

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

NO. D-101-CV-2009-00440

JPC CONTRACTORS, LLC,

Plaintiff,

vs.

**RUFINA LOFTS, LLC AND U.S. BANK
NATIONAL ASSOCIATION, AS TRUSTEE FOR
THE Santa Fe COUNTY, NEW MEXICO
MULTIFAMILY HOUSING REVENUE BONDS
(VILLA GRANDE APARTMENTS PROJECT)
SERIES 1998, AND KEITH MARSHALL,**

Defendants and Third Party Defendants,

vs.

**JERRY D. POWERS AND INDUSTRIAL
CONSTRUCTORS CORPORATION,**

Third Party Defendants and Counterclaimants,

**PHIL LUCAS, INDIVIDUALLY AND AS ATTORNEY
IN FACT FOR CERTAIN HOLDERS OF THE SANTA
FE COUNTY, NEW MEXICO MULTIFAMILY HOUSING
REVENUE BONDS (VILLA GRANDE APARTMENTS
PROJECT) SERIES 1998,**

Intervenor,

vs.

**U.S. BANK NATIONAL ASSOCIATION AND
KEITH MARSHALL,**

Defendants in Intervention.

**INTERVENOR'S MOTION FOR ATTORNEYS' FEES
AND LITIGATION EXPENSES**

Intervenor, by undersigned counsel, respectfully moves this Court for its order quantifying his reasonable and necessary attorneys' fees and litigation expenses incurred in the successful prosecution of the UPA claim in this case which it awarded against Defendant-in-Intervention U.S. Bank ("the Bank") in its Decision on Intervenor's Portion of Case ("Decision") (filed 3/14/16), at 38. The Bank does not concur in this motion. Intervenor's requested attorneys' fees and litigation expenses are set out in the chart that is attached to this Motion as Exhibit 1.

In its Judgment on Intervenor's Action ("Judgment"), entered herein on July 27, 2016, the Court found for Intervenor on his claim under the Unfair Practices Act ("UPA"), NMSA 1978, §§ 57-12-1 *et seq.*, and awarded him the amount of "\$31,854.54, against Defendant-in-Intervention U.S. Bank, only, representing actual damages awarded for Unfair Practices, pursuant to the Unfair Practices Act," and awarded Intervenor his "[a]ttorneys' fees and costs for U.S. Bank's violations of the Unfair Practices Act and allowable costs as provided for by New Mexico law." Judgment, at 2. Based on the Judgment, Intervenor's entitlement as a "prevailing party" to his reasonable and necessary attorneys' fees and litigation expenses is not in question. As a result, Intervenor's motion for attorneys' fees and litigation expenses (and applicable gross receipts tax as required by law) addresses the reasonable hourly rates to which his lawyers are entitled and the time and expenses that are fairly and reasonably allocable to the prosecution of his UPA claim. Intervenor also seeks an award of statutory interest on the fees and expenses awarded from July 27, 2016, the date of the Judgment rendering him the prevailing party on his UPA claim in this action.

Filed in support of this motion are the Affidavits of Intervenor's merits counsel, D. Diego Zamora, Ray M. Vargas II and Katherine Wray. The Declaration of Intervenor's fee counsel, the undersigned, is attached hereto as Exhibit 2. Also attached hereto as Exhibits 3-4 are the Affidavits

of Santa Fe attorneys Katherine Hall and James Sullivan. The Affidavit of Albuquerque attorney Joseph Goldberg was not ready at the time of the filing of this Motion and will be filed in support of the Motion upon receipt.

ARGUMENT

I. INTERVENOR PREVAILED AND IS ENTITLED TO ATTORNEYS' FEES.

Intervenor's counsel are entitled to an award of reasonable attorneys' fees and expenses incurred in the successful prosecution of Intervenor's UPA claim in this case. As a matter of law, the Judgment entered on July 27, 2016 rendered the Intervenor a prevailing party for purposes of a statutory award of attorneys' fees and litigation expenses and included the Court's judgment that such fees and expenses be awarded. Judgment, at 2. Ordinarily the Court must enter findings and conclusions on attorneys' fees to provide an adequate basis for appellate review of the fee award. *See, Lenz v. Chalamidas*, 109 N.M. 113, 118-19, 782 P.2d 85, 90-91 (1989). That is not necessary where the fact-finding required to support the award of fees has already been made. *See, O'Neel v. USAA Ins. Co.*, 2002-NMCA-028, ¶¶ 19-20, 131 N.M. 630, 636, 41 P.3d 356, 362, *cert. denied*, 131 N.M. 737, 42 P.3d 842 (2002).

The Court's Decision is replete with factual findings to support both its award of punitive damages and an award of attorneys' fees on the Intervenor's UPA claim. *See, e.g.*, Decision, at 35-36 ("Intervenor proved that the Trustee represented its services to be of a particular quality or standard, which they were not; made false or misleading statements to maintain its position as Trustee in its notices; used exaggeration or deception as to material facts in its notices; and failed to deliver the quality of services contracted."; "USB knowingly made false or misleading written or oral statements in connection with the sale of services in the regular course of business ...";

“Intervenor also proved an unconscionable practice.”; “The Trustee sent misleading and incomplete notices, attempting to minimize its failures and manipulate bondholders into consenting to further Trustee action.”; at 39 (on fraud claim, “the Court finds that the intent of those acting on behalf of USB in sending the misleading, incomplete notices was to avoid ‘raising the ire’ of the bondholders in order to get them to approve and not scrutinize the actions taken by USB.”; at 41 (on breach of fiduciary duty claim, evidence of Bank’s “cavalier attitude toward USB’s duties as trustee” justified award of punitive damages).

In addition, although it is not reflected in the Judgment because the Intervenor was required to elect remedies, *see*, Decision, at 55 n. 9, the Court expressly found that the Bank had engaged in wrongful conduct in its violation of the UPA sufficient to justify trebling the UPA damages awarded and to find Intervenor entitled to recover attorneys’ fees and costs. Decision, at 36-38.

After the Intervenor filed his Complaint in Intervention in this Court, the Bank steadfastly litigated against his claims and continues to do so. The work that Intervenor’s counsel were obliged to undertake to navigate their way to success in this matter, and of which this Court has direct knowledge having presided over discovery, dispositive motions and the trial, is set forth in their affidavits. *See*, Zamora Aff., ¶¶ 16-19, 27-28; Vargas Aff., ¶¶ 12-14, 19-20; Wray Aff., ¶¶ 11-17. After dribbling out its document production prior to the Court’s ruling on its motion for summary judgment, once that motion was denied, the Bank produced to the Intervenor a “document dump,” *see, e.g., Radian Asset Assur., Inc. v. Coll. of the Christian Bros. of New Mexico*, No. CIV 09-0885 JB/DJS, 2010 WL 4928866, at *7 (U.S.D.N.M. 10/ 22/10) (“a document dump [] hides the proverbial smoking gun in an ocean of production”) (citation and internal quote marks omitted), containing more than 18,000 pages of documents. Production from the Bank in the *Powers* case and

this one came to more than 25,000 pages overall which the Intervenor’s counsel were obliged to comb through to find the documents relevant to his claims and for use at trial. Vargas Aff., ¶ 19; Wray Aff., ¶¶ 11, 13. The case went to trial because the Bank failed to make any meaningful offer of settlement. Zamora Aff., ¶ 29; Vargas Aff., ¶ 19.

The Court found in favor of the Intervenor and against the Bank on every claim he brought, including his statutory fee award-based claim under the New Mexico Unfair Practices Act (“UPA”). The Court found bad faith conduct and a willful violation of the UPA by the Bank which led to treble UPA-based damages. Based on the Court’s finding that on his UPA claim, “Intervenor has shown damages of *at least* \$31,854.54,” Decision at 38 (emphasis added), and because it made substantial awards of compensatory and punitive damages awards to the Intervenor on his non-UPA claims, it did not find it necessary to award Intervenor on his UPA claim anything more than the minimum amount it found the Intervenor had proved, trebled, plus attorneys’ fees and costs. *Id.*, at 55. *See also*, Wray Aff., ¶¶ 18-24.

II. ATTORNEYS’ FEE AWARD FACTORS

A. Attorneys’ Fees Factors Generally.

This Court is well versed in the matter of attorneys’ fee awards under the UPA. Attorneys’ fees under the UPA are subject to several factors, not all of which may be relevant in every case.

Factors that have been considered in determining the reasonableness of attorney fees as between attorney and client include: (1) the time and labor required--the novelty and difficulty of the questions involved and skill required; (2) the fee customarily charged in the locality for similar services; (3) the amount involved and the results obtained; (4) the time limitations imposed by the client or by the circumstances; and (5) the experience, reputation and ability of the lawyer or lawyers performing the services.

Lenz, 109 N.M. at 118, 782 P.2d at 90 (citations omitted). At bottom, “the amount of an award of

attorney fees lies within the sound discretion of the trial court.” *Gavin Maloof & Co. v. Southwest Distrib. Co.*, 106 N.M. 413, 415, 744 P.2d 541, 543 (1987) (citation omitted).

As with any statutory fee award case under federal or state law, “[t]he most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” *Ramos v. Lamm*, 713 F.2d 546, 552 (10th Cir. 1983), *quoting Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The “lodestar” calculus encompasses in large part the first two and the fifth factors listed in *Lenz*. The hourly rate that can reasonably be charged by counsel reflects such factors as counsel’s “experience and special skill” in the litigated area, and counsel’s “experience, reputation and ability.” The reasonable and necessary number of hours charged addresses both the “labor required” and “the novelty and difficulty of the questions involved and skill required” listed in the first *Lenz* factor above, and the experience and skill of counsel and the degree of opposition encountered in the course of the litigation, included in the fifth *Lenz* factor. The hours spent by Intervenor’s merits counsel reaped complete success for their client based on the size of the Judgment in his favor, which reflects the third *Lenz* factor.¹ *See, Zamora Aff.*, ¶¶ 29-30. When the prevailing party “has obtained excellent results, his attorneys should receive a fully compensatory fee.” *Hensley*, 461 U.S. at 435.

