

SECOND JUDICIAL DISTRICT COURT  
COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

STEPHEN CHAVEZ, BENJAMIN JARAMILLO  
DULCE HERNANDEZ, IRMA LUNA, and,  
BERNARDA NIEVES, on behalf of themselves and  
other individuals similarly situated.

Plaintiffs,

v.

No. D-202-CV-2020-\_\_\_\_\_

NODEL PARKS, LLC, AZTEC VILLAGE MHC, LLC, dba  
AZTEC VILLAGE MANUFACTURED HOME COMMUNITY,  
RICHARD NODEL, individually, and as owner of Nodel Parks, LLC,  
ED SUMMONS, individually, and as authorized agent for Nodel Parks, LLC,  
and MAGDALENA VILA, individually, and as authorized agent for  
Aztec Village MHC, LLC

Defendants.

**CLASS ACTION COMPLAINT SEEKING DECLARATORY AND INJUNCTIVE  
RELIEF, RESTITUTION AND DAMAGES FOR MOBILE HOME PARK RESIDENTS  
FOR VIOLATIONS OF NEW MEXICO HOUSING AND CONSUMER LAWS**

**INTRODUCTION**

1. This is a class action to prevent over 150 families from being illegally charged fines and fees and evicted from their long-time homes and community. Plaintiffs seek declaratory and injunctive relief, restitution and damages.

2. Plaintiffs are low-income families who reside in Aztec Village Mobile Home Community (Aztec Village), a mobile home park located in Albuquerque that is owned and operated by Defendants. Over 150 families live in Aztec Village. Many of the families own the homes in which they reside and rent a lot from Defendants. Many of the residents have lived in their homes for decades – in some cases more than 40 years. Over the years, Plaintiffs have

formed strong ties to their community and have developed strong relationships with their neighbors.

3. Defendants illegally impose new community rules without following the process required by state law, then illegally charge low-income residents fines and fees for purported violations of those rules, and threaten them with eviction in order to collect the illegal fines and fees.

4. The impact of Defendants' illegal actions cause residents, including named Plaintiffs, financial hardship when they are coerced into paying illegal fines and fees they do not owe, as well as extreme stress, anxiety and inconvenience, due to the threatened displacement from their homes, disruption of their lives and loss of their community.

5. Families that have been illegally charged fines and fees and threatened with eviction are facing a dire emergency. They cannot afford to pay illegal fines and cannot afford the costs associated with an eviction, which are particularly high for a mobile home park resident. After years, and in most cases over a decade, in place, many "mobile" homes are unable to structurally withstand a move to another location. Even if relocating the home is possible, low-income families cannot afford the cost of moving their home. Because families facing eviction from a home they own cannot afford to pay the lot rent for a home in which they no longer reside, they have no choice but to sell their homes at a significant loss. Many of these families will not be able to afford to relocate to another residence at all, rendering them homeless.

6. Policies and practices such as those being imposed by Defendants push families out of their communities and onto the streets at a time when our state is facing a housing crisis. According to the United States Housing and Urban Development Department, New Mexico had

the largest rise in homelessness in the United States, with a 27% increase from 2018 to 2019.<sup>1</sup> Homelessness in Albuquerque, alone, rose by 15% in the same time period.<sup>2</sup> Mobile homes are the single greatest source of non-subsidized affordable housing in the United States.<sup>3</sup>

7. The New Mexico legislature, recognizing the inherent vulnerability of mobile home park residents, enacted the New Mexico Mobile Home Park Act to provide special protections for mobile home owners who reside in a park, to prevent abusive landlord practices. *See Green Valley Mobile Home Park v. Mulvaney*, 1996-NMSC-037, ¶¶ 12-13, 121 N.M. 817, 820, 918 P.2d 1317, 1320.

8. The New Mexico Mobile Home Park Act, NMSA 1978 § 47-10-1 to -23 (2007), governs the relationship between mobile home park owners and residents in New Mexico. Where the MHPA does not conflict with the Uniform Owner Resident Relations Act, the Uniform Owner Resident Relations Act governs the relationship between the mobile home park owners and residents. NMSA 1978 §47-8-1 to -52 (2007).

9. Pursuant to the Mobile Home Parks Act (MHPA), NMSA 1978 § 47-10-1 to -23 (2007), the Uniform Owner-Resident Relations Act (UORRA), NMSA 1978 §47-8-1 to -52 (2007), the Unfair Practices Act (UPA), NMSA 1978, § 57-12-1 to -26 (2019), and the Declaratory Judgment Act, NMSA 1978 § 44-6-1 to -15, Plaintiffs seek restitution and damages, as well as declaratory and injunctive relief, requiring Defendants to abide by state law. Plaintiffs also assert that Defendants' actions constitute negligence, negligence *per se*, negligent hiring and

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<sup>1</sup> Rick Nathanson, NM's Rise in Homelessness Highest in the Nation, Albuquerque Journal, Jan. 9, 2020. <https://www.abqjournal.com/1408348/nms-rise-in-homelessness-tops-nation-hud-reports-27-increase-in-one-year.html>.

<sup>2</sup> *Id.*

<sup>3</sup> Emma Whitford, Affordable Housing Is Disappearing. These Mobile Home Residents are Fighting to Protect Theirs. TIME. November 30, 2018. <https://time.com/longform/affordable-housing-mobile-homes/>.

retention, negligent training and supervision, tortious debt collection, breach of contract, civil conspiracy, joint venture, private nuisance, unjust enrichment, conversion, common law fraud, and negligent misrepresentation.

## **LEGAL FRAMEWORK**

### The Mobile Home Park Act

10. The Mobile Home Park Act (MHPA) protects residents of mobile home parks from unlawful treatment by park owners and was enacted because of the “inherent vulnerability” experienced by low-income residents who own a home but lease the land on which the home is located. *Green Valley Mobile Home Park*, 1996-NMSC-037. The law was created to “mitigate the susceptibility of families owning mobile homes to significant harm at the whim of the landlords.” *Id.* ¶ 13.

11. The MHPA only allows for a tenancy to be terminated for 5 reasons: a) failure of the tenant to comply with state or local law or regulations concerning mobile homes; b) conduct of the tenant that constitutes an annoyance to other tenants or interference with park management; c) failure of the tenant to comply with written rules and regulations of the park; d) condemnation or change of use of the mobile home park; or e) in those cases where zoning laws allow the landlord to change the use of his land without obtaining consent of the zoning authority. NMSA 1978 § 47-10-5 (1983).

12. The MHPA explicitly prohibits “any fee paid to or received by an owner of a mobile home park or his agent that is not 1) rent, 2) a security deposit, 3) a fee required by local or state government, utilities or 4) charges for services actually performed.” NMSA 1978 § 47-10-10(B) (1983).

