-7-401(2); *see also Wheeler v. McPherson*, 2002 UT 16, ¶ 9, 40 P.3d 632, 635. “Utah law mandates *strict compliance* with the requirements of the UGIA.” *Id.* at ¶ 12 (emphasis added); *Wheeler* at ¶ 9 (“We have consistently and uniformly held that suit may not be brought against the state or its subdivisions unless the requirements of the Governmental UGIA are *strictly* followed.”) (emphasis added).

The fundamental procedural requirement of the UGIA is to serve a notice of claim prior to initiating suit. *See id.* Even “[a]ctual notice of a claim by a governmental entity does not excuse a claimant’s strict compliance with the requirements of the” UGIA. *Greene v. Utah Transit Auth.*, 2001 UT 109, ¶ 15, 37 P.3d 1156. Among other things, the notice of claim must specifically name any employee against whom a “claim is being pursued.” Utah Code § 63G-7-401(3)(a)(iv). The UGIA provides:

The notice of claim shall set forth:

- (i) a brief statement of the facts;
- (ii) the nature of the claim asserted;
- (iii) the damages incurred by the claimant so far as the damages are known; and
- (iv) *if the claim is being pursued against a governmental employee individually as provided in Subsection 63G-7-202(3)(c), the name of the employee.*

Id. at § 63G-7-401(3)(a).

Here, Gaston’s notice of claim sets forth a “Brief Statement of Facts” in compliance with subsection (i) and the “Nature of Claim and Damages” in compliance with subsections (ii) and (iii). *See* Notice of Claim, Ex. A. However, nowhere in the notice of claim does it set forth Mayor Hall’s name as a person against whom a “claim is being pursued” as is required. Utah Code § 63G-7-401(3)(a)(iv).¹ To the contrary, the notice of claim confirms that the claims it is pursuing are only against the City: “Pursuant to Utah Code 63G-7-401 et al., this letter shall serve as a Notice of Claim *against Bluffdale*.” *See* Notice of Claim at 1 (emphasis added). Because this deficiency deprives the Court of subject matter jurisdiction, “the UGIA requires [the Court] to dismiss” Gaston’s claims against Mayor Hall in her official capacity. *Greene*, 2001 UT 109 at ¶ 16; *Wheeler*, 2002 UT 16 at ¶ 16.

II. THE UGIA DOES NOT WAIVE LIABILITY FOR TORTS ARISING FROM INTENTIONAL CONDUCT.

Plaintiffs’ claims fail to state a claim against Bluffdale City because the UGIA has not waived liability for torts based on intentional conduct. Generally, to determine whether a governmental entity is immune from suit under the Act, courts apply a three-part test, which assesses (1) whether the activity undertaken is a governmental function; (2) whether governmental immunity was waived for the particular activity; and (3) whether there is an exception to that waiver. *Blackner v. State, Dep’t of Transp.*, 2002 UT 44, ¶ 10, 48 P.3d 949.

A. Gaston’s Allegations Relate to Government Functions.

With respect to the first inquiry, the UGIA defines what constitutes a governmental function. Governmental function “means each activity, undertaking, or operation of a governmental entity” and “includes each activity, undertaking, or operation performed by a

¹ The notice of claim mentions the Mayor’s name along with the named of other employees, but never identifies her as someone who is going to be sued.

department, agency, employee, agent, or officer of a governmental entity.” Utah Code § 63G-7-102(5)(a) and (b). It also “includes a governmental entity’s failure to act.” *Id.* at 5(c). Here, all the wrongful conduct attributed to Bluffdale City is alleged to have been part of official governmental functions. This includes alleged false statements made on “official Bluffdale Mayor account on social media” and in the mayor’s official capacity at city council meetings, *E.g.*, Complaint at ¶¶ 126, 131, 197–98; alleged unlawful instructions given to city law enforcement, *E.g., id.*, ¶¶ 148–49, 152, 157, 160–61; alleged unlawful access to and tampering with evidence maintained in the city police’s “evidence storage locker,” *E.g., id.*, ¶¶ 171–73; alleged improper refusal to comply with GRAMA requests, *id.* at ¶ 184; and alleged unlawful exclusion of Gaston from official city communications, *id.* at ¶ 191. In short, the alleged improper conduct relates to a governmental function.

B. The UGIA Has Not Waived Immunity for Gaston’s Claims.

With respect to the second inquiry, the UGIA has *not* waived immunity on behalf of governmental entities for claims based on intentional conduct, such as false light, intentional infliction of emotional distress and civil conspiracy. In this regard, it is critical to remember that the UGIA was passed to waive immunity for certain claims only: “A governmental entity and an employee of a governmental entity retain immunity from suit unless that immunity has been *expressly* waived in this chapter.” Utah Code § 63G-7-101(3) (emphasis added). Accordingly, one cannot bring a claim against the government or a government employee unless immunity for that specific claim has been waived.

The UGIA’s waivers are set forth in Utah Code section 63G-7-301. Nowhere in this section is there a general waiver for tort claims based on intentional conduct. Instead, immunity is waived only for torts based on negligent conduct. *See id.* at § 63G-7-301(2)(i) (waving immunity

for “any injury proximately caused by a negligent act or omission of an employee”).² Because there is no waiver under the UGIA for false light, intentional infliction of emotional distress and civil conspiracy, the immunity analysis can stop here. There is no need to analyze whether there may be an exception to an immunity waiver. *See Atiya v. Salt Lake County*, 852 P.2d 1007 (1993) (holding immunity from liability for torts such as intentional infliction of emotional distress not waived under UGIA).

CONCLUSION

For the foregoing reasons, Bluffdale City and Mayor Hall respectfully submit that their motion should be granted.

DATED this 14th day of February 2024.

HOOLE & KING, L.C.

/s/ Gregory N. Hoole
Gregory N. Hoole
Attorneys for Bluffdale City
and Mayor Natalie Hall

² Immunity is also waived for other specific claims, such as those related to contractual obligations, quiet title, government takings, dangerous highway conditions, among others. *See id.* § 63G-7-301(2)

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of February 2024, a true and correct copy of the foregoing document was filed electronically with the Court, which sent notice of the same via email to all parties who have appeared in this case.

/s/ Gregory N. Hoole

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You have a limited amount of time to respond to this motion. In most cases, you must file a written response with the court and provide a copy to the other party:

- within 14 days of this motion being filed, if the motion will be decided by a judge, or
- at least 14 days before the hearing, if the motion will be decided by a commissioner.

In some situations a statute or court order may specify a different deadline.

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Su tiempo para responder a esta moción es limitado. En la mayoría de casos deberá presentar una respuesta escrita con el tribunal y darle una copia de la misma a la otra parte:

- dentro de 14 días del día que se presenta la moción, si la misma será resuelta por un juez, o
- por lo menos 14 días antes de la audiencia, si la misma será resuelta por un comisionado.

En algunos casos debido a un estatuto o a una orden de un juez la fecha límite podrá ser distinta.

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