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Contact:

Alex Curtas, Center for Civic Policy

Phone: [505-312-5402](tel:505-312-5402)

Email: alex@progressnownm.org

Wage theft lawsuit concludes in win for New Mexico workers

Judge approves final class action settlement agreement in lawsuit brought by low-wage workers against the Department of Workforce Solutions for failing to enforce New Mexico's wage payment laws

SANTA FE – Today, after hearing public testimony, First Judicial District Court Judge David K. Thomson approved a class action settlement agreement between workers and workers' rights organizations and 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.

"This is a victory for low-wage workers and proof that when we come together, we can hold powerful institutions accountable," said Jose "Pancho" Olivas, a member of Somos Gallup, *Somos Un Pueblo Unido's* membership team in McKinley County and lead plaintiff in the complaint. "For too long wage thieves were let off the hook. Because of this settlement, DWS will not only enforce our 2009 anti-wage theft law but will do more to ensure workers have a fair shot at recouping their stolen wages."

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.

"We all deserve to be treated fairly by our employers and paid for every hour that we work," said Elizabeth Wagoner of the New Mexico Center on Law and Poverty, lead counsel for the plaintiffs. "DWS diligently worked with us on this settlement agreement to make sure that hardworking people who experience violations of New Mexico's wage payment laws can access their legal right to an investigation of their claims and recover wages owed."

"In 2009, low-wage workers came together to strengthen protections against wage theft in New Mexico," said Gabriela Ibañez Guzmán, staff attorney with *Somos Un Pueblo Unido's* Worker Center and co-counsel in the lawsuit. "This legislation passed both chambers with a wide margin because wage theft hurts everyone, workers, law-abiding businesses and local economies. But our laws are only as good as the appropriate government agencies are willing to enforce them. This settlement sends a message that enforcement should be a priority."

Now that the court has issued final approval of the settlement agreement, DWS will begin accepting requests from workers to re-investigate wage claims that DWS did not initially accept or correctly investigate. This includes workers who experienced the following problems:

- DWS rejected or returned the claim form without investigating the claim;
- DWS rejected, closed, or incompletely investigated the wage claim because of an unlawful \$10,000 cap or one-year time limit;
- DWS made a decision in favor of the employer for an improper jurisdictional reason;
- DWS closed the wage claim after the employee or employer missed a deadline or hearing.

"When my sister and I went to the Department of Workforce Solutions to file our wage claims, we experienced problems communicating with the people in this office because they did not provide translation services," said Sabina Armendariz, a low-wage immigrant worker, single mother, and member of El CENTRO de Igualdad y Derechos. "Now, all Spanish speakers will receive equal access to DWS services. This settlement agreement is an example of what can happen when low-wage workers organize to confront labor abuses and work to hold accountable the very government institutions entrusted with enforcing the laws. We encourage other workers to come forward and present their cases."

Several workers plan on filing their wage theft complaints with DWS after the hearing.

"I look forward to filing my wage theft complaint along with three of my co-workers," said Yesenia Sanchez, mother of three children and a member *Somos Un Pueblo Unido's* United Worker Center. "I am happy to know that our complaints will be taken seriously and not be turned away."

Beginning on March 16, DWS will also take several steps to notify workers about their rights, including running radio ads in English and Spanish, providing information about the wage claim process on the homepage of the DWS website, mailing notice to the class with instructions about the right to request a re-investigation, and posting notices in all DWS offices statewide.

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.

Plaintiff workers and organizations and DWS [filed a joint motion on December 20, 2017 in the First Judicial District Court](#) asking Judge Thomson to approve the class action settlement agreement.

"Language barriers should not be a reason why New Mexican workers suffer from wage theft. People with limited English language access should be kept fully informed by state government agencies such as DWS and should not have additional limitations when filing or pursuing wage theft claims. Our message is loud and clear; we will not rest until we end wage theft and labor abuses in New Mexico," said Javier Castillo Chavez, a low-wage immigrant worker and member of El Centro who's wage claim case was successful thanks to the new DWS regulations put in place because of the class action settlement agreement.

In addition to re-investigating prior wage claims and notifying workers of their rights, DWS has also implemented the following policies to end the practices challenged in the lawsuit:

- LRD investigates all wage claims, regardless of their dollar value;
- LRD takes 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;
- LRD no longer closes wage claims for impermissible procedural reasons; and
- LRD provides 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 has revamped 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 enforces the law, which LRD and attorneys for the plaintiffs are writing together. Attorneys for the plaintiffs will also review worker case files to identify wage claims that LRD may consider for workplace-wide enforcement action.

People who experienced a problem with a wage claim at DWS should request a re-investigation or contact:

- New Mexico Center on Law and Poverty: [\(505\) 255-2840](tel:5052552840)
- Somos Un Pueblo Unido: [\(505\) 424-7832](tel:5054247832)
- El CENTRO de Igualdad y Derechos: [\(505\) 246-1627](tel:5052461627)

The notice of rights, claim form, and instructions for requesting a re-investigation will be available in a link from the DWS website homepage on or before March 16.

Elizabeth Wagoner of the New Mexico Center on Law and Poverty is lead counsel on a legal team that includes the Center's Gail Evans, Stephanie Welch, and Juan Martinez, Santa Fe attorney Daniel Yohalem, and Gabriela Ibañez Guzmán of Somos Un Pueblo Unido.

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