

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

HAILEY ATYANI, NICOLE CDE BACA,
BIANCA GARCIA, HANNAH JIRON,
CESELIA MERRYMAN, ANDREA
VARELA, and WHITNEY WHITSON,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

Case No. D-202-CV-2016-02775

DENNIS BONFANTINE, JANICE
BONFANTINE, D.B. KELLY, INC.,
d/b/a KELLY'S BREW PUB AND
RESTAURANT, and DB BREWERY LLC,

Defendants.

**COMPLAINT FOR VIOLATIONS OF THE CITY OF ALBUQUERQUE
MINIMUM WAGE ACT AND STATE COMMON-LAW CLAIMS**

COME NOW the Plaintiffs, Hailey Atyani, Nicole Cde Baca, Bianca Garcia, Hannah Jiron, Ceselia Merryman, Andrea Varela, and Whitney Whitson, on their own behalf and on behalf of others similarly situated, by and through their counsel, Youtz and Valdez, P.C. (Shane C. Youtz, Stephen Curtice, James Montalbano). and Gail Evans and Elizabeth Wagoner of the New Mexico Center on Law and Poverty, and for their Complaint against Defendants state as follows:

Introduction

1. On November 6, 2012, the voters of the City of Albuquerque approved a ballot initiative to give Albuquerque's lowest-wage workers a raise. For tipped workers, the amended Albuquerque Minimum Wage Ordinance raised the tipped minimum wage from \$2.13 an hour to

\$3.83 an hour in 2013, and \$5.25 per hour in 2014 and afterwards, with annual adjustments for the cost of living.

2. However, at Kelly's Brew Pub & Restaurant – "Albuquerque's premier hotspot for food, entertainment and of course beer," according to its website – servers never got a raise. Instead of complying with the new law, its owners, Defendants in this action, settled on an unlawful response to the minimum wage increase: servers would pay for it themselves, out of their tips. Starting in 2013, Defendants increased the wage rate that appeared on servers' paychecks so that Defendants appeared to comply with the new law, but required servers to pay the house cash each shift, calculated at 2% of their total daily sales, plus \$3.00 per hour they worked on the clock. After tipping out, servers sometimes owed more in cash than they had actually earned in cash tips during the shift. When this happened, servers were required to pay the difference from their wallets or their paychecks. When questioned about this "tip out" policy, the Bonfantines and managers explained that Kelly's needed the money to pay for the minimum wage increase and other business expenses.

3. What's more, Defendants did not pay servers all of their customers' credit card tips, and instead kept a portion of those tips for themselves. Defendants also did not pay servers any wages at all for non-tipped work they performed off-the-clock, such as rolling silverware, kitchen prep, and awaiting table assignments.

4. The Albuquerque Minimum Wage Ordinance is clear that tips belong to the worker who receives them, and that an employer cannot take a portion of the tips workers earn. It is also clear that employers who violate the Ordinance's strict rules around the tipped minimum wage must pay their employees the full Albuquerque minimum wage rate, currently \$8.75 per hour.

5. Plaintiffs bring this action on behalf of themselves and other similarly situated servers who were employed by Defendants as food and drink servers at Kelly's, pursuant to the Albuquerque Minimum Wage Ordinance, Ord. 12-2006, § 13-12-1, *et seq.*, and New Mexico common law, to remedy Defendants' violations that have deprived Plaintiffs and other similarly situated servers of their lawfully earned tips and wages.

Parties

6. Plaintiff Hailey Atyani is an adult individual currently residing in Albuquerque, New Mexico, County of Bernalillo.

7. Atyani was employed by Defendants as a server from approximately August 2014 to January 2016.

8. Plaintiff Nicole Cde Baca is an adult individual currently residing in Albuquerque, New Mexico, County of Bernalillo.

9. Cde Baca was employed by Defendants as a server from approximately March 2010 to August 2015.

10. Plaintiff Bianca Garcia is an adult individual currently residing in Albuquerque, New Mexico, County of Bernalillo.

11. Garcia was employed by Defendants as a server from approximately September 2014 to August 2015.

12. Plaintiff Hannah Jiron is an adult individual currently residing in Albuquerque, New Mexico, County of Bernalillo.

13. Jiron has been employed by Defendants as a server from approximately May 2014 to the present.

14. Plaintiff Ceselia Merryman is an adult individual currently residing in Phoenix, Arizona.

15. Merryman was employed by Defendants as a server from approximately July 2010 to May 2014.

16. Plaintiff Andrea Varela is an adult individual currently residing in Albuquerque, New Mexico, County of Bernalillo.

17. Varela was employed by Defendants as a hostess from approximately June 2012 to September 2014, and as a server from September 2014 to June 2015.