13. All terms and conditions of a tenancy shall be adequately disclosed in writing in a rental agreement by the management to prospective residents prior to the rental or occupancy of a mobile home space or lot. The disclosures must include the items enumerated at NMSA 1978 Section 47-10-14(A) (1997), including the name and mailing address where a manager's decision may be appealed and all charges to the tenant other than rent. The rental agreement shall only include terms and conditions not prohibited under the MHPA. NMSA 1978 § 47-10-14(C) (1997).

14. Management is required to adopt rules and regulations concerning the residents' use and occupancy of the premises. NMSA 1978 § 47-10-15 (2017). Rules are only enforceable if a) they have been submitted to tenants for their comment sixty days prior to the rules being implemented; b) their purpose is to promote the convenience, safety or welfare of the residents, protect and preserve the premises from abuse use or make fair distribution of services and facilities held out for the residents generally; c) they are reasonably related to the purpose for which they are adopted; d) they are not retaliatory or discriminatory in nature; and e) they are sufficiently explicit in prohibition, direction or limitation of the resident's conduct to fairly inform him of what he must or must not do to comply. *Id.*

15. The management must notify residents of proposed new rules and amendments to rules at least sixty-days prior to the effective date of the new or amended rules and allow residents a thirty-day comment period on proposed rule changes. NMSA 1978 § 47-10-15.1(A) (1997). Once comments have been received, the management shall post all comments and the responses to the comments in a conspicuous place. The new rules or amended rules shall not take effect any sooner than sixty days after the notification date. *Id.*

16. A landlord may be charged a civil penalty not to exceed \$500 for each violation of the MHPA. NMSA 1978 § 47-10-23(A) (1993).

#### The Uniform Owner Resident Relations Act

17. Unless a provision of the MPHA directly conflicts with the provisions of UORRA, the provisions of UORRA apply to mobile home park owners and residents. NMSA 1978 § 47-8-52 (1989). *See also* NMSA 1978 § 47-10-18 (1989).

18. Under UORRA, rules and regulations are only enforceable as specified in NMSA 1978 Section 47-8-33 (1999). This only allows the owner/manager to enforce initial violations of rules and regulations through notice of non-compliance and an opportunity to remedy within 7 days. *Id.*

19. An owner may not retaliate against a resident who is in compliance with his or her rental agreement and acted in good faith to exercise his rights provided under the UORRA. NMSA 1978 § 47-8-39(A)(3) (1999).

20. All duties under UORRA impose an obligation of good faith in its performance or enforcement. NMSA 1978, § 47-8-11 (1975).

#### Unfair Trade Practices Act

21. New Mexico's Unfair Practices Act (UPA) NMSA 1978 Section 57-12-3 prohibits unfair, deceptive, and unconscionable practices in the collection of debt in New Mexico.

22. Unfair or deceptive trade practices include, but are not limited to, the following:

a. representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a

person has a sponsorship, approval, status, affiliation or connection that the person does not have, NMSA 1978, § 57-12-2(D)(5) (2019);

b. making false or misleading statements of fact concerning the price of goods or services, the prices of competitors or one's own price at a past or future time or the reasons for, existence of or amounts of price reduction, NMSA 1978, § 57-12-2(D)(11) (2019);

c. using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive, NMSA 1978, § 57-12-2(D)(14) (2019);

d. stating that a transaction involves rights, remedies or obligations that it does not involve, NMSA 1978, § 57-12-2(D)(15) (2019); and

e. failing to deliver the quality or quantity of goods or services contracted for, NMSA 1978, § 57-12-2(D)(17) (2019).

23. Under the UPA, a person likely to be damaged by an unfair or deceptive trade practice or by an unconscionable trade practice of another may be granted an injunction against it under the principles of equity, and on terms that the court considers reasonable. Proof of monetary damage, loss of profits or intent to deceive or take unfair advantage of any person is not required. NMSA 1978, § 57-12-10(A) (2005).

24. A prevailing party complaining of an unfair or deceptive trade practice or unconscionable trade practice is entitled to an award attorney fees and costs. NMSA 1978, § 57-12-10(C) (2005).

25. In a class action brought under the UPA, the court may award members of the class such actual damages as were suffered by each member of the class as a result of the unlawful method, act or practice. NMSA 1978, § 57-12-10(E) (2005).

26. When the party charged with an unfair or deceptive trade practice, or an unconscionable trade practice, has willfully engaged in the trade practice, the court may award up to three times actual damages or three hundred dollars (\$300), whichever is greater, to the party complaining of the practice. NMSA 1978, § 57-12-10(B) (2005).

### **JURISDICTION**

27. Plaintiffs bring these claims in this Complaint under the Mobile Home Parks Act (MHPA), NMSA 1978 § 47-10-1 to -23 (2007), the Uniform Owner-Resident Relations Act (UORRA), NMSA 1978 §47-8-1 to -52 (2007), the Unfair Practices Act (UPA), NMSA 1978, § 57-12-1 to -26 (2019), and the Declaratory Judgment Act, NMSA 1978 § 44-6-1 to -15.

28. The Second Judicial District Court has jurisdiction over this action under NMSA 1978, § 47-8-10, NMSA 1978, § 47-10-4 (1983), NMSA 1978 § 57-12-10 (2005), and NMSA 1978 § 44-6-4. Jurisdiction is also proper in this Court for all common law claims of Plaintiffs.

### **VENUE**

29. Venue for this action lies in the Second Judicial District of Bernalillo County, pursuant to NMSA 1978, Section 38-3-1(A) (1988). All Plaintiffs in this matter are residents of Bernalillo County. Defendant Magdalena Vila is a resident of Bernalillo County. Aztec Village Manufactured Home Community is located in Bernalillo County.

### **PARTIES**

30. Individually named Plaintiffs are all owners or tenants of mobile homes on a designated lot located at Aztec Village, 3000 Aztec Rd, NE Albuquerque NM 87107.



31. Plaintiff Stephen Chavez has lived in Aztec Village for most of his life. His family was the second family to occupy the park when it opened in 1970. He is now 58 years old and has owned a mobile home in the park for over two decades. He pays a monthly bill for the space and utilities to Aztec Village.

32. Plaintiff Ben Jaramillo is a 73 year-old disabled combat veteran, who has lived in Aztec Village for 15 years. He lives with his adult son. His only income is from disability benefits through the Veteran's and Social Security Administrations. Mr. Jaramillo owns his home and pays a monthly bill for the space and utilities to Aztec Village.

33. Plaintiff Dulce Hernandez is a 25 year-old single mother of a disabled 4 year-old child. She has lived in Aztec Village for 9 years. Ms. Hernandez rents a lot from Aztec Village and pays a monthly mortgage to a third-party owner.

