

COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT
STATE OF NEW MEXICO

NO. D-101-CV-2017-00139

JOSE OLIVAS, OCTAVIO RIOS OLIVAS,
BLAKE CAHILL, and ALVARO BRAVO, as
individuals and class representatives; EL
CENTRO DE IGUALDAD Y DERECHOS,
NM COMUNIDADES EN ACCION Y DE FÉ,
ORGANIZERS IN THE LAND OF
ENCHANTMENT, and SOMOS UN PUEBLO
UNIDO, New Mexico membership-based
organizations representing low-income
workers;

Plaintiffs,

vs.

CELINA BUSSEY, Secretary of the New
Mexico Department of Workforce Solutions,
JASON DEAN, Director of the Labor
Relations Division of the Department of
Workforce Solutions; and the NEW MEXICO
DEPARTMENT OF WORKFORCE
SOLUTIONS, an executive agency;

Defendants.

ORDER DENYING DEFENDANTS'
MOTION TO DISMISS

THIS MATTER having come before the Court for hearing on April 17, 2017 on Defendants' Motion to Dismiss, and the Court having considered and reviewed all matters of record in this case and being otherwise advised finds that under the standing of NMRA 1-012, the Motion is not well-taken and the Court hereby **DENIES** Defendants' Motion to Dismiss.

In considering a motion to dismiss under SCRA 1986, Rule 1-012(B)(6), the well-pleaded facts alleged in the complaint are taken as true. *State ex rel. Risk Management Division v. Gathman-Matotan Architects & Planners, Inc.*, 98 N.M. 790, 653 P.2d 166 (Ct.App.1982). In

order to state a cause of action, plaintiff must allege facts which, if proven, would allow relief. *Vigil v. Arzola*, 102 N.M. 682, 699 P.2d 613 (Ct.App.1983). A motion to dismiss should not be granted unless the court determines that the plaintiff cannot obtain relief under any state of facts provable under the alleged claims. *Eldridge v. Sandoval County*, 92 N.M. 152, 584 P.2d 199 (Ct.App.1978).

Hern v. Crist, 735 P.2d 1151, 1153, 105 N.M. 645, 647 (N.M.App., 1987).

1. Defendants' Motion to Dismiss Count I is **DENIED**.
2. Defendants' Motion to Dismiss Count II is **DENIED**.
3. Defendants' Motion to Dismiss Count III is **DENIED**.
4. Count IV:

The provision at issue reads:

§ 50-4-26. Enforcement; penalties; employees' remedies

A. An employer who violates any of the provisions of the Minimum Wage Act is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

B. The director of the labor relations division of the workforce solutions department shall enforce and prosecute violations of the Minimum Wage Act. The director may institute in the name of the state an action in the district court of the county wherein the employer who has failed to comply with the Minimum Wage Act resides or has a principal office or place of business, for the purpose of prosecuting violations. The district attorney for the district wherein any violation hereof occurs shall aid and assist the director in the prosecution.

C. In addition to penalties provided pursuant to this section, an employer who violates any provision of Section 50-4-22 NMSA 1978 shall be liable to the employees affected in the amount of their unpaid or underpaid minimum wages plus interest, and in an additional amount equal to twice the unpaid or underpaid wages.

D. An action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and on behalf of the employee or employees and for other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action on behalf of all employees similarly situated.

§ 50-4-26. Enforcement; penalties; employees' remedies, NM ST § 50-4-26.

Defendant cites for authority a Federal Court decision that § 50-4-26(c) does not account for treble damages for “overtime” claims.

This is the portion of the case upon which Defendant relies:

The parties dispute whether the treble damages clause in N.M.S.A.1978, § 50–4–26(C) applies both to violations of the minimum wage and overtime provisions, or solely to minimum wage violations. This is a matter of statutory interpretation and therefore is a purely legal issue on which the parties are entitled to judgment as a matter of law. The relevant portion of the statute provides that, “[i]n addition to penalties provided pursuant to this section, an employer who violates any provision of Section 50–4–22 NMSA 1978 shall be liable to the employees affected in the amount of their unpaid or underpaid minimum wages plus interest, and in an additional amount equal to twice the unpaid or underpaid wages.” Research has not revealed any pertinent interpretation of this section of the NMMWA; the Court will thus repair to interpretations of comparable portions of the FLSA to aid in its construction of the ambiguous statutory text. *See, e.g., Bishop v. Evangelical Good Samaritan Soc’y*, 146 N.M. 473, 212 P.3d 361, 364–65 (2009) (“when presented with a question of statutory construction, we begin our analysis by examining the language utilized by the Legislature, as the text of the statute is the primary indicator of legislative intent” but courts must avoid interpretations that “would be absurd, unreasonable, or otherwise inappropriate in application”); *Schlumberger*, 2010 WL 9007208 at 4 (New Mexico courts often refer to analogous sections of the FLSA where the NMMWA is ambiguous); *Armijo v. Wal-Mart Stores, Inc.*, 142 N.M. 557, 168 P.3d 129, 144 (N.M.Ct.App.2007) (looking to a “similar provision” in the FLSA where the New Mexico “Act does not define the term” and “and there is no appellate decision in New Mexico” resolving the question).