18. Plaintiff Whitney Whitson is an adult individual currently residing in Albuquerque, New Mexico, County of Bernalillo.

19. Whitson has been employed by Defendants as a server from approximately February 2013 to the present.

20. At all times relevant to this action, Plaintiffs and other similarly situated servers have been “employees” of Defendants, as that term is defined in the Albuquerque Minimum Wage Ordinance, Ord. 12-2006 (amended November 6, 2012) Section 13-12-1 *et seq.* (“Albuquerque MWO”), and the common law of New Mexico.

21. Defendant D.B. Kelly, Inc., is a Domestic for-profit corporation, incorporated in New Mexico, doing business as Kelly’s Brew Pub and Restaurant (“Kelly’s”). It has a principal place of business at 3222 Central Avenue SE, Albuquerque, New Mexico, County of Bernalillo.

22. Defendant DB Brewery LLC is a Domestic for-profit corporation, incorporated in New Mexico, doing business as Kelly’s. It has a principal place of business at 3222 Central Avenue SE, Albuquerque, New Mexico, County of Bernalillo.

23. Defendant Dennis Bonfantine is an adult individual currently residing in Albuquerque, New Mexico, County of Bernalillo.

24. Defendant Janice Bonfantine is an adult individual currently residing in Albuquerque, New Mexico, County of Bernalillo.

25. At all times relevant to this action, Defendant Dennis Bonfantine has been an owner or co-owner of Kelly's.

26. At all times relevant to this action, and upon information and belief, Defendant Janice Bonfantine has been an owner or co-owner of Kelly's.

27. At all times relevant to this action, Defendant Dennis Bonfantine and Defendant Janice Bonfantine have been co-managers of Kelly's.

28. Defendants exercised control over the wages, hours, or working conditions of Plaintiffs and other similarly situated servers.

29. Defendants hired Plaintiffs and other similarly situated servers, and/or hired the managers who supervised them.

30. Defendants determined the rates and methods of payment of Plaintiffs and other similarly situated servers.

31. Defendants maintained employment records at Kelly's.

32. Defendants are required to have, and do have, a business registration from the City of Albuquerque.

33. At all times relevant to this action, Defendant D.B. Kelly, Inc., has been an "employer" as that term is defined in the Albuquerque MWO and/or common law, and at all relevant times, employed and/or jointly employed Plaintiffs and similarly situated employees.

34. At all times relevant to this action, Defendant DB Brewery LLC has been an “employer” as that term is defined in the Albuquerque MWO and/or common law, and at all relevant times, employed and/or jointly employed Plaintiffs and similarly situated employees.

35. At all times relevant to this action, Defendant Dennis Bonfantine has been an “employer” as that term is defined in the Albuquerque MWO and/or common law, and at all relevant times, employed and/or jointly employed Plaintiffs and similarly situated employees.

36. At all times relevant to this action, Defendant Janice Bonfantine has been an “employer” as that term is defined in the Albuquerque MWO and/or common law, and at all relevant times, employed and/or jointly employed Plaintiffs and similarly situated employees.

Jurisdiction and Venue

37. This Court enjoys subject matter jurisdiction here because the Complaint alleges a cause of action under the laws of the State of New Mexico, to wit: the Albuquerque Minimum Wage Ordinance, Ord. 12-2006, § 13-12-1, *et seq.*; and state common law causes of action.

38. This Court enjoys personal jurisdiction over Defendants because Defendants conduct business in this judicial district and are based in this judicial district.