34. Plaintiff Irma Luna is a 40 year-old single mother that has been living in Aztec Village for 6 years with her two children, ages 11 and 19. Ms. Luna rents a lot from Aztec Village and pays a monthly mortgage to a third-party owner.

35. Plaintiff Bernarda Nieves is a 49 year-old homeowner who has resided in Aztec Village for 10 years with her children. Ms. Nieves is a single mother. She has one minor child and provides full-time care for her adult son, who has severe cognitive impairment. Her only income is a small amount of child support she receives each month, her son's disability benefits, and food assistance. Ms. Nieves owns her home and pays a monthly bill for the space and utilities to Aztec Village.

36. Defendant Nodel Parks, LLC is a Michigan-based limited liability corporation. Nodel Parks, LLC owns and operates multiple manufactured home communities throughout the United States, including large concentrations in Oklahoma, Texas, North Carolina, Alaska, and

New Mexico. Nodel Parks, LLC owns and operates six mobile home parks in Albuquerque, including Aztec Village.

37. Defendant Aztec Village, MHC, LLC is a foreign corporation, registered in Michigan. Aztec Village, MHC, LLC is doing business as Aztec Village Manufactured Home Community (Aztec Village), with its principal place of business in Albuquerque, New Mexico.

38. Defendant Richard Nodel is the owner of Nodel Parks, LLC.

39. Defendant Ed Summons is the District Manager of Nodel Parks, LLC and oversees the management of all six Nodel Parks, LLC properties located in Albuquerque.

40. Defendant Magdalena Vila is an employee of Aztec Village MHC, LLC. She manages Aztec Village and resides in a designated lot in the park.

**DEFENDANTS IMPOSE ILLEGAL FINES AND FEES AND SEEKS TO EVICT  
FAMILIES WHO DO NOT PAY THEM**

41. Aztec Village is a mobile home community located in Northeast Albuquerque at 3000 Aztec Rd., Northeast. It is comprised of 163 lots/spaces, with each lot/space containing one mobile home.

42. A large portion of the mobile homes in the park are owned by the families that occupy them (“homeowners”).

43. Residents of the park who do not own the mobile homes in which they reside (“tenants”), either rent their homes from Aztec Village or from private, third-party owners.

44. Homeowners and tenants are subject to a written lease..

45. Some homeowners and tenants receive community rules when they enter into a lease agreement to rent a space or mobile home. Over the years, different versions of community rules have been issued to new residents, if they were issued at all.

46. All homeowners and tenants pay a monthly sum to Aztec Village for charges including base rent of the lot, and/or rent of the mobile home, utilities, and trash (hereinafter collectively referred to as “monthly charges”).

47. Magdalena Vila is the onsite property manager of Aztec Village. She has been the onsite property manager since on or around May 15, 2019.

48. As the property manager of Aztec Village, Defendant Vila’s responsibilities include, but are not limited to, enforcing the terms of the rental agreements and the community rules and regulations, inspecting and maintaining the park for the benefit of all residents, providing monthly invoices to all residents detailing all monthly charges, and providing written notices required by law, including notices of non-payment of rent and notices terminating tenancy.

49. At the end of each calendar month, Defendant Vila delivers to all residents an invoice detailing all monthly charges which are due and payable no later than the 5th day of the following month.

50. Aztec Village is subject to the MHPA, pursuant to NMSA 1978, Section § 47-10-2(C) (1983).

51. Aztec Village is subject to the provisions of UORRA, to the extent the provisions of UORRA do not conflict with the MHPA. NMSA 1978, § 47-8-52 (1989) and NMSA 1978, § 47-10-18 (1989).

52. Defendant Vila is required to comply with the MHPA, UORRA, and all other applicable laws, rules and regulations.

**AZTEC VILLAGE LLC, AND ITS MANAGER ILLEGALLY FINE,  
HARRAS, INTIMIDATE, AND RETALIATE AGAINST RESIDENTS**

53. As soon as Defendant Vila began managing the park, she distributed a letter to all residents stating, in pertinent part, “*I will be issuing fines for children jumping the chain link fences*” and “*I will also be issuing citations to those who break the rules.*” The letter is attached as Exhibit A.

54. Defendant Vila then promptly began issuing “warning” or “violation” notices which threaten the imposition of, or require payment of, fines and fees to compel compliance with what she states are community rules. Many of the alleged infractions were not violations of any community rules ever issued by Aztec Village in accordance with the law. These include alleged violations for disposing of leaves in dumpsters, repairing a washing machine in the front yard, and requiring additional payment over the statutorily allowed fee for late rent.

55. Defendant Vila has never issued revised community rules to the residents for comment, as required by NMSA 1978 Section 47-10-15.1(A) (1997).

56. In September of 2019, Defendant Vila issued a letter to residents demanding immediate repairs and maintenance to individual mobile homes in advance of a visit by Nodel Parks, LLC owner, Richard Nodel, without citation to any specific community rule. The letter directly threatens issuance of fines if repairs are not made. This letter is attached as Exhibit B.

57. Defendant Vila issues at least three types of notices to residents to compel compliance with rules:

a. Warning notices – warning notices threaten the imposition of a fine if the behavior is not cured or violations continue. An Example is attached as Exhibit C.

b. Violation notices – violation notices assessing a fine. These notices are contradictory on their face. The notice states that the violation should be remedied to

avoid a fine but also states that a fine, in an arbitrary amount, must be paid and will be added to the following month's invoice. An example is attached as Exhibit D.

c. Violation Fine Fine [sic] Notices – These notices inform residents that they are being assessed a fine for an alleged violation, give no opportunity to cure the alleged violation, and state “continued violations may be grounds for further fines, eviction, or non-renewal of your lease.” An example is attached as Exhibit E.

d. Final notices - final notices are distributed to residents who did not pay their rent and late rent fee on or before the 8<sup>th</sup> day of the month, after receiving a three-day notice of non-payment of rent. The final notice imposes a \$130.00 fee, in addition to rent owed and the statutory fee for late rent, which is capped at 10% of total rent, as allowed in NMSA 1978, Section 47-8-15(D) (1995). An example is attached as Exhibit F.

58. Defendant Vila requires tenants to pay the fines contemporaneously with the monthly rent charges, due no later than the fifth day of the following month.

59. Defendant Vila rejects rent payments from tenants if they do not include payment for any and all assessed fines, alleging that she cannot accept “partial payment.”

60. After refusing to accept full payments (absent the illegal fines), Defendant Vila serves residents with a three-day notice of non-payment of rent (three-day notice). The three-day notice includes any fined amounts added to the base rent as well as a late fee for failure to timely pay all monthly charges.

