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Press Release

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Workers and Community Groups File Lawsuit Against Department of Workforce Solutions for Failing to Enforce State Wage & Hours Laws

SANTA FE - Today, New Mexicans whose legal rights were violated by the state Department of Workforce Solutions (DWS) announced the filing of a lawsuit to remedy the DWS's failure to enforce our state's wage payment laws.

The lawsuit is seeking an injunction to require the DWS to enforce the law and investigate wage theft claims. The suit addresses the DWS's illegally imposed \$10,000 cap on investigating wage theft claims; their illegal practice of not investigating or taking any enforcement action on wage claims that go back more than one year; the fact that the DWS does not hold employers liable for any statutory damages at all at the administrative enforcement phase of a case; and the fact that the DWS closes or refuses to open claims when workers can't get through the DWS's administrative red tape, even when the claims are strong (*fact sheet with more details attached.*)

The lawsuit was filed by four workers who were victims of wage theft and workers' rights organizations El Centro de Igualdad y Derechos, NM Comunidades en Accion y de Fé (CAFÉ), Organizers in the Land of Enchantment (OLÉ), and *Somos Un Pueblo Unido*. Elizabeth Wagoner of the New Mexico Center on Law and Poverty (NMCLP) is lead counsel on a legal team that includes NMCLP's Gail Evans, Tim Davis, Santa Fe attorney Daniel Yohalem and Gabriela Ibañez Guzmán of *Somos Un Pueblo Unido*.

One of the plaintiff workers, Jose "Pancho" Olivas of Gallup, worked full-time in a restaurant in Farmington from 2014 to 2015, and his employer failed to pay him approximately \$15,000 in wages. The department refused to accept his claim because it exceeded \$10,000, even though DWS is legally required to investigate.

"Not being paid the money I was owed hurt my whole family financially--my wife, children and grandchildren--and we still haven't recovered." said Olivas, a member of

Somos Un Pueblo Unido and plaintiff in the complaint. "The department's refusal to investigate my case sends the wrong message to workers about their rights and lets bad employers off the hook."

New Mexico has some of the country's strongest state-level protections against wage theft. These include: (1) Mandatory statutory damages to victims of wage theft, calculated as full back wages, plus interest, plus double damages; (2) At least a three-year statute of limitations, or longer when the violation is part of a "continuing course of conduct"; (3) A minimum wage of \$7.50 and overtime pay for hours over 40 at one-and-one-half times the employee's regular hourly rate; (4) the department must investigate and take legal action on valid and enforceable claims filed by workers who cannot afford private attorneys.

"A strong law is only as good as the enforcement framework behind it," said Elizabeth Wagoner, a Supervising Attorney with the New Mexico Center on Law and Poverty and lead counsel on the case. "Our state legislature has done its job to fight wage theft by passing one of the strongest anti-wage theft bills in the country. But the political appointees at DWS have failed working people by carving out enforcement exceptions and loopholes that allow employers who steal wages to get away with paying far less than the law requires. DWS is a law enforcement agency that refuses to enforce the law, and we have filed this case to make sure the agency does its job for working people."

The following are statements from the workers' rights organizations that are plaintiffs in the case and a business owner:

"In 2009, low-wage workers organized for stronger anti-wage theft laws to counter retaliation and hold unscrupulous employers accountable," said Marcela Díaz, Executive Director of *Somos Un Pueblo Unido*. "It is shameful that despite strong bipartisan support for these legal protections, this administration chooses to ignore the legislature and side with the wage thieves. In New Mexico's tough economic climate, working families and law abiding businesses are the ones suffering the consequences."

Rachel Lazar, Executive Director of El CENTRO states, "As an Albuquerque-based immigrants rights and worker justice organization with close to 4,000 members, we see first-hand the prevalence and traumatic impact wage theft has on Albuquerquean families. Not only does wage theft rob a worker of their ability to take care of their families, it robs New Mexico's already depleted budget of additional revenue, and it puts businesses that are doing the right thing at a competitive disadvantage. DWS must play an important role in stopping wage theft in New Mexico. Instead, the Martinez Administration is, again, abandoning hard working New Mexicans through a strategy of capricious and deliberate non-enforcement of state labor laws."

"We stand with our partners from across the state who are working to ensure that DWS follows the law," said Sarah Silva, Executive Director for Comunidades en Accion y Fé" (CAFé) based in Las Cruces. "As a faith based organization we believe in standing with

all workers from across New Mexico who are experiencing wage theft. We hope this lawsuit brings justice to those families now and in the future."

Kris Buchman, owner of Lux Lash and Beauty Bar in Albuquerque states, "My business has been open less than a year, but I am already seeing great success. Part of my success is because of my excellent staff, who are paid fair wages for their hard work. I am a locally based business and I treat my clients and employees with the respect they deserve. Unfortunately, there are businesses that do not treat their employees with respect and do not compensate them for their hard work. There are laws to protect employees and their wages, yet the Department of Workforce Solutions is not enforcing those laws and they are further cheating the hard working people of New Mexico. By not investigating wage theft claims, DWS is not in compliance with the law. In other words, they are breaking laws and further abusing the very workers they represent. I call on the Department of Workforce Solutions to enforce their own."

The defendants in the lawsuit are the DWS, Cabinet Secretary Celina Bussey, and Labor Relations Division Director Jason Dean.

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**El CENTRO de Igualdad y Derechos is a grassroots, immigrants' rights and workers' justice organization based in Albuquerque, NM that works with Latino immigrant communities and allies to defend, strengthen, and advance the rights of our community.*