39. Venue is proper here because the incidents at issue occurred within this District.

40. Plaintiffs’ individual claims do not exceed \$75,000.00 individually.

Statutory Scheme

41. In 2012, a city ballot initiative revised the Albuquerque MWO effective January 1, 2013, to increase the minimum wage from \$7.50 to \$8.50, adjusted yearly for cost of living increases. Albuquerque MWO, § 13-2-3(B). The initiative also created a new “tipped minimum wage” to be paid to a “tipped employee,” defined as an “employee engaged in an occupation in which he or she customarily and regularly receives tips from customers.” *Id.* § 13-2-2. This

tipped minimum wage, for the first time, increased tipped employees' wages above the state-mandated level of \$2.13. The Albuquerque tipped minimum wage was initially 45% of the minimum wage, and 60% of the minimum wage after January 1, 2014.

42. The following chart reflects the minimum wage and the tipped minimum wage under the Albuquerque MWO from January 1, 2013, through the present:

	January 1, 2013	January 1, 2014	January 1, 2015	January 1, 2016
Regular MW	\$8.50	\$8.60	\$8.75	\$8.75
Tipped MW	\$3.83	\$5.16	\$5.25	\$5.25

43. The 2012 ballot initiative amending the Albuquerque MWO also added protections to ensure that employers do not take advantage of the tipped minimum wage to underpay tipped workers. First, the Albuquerque MWO prohibits the sharing of tips with employers and specifies that tips are the property of the tipped employee. Albuquerque MWO, § 13-12-3(A). The Albuquerque MWO does permit tip-pooling, but only among tipped employees, not with employers. Second, an employer can pay the lower tipped minimum wage only if the employer:

- a. Informs the tipped employee in advance in writing of his intention to count any tips received from customers as wages, and credit them toward partial satisfaction of the minimum wage obligation;
- b. Pays the tipped employee a cash wage equal to or greater than the tipped minimum wage; and
- c. Is able to establish by the tipped employee’s declaration for Federal Insurance Contributions Act purposes or by its records of charged tips that the total of tips received by the tipped employee and the cash wages paid by the employer is equal to or greater than the minimum wage.

44. The Albuquerque MWO also requires employers to maintain records to demonstrate their compliance with the law. Employers must maintain payroll records for three years that show the hours worked daily by all employees and the wages paid to all employees. Albuquerque MWO, Section 13-12-4(B). When an employer pays the tipped minimum wage, he must also maintain a “tip declaration” signed by the tipped employee for each pay period. *Id.*

Factual Allegations

45. Prior to January 1, 2013, Defendants paid Plaintiffs¹ and other similarly situated servers the state tipped minimum wage of \$2.13. They also required Plaintiffs and other similarly situated servers to “tip out” 2% of their total sales to Defendants. For example, a server who sold \$500.00 worth of food and drink in a shift would be required to pay back \$10.00 in cash at the end of that shift.

46. On or about January 1, 2013—when the higher minimum wage under the Albuquerque MWO went into effect—Defendants increased the “tip out” amounts Plaintiffs and other similarly situated servers were required to pay.

47. Initially, Defendants required Plaintiffs and other similarly situated servers to “tip out” 6% of their total sales.

48. Shortly thereafter, Defendants changed the “tip out” to 2% of total sales, plus \$3.00 an hour for each work hour recorded in Defendants’ timekeeping system. For example, a server who sold \$500.00 worth of food and drink over a five-hour shift would be required to pay Defendants \$25.00 – 2% of gross sales equals \$10.00, and \$3.00 times five hours equals \$15.00.

49. Plaintiffs and other similarly situated servers paid this tip-out in a transaction that took place at the end of each shift, during which Plaintiffs also paid Defendants any funds received from customers who paid their bills in cash. Defendants required Plaintiffs and other similarly situated servers to fill out a “Daily Balancing Sheet” form, on which they calculated 2% of gross sales plus \$3.00 per recorded work hour, in addition to the cash they owed to Defendants from cash sales.

¹ Only Plaintiffs Merriman and Cde Baca were employed by Kelly’s at that time.

50. Defendants and their managerial employees gave varying explanations for the increased tip out, including that they needed to upgrade the kitchen equipment and that their labor costs had increased as a result of the increase in the minimum wage under the Albuquerque MWO.

51. As a result of Defendants' "tip out" requirement, Plaintiffs and other similarly situated servers sometimes owed more in cash at the end of their shifts than they actually earned in cash tips. When this happened, Defendants required Plaintiffs and other similarly situated servers to pay the difference from their wallets, or took the difference out of their paychecks.