61. For fees issued via “final” notices, Defendant Vila deceptively tells residents that the \$130.00 fee represents costs incurred for “filing a court case.” She coerces payment of this fee by telling residents she will “drop the court case” if they pay the “court fees.” The filing fee for bringing a restitution case in Magistrate Court is \$77.00. Costs are only awarded to the

prevailing party in a suit brought to enforce the terms and conditions of a rental agreement, per NMSA 1978, Section 47-8-48(A) (1995). Defendant Vila demands payment of the \$130.00 fee, whether or not she has even filed a case in court.

62. Defendant Vila has an obligation and duty to act in good faith when performing her job as a manager, providing a service to residents, exercising the rights of Aztec Village, and enforcing remedies under UORRA. NMSA 1978, § 47-8-11 (1975).

63. Defendant Vila has breached her duty to Plaintiffs.

**NODEL PARKS, LLC, ITS OWNER AND ITS DISTRICT MANAGER ARE  
AWARE OF AZTEC VILLAGE'S ILLEGAL PRACTICES AND ENDORCE  
THEM**

64. After numerous residents had encountered poor treatment by Defendant Vila and were required to unfairly pay fines and fees, multiple families organized a resident meeting with Defendant Ed Summons, District Manager of Nodel Parks, LLC.

65. During the June 19, 2019 meeting, multiple residents complained to Mr. Summons about the park management and Defendant Vila's conduct. Many of the residents expressed that they had lived in the park for several years and had never experienced such poor treatment and were never subject to fines and fees prior to Defendant Vila taking over as manager of Aztec Village. Mr. Summons exhibited no concern in response to residents' distress. Instead, he told residents that Defendant Vila was "new to the job" and they needed to "give her a chance."

66. Plaintiffs have contacted Defendant Summons about the illegal fines imposed by Defendant Vila. Defendant Summons informed Plaintiffs that he supports and endorses Defendant Vila's continued issuance of fines. See email from Ed Summons attached as Exhibit G.

67. Defendant Summons has an obligation and duty to act in good faith when performing his job as District Manager of Nodel Parks, LLC, exercising the rights of Nodel Parks residents, and enforcing remedies under UORRA. NMSA 1978, § 47-8-11 (1975).

68. Defendant Summons has breached his duty to Plaintiffs.

69. Defendant Richard Nodel is the owner of Nodel Parks, LLC. On occasion, Mr. Nodel visits Nodel Park properties, including Aztec Village, to monitor the management and up-keep of the parks.

70. On or about September 15, 2019, Defendant Vila sent a letter to all residents saying that Richard Nodel would be visiting Aztec Village the first week of October (2019). The letter informs residents that she and Defendant Nodel will be inspecting each mobile home to determine if previously demanded improvements had been made. The letter further states *“if no improvements have been made, a fine will be issued and your file will be reviewed with management for further action.”* See Exhibit B. Defendant Richard Nodel had knowledge that Defendant Vila was issuing fines in violation of the law.

71. On or about January 27, 2020, Defendant Vila delivered a letter to multiple park residents stating that residents with exposed hitches on their mobile homes must cover or remove their hitch within 14 days. The letter states *“Mr. Nodel has negotiated with our financial institution to allow residents who have their hitches properly covered (framed and skirted) to keep them as they are. For any resident who has their hitch exposed, you will have the opportunity to remove your hitch or cover it properly.”* A copy of the letter is attached as Exhibit H. This is a new rule that was not propounded as required by NMSA 1978 Section 47-10-15(A). Defendant Nodel had knowledge that Defendant Vila was implementing this new rule in violation of the law.

72. Defendant Nodel has an obligation and duty to act in good faith when performing his duties as owner and representative of Nodel Parks, LLC, exercising the rights of Nodel Parks residents, and enforcing remedies under MHPA and UORRA.

73. Defendant Richard Nodel has visited Aztec Village on at least one occasion since Defendant Vila began managing the park.

74. Defendant Richard Nodel knew or should have known that Defendant Vila was enforcing community rules and regulations not propounded in accordance with the law and that she was illegally compelling compliance with the rules by fining residents and charging them illegal fees and wrongfully collecting and retaining the fines and fees.

75. Defendant Nodel has breached his duty to Plaintiffs.

#### CLAIMS OF PLAINTIFFS

76. **Stephen Chavez**. In November 2019, Mr. Chavez was laid off from his full-time job. He was unable to pay his December 2019 rent on or before the 5th of the month. On December 6, 2019, Mr. Chavez discovered a Three-Day Notice of Non-Payment of Rent (three-day notice) posted on his door. The three-day notice, signed by Defendant Vila, stated that Mr. Chavez owed \$576.60, including, rent, late fees and utilities. The three-day notice stated that if the total due was not paid by December 9, 2019, the rental agreement would be terminated. Despite great effort, Mr. Chavez was not able to pay the total amount listed in the three-day notice by December 9, 2019. On December 13, 2019, Defendant Vila delivered to Mr. Chavez a notice that stated:

#### FINAL NOTICE

**On 12/06/19, I posted a 3 day notice on your door. This balance is still not paid. We do not accept partial payments. The remaining balance due is \$576.60. If this balance is not paid in full by 12/16/19, Monday 5pm, an additional \$130.00.00 will be applied to your ledger and a**



**court eviction will be filed. Please make the payment to the office in certified funds.**

Mr. Chavez was not able to pay his rent balance by December 16, 2019. On December 17, 2019, Defendant Vila called Mr. Chavez and demanded to know when he would pay his rent. She reminded him that she could not accept “partial payment.” On December 20, 2019, Mr. Chavez tendered a check to Defendant Villa for the total amount owed, minus the \$130.00.00 additional fine. Defendant Vila refused the check and stated that she had filed for a Petition for Restitution and incurred a \$130.00.00 charge in doing so, which he is required to pay. As of December 20, 2019, Defendant Vila had not filed a Petition for Restitution against Mr. Chavez. A Petition for Writ of Restitution was filed on December 23, 2019. The total filing fee incurred by Defendant Vila was \$77.00. Mr. Chavez became increasingly distressed and fearful that he would be evicted from his nearly life-long home and would end up homeless. On January 6, 2020, Mr. Chavez borrowed money from a friend and tendered a check to Defendant Vila in the amount of \$1318.63 which included the total amount owed for December 2019, January 2020, and the illegal \$130.00 fee. Mr. Chavez inquired what would happen with the pending eviction. Defendant Vila told him that she would “cancel the court case.” Mr. Chavez then asked that Defendant Vila return the \$130.00. Defendant Vila refused to return the money.

