

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

CARLOS SANDOVAL-SMITH,

Plaintiff,

v.

No. _____

THE CITY OF ALBUQUERQUE;
CHIEF HAROLD MEDINA;
JOSHUA MONTAÑO,
HONORIO ALBA,
HARVEY JOHNSON,
NELSON ORTIZ,
JUSTIN HUNT,
DAREN DEAGUERO,
NEILL ELSMAN,
MATTHEW TRAHAN, and
MARK LANDAVAZO,
THOMAS CLEAR III, ESQ.; and
RICARDO “RICK” MENDEZ.

Defendants.

**COMPLAINT FOR CIVIL RIGHTS VIOLATIONS, RACKETEERING, VIOLATIONS
OF THE NEW MEXICO TORT CLAIMS ACT, AND FOR DAMAGES**

Plaintiff Carlos Sandoval-Smith, by and through undersigned counsel, Smith & Marjanovic Law, LLC (Taylor E. Smith), The Soto Law Office, LLC (Ramón A. Soto), and the American Civil Liberties Union of New Mexico (Maria Martinez Sanchez) hereby brings the following causes of action against the City of Albuquerque, individual law enforcement officers employed by the Albuquerque Police Department, Thomas Clear III, and Ricardo “Rick” Mendez. Plaintiff brings claims pursuant to the New Mexico Constitution, the New Mexico Civil Rights Act (“NMCRA”), NMSA 1978, §§ 41-4A-1, *et seq.*, the New Mexico Tort Claims Act (“NMTCA”), NMSA 1978, §§ 41-4-1, *et seq.*, the Racketeering Act, NMSA 1978 §§ 30-42-1, *et seq.*, and the common law. In support thereof, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. Jurisdiction is proper in this Court according to the New Mexico Constitution, art. VI., Section 13 and the common law.

2. Venue is proper in this district because Plaintiff resides in Bernalillo County, New Mexico. NMSA 1978, § 38-3-1 (A).

3. Venue is proper in this Court because the facts and circumstances underlying the claims arose in Bernalillo County and because Defendants are located in Bernalillo County. *Id.*

4. Plaintiff provided timely written notice of claims to Defendant City of Albuquerque and Defendants otherwise had actual notice of all of the facts as alleged in this complaint.

PARTIES

5. Plaintiff Carlos Sandoval-Smith (hereinafter “Plaintiff”) was, at all relevant times, a resident of Bernalillo County, New Mexico, and is a “person” within the meaning of Section 41-4A-3 of the NMCRA, Section 30-42-6 of the Racketeering Act, as well as Article II, Sections 4, 10, and 18 of the New Mexico Constitution.

6. Defendant City of Albuquerque (hereinafter “City”) is a municipality operating within the County of Bernalillo and controls the Albuquerque Police Department (hereinafter “APD”) and its agents and employees. Defendant City is a “public body” within the definition provided in Section 41-4A-3 of the NMCRA, as well as a “governmental entity” and a “local public body” within the definitions provided in Sections 41-4-3(B) and (C) of the NMTCA.

7. Defendant Harold Medina is an individual employed by Defendant City as Chief of Police with APD. At all material times, he was acting in the course and scope of his employment and under color of state law.

8. Defendant Joshua Montañó was an individual employed at all material times by Defendant City as a police officer with APD. At all material times, he was acting in the course and scope of his employment and under color of state law.

9. Defendant Honorio Alba was an individual employed at all material times by Defendant City as a police officer with APD. At all material times, he was acting in the course and scope of his employment and under color of state law.

10. Defendant Harvey Johnson was an individual employed at all material times by Defendant City as a police officer with APD. At all material times, he was acting in the course and scope of his employment and under color of state law.

11. Defendant Nelson Ortiz was an individual employed at all material times by Defendant City as a police officer with APD. At all material times, he was acting in the course and scope of his employment and under color of state law.

12. Defendant Justin Hunt was an individual employed at all material times by Defendant City as a police officer with APD. At all material times, he was acting in the course and scope of his employment and under color of state law.

13. Defendant Daren DeAgüero was an individual employed at all material times by Defendant City as a police officer with APD. At all material times, he was acting in the course and scope of his employment and under color of state law.

14. Defendant Neill Elsman was an individual employed at all material times by Defendant City as a police officer with APD. At all material times, he was acting in the course and scope of his employment and under color of state law.

15. Defendant Matthew Trahan was an individual employed at all material times by Defendant City as a police officer with APD. At all material times, he was acting in the course and scope of his employment and under color of state law.