52. Defendants also failed to pay Plaintiffs and other similarly situated servers all of the tips customers paid them in credit card transactions. Although Defendants and/or their managers told Plaintiffs and other similarly situated servers that credit card tips they earned would be paid to them on their biweekly paychecks, Defendants actually only paid them the portion of their credit card tips necessary to bring their paycheck wages up to the full minimum wage rate, and retained the rest for themselves.

53. For example, in 2015, when the full minimum wage was \$8.75 and the tipped minimum wage was \$5.25, Defendants only paid out credit card tips on Plaintiffs' and other similarly situated servers' paychecks up to \$3.50 per hour (\$8.75 minus \$5.25) times the number of recorded work hours. If a server earned more than \$3.50 per hour in credit card tips, Defendants retained the difference.

54. Defendants did not inform Plaintiffs and other similarly situated servers in advance in writing of their intention to credit tips as part of wages, as the Albuquerque MWO requires employers to do as a prerequisite to paying the tipped minimum wage.

55. Defendants did not obtain tip declarations signed by Plaintiffs and other similarly situated servers for each pay period, as the Albuquerque MWO requires employers to do as part of their recordkeeping obligations.

56. The tips Plaintiffs and similarly situated servers earned were their property.

57. Defendants' policy or practice of requiring Plaintiffs and similarly situated servers to share their tips with Defendants was prohibited by the Albuquerque MWO as of January 1, 2013.

58. Defendants did not pool or distribute to other tipped employees all of the tips they required Plaintiffs and similarly situated servers to share. Instead, it was Defendants' policy or practice to retain some or all of these tips, which the Albuquerque MWO prohibited as of January 1, 2013.

59. Defendants also failed to pay Plaintiffs and other similarly situated servers a cash wage equal to or greater than the tipped minimum wage, as the Albuquerque MWO requires employers to do as a prerequisite to paying the tipped minimum wage.

60. Defendants knowingly allowed Plaintiffs and other similarly situated servers not to record their work hours in Defendants' timekeeping system when they did not have customer tables assigned to them. Since the \$3.00 per hour portion of the "tip out" was only calculated on recorded work hours, with Defendants' knowledge and consent Plaintiffs and other similarly situated servers often did not clock in until they had customer tables to wait on, and clocked out when their last customers left, so that they would not owe more in cash at the end of the shift than they actually earned in cash tips.

61. As a result of this practice, Plaintiffs and other similarly situated servers worked off the clock before and after they performed tipped work. Such non-tipped work was called

“side work” at Kelly’s, and included rolling silverware, some kitchen prep, and other tasks. When there was no side work to be done, Plaintiffs were required to be available on the Kelly’s premises to begin waiting on tables when customers arrived.

62. Plaintiffs and other similarly situated servers were only paid for the work hours that were recorded in Defendants’ timekeeping system. Plaintiffs and other similarly situated servers thus were not adequately compensated for each hour they actually worked, in violation of the Albuquerque MWO.

63. Defendants were required to maintain records of the hours worked daily by and the wages paid to all employees pursuant to the Albuquerque MWO § 13-12-4(B). Defendants failed to maintain such records for Plaintiffs and other similarly situated servers.

64. As a result of Defendants’ failure to pay minimum and overtime wages required by law, Plaintiffs and other similarly situated servers seek to recover back wages at the full minimum wage rate for each hour worked, less the wages they were actually paid; all tips unlawfully misappropriated from them; statutory liquidated damages equal to twice the amount of back wages owed; compensatory, punitive and injunctive relief; and attorney’s fees and costs.

Class Allegations

65. Plaintiffs bring this action as a class action pursuant to Rule 1-023(A), (B)(2) and (B)(3) NMRA, on behalf of themselves all current or former employees of Defendants who worked in the classification of server on or after January 1, 2013 and who were required to pay a portion of their tips to Defendants (“the Class”).

66. Excluded from the proposed Class are any judge to whom this matter may be assigned and any members of his or her staff.

67. On information and belief, the members of this Class number in excess of 100 and are geographically diverse, such that joinder of all of the individual class members is impracticable. The exact size of the Class and the identities of the individual members thereof are ascertainable through Defendants' records.