On January 28, 2020, Defendant Vila delivered a “warning” notice to Mr. Chavez that stated that he needed to repair or replace the skirting on two sides of his home and clean his yard within 7 days. The notice states “[y]ou must remedy the violation/s within 7 days or you will be charged \$75.00. Failure to remedy the violation or continued violations may be grounds for eviction or non-renewal of your lease...Please refer to the Community Rules that have been distributed to all residents for information regarding violation fines.” No such rules exist. Mr. Chavez is unable to afford the costs associated with replacing/repairing the skirting on his home

with such short notice. He is unable to pay the \$75 fee and will be facing eviction proceedings for the second month in a row if Defendants' illegal conduct continues. Moreover, Mr. Chavez has alerted multiple employees of Nodel Parks, LLC in the past that the reason his home is not fully skirted is because the Aztec Park sewer system frequently backs up on his lot and floods the space under his home with raw sewage. Nodel Parks, LLC has taken no action to remedy this very serious health hazard.

77. **Benjamin Jaramillo**. In November of 2019, Defendant Vila verbally warned Mr. Jaramillo that he needed to clean his front yard and remove yard waste. Mr. Jaramillo complied with this request. He and his son raked up all fallen leaves on their lot and disposed of them in the community dumpster. On November 15, 2019, Defendant Vila posted on the door of the Jaramillo residence a notice that states:

**Violation**

**You are in violation of the Community Rules. Please remedy the violation(s) listed below to avoid a fine and/or further action against you.**

**OTHER: Your guest/resident was seen illegally dumping trash in our dumpsters. I have added a \$75.00 violation fee to your ledger. This needs to be paid with Decembers [sic] rent. If you are seen again illegally dumping trash in Aztec Village dumpsters, this will be terms for eviction. Any questions, feel free to give me a call, (505)908-6700.**  
[In handwriting] **Yard & Porch needs to be cleaned.**

**Failure to remedy the violation or continued violations may be grounds for eviction or non-renewal of your lease.**

The notice also states “[p]lease refer to the Community Rules that have been distributed to all residents for information regarding violation fines.” No such rules exist.

During the final week of November, Mr. Jaramillo received from Ms. Villa his December 2019 invoice detailing his monthly charges, due no later than the December 5, 2019 to avoid a late fee. The monthly charges totaled \$610.13, including a base rent charge of \$470.00 and a

charge for “previous balance” of \$75.00, representing the fine for “illegally” dumping leaves in the community dumpster. On or about December 3, 2019, Ben Jaramillo delivered a check in the amount of \$535.13 to Defendant Vila – the total amount owed, not including the illegal fine. Defendant Vila told Mr. Jaramillo that she could not accept the check because it did not include the fine charged for the disposal of leaves in the community dumpster and alleged that the check for \$535.13 constituted “partial payment.” Mr. Jaramillo became upset and frustrated over Defendant Vila’s refusal to accept his rent. Defendant Vila then called the police and asked that Mr. Jaramillo be removed from the office. On December 6, 2019, Defendant Vila delivered to the Jaramillo residence a three-day notice of non-payment of rent. The total amount owed in the three-day notice was \$657.13. This amount included a late fee of \$47.00 and \$75.00 for the illegal fine. After Mr. Jaramillo refused to pay the late fee and fine as required in the three-day notice, Defendant Vila filed a Complaint and Motion for Temporary Restraining Order against Mr. Jaramillo in District Court. The Complaint seeks to evict Mr. Jaramillo for non-payment of rent and asks the Court to restrain Mr. Jaramillo from communicating with Defendant Vila. Mr. Jaramillo is disabled and cannot walk without the assistance of a cane.

Mr. Jaramillo no longer feels safe and cannot enjoy his home in Aztec Village because he is in constant fear that Defendant Vila will falsely accuse him of violating community rules and will continue to illegally fine him. Mr. Jaramillo is currently attempting to obtain a Veterans Affairs loan to buy a home and must have a record of paying his rent on time to obtain the loan. Defendant Vila refused to provide this documentation because his December rent payment did not include the \$75.00 fine. Mr. Jaramillo ultimately paid the \$75.00 fine and \$45.00 late fee on January 3, 2020 so his rental history would not be damaged. However, Defendants still have a pending TRO and eviction case against him.

78. **Dulce Hernandez.** On or about November 15, 2019, Ms. Hernandez and her father moved their washing machine from their indoor laundry room to their front yard to make a repair on the then non-functioning machine. After working on the machine for less than an hour, Defendant Magdalena Vila came to their home and warned them that they are not allowed to “store” their washing machine outside the home. Ms. Hernandez and her father explained to Defendant Vila that they were simply repairing the machine and would promptly return it indoors. Ms. Hernandez and her father moved the machine back indoors that same day. Within three hours of her first visit on November 15, 2019, Defendant Vila returned to the Hernandez family home and delivered a violation notice. The violation notice stated the following:

**You are in violation of the Community Rules. Please remedy the violation(s) listed below to avoid a fine and/or further action against you.**

**HOME SITE MAINTENANCE: We have asked you several times to clean your yard and keep up with maintenance. Large appliances are always in your yard. (washer) [sic] You will see this \$75.00 fee in Jan [sic] invoice. If you have any questions for would like to see the pictures of your lot, stop by the office. You must remedy the violation/s within 7 days. Failure to remedy the violation or continued violations may be grounds for eviction or non-renewal of your lease.**

On August 30, 2019, Defendant Vila delivered a “warning notice” to Ms. Hernandez’ household, which states that a truck belonging to her household was going more than 20 mph and that she received a notice about unauthorized tenants. The notice instructs her to remedy the violations within 7 days or she will be charged \$75.00. Both the warning and violation notice state: “[p]refer to the Community Rules that have been distributed to all residents for information regarding violation fines.” However, no such rules exist.

79. **Irma Luna.** Irma Luna received multiple notices concerning late payment of rent in October and November 2019 because she left rent in the office drop box and the check was

not retrieved by Defendant Vila by 5:00 pm on the fifth day of the month. Defendant Vila then delivered an undated document that stated the following:

### FINAL NOTICE

**On 11/13/19, I posted a balance due on your door. This balance is still not paid. Your payment of \$535.00 has not been processed to due to the balance was not made in full. We do not accept partial payments. The remaining balance due is \$576.60. If this balance is not paid in full by Monday 5pm, an additional \$130.00.00 will be applied to your ledger and a court eviction will be filed. Please make the payment to the office in certified funds. Any questions give me a call at (505)908-6700.**

Ms. Luna attempted to pay her rent including the statutory late fee, but Defendant Vila refused to accept it without the \$130.00.00 additional charge. Ms. Luna ultimately paid the \$130.00.00 because she feared she would lose her home.

On August 8, 2019, Defendant Vila delivered a “warning” notice to Ms. Luna regarding alleged construction on her mobile home. The notice stated “[y]ou must remedy the violation/s within 1 days [sic] or you will be charged \$100.00. Failure to remedy the violation or continued violations may be grounds for eviction or non-renewal of your lease.” The notice further states “[p]lease refer to the Community Rules that have been distributed to all residents for information regarding violation fines.” No such rules exist.

