

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>LISA KRAGNES, et al.</p> <p>Plaintiffs,</p> <p>vs.</p> <p>CITY OF DES MOINES, IOWA,</p> <p>Defendant.</p>	<p>Case No. CE 49273</p> <p>PLAINTIFF'S RESISTANCE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO IOWA CODE SECTIONS 670.4(2) AND 670.4(3)</p>
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COMES NOW, the Plaintiff, Lisa Kragnes, and by way of resistance to Defendant's Motion states to the Court as follows:

1. Defendant attempts to mislabel Plaintiff's claim and couch them as claims governed by Chapter 670. Plaintiff's claim is for restitution and unjust enrichment and do not sound in tort.
2. That Defendant proffered a statement of material facts not in dispute and to the extent the statement is based on accurate quotations from the Kragnes case, the Plaintiff does not dispute that the Kragnes case contains such findings.
3. That Plaintiff specifically denies paragraph 4 of Defendant's Motion and specifically asserts that Chapter 670 of the Iowa Code is not applicable to this case.
4. The law makes it clear the Chapter 670 applies only to "torts" and does not provide immunity for other wrongs.
5. The Plaintiffs' case is based on the theories of unjust enrichment and implied contract.
6. Chapter 670 does not grant the City immunity for these causes of action because the causes of action do not sound in tort.

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7. Additionally, the City is not entitled to discretionary function immunity for making a decision in contravention of clear state law because the law does not allow such impermissible discretion.

8. This resistance is supported by a brief, all of which is filed simultaneously.

WHEREFORE, the Plaintiff prays that the Court deny Defendant's Motion for Summary Judgment founded on the immunity granted under Iowa Code Sections 670.4(2) and 670.4(3), assess the costs against the Defendant, and for such other and further relief as the Court deems equitable on the premises.

Respectfully Submitted,

By:



Bruce H. Stoltze (AT0007521)
Eric M. Updegraff (AT0008025)
Stoltze & Updegraff, P.C.
300 Walnut, Suite 260
Des Moines, Iowa 50309
Telephone: 515-244-1473
Fax: 515-244-3930
Email: bruce.stoltze@stoltzelaw.com
ATTORNEY FOR PLAINTIFF

ORIGINAL FILED.

CERTIFICATE OF SERVICE:

Copies of the foregoing have been mailed
this 19th day of May, 2008, to the following:

Mark Godwin
Deputy City Attorney
City Hall
400 Robert D. Ray Drive
Des Moines, Iowa 50309-1891
ATTORNEY FOR DEFENDANT

Judge Joel D. Novak
Polk County Courthouse
500 Mulberry Street
Des Moines, IA 50309

Michelle Hirsch

By _____