Merits counsel’s affidavits provide the basis for calculating the hours on which attorneys’ fees should be awarded. They state that the time spent was reasonable and necessary for the

¹ The Court found that Intervenor had proved “at least” the amount of damages it awarded him on his UPA claim. Decision, at 37-38. The Court provided no explanation of what more the Intervenor had proved in the way of damages on his UPA claim. One can only speculate that the Court found no need to do so in light of the substantial damages award it made to the Intervenor on his common law claims. It cannot be overlooked that as the basis for its requirement that the Intervenor make an election of remedies, the Court expressly found that “the conduct giving rise to the UPA claim is the same conduct that supports the other causes of action” *Id.*, at 55 n. 9.

prosecution of this case and further detail for the Court: 1) time spent solely on the UPA claim, 2) time unrelated to the UPA claim and therefore non-compensable, and 3) time spent on the UPA claim as well as on non-fee generating claims which was inextricably linked and incapable of segregation (“overlapping claims”). Their affidavits also establish that they exercised billing judgment in identifying the time for which the Intervenor seeks compensation and for which he does not, and categorized their time as compensable, non-compensable and compensable in part. *Zamora Aff.*, ¶¶ 31-34; *Vargas Aff.*, ¶¶ 21-28; *Wray Aff.*, ¶¶ 25-26.

This Court’s review of the affidavits will satisfy it that the hours spent on the case were reasonable and necessary, that the time allocable to the UPA claim both in whole and in part is as merits counsel’s affidavits indicate, and that counsel exercised billing judgment. The federal courts assess what are reasonable hours spent based on considerations similar to the *Lenz* factors:

In determining what is a reasonable time in which to perform a given task or to prosecute the litigation as a whole, the court should consider that what is reasonable in a particular case can depend upon factors such as the complexity of the case, the number of reasonable strategies pursued, and the responses necessitated by the maneuvering of the other side.

Ramos, 713 F.2d at 554. “The [defendants] cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff[s] in response.” *City of Riverside v. Rivera*, 477 U.S. 561, 580-81 n.11 (1986) (citation and internal quote marks omitted).

The complexity of this case and the intensity with which it was defended increased not only the number of hours that Intervenor’s counsel had to expend – in this case the Bank’s position in settlement negotiations guaranteed that the case would have to be tried to a verdict in order for the Intervenor to prevail – but also the risk of succeeding. The availability of a fully compensatory attorneys’ fee, subject to a reasonable allocation of fees for overlapping time in the Court’s sound

discretion, is particularly important here, where the Intervenor is represented by two solo practice lawyers and a lawyer in a two-lawyer partnership to whom the risk of not prevailing, and therefore non-payment, created even greater economic risks. *Cf. Pennsylvania v. Delaware Valley Citizens' Council*, 483 U.S. 711, 750 and n.14 (1987) (Blackmun, J., dissenting). While the substantial damages that the Court awarded to the Intervenor are an excellent result for this type of case, the vindication of the public policies behind the UPA under which the Intervenor's claim was brought for which he seeks attorneys' fees also serves important public interests, addressed by the third *Lenz* factor. The Intervenor's success in this case has provided a forum for exposing a nationwide financial institution's gross misconduct, which one must not only hope but expect will provide an incentive to the Bank and other financial institutions like it to institute – and follow – policies protective of consumer rights and ensure in the future the adequate training and supervision of corporate personnel. It is not only the Judgment but this Court's award of a fully compensatory statutory attorneys' fee that will serve as an effective deterrent.

In addition, the award of a fully compensatory attorneys' fee in this case should have the further salutary effect of serving the twin “public policies of encouraging individuals to pursue their UPA claims and reimbursing [claimants] and their counsel for enforcing the UPA.” *Aguilera v. Palm Harbor Homes, Inc.*, 2004-NMCA-120, ¶ 10, 136 N.M. 422, 426, 99 P.3d 672, 676, *cert. denied*, No. 28,869 (2004), *citing Jones v. Gen. Motors Corp.*, 1998-NMCA-020, ¶¶ 24-25, 124 N.M. 606, 953 P.2d 1104 (award “should reflect the full amount of fees fairly and reasonably incurred by [claimant]”) (citation omitted); *Hale v. Basin Motor Co.*, 110 N.M. 314, 321-22, 795 P.2d 1006, 1013-14 (1990). *See also*, Davis Decl., ¶ 25.

The Intervenor herein undeniably obtained “excellent results.” Counsel's decision to take

this case, their reasons for doing so and the skill and tenacity they brought to bear in securing the vindication of their client's statutory rights, exemplify the highest traditions of the bar. The attorneys' fees awarded should not only reinforce public policy but also reflect counsel's dedication to the vindication of their client's rights and the substantial success that he obtained.

B. Allocation of Attorneys' Fees in UPA Cases

As the Court noted at the hearing at which it ruled on Intervenor's Motion to Stay Attorneys' Fee Proceedings, the difficult – and critical – task for the Court in awarding Intervenor his attorneys' fees on his successful UPA claim is how, in its sound discretion, to allocate an appropriate portion of his counsel's time spent on the case overall to the UPA claim. "Our Supreme Court has continued to direct that recoverable fees be segregated from non-recoverable fees to ensure that only those fees for which there is authority to award attorney fees are in fact awarded." *Dean v. Brizuela*, 2010-NMCA-076, ¶ 17, 148 N.M. 548, 551–52, 238 P.3d 917, 920–21, *citing Hinkle, Cox, Eaton, Coffield & Hensley v. Cadle Co.*, 115 N.M. 152, 157–58, 848 P.2d 1079, 1084–85 (1993) (reversing fee award that included fees for both prosecution of statutory fee generating claim and defense of counterclaim for which no statutory fee was allowed).

Time spent on claims wholly distinct from the UPA claim are not compensable. The trial court is to exercise its sound discretion, after securing the assistance of the party seeking fees, "to separate the claims and determine the amount of time spent on each." *Id.*, *citing Gonzales v. N.M. Dep't of Health*, 2000 NMSC 29, ¶¶ 35-36, 129 N.M. 586, 11 P.3d 550.

As this Court is well aware, the category of time that is the one most difficult for the trial court and the prevailing party seeking fees to address is "inextricably intertwined" or "overlapping" time – time spent on both fee generating and non-fee generating claims.

Some of the work may be inextricably intertwined, making it difficult or impossible to segregate some of the time worked on the complaint from work related to the counterclaims. Nevertheless, the trial court should attempt to distinguish between the two types of work to the extent possible.

Hinkle, Cox, 115 N.M. at 157–58.

The Court’s obligation – and Intervenor’s – is not to do the impossible, however. The Court must attempt, “to the extent possible,” to distinguish between the work done on claims providing for fees to the prevailing party and claims which make no such provision, such as the breach of contract, fraud and breach of fiduciary duty claims in this case. *Hinkle, Cox*, 115 N.M. at 158, 848 P.2d at 1085. *See also, Chavarria v. Fleetwood Retail Corp.*, 2005-NMCA-082, ¶43, 137 N.M. 783, 799, 115 P.3d 799, 815, *rev’d on other gr’ds*, 2006-NMSC-46, 140 N.M. 478, 143 P.3d 717. And while it is the trial court’s obligation to undertake this “allocation” effort with regard to time that is “inextricably intertwined,” the burden of establishing that this is so, and how to allocate it, is on the attorneys seeking the fee award. *J.R. Hale Contracting Co. v. Union Pacific Railroad*, 2008–NMCA–037, ¶ 95, 143 N.M. 574, 179 P.3d 579. *See also, Jaramillo, supra*. Intervenor willingly embraces his obligation to make this proof of allocation.

To assist the trial court in the task imposed upon it by the New Mexico appellate courts, Intervenor’s counsel have attached to their affidavits filed in support of this fee motion their time records segregating their time into three categories: 1) time reasonably and necessarily spent on UPA claims and which is therefore entirely compensable as a matter of law (color coded in green); 2) time either not related in any way to the UPA claims, which is therefore *not* compensable as a matter of law, or for which compensation is not sought as a matter of billing judgment (color coded in red); and, 3) time spent on both the UPA claim and the non-fee generating breach of contract,

fraud and breach of fiduciary duty claims, as well as overcoming the statute of limitations defense,² for which the Intervenor is entitled to compensation for a portion thereof, because overlapping claims are compensable in part (color coded in yellow). *Cf., Chavarria, supra*. By doing so, Intervenor’s counsel have provided the assistance to the Court required of them. *Jaramillo v. Gonzales*, 2002 NMCA 72, ¶ 41, 132 N.M. 459, 469, 50 P.3d 554, 564, *cert. denied*, 47 P.3d 447 (2002) (burden to segregate time not spent on UPA claim, and thus not compensable, not on party opposing fee request, but on fee applicant and trial court).

This Court expressly found that “the conduct giving rise to the UPA claim is the same conduct that supports the other causes of action” Decision, at 55 n. 9. If the conduct “is the same,” then a predominating consideration for the Court in making its allocation must be the notion that the time spent by Intervenor’s counsel proving “the other causes of action” “is the same” time spent proving the UPA violation. All such time spent on both fee-generating and non-fee-generating claims is therefore “inextricably intertwined.” *Hinkle, Cox*, 115 N.M. at 158, 848 P.2d at 1085. And where a court in its discretion concludes that time spent on both fee-generating and non-fee-generating claims is “inextricably intertwined,” *id.*, it “may properly award fees for UPA work that overlaps factually with another claim.” *Chavarria*, 2005-NMCA-82, ¶44 (citation omitted).

[W]hen the attorney’s services are rendered in pursuit of multiple objectives, some of which permit an award of fees and some of which do not, *the court must make a reasoned estimate, based either on evidence or on its familiarity with the case at trial, of the proportion or quantum of services that are compensable ...* .

² The Bank’s statute of limitations defense extended to all of Intervenor’s claims, including his UPA claim, since all of his claims were filed beyond the statute of limitations and the failure to overcome this defense would have been fatal to all of the Intervenor’s claims. Intervenor succeeded in overcoming this defense based on the same evidence of fraud that supported all of his substantive claims, including his UPA claim. Decision, at 41-44.

Economy Rentals, Inc. v. Garcia, 112 N.M. 748, 765, 819 P.2d 1306, 1323 (1991) (emphasis added).