80. **Bernarda Nieves.** Defendant Vila delivered two “warning” notices to Ms. Nieves. One was issued on August 21, 2019 for an alleged speeding violation and threatens a fine of \$75.00 if it is not remedied within 1 day. The other notice was dated August 26, 2019 and states that Ms. Nieves’ household violated the rules by having loud music on after 10:00 pm and threatens a fine of \$75.00 if the violation is not remedied within 1 day. Both notices state that Ms. Nieves should “refer to the Community Rules that have been distributed to all residents for information regarding violation fines.” No such rules exist.

On January 28, 2020, Ms. Nieves received a notice from Defendant Vila that stated that she has 14 days to remove or cover (with wood frame and skirting) the exposed hitch on her mobile home. Ms. Nieves cannot afford to have the hitch removed or covered within the next two weeks. Ms. Nieves cannot afford a fine and will face eviction because of Defendants' illegal management.

### **Plaintiffs Bring This Case as a Class Action**

81. Plaintiffs are representatives of a class of all persons who reside at Aztec Village and are subject to Defendants' enforcement of community rules and lease agreements.

82. The class is so numerous that joinder of all members is impracticable. It contains over 160 persons.

83. This action is based on standard practices of Defendants, who issue notices, enforce purported community rules and regulations, seek collection of fines and fees to enforce those rules and file evictions when fines and fees are not paid.

84. The claims in this lawsuit can be determined principally from documents.

85. The issues involve questions of law or fact common to the class, including the legality of fines and fees issued and collected against mobile home residents and enforcement of community rules. Plaintiffs have recited these claims in detail throughout this Complaint. These questions predominate over any questions affecting only individual class members. The common questions include:

- a. Whether Defendants' violated the Mobile Home Park Act, the Uniform Owner Resident Relations Act, and the Unfair Trade Practices Act; and
- b. Whether Defendants' conduct constituted: negligence, negligence *per se*, negligent hiring and retention, negligent training and supervision, tortious debt collection,

breach of contract, civil conspiracy, joint venture, private nuisance, unjust enrichment, conversion, common law fraud, and negligent misrepresentation.

86. The claims of the representative parties are typical of the claims of the class, namely that all claims are based on the same factual and legal theories. All claims arise from the same form documents and uniform business practices.

87. Plaintiffs will fairly and adequately represent the class. Plaintiffs are committed to litigating this matter. They have retained counsel experienced in handling class claims. Neither Plaintiffs nor class counsel have any interests which might cause them not to pursue this claim vigorously.

88. Defendant has acted on grounds generally applicable to the class, thereby making appropriate temporary, interim, and final injunctive relief with respect to the class as a whole.

89. The actions of Defendant have or will likely cause Plaintiff and members of the putative class irreparable injury with no adequate remedy at law.

90. When Defendants attempt to collect illegal fines and fees and impose illegal community rules against a putative class member, that person is subject to financial hardship including diminished ability to support themselves and to pay for housing, utilities, food, insurance and other monthly bills which are crucial to survival. When putative class members cannot pay the fines and fees or assert their right to not pay these illegal fines and fees, Defendants refuse to accept rent, creating a false record of late rent that impacts Plaintiffs' rental history. This harm progresses to full eviction proceedings, for which putative class members cannot afford to hire counsel. If evicted, class members will face court costs and most alarmingly the loss of their home, which in many cases includes the mobile home that they own because they cannot afford to move it to a new mobile home park.

91. The Plaintiffs have a high likelihood of success on the merits of the case.

92. Granting any form of injunctive relief will not harm the defendant, who will retain all of its legal rights to enforce legally imposed community rules.

93. Granting injunctive relief is in the public interest because it will ensure that families do not become homeless and that statutory requirements passed by the legislature to protect vulnerable mobile home park residents are followed.

94. A class action is superior for the fair and efficient adjudication of the class members' claims. Class members are unaware of the fact that their rights have been violated. Defendants' customers cannot generally afford counsel to engage in individual litigation against Defendants. A failure of justice will result in the absence of a class action.

#### **COUNT I –VIOLATIONS OF THE MOBILE HOME PARK ACT**

95. As a matter of practice and policy, Defendants charge and threatens to charge homeowner residents fines and fees for alleged infractions of the community rules. In fact, many of the infractions for which Defendants charge Aztec Village homeowner residents are not violations of the rental agreement or community rules that were distributed to residents with their lease agreements.

96. Defendant Vila's repeated billing and collection of fines and fees on mobile home owners for alleged infractions of the rental agreement and/or community rules violates NMSA 1978 Section 47-10-10(A) (1983).

97. Defendants' threats and attempts to collect fines and fees on the basis of "community rules" that have not been distributed for public comment violate NMSA 1978 Section 47-10-15 (1997).



98. As a proximate and direct result of Defendants' violations of NMSA 1978 Sections 47-10-10(A) (1983) and 47-10-15 (1997), Plaintiffs and members of the class have suffered and will suffer damages including, but not limited to, the amounts of the illegal fines and consequential results from refusal to pay same.

99. Pursuant to NMSA 1978 Section 47-10-23 (1993), Defendants should be penalized \$500 for each violation of the MHPA committed against each member of the plaintiff class.

## **COUNT II –VIOLATIONS OF THE UNIFORM OWNER-RESIDENT RELATIONS ACT**

100. NMSA 1978 Section 47-8-33 (1999) provides the exclusive remedy for a tenant's non-compliance with a rental agreement or community rules. It requires an owner/manager to deliver a written notice to the resident specifying the acts and omissions constituting the breach, including the dates and specific facts describing the nature of the alleged breach, and stating that the rental agreement will terminate upon a date not less than seven days after receipt of the notice if the breach is not remedied in seven days (7-day notice).

101. Instead of issuing 7-day notices for purported violations of the rental agreement/community rules and regulations and allowing tenants a full seven days to cure the purported violation, Defendants issue notices threatening and requiring families to pay fines and fees with their monthly rent without providing them the opportunity to challenge or cure the alleged violation, in violation of NMSA 1978 Section 47-8-33 (1999).

102. Defendants illegally retaliate against Plaintiffs who assert their rights under UORRA and refuse to pay illegal fines or comply with illegally imposed community rules in violation of NMSA 1978 Section 47-8-39 (1999).

103. As a direct and proximate result of Defendants' violations of NMSA 1978 Sections 47-8-33 and 47-8-39 (1999), Plaintiffs and members of the class have and will suffer injury and damages, including, but not limited to the amounts of the wrongful fines that Plaintiffs and class members were or will be required to pay as well as unlawful terminations of tenancy.