68. Plaintiffs' claims are typical of the claims of all the other members of the Class. The claims of Plaintiffs and the other members of the Class are based on the same legal theories and arise from the same unlawful and willful conduct—specifically, the tip misappropriation and nonpayment practices described in this Complaint—resulting in the same injury to the Plaintiffs and to all of the other Class members.

69. The Class has a well-defined community of interest. Defendants have acted and failed to act on grounds generally applicable to Plaintiffs and the other members of the Class, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the Class members.

70. There are many questions of law and fact common to the claims of Plaintiffs and the other members of the Class, and those questions predominate over any questions that may affect individual Class members.

71. Common questions of law and fact affecting members of the Class include, but are not limited to:

a. Whether Defendants had a policy or practice of unlawfully requiring Plaintiffs and other similarly situated servers to give Defendants a portion of their cash tips;

b. Whether Defendants had a policy or practice of unlawfully retaining a portion of the credit card tips that Plaintiffs and other similarly situated servers earned;

c. Whether Defendants had a policy or practice of pooling and/or distributing the money they collected from Plaintiffs and other similarly situated servers among tipped employees, or of retaining it for themselves;

d. Whether Defendants had a had a policy or practice or failing to inform Plaintiffs and other similarly situated servers in advance in writing of their intention to credit tips as part of wages;

e. Whether Defendants had a policy or practice of failing to pay Plaintiffs and other similarly situated servers a cash wage equal to or greater than the tipped minimum wage;

f. Whether Defendants had a policy or practice of requiring and/or encouraging Plaintiffs and other similarly situated servers to perform work “off the clock”;

g. Whether Defendants’ tip out practices had the effect of encouraging employees to work “off the clock” when there were few or no customers so as to avoid “owing” Defendants less money;

h. Whether Defendants’ policies or practices entitled them to credit tips Plaintiffs and other similarly situated servers earned toward partial satisfaction of their minimum wage obligation under the Albuquerque MWO;

i. Whether Defendants were unjustly enriched by their practices;

j. Whether Defendants converted the property of Plaintiffs and other similarly situated servers —i.e., their tips—to Defendants’ own use.

k. The nature and extent of class-wide injury and the measure of damages for those injuries.

72. Absent a class action, most Class members would find the cost of litigating their claims to be prohibitive, and would have no effective remedy. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants, and promotes consistency and efficiency of adjudication.

73. Plaintiffs will fairly and adequately represent and protect the interests of the other members of the Class. Plaintiffs have retained counsel with substantial experience in prosecuting complex litigation and class actions.

74. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the other Class members, and have the financial resources to do so. Neither Plaintiffs nor their counsel have any interest adverse to those of the other Class members.

**Count I: Violation of the Tip Retention Provisions
of the Albuquerque Minimum Wage Ordinance
(Ord. 12-2006, § 13-12-1, *et seq.*)**

75. Plaintiffs incorporate herein the previous allegations of this complaint.

76. At all times relevant to this action, Plaintiffs and the Class were employees, and Defendants were their employers, within the meaning of the Albuquerque MWO.

77. The tips Plaintiffs and the Class earned were their property, and Defendants were prohibited from requiring Plaintiffs and the Class to share their tips under the Albuquerque MWO, § 13-12-3(A).

78. Plaintiffs and the Class are entitled to damages to remedy Defendants' conduct in the amount of the tips that Defendants misappropriated from them, and an additional amount of statutory liquidated damages equal to twice this amount, pre- and post-judgment interest,

injunctive relief, and costs and expenses of suit and reasonable attorney's fees, pursuant to Ord. 12-2006, § 13-12-5(B).

79. Defendants were aware or should have been aware that their policies and practices with respect to tip misappropriation were unlawful. Defendants did not make a good faith effort to comply with the Albuquerque MWO with respect to the right of Plaintiffs and the Class to retain all tips earned.

**Count II: Violation of the Minimum Wage Provisions
of the Albuquerque Minimum Wage Ordinance
(Ord. 12-2006, § 13-12-1, *et seq.*)**

80. Plaintiffs incorporate herein the previous allegations of this complaint.

81. Defendants did not inform Plaintiffs and the Class in advance in writing of their intention to credit tips as part of wages, as employers must do as a prerequisite to paying the tipped minimum wage under the Albuquerque MWO, § 13-12-3(A).