In *Chavarria*, “the trial court found that proof of an unfair trade practice ‘was an element of the usury claim that required presentation of evidence at trial’ and deducted from its fee determination a portion of the time spent on other aspects or legal issues related to the usury claim.” 2005-NMCA-82, ¶44. The court “defer[red] to the trial court’s reasoned estimate of the amount of work attributable to the UPA in this regard.” *Id.* In this case, the Court found not that proof of the UPA claim was “an element” of the non-fee generating claims, but that it was one and the same. If all such time is not compensable because the case law requires the Court to make an allocation, then surely the vast percentage of such time may be allocated to the UPA claim, and is therefore compensable, where the work done to prove the other, non-fee generating claims was the same work by which Intervenor’s counsel proved the UPA claim.

Finally, the Court should take into consideration as a factor in how it allocates time, the public policy behind the UPA. As a matter of public policy, UPA claims are not “minor issues” in any consumer protection litigation regardless of the damages involved. *Jones, supra*; *Hale, supra*.

Based on all of the above, and keenly aware that the selection of a reasonable allocation is solely within the sound discretion of the trial court, *Economy Rentals, supra*, Intervenor respectfully suggests to the Court that allocating 70% of his counsel’s time spent on the overlapping claims is a reasonable percentage of that time for which he is entitled to compensation. *See* Ex. 1; Affidavits of Zamora, Vargas, Wray filed herewith.

III. MARKET RATES

Any award of fees to counsel in this case is based solely on achieving success for the client and a court-awarded fee. *See* Zamora Aff., ¶ 2; Vargas Aff., ¶ 2. Intervenor’s counsel are entitled

to the reasonable hourly rates requested in their affidavits. These rates are within the range of what they charge to paying clients and are consistent with prevailing market rates in the New Mexico legal community, *i.e.*, “what lawyers of comparable skill and experience practicing in the area in which the litigation occurs would charge for their time.” *Ramos*, 713 F.2d at 555 (footnote omitted); *see also*, Davis Decl., ¶¶ 9-11, 18 (setting out cases establishing market rate of lawyers of comparable skill and experience to Intervenor’s counsel). All of Intervenor’s counsel have established their skill and experience to support the hourly rates sought in their affidavits. Zamora Aff., ¶¶ 3-15; Vargas Aff., ¶¶ 3-11; Wray Aff., ¶¶ 2-9; Davis Decl., ¶¶ 1-12, 17-23. *See also*, Hall Aff., ¶ 4-8; Sullivan Aff., ¶¶ 5-7. *See also*, Goldberg Aff., ¶¶ 5-9.

Moreover, this Court has firsthand knowledge of Intervenor’s counsel’s skill and experience, demonstrated in this and other cases in which they have appeared before it, which it can consider to value counsel’s services. The trial court has a “superior understanding of the litigation,” *Hensley*, 461 U.S. at 437, and “can best assess the experience and skill of attorneys” who practice before it. *Mary Beth v. City of Chicago*, 723 F.2d 1263, 1281 (7th Cir. 1983).

In view of the “excellent results” achieved, the quality of the services rendered, Intervenor’s counsel’s experience as trial attorneys in complex litigation, the prevailing fees paid to New Mexico attorneys of comparable experience for complex litigation, and the need to compensate lawyers at rates high enough to attract competent counsel to consumer protection litigation in this jurisdiction, Intervenor’s counsel are all entitled to their requested hourly rates.

IV. FEEES FOR OBTAINING FEES

The time expended in proving and pursuing the fee claim itself is compensable. *Love v.*

Mayor, City of Cheyenne, 620 F.2d 235 (10th Cir. 1980). Undersigned counsel has established in his affidavit his expertise and experience in attorneys' fee litigation, of which this Court has first hand knowledge. Davis Decl., ¶¶ 2-10. His involvement as fee counsel has "minimized the fees incurred" for the fee work because in his absence, merits counsel would have had to do the same work but with less efficiency, given undersigned counsel's "specialized knowledge and greater experience in fees litigation" than merits counsel. *Kee v. Smith*, No. CIV 02-1243 JH/RHS (U.S.D.N.M.) (Mem. Op. and Order, 10/31/06)(Doc. 139), at 6. Fee counsel has used billing judgment in this effort as well, employing the services of Ms. Wray due to her direct knowledge of the merits litigation to assist in the preparation of the fee motion and merits counsel's affidavits and time records, in which, employing her superior knowledge of the merits of the case, she has categorized and color coded merits counsel's time. And she has done so working at a lower hourly rate than fee counsel.

The fees requested in the present motion relate to work through the filing of this motion. However, the trial court work is not completed in this matter as the Intervenor's motion for pre-judgment interest remains pending and Intervenor must still respond to the Bank's anticipated opposition to the present motion. Counsel will be filing together with Intervenor's reply brief on the fee motion their supplemental affidavits setting forth the additional time spent by them in the case. That said, Intervenor is well aware that a "request for attorneys' fees should not result in a second major litigation," *Hensley*, 461 U.S. at 437, a sentiment repeated by the New Mexico appellate courts. *See, e.g., Sanchez v. Homestake Mining Co.*, 102 N.M. 473, 480, 697 P.2d 156, 163 (Ct. App. 1985) (citations omitted).

V. LITIGATION EXPENSES

The expenses for which reimbursement is requested are all normally billed to paying clients by Intervenor's counsel and in the New Mexico legal community. *Zamora Aff.*, ¶ 36; *Vargas Aff.*, ¶ 30; *Davis Decl.*, ¶ 24. The records attached to Intervenor's counsel's affidavits itemize all such reasonable and necessary expenses, and otherwise provide the full basis for calculating Intervenor's total fee award, including litigation expenses.³

All litigation expenses in statutory fee award cases, including out-of-pocket expenses, are recoverable under the statute as long as the expenses were reasonable and necessary to the litigation of the prevailing party's claims and are not normally billed to the lawyer's paying clients as overhead. *Ramos, supra*. The rulings in the New Mexico state district courts have followed the principles enunciated in *Ramos*. See, e.g., *Albuquerque Commons Partnership v. City Council of the City of Albuquerque*, 2009-NMCA-65, ¶¶ 61-65, 146 N.M. 568, 212 P.3d 1122, *cert. denied in relevant part*, 2009-NMCERT-006, 146 N.M. 733, 215 P.3d 42 (affirming district court award of litigation expenses and statutory costs in state court § 1983 action).

VI. INTEREST ON AWARD OF ATTORNEYS' FEES AND EXPENSES

The need to litigate the fee award causes a delay in payment to Intervenor's counsel of their reasonable attorneys' fees. They should not have to bear this opportunity cost but instead it is the Bank which should have to pay it. *Cf., Chalmers v. City of Los Angeles*, 676 F. Supp. 1515, 1527 (C.D. Cal. 1987). Interest on the statutory award of fees and costs running from July 27, 2016, the date of the Judgment, at the statutory rate the Court allowed with regard to the judgment amount,

³ Intervenor expressly states that he does not seek double recovery of any costs/expenses by way of the Cost Bill and this motion for attorneys' fees and expenses. Intervenor's statutory costs of litigation are the subject of his Rule 1-054 Cost Bill (filed 8/9/16). However, the Cost Bill is opposed and certain costs listed therein may be disallowed in the sound discretion of the Court. Any costs sought under Rule 1-054 that are disallowed may be sought as litigation expenses under NMSA 1978 § 57-12-10(C).

is appropriate to compensate for the delay in payment. *Id. See also, Jenkins v. Missouri*, 731 F. Supp. 1437, 1439 (W.D. Mo. 1990) (plaintiff entitled to interest on fees from date of determination of prevailing party status).

“[L]ong established principles of tort law” dictate that the purpose of allowing damages in actions in tort are to ““make the injured person whole.”” *Lovelace Medical Center v. Mendez*, 111 N.M. 336, 349, 805 P.2d 603, 616 (1991). Post-judgment interest furthers this principle, especially in cases such as this one where the delay from the judgment to when the judgment is paid may span many years, by “prevent[ing] the inequity of denying the prevailing party the cost of the lost opportunity of using the money that the judgment debtor had use of during the pendency of the appeal.” *Folz v. State*, 115 N.M. 639, 642, 857 P.2d 39, 42 (Ct. App.), *cert. denied*, 115 N.M. 602 (1993) (citation omitted). *See also Bird v. State Farm Mut. Auto Ins. Co.*, 2007-NMCA-088, ¶ 42, 142 N.M. 346, 165 P.3d 343 (in addition to its value as “enforcement mechanism,” post-judgment interest serves to “compensat[e] the plaintiff for being deprived of compensation from the time of judgment until payment”).

CONCLUSION

Merit counsel have achieved undeniably excellent results for the Intervenor in this case, reflecting their skill and experience as trial lawyers, which this Court observed firsthand. In doing so, they expended reasonable and necessary time for which the Intervenor is entitled to be fully compensated, subject to the allocation mandated as to “inextricably intertwined” time. Intervenor is further entitled to be fully compensated for his reasonable and necessary litigation expenses.