### **COUNT III – VIOLATIONS OF THE UNFAIR PRACTICES ACT**

104. Defendants are subject to the New Mexico Unfair Practices Act, NMSA 1978 Section 57-12-1 to -26 (2019). (UPA).

105. These transactions occurred in the regular course of Defendants' trade or commerce.

106. Defendants' actions are unfair or deceptive trade practices in the provision of services to plaintiffs and collection of debt within the meaning of the UPA, NMSA 1978 Section 57-12-2(D) (2019), generally, and Sections 57-12-2(D)(5)(11)(14), (15), and (17) specifically.

107. Defendants knowingly and willfully engaged in these unlawful trade practices.

108. By threatening to collect fines and fees and including fines and fees in monthly invoices which are not permitted under New Mexico law, by representing that the fines and fees are allowed under the community rules and regulations, by refusing to accept rent payments that do not include the fines and fees, by subsequently charging unlawful late fees, by misrepresenting the cost of filing an eviction case, and by exaggerating the actions of tenants that lead to fines and court action, Defendants are engaged in unfair, deceptive and unconscionable acts that violate the UPA.

109. Plaintiffs are entitled to recover damages as a result of Defendants' unfair, deceptive and unconscionable acts in an amount to be proved at trial.

110. In addition to actual damages, Plaintiffs are entitled to recover treble damages, pursuant to NMSA 1978 Section 57-12-10(B) (2005).

111. Pursuant to NMSA 1978 Section 57-12-10(C) (2005), Plaintiffs are entitled to recover attorney fees and costs for litigating this action.

#### **COUNT IV – NEGLIGENCE**

112. Defendants owe Plaintiffs and class members the duty of care to not charge Plaintiffs and other class members illegal fees and penalties in violation of New Mexico law.

113. Defendants owe Plaintiffs and class members the duty of care to not distribute unfair or deceptive notices to Plaintiffs and other members of the class about illegal fines and fees.

114. Defendant Summons was made aware of the abusive and illegal practices of Defendant Vila and refused to intervene and stop such practices.

115. Defendant Nodel had constructive and/or actual knowledge of the illegal and abusive practices of Defendant Vila.

116. Aztec Village, LLC and Nodel Parks, LLC had actual knowledge of Defendant Vila's illegal and unconscionable actions.

117. Aztec Village, LLC and Nodel Parks, LLC are responsible for the actions of Defendant Vila under the doctrine of *respondeat superior*.

118. Defendants have breached their duties of care to Plaintiffs and class members.

119. Plaintiffs are entitled to recover damages for the harm they suffered as a result of Defendants' negligence.

### **COUNT V – NEGLIGENCE *PER SE***

120. Defendants had a duty to follow the laws, rules, and regulations to prevent foreseeable harm to others, including Plaintiffs.

121. Defendants failed to follow the laws, rules, and regulations.

122. Specifically, Defendants failed to promulgate their community rules and regulations in accordance with the MHPA and are illegally compelling compliance with the community rules and regulations by issuing illegal fines, refusing to accept rent, illegally adding late fees to rent timely tendered, charging additional late fees beyond the 10% maximum allowed under the law, and illegally retaliating against residents by pursuing court ordered evictions.

123. Defendants breached their duty owed to Plaintiffs.

124. Defendants' conduct was reckless, careless, wanton, grossly negligent, and negligent.

125. Defendants violated laws, codes or regulations, without just cause or excuse.

126. Plaintiffs were in the class of persons intended to be protected by the laws, codes or regulations that Defendants violated.

127. Defendants' wrongful conduct, negligence, and negligence *per se*, caused Plaintiffs damages.

### **COUNT VI- NEGLIGENT HIRING AND RETENTION**

128. Nodel Parks, LLC and Aztec Village MHC, LLC are the employers of Defendant Summons.

129. Defendant Vila is supervised by and reports to Defendant Summons.

130. Nodel Parks, LLC, Aztec Village MHC, LLC, and Defendant Summons knew or should have known that hiring or retaining Defendant Vila would create an unreasonable risk of injury to a group or class that includes Plaintiffs.

131. Nodel Parks, LLC, Aztec Village MHC, LLC, and Defendant Summons failed to use ordinary care in hiring or retaining Defendant Vila.

132. Nodel Parks, LLC, Aztec Village MHC, LLC, and Defendant Summons' negligence in hiring or retaining Defendant Vila was a cause of Plaintiffs' damages.

133. Defendants' conduct was malicious, willful, reckless, wanton, fraudulent, and in bad faith.

134. Plaintiffs are entitled to recover actual damages and punitive damages, plus costs.

#### **COUNT VII – NEGLIGENT TRAINING AND SUPERVISION**

135. Nodel Parks, LLC, Aztec Village MHC, LLC, and Defendant Summons are the employers of Defendant Vila, or otherwise had the authority and responsibility to train or supervise Defendant Vila.

136. Nodel Parks, LLC, Aztec Village MHC, LLC, and Defendant Summons knew or should have known that hiring or retaining Defendant Vila would create an unreasonable risk of injury to a group or class that includes Plaintiffs.

137. Nodel Parks, LLC, Aztec Village MHC, LLC, and Defendant Summons failed to use ordinary care in training or supervising Defendant Vila.

138. Nodel Parks, LLC, Aztec Village MHC, LLC, and Ed Summons' negligence in training or supervising Defendant Vila was a cause of Plaintiffs' damages.

139. Defendants' conduct was malicious, willful, reckless, wanton, fraudulent, and in bad faith.

140. Plaintiffs are entitled to recover actual damages and punitive damages, plus costs.

#### **COUNT VII - TORTIOUS DEBT COLLECTION**

141. Defendants' actions and omissions constitute unreasonable and tortious debt collection practices in violation of the doctrine enunciated by the New Mexico Supreme Court in *Montgomery Ward v. Larragoite*, 81 N.M. 383, 467 P.2d 399 (1970).

142. Plaintiffs are entitled to recover actual damages and punitive damages, plus costs.

#### **COUNT IX - BREACH OF CONTRACT**

143. Class members entered into contracts for the rent of their homes and/or the lots on which their homes sit.

144. The contracts were drafted exclusively by Defendants and/or their agents.

145. Defendant violated its duty of good faith and fair dealing owed Plaintiffs.

146. As a direct and proximate result of the breaches, Plaintiffs have suffered and continue to suffer damages, in an amount to be proven at trial.

147. The acts and omissions of Defendants in misrepresenting the nature of the contracts, its intentions, and its breaching of the contracts and other unlawful conduct regarding the contracts were malicious, reckless, wanton, oppressive and/or fraudulent, justifying an award of punitive damages.