16. Defendant Mark Landavazo was an individual employed at all material times by Defendant City as a police officer with APD. At all material times, he was acting in the course and scope of his employment and under color of state law.

17. Tom Clear III is a resident of Bernalillo County, New Mexico and at all relevant times a licensed attorney in New Mexico.

18. Ricardo “Rick” Mendez is a resident of Bernalillo County, New Mexico and Mr. Clear’s paralegal/legal assistant.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

A. Conspiracy at APD

19. On information and belief, prior to and/or on June 25, 2023, Defendants Montaña, Alba, Johnson, Ortiz, Hunt, DeAgüero, Elsmán, Trahan, and Landavazo (“Defendant Officers”) had an agreement with Defendants Clear and Mendez that Defendant Officers would refer people charged with driving under the influence (“DUI”) to them for legal services and Defendant Officers would agree not to attend pre-trial interviews or testify in those individuals’ criminal cases in exchange for consideration from Defendants Clear and Mendez.

20. On information and belief, Defendants Chief Medina and City knew of the agreement between Defendant Officers and Defendants Clear and Mendez.

21. On information and belief, Defendant Officers and Defendants Clear and Mendez carried out their agreement dozens of times over a period of over five years.¹

22. In June of 2022, the Federal Bureau of Investigation informed the Albuquerque Police Department that Defendant Montañó, Defendant Clear, and Defendant Mendez had attempted to extort \$10,000 from Jaden Brown in return for a guarantee that a DUI charge Defendant Montañó had filed against Mr. Brown would go away.²

23. Defendants Montañó, Clear, and Mendez also informed Mr. Brown that a charge of possession of a controlled substance would not be added if he paid them the \$10,000.³

24. In December of 2022, the APD Criminal Intelligence Unit received a tip that APD DWI Unit officers were being paid to get cases dismissed and were working in collaboration with a local attorney.⁴

25. Defendants City and Medina did not adequately investigate these allegations, if at all, prior to the involvement of federal authorities.

26. Defendants City and Medina ratified the conduct of Defendant Officers by failing to intervene after receiving multiple notices that Defendant Officers were violating the law.

27. Defendant Montañó, in a publicly published letter submitted to APD on March 20, 2024 upon his resignation, alleged that “the issues [he] let [him]self get caught up in within the

¹ Elise Kaplan, *5 years, 29 cases, just 1 conviction*, CITY DESK ABQ (Feb. 5, 2024), <https://citydesk.org/2024/apd-didnt-track-dismissed-cases-despite-records-from-da/>.

² Elise Kaplan, *Man who alerted FBI to possible corruption in APD’s DWI unit speaks out*, CITY DESK ABQ (June 13, 2024), <https://citydesk.org/2024/man-who-alerted-fbi-to-possible-corruption-in-apds-dwi-unit-speaks-out/>.

³ *Id.*

⁴ Elise Kaplan, *APD got a tip in 2022 that DWI officers were being paid to get cases dismissed. Its review did not find wrongdoing*, CITY DESK ABQ (April 24, 2024), <https://citydesk.org/2024/apd-got-a-tip-in-2022-that-dwi-officers-were-being-paid-to-get-cases-dismissed-its-review-did-not-find-wrongdoing/>.

DWI Unit were generational” and that “[n]one of the allegations against [him] or others in the DWI Unit happened without supervisory knowledge. And they didn’t just happen over a few years.”⁵

B. Deprivation of Plaintiff’s Constitutional Rights by Defendant Montaña

28. On June 25, 2023, Plaintiff was driving eastbound on Central Avenue with his cousin when Defendant Montaña initiated a traffic stop.

29. Plaintiff pulled his car over onto the side of the I-25 Frontage Road immediately north of Central Avenue.

30. Defendant Montaña approached the vehicle and informed Plaintiff that he had stopped Plaintiff’s car because he was speeding.

31. Upon information and belief, Defendant Montaña did not have reasonable suspicion that Plaintiff was speeding.

32. Instead of providing Plaintiff with a speeding ticket, Defendant Montaña unlawfully expanded the scope of the stop by initiating a DUI investigation without reasonable suspicion that Plaintiff was driving under the influence.

33. Defendant Montaña had Plaintiff perform several Standardized Field Sobriety Tests (“SFSTs”), including alternate tests.

34. Plaintiff performed very well on the SFSTs and alternate tests.

35. Despite this, Defendant Montaña placed Plaintiff under arrest and in handcuffs, loaded Plaintiff into his police car, and told Plaintiff he planned to transport him to a police station to conduct a breath test.