Intervenor’s motion for attorneys’ fees and expenses, plus applicable gross receipts tax, together with interest thereon from the date of Judgment, July 20, 2016, is reasonable and well supported and should be granted in its entirety by the Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was electronically filed with the First Judicial District Court and was served via e-mail on this 20th day of October, 2016, to the following counsel of record:

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Counsel for Defendants-in-Intervention

/s/ Philip B. Davis
Philip B. Davis

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Counsel for Rufina Lofts, LLC

ATTORNEYS' FEES AND LITIGATION EXPENSES CHART

<u>Zamora Law Firm</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Totals</u>
D. Diego Zamora			
Time spent solely on			
UPA claim (coded in green)	0.0 hours		0.00
Time spent solely on non-UPA claims			
(coded in red)	1.9 hours (n/c)		0.00
Time spent on "inextricably intertwined"			
(overlapping) claims (coded in yellow)			
	520.9 hours	\$375.00	\$195,337.50
30% Reduction ($\$195,337.50 \times 0.30 = \$58,601.25$)			<u>(58,601.25)</u>
Subtotal Fees			\$136,736.25
Gross receipts tax (8.3125%)			<u>11,366.20</u>
Subtotal fees and tax			\$148,102.45
Expenses			
Costs (Exhibit B-1)		\$35,783.14	
Litigation Expenses (Exhibit B-2)		14,832.25	
Gilbert Invoice (Exhibit C)		<u>35,218.75</u>	
Total Expenses		\$85,834.14	<u>85,834.14</u>
TOTAL (THROUGH OCTOBER 18, 2016)			<u><u>\$233,936.59</u></u>

Vargas Law Firm

Ray Vargas			
Time spent solely on			
UPA claim (coded in green)	28.0 hours @ \$300/hr.		\$ 8,400.00
Time spent solely on non-UPA claims			
(coded in red)	0.0 hours (n/c)		0.00
Time spent on "inextricably intertwined"			
(overlapping) claims (coded in yellow)			
	375.6 hours @ \$ 300/hr.		112,680.00
30% reduction ($\$112,680 \times 0.30 = \$33,804.00$)			<u>(33,804.00)</u>
Subtotal Fees			\$ 87,276.00
Gross receipts tax (7.3125%)			<u>6,382.06</u>
Subtotal Fees and Tax			\$ 93,658.06



Expenses		
Costs (Exhibit B-1)	\$58,522.76	
Litigation Expenses (Exhibit B-2)	<u>10,217.27</u>	
Total Expenses	\$68,740.03	<u>68,740.03</u>

TOTAL (THROUGH OCTOBER 18, 2016) \$162,398.09

Wray & Girard Law Firm

Katherine Wray		
Time spent solely on UPA claim	3.8 hours @ \$225/hr.	\$ 855.00
Time spent solely on non-UPA claims (coded in red)	17.4 hours (n/c)	0.00
“No charge” time (billing judgment (apart from non-UPA time) (also coded in red))	91.3 hrs. (n/c)	\$ 0.00
Time spent on "inextricably intertwined" (overlapping) claims (coded in yellow)	452.8 hrs. @ \$ 225/hr.	101,880.00
30% reduction (\$101,880.00 x 0.30 = \$30,564.00)		<u>(30,564.00)</u>
Subtotal Fees		\$ 72,171.00
Gross receipts tax (7.3125%)		<u>5,277.50</u>
Subtotal Fees and Tax		\$ 77,448.50
Expenses		<u>230.00</u>

TOTAL (THROUGH OCTOBER 18, 2016) \$ 77,678.50

Law Office of Philip B. Davis

Philip B. Davis	37.7 hours	
No Charge Time	<u>(4.8)</u>	
Billable Hours	32.9 @ \$400.00	\$13,160.00
Kristina Bainbridge	15.0 hours	
No Charge Time	<u>(3.3)</u>	
Billable Hours	11.7 @ \$125.00	<u>1,462.50</u>
Subtotal Fees		\$14,622.50
Gross receipts tax (7.3125%)		<u>1,069.27</u>
Subtotal Fees and Tax		\$15,691.77
Expenses (incl. GRT on taxable costs of \$60.00)		<u>195.73</u>

TOTAL (THROUGH OCTOBER 18, 2016): \$15,887.50

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

NO. D-101-CV-2009-00440

JPC CONTRACTORS, LLC,

Plaintiff,

vs.

**RUFINA LOFTS, LLC AND U.S. BANK
NATIONAL ASSOCIATION, AS TRUSTEE FOR
THE Santa Fe COUNTY, NEW MEXICO
MULTIFAMILY HOUSING REVENUE BONDS
(VILLA GRANDE APARTMENTS PROJECT)
SERIES 1998, AND KEITH MARSHALL,**

Defendants and Third Party Defendants,

vs.

**JERRY D. POWERS AND INDUSTRIAL
CONSTRUCTORS CORPORATION,**

Third Party Defendants and Counterclaimants,

**PHIL LUCAS, INDIVIDUALLY AND AS ATTORNEY
IN FACT FOR CERTAIN HOLDERS OF THE SANTA
FE COUNTY, NEW MEXICO MULTIFAMILY HOUSING
REVENUE BONDS (VILLA GRANDE APARTMENTS
PROJECT) SERIES 1998,**

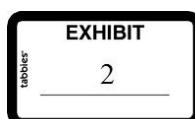
Intervenor,

vs.

**U.S. BANK NATIONAL ASSOCIATION AND
KEITH MARSHALL,**

Defendants in Intervention.

DECLARATION OF PHILIP B. DAVIS



STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

I, Philip B. Davis, declare under penalty of perjury and as an officer of this Court as follows:

1. I am an attorney licensed to practice law in the State of New Mexico since 1978 and before the United States District Court for the District of New Mexico, the Seventh and Tenth Circuit Courts of Appeals and the United States Supreme Court. I have an AV rating in the Martindale-Hubbell Law Directory and an AV Preeminent rating with New Mexico's Top Rated Lawyers. To the best of my knowledge, I have been included in Who's Who in American Law since 1996. From 2008 to the present, I have been one of a half dozen New Mexico lawyers named to the list of "Super Lawyers" in the areas of civil rights and First Amendment law. I have been listed since 1995 in The Best Lawyers in America for First Amendment (civil rights, police misconduct) and Employment Law (individuals). Best Lawyers named me as its 2014 Albuquerque Employment Law-Individuals "Lawyer of the Year." For 2011-15, my solo practice law firm was identified by U.S. News & World Report in their Best Lawyers/Best Law Firms rankings as having a "First Tier Ranking" among Albuquerque law firms in the areas of Civil Rights Law, Employment Law - Individuals and Litigation - First Amendment law. For 2016, my law firm maintained its Best Lawyers first tier ranking in the fields of Civil Rights Law, Employment Law - Individuals and Litigation - First Amendment, and I was named by Best Lawyers as its 2016 Albuquerque Litigation - First Amendment "Lawyer of the Year."

2. I have handled numerous attorneys' fees litigations under 42 U.S.C. § 1988 and related federal and state fee-shifting statutes such as the federal disability discrimination laws and

state consumer protection laws. I have been retained in nearly seventy-five cases solely to represent counsel for prevailing parties in obtaining a fee award. I was fee counsel in the trial court and counsel in the appeals from the fee awards in both ACLU v. Duran, 2016-NMCA-063, 2016 WL 1593703 (N.M. Ct. App.), a state law Inspection of Public Records Act (“IPRA”) case, and Khalsa v. Puri, No. 33,622 (April 14, 2015), *cert. denied*, N.M.S.Ct. No. S-1-SC-35294 (June 11, 2015), a trust accounting case. I remain fee counsel in both of these cases on remand. I was fee counsel for plaintiff in another state law IPRA case, Cox v. New Mexico Dept. of Safety, in the trial court on remand. *See, Cox v. New Mexico Dept. of Safety*, 2010-NMCA-096, 148 N.M. 934242 P.3d 501, *cert. quashed*, 266 P.3d 634 (Table 2011). I was also fee counsel for plaintiffs in Duran v. Johnson, No. CIV 77-721-JC. *See Duran v. Carruthers*, 885 F.2d 1492 (10th Cir. 1989). I am also fee counsel as well as a member of the litigation team in Jackson v. Ft. Stanton Hospital and Training School, 757 F. Supp. 1243 (D.N.M. 1990), *rev'd in part on other grounds*, 964 F.2d 980 (10th Cir. 1992), and was fee counsel as well as a member of plaintiffs’ litigation team in ACLU v. Johnson, 4 F. Supp.2d 1024 and 1029 (D.N.M. 1999), *aff’d*, 194 F.3d 1149 (10th Cir. 2000). For the past several years, I have been fee counsel in a long-running prison conditions class action litigation in the federal district court entitled McClendon v. City of Albuquerque, et al., No. CIV No. 95-0024 JAP/KBM.

3. I routinely consult on attorneys’ fees issues with other members of the civil rights bar and successful plaintiffs’ attorneys in statutory fee generating cases in New Mexico and elsewhere in the United States, including the National Office and various state affiliate offices of the American Civil Liberties Union. On a regular basis, I am paid my standard hourly rate by New Mexico attorneys to consult on the issue of attorneys’ fees and expenses. I am not aware of any other lawyer

in New Mexico with experience comparable to mine in the area of attorneys' fees litigation.

4. I have lectured on attorneys' fees litigation on a regular basis over the years to numerous lawyers' associations on both sides of the bar.

5. I have been qualified and testified as an expert on attorneys' fees in both the state and federal courts of New Mexico.

6. I have been retained numerous times by mutual agreement of counsel for the parties to arbitrate and mediate attorneys' fee disputes in fee award generating litigation.

7. In addition to my having been qualified to testify as an expert on attorneys' fees, I have also filed numerous affidavits in both the state and federal courts on behalf of attorneys seeking fees under fee-shifting statutes. The New Mexico federal district judges have acknowledged my expertise in civil rights law as well as in the law of attorneys' fees for nearly 30 years. *See, e.g., Valdez v. Herrera*, Civ. No. 09-668 JCH/DJS (Order Granting Attorneys' Fees, 3/21/11) [Doc. 149], at 3-4 (setting rates, relying on affidavit of Davis as having "substantial expertise in attorney fee issues in civil rights cases"); *Lewis v. New Mexico Dept. of Health*, No. CIV 99-0021 MV/JHG (Mem. Op. and Order, 1/5/05) [Doc. 230], at 19 (identifying Davis as "an expert on attorneys' fees in this state and fee counsel in this case"); *Nieto v. Kapoor*, No. CIV 96-1225 MV/JHG (Mem. Op. and Order, 6/12/01), at 11 (in setting hourly rates for prevailing plaintiffs' counsel, court acknowledged reliance on affidavit of undersigned counsel, stating "Davis [is] an experienced civil rights attorney in this state, who also has significant experience in attorneys' fees litigation, ..."); *Martinez v. Jennings*, No. 85-1291-M Civil (Mem. Op. and Order, July 11, 1988), at 6 ("Rosenstock and Rothstein hired Phil Davis, expert in civil rights and in § 1988 fee litigation, to pursue this [fee] application").

8. Based on my substantial involvement as fee counsel in a number of fee award litigations, I am familiar with contemporary market rates for lawyers in New Mexico involved in litigation of all sorts, including securities and antitrust work, complex commercial litigation, consumer protection litigation and other civil rights work, and particular to this matter, public records act litigation.