82. Defendants failed to pay Plaintiffs and the Class a cash wage equal to or greater than the tipped minimum wage, as employers must do as a prerequisite to paying the tipped minimum wage under the Albuquerque MWO, § 13-12-3(A).

83. Defendants misappropriated the tips of Plaintiffs and the Class, in violation of the Albuquerque MWO, § 13-12-3(A).

84. Due to Defendants' violations of the Albuquerque MWO described herein, Defendants were not entitled to count the tips that Plaintiffs and the Class earned as wages, or to credit their tips toward partial satisfaction of the minimum wage.

85. Plaintiffs and the Class are entitled to damages to remedy Defendants' conduct, in the amount of their back wages at the full minimum wage rate for each hour worked, less the wages they were actually paid, statutory liquidated damages equal to twice this amount, pre- and

post-judgment interest, injunctive relief, and costs and expenses of suit and reasonable attorney's fees, pursuant to Ord. 12-2006, § 13-12-5(B).

86. Defendants were aware or should have been aware that their compensation policies and practices were unlawful. Defendants did not make a good faith effort to comply with the Albuquerque MWO with respect to the compensation of Plaintiffs and the Class.

**Count III: Violation of the Recordkeeping Provisions
of the Albuquerque Minimum Wage Ordinance
(Ord. 12-2006, § 13-12-1, *et seq.*)**

87. Plaintiffs incorporate herein the previous allegations of this complaint.

88. Defendants did not maintain payroll records showing the actual hours Plaintiffs and the Class worked.

89. Defendants did not maintain tip declarations signed by Plaintiffs and the Class for each pay period.

Count IV: Unjust Enrichment

90. Plaintiffs incorporate herein the previous allegations of this complaint.

91. Plaintiffs and the Class are entitled to payment for all hours worked for Defendants, as well as retention of tips paid to them by customers

92. Defendants failed to pay Plaintiffs and the Class for all hours worked, failed to properly account for their tips, retained the fruits of the labor of Plaintiffs and the Class, and retained the monies that should have been paid to Plaintiffs and the Class as wages for hours worked and/or tips.

93. Defendants were unjustly enriched by their refusal to pay Plaintiffs and the Class for all hours worked, and have benefited at their expense.

94. Defendants should be required to disgorge this unjust enrichment.

Count V: Conversion

95. Plaintiffs incorporate herein the previous allegations of this complaint.

96. Through the foregoing actions relating to the tips of Plaintiffs and the Class, Defendants have unlawfully exercised dominion and control over their property, specifically tips provided them by customers.

97. Through the foregoing actions relating to the tips of Plaintiffs and the Class, Defendants are in unlawful possession of the property of Plaintiffs and the Class, specifically tips provided them by customers.

98. Through the foregoing actions relating to the tips of Plaintiffs and the Class, Defendants have acted in exclusion and/or defiance of the property rights of Plaintiffs and the Class.

99. Defendants' actions constitute an unauthorized and injurious use of the property of Plaintiffs and the Class, specifically tips provided them by customers.

100. Plaintiffs and the Class are entitled to compensatory and punitive damages as a result of Defendants' conversion of their property, in an amount to be determined at trial.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray that:

- a. This matter be heard before a jury;
- b. The Court certify the Class set forth above pursuant to Rules 1-023(A), (B)(2) and (B)(3) NMRA;
- c. The Court designate Plaintiffs as class representatives and counsel of record as Class Counsel;
- d. The Court award Plaintiffs and the Class the tips that Defendants unlawfully misappropriated;
- e. The Court award Plaintiffs and the Class back wages;

- f. The Court award Plaintiffs and the Class statutory liquidated damages;
- g. The Court award Plaintiffs and the Class compensatory damages;
- h. The Court award Plaintiffs and the Class punitive damages;
- i. The Court award Plaintiffs and the Class pre-judgment and post-judgment interest as permitted by law;
- j. The Court order Defendants to cease their unlawful practices;
- k. The Court order that Defendants to pay the costs and attorneys' fees of Plaintiffs and the Class, pursuant to the Albuquerque MWO, Section 13-12-5(B); and
- l. The Court award Plaintiffs and the Class such other and further relief as may be necessary and appropriate.

Dated: April 29, 2016

Respectfully submitted,

YOUTZ AND VALDEZ, P.C.

/s/ Shane Youtz

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