⁵ Elise Kaplan, *Attorney: DWI corruption scheme ‘goes outward and upward’*, CITY DESK ABQ (March 23, 2024), <https://citydesk.org/2024/attorney-dwi-corruption-scheme-goes-outward-and-upward/>.

36. Defendant Montaña did not have probable cause to believe that Plaintiff was driving under the influence.

37. Defendant Montaña, while deciding what to do with Plaintiff's car following his arrest, determined that Plaintiff's cousin was 16 years old.

38. Defendant Montaña transported Plaintiff to the police substation downtown to perform a breath test.

39. After performing a breath test on Plaintiff and deciding to formally charge him, Defendant Montaña moved Plaintiff out of the visual and audio reach of his body-worn camera, which he had removed and placed on a counter.

40. Defendant Montaña then informed Plaintiff that he had an attorney friend who could make the DUI charge go away.

41. Defendant Montaña filed a criminal complaint charging Plaintiff with driving while intoxicated with a minor in the vehicle, in violation of NMSA 1978, Section 66-08-102.5 (2019).

42. NMSA 1978, Section 66-08-102.5(C) defines "minor" as "an individual who is younger than thirteen years of age."

43. Defendant Montaña filed the criminal complaint to accomplish an illegitimate end; to wit, to extort Plaintiff.

C. Defendants Montaña, Clear, and Mendez's Extortion of Plaintiff

44. After Plaintiff was released from the Metropolitan Detention Center ("MDC"), he received several calls from Defendant Montaña.

45. Defendant Montaña left Plaintiff a voicemail informing him that some of Plaintiff's property had not been returned to him at MDC, and that Defendant Montaña was in possession of the property.

46. Defendant Montaña took possession of Plaintiff's property by fraudulently charging him with DUI, arresting him, transferring him to MDC, and then obtaining control over the property after MDC employees took possession of it prior to Plaintiff's incarceration.

47. Defendant Montaña converted Plaintiff's property, with which he had been entrusted by Plaintiff as part of the booking process, to his own use, to wit, to ensure that Plaintiff would meet with Defendant Clear, and with the intent to deprive Plaintiff of that property for the time necessary to transfer it to Defendant Clear.

48. On information and belief, Defendant Officers engaged in multiple acts of fraud or embezzlement over the course of years by taking possession of the personal property of DUI arrestees through fraud or conversion during the booking process, in the same or a similar manner that Defendant Montaña used to take possession of Plaintiff's property, to advance the agreement between Defendant Officers and Defendants Clear and Mendez.

49. Defendant Montaña called Plaintiff again and Plaintiff answered. Defendant Montaña informed Plaintiff that he "had an attorney for him" and that Plaintiff's property could be picked up at the attorney's office.

50. Defendant Montaña then provided Plaintiff with contact information for Defendant Tom Clear III's law office.

51. Plaintiff subsequently received a call from Defendant Clear's office.

52. Plaintiff went to Defendant Clear's office and met with his paralegal, Defendant Ricardo "Rick" Mendez.

53. Defendant Mendez informed Plaintiff that their office would guarantee that the DUI would not go on Plaintiff's record if Plaintiff retained Defendant Clear.

54. Defendant Mendez demanded a payment of \$7,500 up front or installment payments towards \$8,500 plus tax.

55. Defendants Clear and Mendez planned to use some of that money to compensate Defendant Montaño for his participation in the enterprise.

56. On information and belief, Defendant Officers engaged in the same or similar conduct as Defendant Montaño to compel or attempt to compel individuals arrested for DUI to retain Defendant Clear as an attorney and to refrain from retaining any other attorney in exchange for compensation from Defendants Clear and Mendez.

57. Plaintiff's misdemeanor DUI and speeding charges were dismissed on January 11, 2024.

COUNT I
NMCRA CLAIM
AGAINST DEFENDANT CITY
(Violation of Article II, Section 10: Unlawful Detention and Arrest)

58. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

59. Plaintiff's rights under Article II, Section 10 of the New Mexico Constitution are afforded greater protection than his rights under the United States Constitution.

60. Plaintiff has, and had, a right to be free from unreasonable and pretextual seizures under Article II, Section 10 of the New Mexico Constitution.

61. Defendant Montaño unlawfully seized Plaintiff with the intent to advance a conspiracy to directly or indirectly defraud Plaintiff and request a bribe from Plaintiff in exchange for a promise not to participate in the prosecution of criminal charges Defendant Montaño intended to bring against Plaintiff.

62. Defendant Montaño initiated a DUI investigation into Plaintiff without reasonable suspicion that Plaintiff had committed or was committing DUI.