9. My current hourly rate is \$400. Since January 2015, I have billed and been paid by paying clients, both individuals and government entities, at my current hourly rate to consult on civil rights and attorneys' fee issues and to engage in complex litigation in the New Mexico courts, including in this state district court. *See, e.g., O'Friel v. Goldberg*, No. D-101-CV-2014-00132 (1st Jud. Dist. Ct., Santa Fe Cty., N.M.). Since that time, I have also settled my fees in civil rights cases based on that rate. I was recently awarded attorneys' fees at my current hourly rate of \$400 by the Hon. Clay Campbell, District Judge, for my work as appellate counsel and fee counsel on remand in ACLU v. Duran, No. D-202-CV-2011-07257 (2d Jud. Dist. Ct., Bern. Cty., N.M.) (Stipulated Order Granting Plaintiff's Unopposed Motion for Attorneys' Fees, Expenses and Statutory Costs for Appeal and on Remand, 8/12/16), at 2.

10. Based on litigation in which we served as opposing counsel through jury trial, prior to her appointment to the bench, this Court has direct knowledge of my skill and experience as a trial attorney. The Court recognized my skill and experience and particular expertise in the area of fee litigation when it awarded me fees at my then hourly rate of \$350 for my work in 2011 as fee counsel in Tilkemeier v. Capitol City Title Services, Inc., No. D-101-CV 2009-02503 (1st Jud. Dist. Ct., Santa Fe County, NM) (Order Granting in Part Plaintiffs' Motion for Attorneys' Fees and Expenses and Plaintiffs' Bill of Costs, 10/5/11), at 2-3 ¶¶ 5, 7.

11. I was awarded my then-current hourly rate of \$375 by United States District Judge James O. Browning after prevailing on a discovery motion in a federal civil rights case in 2013. *See, Knight v. Metzgar*, No. CIV 12-460 JB/ACT (Clerk's Minutes (6/18/13) [Doc. 46]), at 2). Acknowledging that my current hourly rate is \$400.00, Senior United States District Judge James A. Parker nevertheless recently relied on my former hourly rate of \$375 awarded by Judge Browning in the *Knight* case to award that rate of \$375 to Richard Rosenstock and Daniel Yohalem in 2015. *See, Chavez v. Chavez*, No. CIV 13-1047 JAP/SCY (Mem. Op. and Order Granting Plaintiff's Corrected Motion for Attorneys' Fees and Costs) [Doc. 116] (4/20/15), at 11-12. *See also, Martinez v. Carson*, No. 08-cv-1046 WJ/LFG (Mem. Op. and Order Granting in Part Plaintiffs' Motion for Attorney Fees and Expenses, 8/11/11) [Doc. 231], at 7 (relying on Davis' then-current hourly rate of \$350 to award fees at same rate to Albuquerque attorney Paul Kennedy).

12. Based on my knowledge of hourly rates charged by attorneys in the New Mexico legal community, as a result of my work in the area of fee litigation, I believe that my current hourly rate is within the range of the market rates for an attorney of my skill and experience. In addition, I believe the rate that I seek here is within the range of market rates commanded by attorneys based solely on their years' experience, without regard to the complexity of the particular work being done. For example, I am aware that in New Mexico, bankruptcy attorneys with my years' experience such as Jennie Behles regularly bill and are paid at hourly rates of \$425.00 and higher and that the same is true for class action litigation lawyers such as Gene Gallegos and Michael P. Gross and oil and gas litigation lawyers such as Michael Campbell.

13. The paralegal in our law office, Kristina Bainbridge, has a dozen years' experience as a paralegal working in law firms handling litigation matters. We bill her time at \$125.00 per hour

to paying clients, which is a fair and reasonable hourly rate consistent with the market rate for experienced paralegals in the New Mexico legal community.

14. In preparing this affidavit, I have reviewed the time I spent in this case and have used “billing judgment” in reporting the time for which I am seeking compensation. As a result of such “billing judgment,” I routinely and in this case as well, cut from the billings I prepare or show on such billings as “no charge” time approximately 5-10% of my hours.

15. The hours I have spent representing the Intervenor for which I seek compensation were reasonably necessary to perform the tasks described. I recorded my time contemporaneous with the work done and in no event later than the day after the work was done.

16. Based on the time and expense record attached hereto as Exhibit 1, I request the Court award my attorneys’ fees, litigation expenses and applicable gross receipts tax in the total amount of \$ **15,887.50**.

Philip B. Davis	37.7 hours			
No Charge Time	<u>(4.8)</u>			
Billable Hours	32.9	@	\$400.00	\$13,160.00
Kristina Bainbridge	15.0 hours			
No Charge Time	<u>(3.3)</u>			
Billable Hours	11.7	@	\$125.00	<u>1,462.50</u>
Subtotal Fees				\$14,622.50
Gross receipts tax (7.3125%)				<u>1,069.27</u>
Subtotal Fees and Tax				\$15,691.77
Expenses (incl. GRT on taxable costs of \$60.00)				<u>195.73</u>
TOTAL (THROUGH OCTOBER 18, 2016):				<u>\$15,887.50</u>

17. The hourly rates sought by Intervenor’s merits counsel in this matter are \$375 for Mr. Zamora, \$300 for Mr. Vargas and \$225.00 for Ms. Wray.

18. It is my opinion that the hourly rates sought by Intervenor’s counsel in this case are

fair and reasonable. They are comparable to the market rates for lawyers of comparable skill and experience in the New Mexico legal community. I base my judgment in this regard on my personal knowledge of all of Intervenor's counsel's respective skills and experience as well as on the current prevailing hourly rates in the New Mexico legal community and of hourly rates set by the federal and state district courts in New Mexico in other fee award opinions. *See, e.g., State of New Mexico ex re. King v. Glaxosmithkline, LLC*, No. D-101-CV-2012-01432 (1st Jud. Dist. Ct., Santa Fe Cty., NM), Petition for Attorneys' Fees (12/18/13) and Order Granting (12/18/13). In the Glaxosmithkline case, plaintiff's counsel successfully prosecuted and settled a consumer protection case for the State. In settlement, the defendants did not object and the court awarded fees based on requested hourly rates for plaintiffs' counsel ranging from \$225 to \$475 for associates, and from \$475 to \$595 for partners in the law firm of Heard, Robins, a national law firm with offices in Santa Fe. Lawyers who were awarded fees at the rate of \$475 included those who graduated from law school between 1998 and 2004. The senior partner who was awarded fees at the rate of \$595 graduated from law school in 1991. Moreover, the reasonableness of the fees requested and by implication the rates on which they were based was attested to by then-Chief Deputy Attorney General Albert Lama. Messrs. Zamora and Vargas both have complex litigation experience comparable to if not in excess of the lawyers in the Glaxosmithkline case.

19. I have known Mr. Zamora since the late 1980's. I have co-counseled several police misconduct and a handful of wrongful death personal injury cases with Mr. Zamora over the past thirty-five years. Over the years, I have followed his outstanding work and consulted with him on matters of mutual interest on a regular basis. Mr. Zamora's skill, knowledge and extensive experience as a lawyer, both in writing and in the courtroom, are first rate. He is a zealous advocate

for his clients and is capable of handling vast amounts of complex information in the examination of witnesses and the presentation of evidence and law both in briefing and at hearings in open court. Mr. Zamora has successfully litigated many civil rights, consumer protection, whistleblower and personal injury cases. In my opinion and based on my direct observation over more than thirty years, he ranks at the pinnacle of the plaintiffs' bar in New Mexico. Mr. Zamora's requested hourly rate of \$375 is fair and reasonable and in line with the market rate for lawyers of comparable skill and experience in the New Mexico legal community.

20. I have known Mr. Vargas for nearly twenty years. I first encountered him across the table when he defended a SLAPP suit brought by the ACLU of New Mexico against a developer, his client, and the City of Albuquerque. Even as a young lawyer, Mr. Vargas displayed a quick mind and excellent writing skills. Since then, I have encountered him in various antitrust and class action litigations, and sometimes as a client in fee matters, and found that his skill and experience in complex litigation matters far surpass what might be expected of a lawyer of less than twenty years at the bar. His requested rate of \$300 per hour is fair and reasonable and in my opinion below the market rate commanded by lawyers of his skill and experience in the New Mexico legal community.

21. I have known Ms. Wray for several years. We worked closely on fee litigation and a series of appeals taken from the rulings of this Court in the Khalsa case. Ms. Wray's organizational skills are excellent. Her legal writing and analysis are excellent. Her skill is well above what would be expected of a lawyer less than 10 years at the bar. Her requested hourly rate of \$225 is fair and reasonable and consistent with if not below the market rate for a lawyer of her skill and experience. *See, e.g., State Farm Mutual Ins. Co. v. Luebbers*, CV 2001-07534 (2nd Jud. Dist. Ct., N.M.) (Campbell, J.) (1/25/10) (awarding Albuquerque attorney Matt Garcia, with five years' experience,

fees on sanctions matter, in 2010, at \$225 per hour); Valdez v. Herrera, Civ. No. 09-668 JCH/DJS (U.S.D.N.M.) (Mem. Op. and Order, 3/21/11) [Doc. 149], at 3 (in Voting Rights Act case, awarding fees to lawyers with 5-10 years' experience, in 2011, at rate of \$225 per hour).

22. I believe further that the rates that Messrs. Zamora and Vargas and Ms. Wray seek here are within the range of market rates commanded by attorneys based solely on their years' experience, without regard to the complexity of the particular work being done.

23. Although I am a sole practitioner, I associate with co-counsel on virtually every case I accept because of the complexity of the litigation and the nature and the degree of resistance put up by defense counsel who routinely are associated with large firms or governmental agencies and who always have substantial litigation support, as well as virtually unlimited economic resources with which to fight the plaintiff's case. As a standard practice in cases where I associate with co-counsel, attention is paid to dividing up the labor, as necessary and where possible, to avoid duplication of effort. I know based on personal experience that Mr. Zamora and Ms. Wray, with whom I have worked closely in complex litigation matters, are skillful at effectively and conscientiously following these same principles of division of labor and avoiding duplication of effort. Based on my review of his time records in this case, it is clear that Mr. Vargas adopted these same principles in how he shared in the prosecution of this case.

