

## FOR IMMEDIATE RELEASE

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### Settlement in lawsuit against DWS ensures enforcement of New Mexico wage payment laws

#### *Plaintiffs claim agreement is a victory for wage theft victims*

SANTA FE , NM – Today, workers and workers' rights organizations announced a settlement agreement with the Department of Workforce Solutions (DWS) that ensures state government will carry out its duty to enforce New Mexico's strong anti-wage theft laws and hold employers accountable when they violate these laws. The workers and DWS filed a joint motion Tuesday evening in the First Judicial District Court asking Judge Thomson to approve the class action settlement agreement.

The class action settlement agreement is a win for New Mexico workers and is the result of years of work by the workers and workers' rights organizations who advocated for passage of a 2009 law imposing stronger anti-wage theft protections, and who filed a 2017 lawsuit to require DWS to enforce those protections. The case, *Olivas v. Bussey*, was filed in January 2017 by four victims of wage theft and workers' rights organizations El CENTRO de Igualdad y Derechos, New Mexico Comunidades en Acción y de Fé (CAFÉ), Organizers in the Land of Enchantment (OLÉ), and *Somos Un Pueblo Unido*. The plaintiffs claimed that DWS had failed to investigate and resolve wage claims concerning violations of New Mexico's wage payment laws.

"Workers need state agencies like the Department of Workforce Solutions to level the playing field," said Jose "Pancho" Olivas, a member of *Somos Gallup*, *Somos Un Pueblo Unido's* affiliate in McKinley County and plaintiff in the complaint. "I am very proud to have joined other workers in this lawsuit to ensure that our government is doing its job and working for the people of our state. Because of this settlement, me and my wife will be able to move forward with our complaints and I know workers in other rural communities like Gallup will too. We work hard for every single dollar and will not hesitate to stand up for what is right when the stakes for our families are so high."

Low-wage workers – who are particularly vulnerable to being taken advantage of by their employers – are more organized and powerful than ever. The settlement is indicative of their success in fighting the unfair practices of dishonest employers, and exercising their right to hold their government accountable.

"This settlement is a hard-earned victory for New Mexican working families, and now we will pivot to ensure this settlement, and all New Mexico's labor laws, are being implemented correctly," said Sabina Armendariz, an immigrant low-wage worker, single mother, and active member of El CENTRO. "We will continue organizing alongside other low-wage workers, and we will keep using everything at our disposal to fight for workers' rights so that all New Mexicans can provide for their families."

Under the settlement agreement, many workers whose cases the DWS Labor Relations Division (LRD) rejected for improper reasons in the past will have the right to a re-investigation of their cases. A notice explaining how workers can seek a re-investigation will be available on the Department of Workforce Solutions website once it is approved by Judge Thomson. Workers may also contact any of the plaintiff organizations for help.

"New Mexicans want to provide for their families and build financial security, and deserve to be treated fairly," said Elizabeth Wagoner of the New Mexico Center on Law and Poverty, lead counsel for the plaintiffs. "DWS leadership worked diligently with us on a settlement that ensures hardworking people who

experience violations of New Mexico's wage payment laws can access their legal right to an investigation of their claims, so that they can recover wages owed."

LRD has also taken the following steps to end the practices challenged in the lawsuit:

- LRD will now investigate all wage claims, regardless of their dollar value;
- LRD will take enforcement action on wage claims going back three years, or longer if the violation is part of a continuing course of conduct;
- Employers who fail to pay minimum or overtime wages must pay damages to wage claimants, calculated at three times the value of the unpaid wages, when a case reaches the administrative enforcement phase and is not resolved in settlement;
- LRD will no longer close wage claims for impermissible procedural reasons; and
- LRD will provide language access services to all wage claimants who need it, by requesting each claimant's language preference on the claim form, providing interpretation in each telephonic and in-person interaction, translating all form letters and claim forms into Spanish, allowing claimants to fill out claim forms in any language, and offering an interpreter to anyone who telephones the agency.

In addition, LRD will revamp its policies and procedures so that the agency is in compliance with the New Mexico wage laws. This includes the adoption of a publicly-available investigations manual that lays out how LRD will enforce the law, which LRD and attorneys for the plaintiffs will write together. Attorneys for the plaintiffs will also review worker case files to identify wage claims that LRD may consider for workplace-wide enforcement action. In addition, the department will inform workers of their rights under the agreement, including how to file an unpaid wage claim, through several means of public notice, including website revisions, radio and social media.

Elizabeth Wagoner of the Center is lead counsel for the plaintiffs on the *Olivas v. Bussey* legal team that includes the Center's Gail Evans and Tim Davis, Santa Fe attorney Daniel Yohalem, and Gabriela Ibañez Guzmán of Somos Un Pueblo Unido.

A copy of the submitted settlement agreement [can be found here](#).

Photographs from today's press conference in Santa Fe [can be found here](#). A recorded "Facebook Live" video of the press conference [can be found here](#).

**The following additional statements are from individual plaintiffs and representatives from plaintiff organizations:**

"In 2009, the state legislature passed a law recognizing the harmful impact wage theft has on working families, law-abiding employers and local economies," said Marcela Díaz, Executive Director of *Somos Un Pueblo Unido*. "And when the Legislature passes a law that is supposed to give workers a fair shot at recuperating their stolen wages, we expect state agencies like the Department of Workforce Solutions to do their job. Workers will continue to ensure that this settlement is honored."

"This is what is possible when workers come together," said Moises Penagos Ruiz a member of Familia Unidas Por Justicia, a Somos affiliate group in San Juan County, and a class member in the lawsuit. "I believe that our state government should thoroughly investigate wage theft claims, especially if two or more workers come forward from the same workplace claiming they are victims. And now, my case, and those of my co-workers, will move forward. If DWS fulfills its role, we believe that we can eradicate wage theft once and for all."

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