63. Defendant Montaña arrested Plaintiff without sufficient probable cause.

64. As a direct and proximate result of Defendant Montaña's actions, Plaintiff suffered and continues to suffer substantial past and future damages, including, but not limited to, loss of liberty, loss of income, severe emotional distress, mental anguish, embarrassment, and humiliation.

65. Defendant City is liable for the actions of Defendant Montaña under the NMCRA.

COUNT II
NMCRA CLAIM
AGAINST DEFENDANT CITY
(Violation of Article II, Section 10: Malicious Abuse of Process)

66. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

67. Plaintiff's rights under Article II, Section 10 of the New Mexico Constitution are afforded greater protection than his rights under the United States Constitution.

68. Defendant Montaña misused the legal process against Plaintiff.

69. Defendant Montaña did not have a reasonable belief, based on the facts known to him, that the DUI charge against Plaintiff could be established to the satisfaction of a court or jury.

70. Defendant Montaña's primary motive in misusing the legal process was to accomplish an illegitimate end, to wit: to induce Plaintiff to participate in Defendants' extortion scheme.

71. As a direct and proximate result of Defendant Montaña's actions, Plaintiff was arrested and charged with driving while intoxicated with a minor in the vehicle, even though Defendant Montaña did not have probable cause to believe that Plaintiff had committed this crime.

72. As a direct and proximate result of Defendant Montaña's actions, Plaintiff spent time in jail.

73. As a direct and proximate result of Defendant Montaño's actions, Plaintiff suffered and continues to suffer substantial past and future damages, including, but not limited to, loss of liberty, loss of income, severe emotional distress, mental anguish, embarrassment, and humiliation.

74. Defendant City is liable for the actions of Defendant Montaño under the NMCRA.

COUNT III
NMCRA
AGAINST DEFENDANT CITY
(Violation of Article II, Sections 4 and 18: Deprivation of Due Process)

75. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

76. Article II, Section 18 of the New Mexico Constitution provides that “[n]o person shall be deprived of life, liberty or property without due process of law.”

77. The rights secured by Article II, Section 18 include broad rights to fundamental fairness afforded to criminal defendants in criminal proceedings brought against them.

78. Plaintiff's rights under Article II, Section 18 are afforded greater protection than his rights under the United States Constitution.

79. Under Article II, Section 18 of the New Mexico Constitution, Plaintiff has, and had, a right to a fundamentally fair process when being criminally charged and prosecuted.

80. Article II, Section 4 of the New Mexico Constitution recognizes and protects certain of Plaintiff's natural, inherent, and inalienable rights, including the rights of enjoying and defending life and liberty, and of seeking and obtaining safety and happiness.

81. Under current New Mexico precedents, Sections 4 and 18 of Article II of the New Mexico Constitution are intertwined so that the due process and equal protection guarantees in Section 18 incorporate and are viewed through the lens of the inherent rights recognized as inalienable in Section 4, while Section 4 provides overarching principles which inform the due process and equal protection guarantees in Section 18.

82. Defendant Montaña deprived Plaintiff of his rights secured by Article II, Section 18 of the New Mexico Constitution by demanding and/or agreeing to receive money from Plaintiff in exchange for not testifying or otherwise participating in the prosecution of criminal charges Defendant Montaña had filed against him.

83. As a direct and proximate result of Defendant Montaña's actions, Plaintiff suffered and continues to suffer substantial past and future damages, including, but not limited to, loss of liberty, loss of income, severe emotional distress, mental anguish, embarrassment, and humiliation.

84. Defendant City is liable for the actions of Defendant Montaña under the NMCRA.

COUNT IV
NMTCA
AGAINST DEFENDANT CITY
(Malicious Abuse of Process)

85. Plaintiff reincorporates the preceding paragraphs as though fully set forth herein.

86. Defendant Montaña misused the legal process against Plaintiff.

87. Defendant Montaña did not have a reasonable belief, based on the facts known to him, that the DUI charges against Plaintiff could be established to the satisfaction of a court or jury.

88. Defendant Montaña's primary motive in misusing the legal process was to accomplish an illegitimate end, to wit: induce Plaintiff to participate in Defendants' extortion scheme.

89. As a direct and proximate result of Defendant Montaña's actions, Plaintiff was arrested and charged with driving while intoxicated with a minor in the vehicle, even though Defendant Montaña did not have probable cause to believe that Plaintiff had committed this crime.

90. As a direct and proximate result of Defendant Montaña's actions, Plaintiff spent time in jail.

91. As a direct and proximate result of Defendant Montaño's actions, Plaintiff suffered and continues to suffer substantial past and future damages, including, but not limited to, loss of liberty, loss of income, severe emotional distress, mental anguish, embarrassment, and humiliation.