24. The expenses for which Intervenor's counsel as well as myself seek reimbursement are not normally absorbed as part of law office overhead by lawyers in the New Mexico legal community but are routinely passed on to private clients. I have personal knowledge that this is so and am aware that the New Mexico federal district courts, consistent with Tenth Circuit case law on the matter, and the state courts in New Mexico as well, compensate prevailing parties in fee-

award generating cases for such out-of-pocket expenditures as part of litigation expenses. *See, e.g., Albuquerque Commons Partnership v. City Council of the City of Albuquerque*, 2009 NMCA 65, ¶¶ 61-65, 212 P.3d 1122, 1140-42, *cert. denied in relevant part*, 146 N.M. 733, 215 P.3d 42 (Table), 2009-NMCERT-006; *Saiz v. City of Santa Rosa*, No. CIV 01-1429 JP/LFG (U.S.D.N.M.) (Mem. Op. and Order, 4/28/03), at 6-7 *citing inter alia*, *Ramos v. Lamm*, 713 F.2d 546 (10th Cir. 1983).

25. Without the willingness and ability of lawyers like Messrs. Zamora and Vargas and Ms. Wray to undertake and successfully prosecute cases such as this one, citizens in New Mexico would not have any realistic opportunity to obtain the vindication of their rights protected under the Unfair Practices Act and other consumer protection statutes. Absent the award of fully compensatory attorneys' fees to lawyers like these who prevail in such public interest litigation, which can be difficult, complex, time consuming and expensive, and invariably hard fought by their opponent with virtually unlimited financial resources, other lawyers will not be attracted to the field or willing to undertake the representation of deserving clients with righteous claims, the legislative intent behind public interest statutes like the UPA, but also the statutory authorization of attorneys' fees to prevailing parties in such cases will go unfulfilled.

Done this 18th day of October, 2016.

A handwritten signature in black ink, appearing to read 'Philip B. Davis', is written over a horizontal line.

PHILIP B. DAVIS

Law Office of Philip B. Davis

814 Marquette Ave NW
Albuquerque, New Mexico 87102

INVOICE

Invoice # 201654
Date: 2016-10-18
Due On: 2016-11-17

Phil Lucas

**Lucas Fees - JPC Contractors, LLC v. Rufina Lofts, et al.,
D101CV200900440 (146)**

**Lucas Fees - JPC Contractors, LLC v. Rufina Lofts, et al.,
D101CV200900440 (146)**

Type	Date	Attorney	Notes	Quantity	Rate	Total
Service	2016-07-05	KB	Legal Services: Research the Odyssey filing system regarding the case docket to date and contact information for all involved counsel.	0.10	\$125.00	\$12.50
Service	2016-07-05	KB	Legal Services: (No charge) Open Lucas Fees matter in Clio, create case contact sheet, and hard file.	0.50	\$0.00	\$0.00
Service	2016-07-05	KB	Draft: Draft Hourly Fee Retainer Agreement for PBD to serve as fee counsel for review and approval by Diego Zamora and Ray Vargas.	0.30	\$125.00	\$37.50
Service	2016-07-05	KB	Draft: Draft letter to Diego Zamora and Ray Vargas regarding the hourly fee retainer agreement for review and approval.	0.10	\$125.00	\$12.50
Service	2016-07-05	KB	Edit: Edit and final the letter and retainer agreement for Diego Zamora and Ray Vargas for PBD to serve as fee counsel for their client, Phil Lucas.	0.20	\$125.00	\$25.00
Expense	2016-08-03	KB	Reimbursable expense: 07/16 Copies (44 @ 0.25 ea)	1.00	\$11.00	\$11.00
Service	2016-08-03	KB	Draft: Draft e-mail to Diego Zamora and Ray Vargas regarding the status of the executed retainer agreement.	0.10	\$125.00	\$12.50
Service	2016-08-04	PD	Legal Services: PC's DDZ, RV re m/stay fee and cost proceedings pending appeal	0.30	\$400.00	\$120.00
Service	2016-08-09	PD	Legal Services: Rev and edit draft EOA, m/stay proceedings on atty fees and litigation expenses, proposed order re same	0.30	\$400.00	\$120.00

Service	2016-08-09	PD	Legal Services: Final edit same	0.20	\$400.00	\$80.00
Service	2016-08-09	KB	Draft: Draft Entry of Appearance for Philip B. Davis as fee counsel for Intervenor Phil Lucas, to be filed in the First Judicial District Court.	0.20	\$125.00	\$25.00
Service	2016-08-09	KB	Draft: Draft Opposed Motion to Stay Proceedings Related to Intervenor's Motions for Attorneys' Fees, Expenses, and Statutory Costs pending resolution of appeal proceedings.	0.50	\$125.00	\$62.50
Service	2016-08-09	KB	Draft: Draft proposed Order Staying Proceedings Related to Intervenor's Motions for Attorneys' Fees, Expenses, and Statutory Costs pending resolution of appeal proceedings.	0.20	\$125.00	\$25.00
Service	2016-08-09	KB	Edit: Edit the Entry of Appearance, to include PBD's revisions.	0.10	\$125.00	\$12.50
Service	2016-08-09	KB	Edit: Edit the Opposed Motion to Stay Proceedings Related to Intervenor's Motions for Attorneys' Fees, Expenses, and Statutory Costs pending resolution of appeal proceedings, to include extensive revisions by PBD.	0.50	\$125.00	\$62.50
Service	2016-08-09	KB	Edit: Edit the proposed Order Staying Proceedings Related to Intervenor's Motions for Attorneys' Fees, Expenses, and Statutory Costs pending resolution of appeal proceedings, to include PBD's revisions.	0.10	\$125.00	\$12.50
Service	2016-08-09	KB	Edit: Continue editing the Opposed Motion to Stay Proceedings Related to Intervenor's Motions for Attorneys' Fees, Expenses, and Statutory Costs pending resolution of appeal proceedings, to include additional revisions by PBD.	0.20	\$125.00	\$25.00
Expense	2016-08-10	KB	Reimbursable expense: Cost adv: E-filing fee pd by Visa; reimb. PBD ck. 14175	1.00	\$10.29	\$10.29
Service	2016-08-10	KB	Edit: Final the Entry of Appearance and Intervenor's Unopposed Motion to Stay Proceedings Relating to Intervenor's Motion for Attorneys' Fees and Litigation Expenses pending appeal, for filing with the court.	0.20	\$125.00	\$25.00
Service	2016-08-10	KB	Draft: Draft e-mail to all counsel regarding the Entry of Appearance and Intervenor's Unopposed Motion to Stay Proceedings Relating to Intervenor's Motion for	0.10	\$125.00	\$12.50

			Attorneys' Fees and Litigation Expenses pending appeal.			
Service	2016-08-17	KB	(No charge) Update filing, create pleadings board.	0.90	\$0.00	\$0.00
Service	2016-08-22	KB	Legal Services: Research the Odyssey system regarding recent filings and Intervenor's Cost Bill, which were not served through the online filing system.	0.30	\$125.00	\$37.50
Service	2016-08-22	KB	(No charge) Update pleadings board with recent filings.	0.20	\$0.00	\$0.00
Service	2016-08-26	PD	Legal Services: Rev Bank's Reps to M Stay; draft Reply	1.70	\$400.00	\$680.00
Service	2016-08-28	PD	Legal Services: Redraft reply	0.40	\$400.00	\$160.00
Service	2016-08-29	PD	Legal Services: Cont'd same	0.30	\$400.00	\$120.00
Service	2016-08-29	KB	Legal Services: Research the United States District Court via PACER regarding the court-filed version of the Order entered by Judge M. Christina Armijo staying proceedings related to fee litigation in the matter of ACLU-NM v. Santillanes, CIV 05-1136, for use as Exhibit 2 to Lucas' Reply to U.S. Bank's Response to Motion to Stay Proceedings.	0.10	\$125.00	\$12.50
Service	2016-08-29	KB	Edit: Edit Lucas' Reply to U.S. Bank's Response to Motion to Stay Proceedings.	0.30	\$125.00	\$37.50
Service	2016-08-29	KB	Legal Services: Prepare exhibits 1 and 2 to Lucas' Reply to U.S. Bank's Response to Motion to Stay Proceedings.	0.20	\$125.00	\$25.00
Service	2016-08-30	PD	Legal Services: Rev RFH, NOH, Notice of Briefing Complete, final edit Reply	0.20	\$400.00	\$80.00
Service	2016-08-30	KB	Draft: Draft Notice of Completion of Briefing for Intervenor's Motion to Stay Proceedings.	0.30	\$125.00	\$37.50
Service	2016-08-30	KB	Draft: Draft Request for Hearing on Intervenor's Motion to Stay Proceedings.	0.20	\$125.00	\$25.00
Service	2016-08-30	KB	Edit: Edit the Reply to Response to Motion to Stay Proceedings, to include further revisions by PBD.	0.20	\$125.00	\$25.00
Service	2016-08-30	KB	Edit: Edit the Notice of Completion of Briefing for Intervenor's Motion to Stay Proceedings, to include revisions by PBD.	0.10	\$125.00	\$12.50
Service	2016-08-30	KB	Edit: Edit the Request for Hearing on Intervenor's Motion to Stay Proceedings, to include revisions by PBD.	0.10	\$125.00	\$12.50