#### **COUNT X- CIVIL CONSPIRACY**

148. Defendants engaged in wrongful and illegal acts.

149. An agreement existed between Defendants pursuant to which these wrongful and illegal acts were carried out.

150. Defendants' civil conspiracy caused Plaintiffs damages.

151. Defendants are jointly and severally liable for the damages caused by the civil conspiracy.

#### **COUNT XI – JOINT VENTURE**

152. Defendants have a community of interest in the performance of common purpose.

153. Defendants share a joint proprietary interest in the subject matter.

154. Defendants each had control over some aspect of the venture.

155. Defendants have a right to the profits.

156. Defendants have a duty to share in any losses which may be sustained.

157. Defendants committed wrongful acts in furtherance of the joint venture.

158. Defendants' joint venture caused Plaintiffs damages.

159. Defendants are jointly and severally liable for the damages caused by the wrongful acts committed in furtherance of the joint venture.

#### **COUNT XII – PRIVATE NUISANCE**

160. Defendants' actions constitute a non-trespassory invasion of Plaintiffs' interest in the use and enjoyment of their property.

161. Defendants' conduct was malicious, willful, reckless, wanton, fraudulent, and in bad faith.

162. Plaintiffs are entitled to recover actual damages and punitive damages, plus costs

#### **COUNT XIII – UNJUST ENRICHMENT**

163. As a result of Defendant's conduct as alleged herein, and the payments it unfairly received both from Plaintiffs as a result of ongoing illegal fines and fees, Defendants have taken undue advantage of Plaintiffs and have unjustly received and retained a benefit to the Plaintiffs'

detriment. Defendants' retention of this benefit violates fundamental principles of justice, equity and good conscience.

164. The specific sum of money unlawfully received and retained, and which in equity and good conscience belongs to the Plaintiffs, is readily identifiable from information and records in Defendants' possession and control.

165. Plaintiffs are entitled to the return of all such fees paid by them. In addition, Plaintiffs are entitled to statutory interest from the date such amounts were paid, plus their costs and attorneys' fees.

#### **COUNT XIV – CONVERSION**

166. Defendants' actions constitute conversion.

167. Defendants knowingly and willfully exercised dominion and control over Plaintiffs' property inconsistent with and in violation of Plaintiffs' rights.

168. Defendants' conduct constitutes the unauthorized and injurious use of the property.

169. The conversion by Defendants was a cause of Plaintiffs' injury.

170. Defendants' conversion was malicious, willful, reckless, wanton, fraudulent, and in bad faith.

171. Plaintiffs are entitled to recover actual damages and punitive damages, plus costs.

#### **COUNT XV – COMMON LAW FRAUD**

172. Defendants told individually named Plaintiffs that the community rules include information regarding violation fines.

173. Defendants misrepresented the content of community rules.



174. Defendants told individually named Plaintiffs that they are required to pay an additional \$130.00.00 when rent is paid after the 9th day of the month and represented that this was required to cover the cost incurred from filing eviction cases in court.

175. Defendants misrepresented the material fact that she had filed eviction proceedings and incurred costs that members of the plaintiff class must pay to avoid evictions. In fact, eviction proceedings had not been filed and the court had not ordered any court costs.

176. Members of the Plaintiff class reasonably relied on Defendant's misrepresentations.

177. As a direct and proximate result, individually named Plaintiffs spent sums of money paying illegal fines and fees.

178. As a direct and proximate result, members of the Plaintiff class will be rendered homeless and or be subject to financial hardship to find alternative housing if Defendants continue their illegal conduct.

179. Defendants have committed common law fraud.

#### **COUNT XVI - NEGLIGENT MISREPRESENTATION**

180. Defendants made material misrepresentations of fact to Plaintiffs.

181. Defendants intended to induce Plaintiffs to rely on such representations.

182. Plaintiffs relied on and were induced by Defendants' false representation to their detriment, causing damages.

183. Defendants' conduct was malicious, willful, reckless, wanton, fraudulent, and in bad faith.

184. Plaintiffs are entitled to recover actual damages and punitive damages, plus costs.

## **COUNT XVII - GROUNDS FOR A PRELIMINARY AND PERMANENT INJUNCTION**

185. Pursuant to Rule 1-066 NMRA, a preliminary injunction will be granted where the following factors are met:

1. plaintiffs will suffer irreparable injury unless the injunction is granted;
2. the threatened injury outweighs any damage the injunction might cause the defendant;
3. issuance of the injunction will not be adverse to the public interest; and
4. there is a substantial likelihood plaintiff will prevail on the merits.

186. Plaintiffs will suffer irreparably injury unless the injunction is granted. At a minimum, families will have to forego purchasing food or paying for other basic necessities to pay the fines and fees illegally imposed by Defendants. At worst, families who have been unfairly fined are facing eminent eviction and are in dire risk of losing the homes they own and becoming homeless.

187. Conversely, Defendants will not suffer any damages by being required to comply with New Mexico housing law for compelling compliance with rental agreements and community rules and regulations.

188. Maintaining stable residence for low-income families and preventing further increase in our state and city's high rate of homelessness serves the public interest.

189. There is substantial likelihood that Plaintiffs will prevail on the merits of this case. Defendants are imposing fines against Plaintiffs in violation of the law.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs ask the Court for an Order:

1. Preliminarily and permanently enjoining and prohibiting Defendants from issuing and collecting fines for purported or actual violations of rental agreements and/or the community rules and regulations;
2. Preliminarily and permanently enjoining and prohibiting Defendants from enforcing rules and regulations that were not issued in accordance with the MHPA;
3. Awarding actual damages, or statutory damages, against Defendants, in an amount to be proven at trial, for violations of the MHPA.
4. Awarding actual damages, or statutory damages, against Defendants, in an amount to be proven at trial for violations of UORRA.
5. Awarding actual damages, or statutory damages, trebled, against Defendants, in an amount to be proven at trial, for violations of the UPA.
6. Awarding actual and punitive damages against Defendants for negligence.
7. Awarding actual and punitive damages against Defendants for negligence *per se*.
8. Awarding actual and punitive damages against Defendants for negligent hiring and retention.
9. Awarding actual and punitive damages against Defendants for negligent training and supervision.
10. Awarding actual and punitive damages against Defendants for tortious debt collection.
11. Awarding actual and punitive damages against Defendants for breach of contract.
12. Awarding actual damages for civil conspiracy.

13. Awarding actual damages for joint venture.
14. Awarding actual and punitive damages against Defendants for private nuisance.
15. Requiring Defendants to disgorge ill-gotten monies from which they were unjustly enriched.
16. Awarding actual and punitive damages against Defendants for conversion.
17. Awarding actual and punitive damages against Defendants for common law fraud.
18. Awarding actual and punitive damages against Defendants for negligent misrepresentation.
19. Requiring Defendants to pay all attorney's fees and costs associated with bringing this action.
20. Any further relief the Court may deem appropriate.

Respectfully submitted,

/s/ Maria Griego

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