92. Defendant City is liable for the actions of Defendant Montaño under the NMTCA.

COUNT V
NMTCA
AGAINST DEFENDANT CITY
(Negligent Hiring, Training, Supervision, and Retention)

93. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

94. Defendant City was in charge of hiring, training, supervising, and retaining Defendant Officers.

95. Defendant City owed a duty to Plaintiff to adequately hire, train, supervise, and retain Defendant Officers to reasonably protect and ensure the safety of the citizens of the City of Albuquerque, including Plaintiff.

96. By hiring Defendant Officers, who were not qualified or competent to work as police officers with APD; by failing to train and supervise Defendant Officers so that they would not extort Plaintiff or deprive Plaintiff of his civil rights; and by the continued retention of Defendant Officers, Defendant City breached its duty to Plaintiff.

97. Defendant City's negligent hiring, training, supervision, and retention of Defendant Officers directly and proximately caused injuries to Plaintiff.

98. As a direct and proximate result of Defendant Officers' actions, Plaintiff suffered and continues to suffer substantial past and future damages, including, but not limited to, loss of liberty, loss of income, severe emotional distress, mental anguish, embarrassment, and humiliation.

99. Defendant City is liable for the actions and inactions of Defendant Officers under the NMTCA.

COUNT VI
RACKETEERING
AGAINST DEFENDANTS MONTAÑO, ALBA, JOHNSON, ORTIZ,
HUNT, DEAGUERO, ELSMAN, TRAHAN, LANDAVAZO, CLEAR, AND MENDEZ

100. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

101. Defendants are each entities capable of holding a legal or beneficial interest in property and are thus “persons” as defined by NMSA 1978, § 30-42-3(B).

102. Defendants are each legal entities and/or groups of individuals associated in fact and are thus “enterprises” as defined by NMSA 1978, § 30-42-3(C).

103. Defendant Officers collectively and individually engaged in at least two instances of direct and/or indirect bribery by demanding or receiving money with the intent to have their decision or action regarding their participation in the prosecution of a particular DUI case influenced thereby.

104. Defendant Officers collectively and individually engaged in at least two instances of bribery by receiving, agreeing to receive, or soliciting a bribe or anything of value to testify falsely or abstain from testifying to a fact in judicial, administrative, or other proceedings.

105. Defendant Officers collectively and individually engaged in at least two instances of fraud by taking personal possessions by means of fraudulent conduct, practices, and/or representations, or embezzlement by converting property with which Defendants had been entrusted to Defendants’ own use with fraudulent intent to deprive the owner thereof.

106. Defendants Officers, Clear, and Mendez collectively and individually engaged in at least two instances of extortion by communicating or transmitting threats to accuse individuals of a crime with the intent thereby to obtain things of value and/or to wrongfully compel individuals to retain Defendant Clear as an attorney and refrain from retaining any other attorney, against their will.

107. These actions are incidents of racketeering as defined by NMSA 1978, §30-42-3(D).

108. Defendants Officers, Clear, and Mendez engaged in this pattern of racketeering activity in order to acquire or maintain, directly or indirectly, an interest in or control of an enterprise.

109. Defendant Officers, as employees of Defendant City, conducted or participated, directly and/or indirectly, in the conduct of Defendant City's affairs by engaging in a pattern of racketeering activity.

110. Defendants Clear and Mendez, as persons who received the proceeds of a pattern of racketeering activity in which they participated, used or invested some part of those proceeds in the establishment or operation of an enterprise.

111. Defendants Clear and Mendez, as persons employed by or associated with an enterprise, conducted or participated, directly and/or indirectly, in the conduct of the enterprise's affairs by engaging in a pattern of racketeering activity.

112. Defendants, including Defendant Medina, each conspired with and amongst each other to violate NMSA 1978, § 30-42-4(A) – (C).

113. As a direct and proximate result of Defendants' pattern of racketeering activity, Plaintiff sustained damages to his person.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment on their behalf and against Defendants for:

- A. Compensatory damages;
- B. Hedonic damages;

- C. Punitive damages;
- D. Pre-judgment interest;
- E. Post-judgment interest;
- F. Declaratory relief;
- G. Treble damages, pursuant to NMSA § 30-42-6(A);
- H. Reasonable attorneys' fees and costs incurred in bringing this action, including expert fees, pursuant to NMSA 1978, § 41-4A-5 and NMSA § 30-42-6(A); and
- I. Such other and further relief as the Court deems just.

DATED: October 1, 2024

Respectfully Submitted,

/s/ Griffin Arellano

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