Service	2016-08-30	KB	Draft: (No charge) Draft version 1 of a proposed Notice of Hearing for all matters to be heard at the 09.06.16 hearing before Judge Singleton.	0.10	\$0.00	\$0.00
Service	2016-08-30	KB	Draft: Draft version 2 of a proposed Notice of Hearing for only Intervenor's Motion to Stay Proceedings, on a date/time to be determined by Judge Singleton.	0.10	\$125.00	\$12.50
Service	2016-08-30	KB	Draft: Draft detailed e-mail to Judge Sarah Singleton regarding the briefing packet for Intervenor's Motion to Stay Proceedings, and the proposed Notice of Hearing (version 2) for her review and approval.	0.20	\$125.00	\$25.00
Expense	2016-08-30	KB	Reimbursable expense: Cost adv - E-filing fee; pd. Visa, reimb. PBD ck. 14209	1.00	\$10.29	\$10.29
Expense	2016-09-01	KB	Reimbursable expense: 8/16 Copies (87 @ 0.25 ea)	1.00	\$21.75	\$21.75
Service	2016-09-02	KB	(No charge) Update pleadings board.	0.40	\$0.00	\$0.00
Service	2016-09-02	KB	Prepare binder containing all briefing on Intervenor's Motion to Stay Proceedings Relating to Attorneys' Fees and Litigation Expenses, for PBD's use during the 09.06.16 hearing.	0.60	\$125.00	\$75.00
Service	2016-09-02	KB	(No charge) Register PBD with Court Call for his telephonic appearance at the 09.06.16 hearing.	0.30	\$0.00	\$0.00
Service	2016-09-02	KB	Draft: Draft e-mail to all counsel and Judge Singleton's chambers regarding confirmation of PBD's telephonic appearance for the 09.06.16 hearing via Court Call.	0.10	\$125.00	\$12.50
Service	2016-09-06	PD	Legal Services: Hrg on m/stay (by phone) (.4); email to cocounsel re same, re next steps on fee motion (.3); instr to paralegal re drafting order on m/stay (.1)	0.80	\$400.00	\$320.00
Expense	2016-09-06	KB	Reimbursable expense: Cost adv- Court Call fee for telephonic appearance at 9/6/16 hearing; pd. Visa, reimb. PBD ck. 14207	1.00	\$60.00	\$60.00
Service	2016-09-07	PD	Legal Services: (No charge) Rev KW notes of motions hrg re next steps	0.20	\$0.00	\$0.00
Service	2016-09-08	KB	Draft: Draft proposed Order Denying Intervenor's Motion to Stay Proceedings, following the 09.06.16 hearing.	0.20	\$125.00	\$25.00

Service	2016-09-12	KB	Edit: Edit the proposed Order Denying Intervenor's Motion to Stay Proceedings, to include PBD's revisions.	0.10	\$125.00	\$12.50
Service	2016-09-12	KB	Draft: Draft e-mail to Jerome Miranowski and Ellen Casey regarding the proposed Order Denying Intervenor's Motion to Stay Proceedings following the 09.06.16 hearing, for their review and approval.	0.10	\$125.00	\$12.50
Service	2016-09-13	PD	Legal Services: PC - KW re fee issues; pull Tilkemeier order on fees, email to KW	0.20	\$400.00	\$80.00
Service	2016-09-14	PD	Legal Services: PC - DZ re fee issues (.2); closer rev Decision and pull excerpts from same relevant to fee issue (.7)	0.90	\$400.00	\$360.00
Service	2016-09-14	PD	Legal Services: Conf w KW re time records, rates, allocation and fee issues generally	1.10	\$400.00	\$440.00
Service	2016-09-19	PD	Legal Services: Rev JL proposed edit to proposed order on m stay; email KW re same	0.20	\$400.00	\$80.00
Service	2016-09-21	PD	Legal Services: Rev KW, RV emails re same; email to JL re same; rev order granting pl's fees; rev and resp to KW emails re rates for various timekeepers	0.30	\$400.00	\$120.00
Service	2016-09-22	KB	Edit: Edit and final the Response to Bank's Motion in Opposition to Intervenor's Proposed Order Denying Motion to Stay Fee Proceedings.	0.20	\$125.00	\$25.00
Service	2016-09-22	KB	Prepare and underline excerpts of the email exchange between PBD and Julie Landy dated 09.21.16, for use as Exhibit 1 to the Response to Bank's Motion in Opposition to Intervenor's Proposed Order Denying Motion to Stay Fee Proceedings.	0.20	\$125.00	\$25.00
Service	2016-09-22	PD	Legal Services: Rev Bank's motion in opp Int's proposed order on m stay; draft response; edit same; email to KB w instr for finalizing and filing same; rev final of response, make final edits; email to KB re same, re filing same	1.30	\$400.00	\$520.00
Expense	2016-09-22	KB	Reimbursable expense: Cost adv - E-filing fee, pd by Visa; reimb. PBD ck. 14245	1.00	\$11.00	\$11.00
Service	2016-09-22	PD	Legal Services: Rev order denying m stay; pc DZ re hrly rates; email KW re same	0.20	\$400.00	\$80.00
Service	2016-09-23	PD	Legal Services: Further email traffic w KW re rates	0.20	\$400.00	\$80.00

Service	2016-09-23	PD	Legal Services: (No charge) Pull and rev Tilkemeier fee pldgs re hrly rates, fees for UPA claims	0.70	\$0.00	\$0.00
Service	2016-09-23	PD	Legal Services: Cont'd rev Decision on UPA violation and UPA-related damages claimed and awarded	0.40	\$400.00	\$160.00
Service	2016-09-23	PD	Legal Services: Begin drafting fee motion; email KW re same, re affidavits	3.80	\$400.00	\$1,520.00
Service	2016-09-23	PD	Legal Services: Rev categories of time spent on chart of fees and expenses	0.40	\$400.00	\$160.00
Service	2016-09-25	PD	Legal Services: Rev and resp to KW email w draft time records for DDZ, RV; rev draft time records; email DZ, RV re same	0.80	\$400.00	\$320.00
Expense	2016-10-01	KB	Reimbursable expense: 09/16 Copies (109 @ 0.25 ea)	1.00	\$27.25	\$27.25
Service	2016-10-03	PD	Legal Services: Rev and resp to KW email re status of time and expense records	0.20	\$400.00	\$80.00
Expense	2016-10-06	KB	Reimbursable expense: Legal Research Fees (Westlaw), 09/16	1.00	\$3.20	\$3.20
Service	2016-10-07	PD	Legal Services: Working lunch w KW to rev fee affidavits, discuss next steps in prep of fee motion	1.00	\$400.00	\$400.00
Expense	2016-10-07	KB	Reimbursable expense: Cost adv - Lunch meeting with Katie Wray to discuss Intervenor's attorney's fees; pd VISA, reimb PBD ck. 14256	1.00	\$25.56	\$25.56
Service	2016-10-11	PD	Legal Services: Email DDZ re same; email JM requesting conc in rates and m/ext pp limits for fee motion	0.40	\$400.00	\$160.00
Service	2016-10-11	PD	Legal Services: PC - DDZ re same	0.20	\$400.00	\$80.00
Service	2016-10-11	PD	Legal Services: (No charge) Email instr to paralegal re drafting m/order ext pp limits for fee motion	0.20	\$0.00	\$0.00
Service	2016-10-13	PD	Legal Services: Rev and edit same	0.20	\$400.00	\$80.00
Service	2016-10-13	KB	Draft: Draft Unopposed Motion to Extend Page Limits for Intervenor's Motion for Attorneys' Fees and Litigation Expenses and the Bank's Response thereto.	0.30	\$125.00	\$37.50
Service	2016-10-13	KB	Draft: Draft proposed Order Extending Page Limits for Intervenor's Motion for Attorneys' Fees and Litigation Expenses and the Bank's Response thereto.	0.20	\$125.00	\$25.00

Service	2016-10-13	KB	Draft: Draft email to Julie Landy and Jerome Miranowski regarding their review and approval of the proposed motion and order to extend page limits for Intervenor's fee motion and their response.	0.10	\$125.00	\$12.50
Service	2016-10-14	KB	(No charge) Update pleadings board with recent pleadings from 9/21/16 to present (11 total).	0.90	\$0.00	\$0.00
Service	2016-10-15	PD	Legal Services: Rev and edit RV aff; email RV re same and re add'l qx's re same	1.10	\$400.00	\$440.00
Service	2016-10-15	PD	Legal Services: Rev and resp to KW email re C Gilbert time records, edits to DDZ aff per same	0.20	\$400.00	\$80.00
Service	2016-10-15	PD	Legal Services: Rev and edit KW aff; email KW re same	0.40	\$400.00	\$160.00
Service	2016-10-15	PD	Legal Services: Cont'd revise RV aff, time records, lit exp exhibits, and calculations re time and expenses	2.40	\$400.00	\$960.00
Service	2016-10-15	PD	Legal Services: Revise DDZ affidavit; email KW re same, re DDZ time and expense records	1.30	\$400.00	\$520.00
Service	2016-10-15	PD	Legal Services: Cont'd redraft, edit fee motion	0.80	\$400.00	\$320.00
Service	2016-10-15	PD	Legal Services: Cont'd revise Fees and Expenses Chart; pc DDZ re litigation expenses, make edits to his Exs. B-1 and B-2 per same; email traffic w KW re edits to her aff, fee motion	1.40	\$400.00	\$560.00
Service	2016-10-16	PD	Legal Services: Redraft fee motion; cont'd revise DDZ Aff and expense charts; email traffic w co-counsel re same; begin drafting Fees and Expenses Chart, Ex 1 to Motion	2.50	\$400.00	\$1,000.00
Service	2016-10-16	PD	Legal Services: (No charge) Cont'd same	1.30	\$0.00	\$0.00
Service	2016-10-17	PD	Legal Services: PC - K Hall re aff for DDZ rate; email KH re same	0.20	\$400.00	\$80.00
Service	2016-10-17	PD	Legal Services: Begin finalizing KW, DDZ, RV aff's; rev J Sullivan aff re DDZ rate; edit DDZ, RV expense exhibits	0.60	\$400.00	\$240.00
Service	2016-10-17	PD	Legal Services: Draft PBD Declaration	1.20	\$400.00	\$480.00
Service	2016-10-17	KB	Edit: Edit and format the Affidavit of Katie Wray, to be attached to Intervenor's Motion for Attorneys' Fees and Litigation Expenses.	0.20	\$125.00	\$25.00