Garcia v. Crossmark, Inc., 157 F.Supp.3d 1046, 1052–53 (D.N.M., 2015).

In this Court’s view the analogy to the FLSA is not required. Instead, the Court turns to the simple reading of Chapter 50 definitions which state:

B. “Wages” shall mean all amounts at which the labor or service rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, commission basis **or other method of calculating such amount.**

§ 50-4-1. Definitions, NM ST § 50-4-1

The legislature then goes on to define Minimum Wages as follows:

A. An employer shall pay an employee the minimum wage rate of six dollars fifty cents (\$6.50) an hour. As of January 1, 2009, an employer shall pay the minimum wage rate of seven dollars fifty cents (\$7.50) an hour.

B. An employer furnishing food, utilities, supplies or housing to an employee who is engaged in agriculture may deduct the reasonable value of such furnished items from any wages due to the employee.

C. An employee who customarily and regularly receives more than thirty dollars (\$30.00) a month in tips shall be paid a minimum hourly wage of two dollars thirteen cents (\$2.13). The employer may consider tips as part of wages, but the tips combined with the employer's cash wage shall not equal less than the minimum wage rate as provided in Subsection A of this section. All tips received by such employees shall be retained by the employee, except that nothing in this section shall prohibit the pooling of tips among employees.

D. An employee shall not be required to work more than forty hours in any week of seven days, unless the employee is paid one and one-half times the employee's regular hourly rate of pay for all hours worked in excess of forty hours. For an employee who is paid a fixed salary for fluctuating hours and who is employed by an employer a majority of whose business in New Mexico consists of providing investigative services to the federal government, the hourly rate may be calculated in accordance with the provisions of the federal Fair Labor Standards Act of 1938¹ and the regulations pursuant to that act; provided that in no case shall the hourly rate be less than the federal minimum wage.

§ 50-4-22. Minimum wages, NM ST § 50-4-22

Respectfully, the statutory language is clear. For violation of ANY provision of Section 50-4-22 the remedies are liquidated damages plus and additional amount equal to twice the unpaid or underpaid wages. Wages, includes, any method of calculating wages earned such as those in excess of 40 hours of work. See § 50-4-22. This Court must give effort to statutes as written.

The first approach, relied on by the Court of Appeals in the decision reviewed here on certiorari, *State ex rel. Helman v. Gallegos*, 114 N.M. 414, 839 P.2d 624 (Ct.App.1992), is often called the “plain meaning” rule.

The Court of Appeals summarized this approach as follows: “ ‘State statutes are to be given effect as written and, where they are free from ambiguity, there is no room for construction; where the meaning of statutory language is plain, and words used by the legislature are free from ambiguity, there is no basis for

interpreting the statute....' ” *Id.* at 416, 839 P.2d at 626 (quoting *Johnson v. Francke*, 105 N.M. 564, 566, 734 P.2d 804, 806 (Ct.App.1987)).

State ex rel. Helman v. Gallegos, 871 P.2d 1352, 1353, 117 N.M. 346, 347 (N.M., 1994)

These Defendants’ Motion to Dismiss Count IV is **DENIED**. The prevailing party shall submit a final Order consistent with the ruling.

IT IS SO ORDERED.

A handwritten signature in cursive script that reads "David K. Thomson".

HONORABLE DAVID K. THOMSON
District Court Judge, Division VI

A copy of this Order will be emailed on date of acceptance for e-filing to all counsel who registered for service in this case as required by the rules.

Elizabeth Wagoner
elizabeth@nmpoertylaw.org
NEW MEXICO CENTER ON LAW AND POVERTY
924 Park Avenue SW, Suite C
Albuquerque, NM 87102
Phone: (505) 255-2840

Daniel Yohalem
dyohalem@aol.com
1121 Paseo de Peralta
Santa Fe, New Mexico 87501
Phone: (505) 983-9433

Counsel for All Plaintiffs

Gabriela Ibañez Guzmán
gguzman.uwc@gmail.com
SOMOS UN PUEBLO UNIDO
1804 Espinacitas St.
Santa Fe, NM 87505
Phone: (505) 983-6247

*Counsel for Plaintiffs Olivas,
Rios Olivas, and Somos Un Pueblo Unido*

Christopher T. Saucedo
csaucedo@saucedochavez.com
Daniel Apodaca
DApodaca@saucedochavez.com
SAUCEDOCHAVEZ, P.C.
800 Lomas Blvd. NW, Suite 200
Albuquerque, N.M. 87102
Phone: (505) 338-3945

Counsel for Defendants