Service	2016-10-17	KB	Draft: Draft e-mail to Katie Wray regarding her revised affidavit for review and signature.	0.10	\$125.00	\$12.50
Service	2016-10-17	KB	Edit: Edit and format Exhibit B-1 to Diego Zamora's Affidavit; calculate total expenses referenced therein.	0.60	\$125.00	\$75.00
Service	2016-10-17	KB	Edit: Begin editing and formatting Exhibit B-2 to Diego Zamora's Affidavit.	0.30	\$125.00	\$37.50
Service	2016-10-18	PD	Legal Services: Rev and edit KW Aff, Ex A per email from KW re same	0.70	\$400.00	\$280.00
Service	2016-10-18	PD	Legal Services: Redraft, edit PBD Declaration	0.40	\$400.00	\$160.00
Service	2016-10-18	PD	Legal Services: Rev K Hall aff	0.20	\$400.00	\$80.00
Service	2016-10-18	PD	Legal Services: (No charge) Revise calculations on Fees and Expenses Chart, Ex. 1 to Fee Motion	0.80	\$0.00	\$0.00
Service	2016-10-18	PD	Legal Services: (No charge) Cont'd edit PBD Declaration	0.30	\$0.00	\$0.00
Service	2016-10-18	KB	Edit: Continue editing and formatting Exhibit B-2 to Diego Zamora's Affidavit; calculate total expenses referenced therein.	0.40	\$125.00	\$50.00
Expense	2016-10-18	KB	Reimbursable expense: Cost adv - E-filing fee, pd. by Visa; reimb. PBD Ck. _____	1.00	\$11.00	\$11.00
Service	2016-10-18	KB	Edit: Edit and format Exhibit B-1 to Ray Vargas' Affidavit; calculate total expenses referenced therein.	0.50	\$125.00	\$62.50
Service	2016-10-18	KB	Edit: Edit and format Exhibit B-2 to Ray Vargas' Affidavit; calculate total expenses referenced therein.	0.20	\$125.00	\$25.00
Service	2016-10-18	KB	Edit: Edit and final the Unopposed Motion to Extend Page Limits for Intervenor's Motion for Attorneys' Fees and Litigation Expenses and the Bank's Response thereto, as well as the proposed order regarding same to note approval by Julie Landy for filing with the Court.	0.20	\$125.00	\$25.00
Service	2016-10-18	KB	Draft: Draft e-mail to Judge Singleton regarding the proposed Order Extending Page Limits, for her review and approval.	0.10	\$125.00	\$12.50
Service	2016-10-18	KB	Edit: Edit and final the Motion for Attorneys' Fees & Litigation Expenses (15 pages total), for filing with the Court.	0.80	\$125.00	\$100.00

Service	2016-10-18	KB	Edit: Finalize all exhibits (and exhibit attachments, 12 total) to Intervenor's Motion for Attorneys' Fees and Litigation Expenses, for filing with the Court.	1.20	\$125.00	\$150.00
Service	2016-10-18	PD	Legal Services: (No charge) Revise DDZ Affidavit	0.70	\$0.00	\$0.00
Service	2016-10-18	PD	Legal Services: Finalize RMV Aff, email RV re same	0.30	\$400.00	\$120.00
Service	2016-10-18	PD	Legal Services: Annotate fee motion w citations to counsel's affidavits; cont'd edit fee motion	1.60	\$400.00	\$640.00
Service	2016-10-18	PD	Legal Services: (No charge) Make further edits to DDZ Aff	0.60	\$0.00	\$0.00
Service	2016-10-18	PD	Legal Services: Finalize fee motion; finalize PBD Decl. and attachment; rev motion pkg for filing	1.60	\$400.00	\$640.00
					Subtotal	\$14,813.84
					Tax (7.3125%)	\$1,073.66
					Total	\$15,887.50

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
201654	2016-11-17	\$15,887.50	\$0.00	\$15,887.50
Outstanding Balance				\$15,887.50
Total Amount Outstanding				\$15,887.50

Please make all amounts payable to: Law Office of Phillip B. Davis

Please pay within 30 days.

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

JPC CONTRACTORS, LLC,
Plaintiff,

vs.

RUFINA LOFTS, LLCs AND US BANK
NATIONAL ASSOCIATION, AS TRUSTEE FOR
THE SANTA FE COUNTY, NEW MEXICO
MULTIFAMILY HOUSING REVENUE BONDS
(VILLA GRANDE APARTMENTS PROJECT)
SERIES 1998, AND KEITH MARSHALL,
Defendants and Third Party Defendants,

vs.

D-101-CV-2009-00440

JERRY D. POWERS AND INDUSTRIAL
CONSTRUCTORS CORPORATION,
Third Party Defendants and Counterclaimants,

PHIL LUCAS, INDIVIDUALLY AND AS
ATTORNEY IN FACT FOR HOLDERS
OF THE SANTA FE COUNTY, NEW MEXICO
MULTIFAMILY HOUSING REVENUE BONDS
(VILLA GRANDE APARTMENTS PROJECT)
SERIES 1998,

Intervenor,

vs.

U.S. BANK NATIONAL ASSOCIATION AND
KEITH MARSHALL,

Defendants in Intervention.

AFFIDAVIT OF KATHERINE W HALL, ESQ.



STATE OF NEW MEXICO)

COUNTY OF SANTA FE)

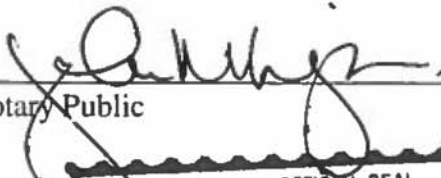
KATHERINE W. HALL, being first duly sworn, states:

1. I am an attorney licensed to practice law in the State of New Mexico since 1983.
2. During the past thirty-three years, I have been involved in civil litigation throughout most areas of New Mexico. For the first twenty years, I focused primarily on insurance defense litigation. Since then, I have represented plaintiffs on medical malpractice and other negligence claims.
3. I am familiar with a large segment of the New Mexico Bar, their practices and their billing rates.
4. I have known Diego Zamora for more than 35 years. I have handled cases on which he has been opposing counsel. I have also worked as co-counsel with him on multiple cases.
5. Mr. Zamora has handled wrongful death, personal injury, bad faith, unfair practices and contract law cases.
6. Mr. Zamora is an excellent attorney. He is very knowledgeable of the law and extremely effective at trial. Perhaps more significant, I have met very few, if any, lawyers who are more dedicated to their clients. He works tirelessly for them and ensures that each is well-represented.
7. I am familiar with the current hourly rates appropriate for the type of litigation involved in this case .

8. It is my opinion that the hourly rate of \$375 requested by Mr. Zamora in this case is reasonable compared to the hourly rates customarily charged by lawyers of similar skill and experience for similar cases in this legal community.

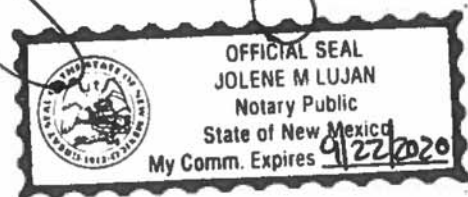

Katherine W. Hall

SUBSCRIBED AND SWORN to before me this 18th day of October, 2016.


Notary Public

My Commission Expires:

9/22/2020



STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

JPC CONTRACTORS, LLC,

Plaintiff

vs.

NO. D-0101-CV-2009-00440

RUFINA LOFTS, LLC AND U.S. BANK
NATIONAL ASSOCIATION, AS TRUSTEE FOR
THE SANTA FE COUNTY, NEW MEXICO
MULTIFAMILY HOUSING REVENUE BONDS
(VILLA GRANDE APARTMENTS PROJECT)
SERIES 1998, AND KEITH MARSHALL

Defendants and Third Party Defendants

vs.

JERRY D. POWERS AND INDUSTRIAL
CONSTRUCTORS CORPORATION,

Third Party Defendants and Counterclaimants

PHIL LUCAS, INDIVIDUALLY AND AS
ATTORNEY IN FACT FOR CERTAIN HOLDERS
OF THE SANTA FE COUNTY NEW MEXICO
MULTIFAMILY HOUSING REVENUE BONDS
(VILLA GRANDE APARTMENTS PROJECT)
SERIES 1998

Intervenor,

vs.

U.S. BANK NATIONAL ASSOCIATION AND
KEITH MARSHALL

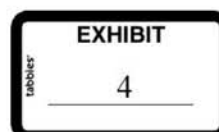
Defendants in Intervention.

AFFIDAVIT OF JAMES P. SULLIVAN

STATE OF NEW MEXICO)
)ss.
COUNTY OF SANTA FE)

I, James P. Sullivan, being duly sworn, state as follows:

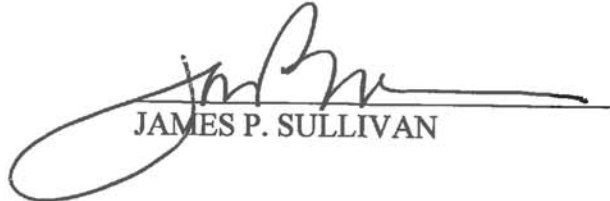
1. I am submitting this affidavit in support of the hourly rates requested by the plaintiffs' counsel, D. Diego Zamora.



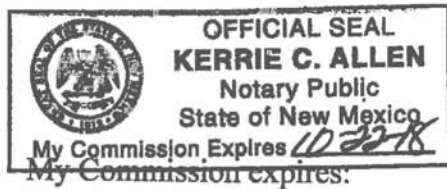
2. I am an attorney licensed to practice law in the State of New Mexico since April, 1983, and before the United States District Court for the District of New Mexico, and the United States Tenth Circuit Court of Appeals.
3. I was a legal aid attorney for two years before entering private practice in Santa Fe, New Mexico. My practice primarily entails insurance defense and representing governmental entities in civil rights and tort litigation. I appear regularly in both state and federal court. During the past 30 years or so, I have personally represented and have often supervised other attorneys who represented numerous individuals, corporations, and governmental entities in federal and state courts in New Mexico.
4. Based upon my litigation background, I have significant experience concerning issues as to attorney's fees in the State of New Mexico.
5. I am familiar with the legal skills of attorney D. Diego Zamora. I have personally been involved in the litigation with Mr. Zamora for the past 30 years or so. Mr. Zamora is a highly skilled litigator who zealously represents his clients, but at the same time, while performing all necessary services required in any particular matter, he is always efficient and avoids unnecessary and superfluous litigation.
6. I am informed that Mr. Zamora has petitioned this court for attorney's fees based upon an hourly rate of \$375.00. It is my opinion that this hourly rate is reasonable compared to the hourly rates customarily charged by lawyers of equal skill and experience for similar or analogous cases in this legal community.

7. My opinion as to the reasonableness of Mr. Zamora's requested hourly rate rests on my knowledge of current prevailing rates in the New Mexico legal community and on my knowledge of the skill and experience of Mr. Zamora.

FURTHER AFFIANT SAYETH NOT.


JAMES P. SULLIVAN

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 17th day
of October, 2016 by JAMES P. SULLIVAN.




Notary Public