

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

PEDRO ANTHONY GONZALES,
JOSE DAVID VASQUEZ,
ANTONIO ABELARDO BARRON,
MARY NICOLE TIXIER,
JOHN DOES 1-5, and
JANE DOES 1-5,
on their behalf and on behalf of similarly situated persons,

Plaintiffs,

v.

No. D-202-CV-2025-01387

THE CITY OF ALBUQUERQUE;
BERNALILLO COUNTY BOARD OF COMMISSIONERS;
NEW MEXICO DEPARTMENT OF PUBLIC SAFETY;
CHIEF HAROLD MEDINA;
JOSHUA MONTAÑO,
HONORIO ALBA,
HARVEY JOHNSON,
NELSON ORTIZ,
JUSTIN HUNT,
DAREN DEAGUERO,
NEILL ELSMAN,
MATTHEW TRAHAN,
MARK LANDAVAZO,
GUSTAVO GOMEZ,
KYLE CURTIS,
MATTHEW CHAVEZ,
TIMOTHY MCCARSON,
JEFF HAMMEREL, and
JOHN DOE 6,
in their individual capacities;
THOMAS CLEAR III, ESQ., and
RICARDO “RICK” MENDEZ.

Defendants.

CLASS ACTION COMPLAINT FOR DEPRIVATION OF CIVIL RIGHTS

Plaintiffs Pedro Gonzales, Jose David Vasquez, Antonio Barron, and Mary Tixier, by and
through undersigned counsel, The Law Offices of Frances Crockett Carpenter (Frances C.

Carpenter, Esq.), The Soto Law Office, LLC (Ramón A. Soto, Esq.), and Smith & Marjanovic Law, LLC (Taylor E. Smith, Esq.), hereby bring the following causes of action on their own behalf and on behalf of persons similarly situated against the City of Albuquerque, individual law enforcement officers employed by the Albuquerque Police Department, Thomas Clear III, Esq., and Ricardo “Rick” Mendez. Plaintiffs bring claims pursuant to the Fourth and Fourteenth Amendments of the United States Constitution, the New Mexico Constitution, 42 U.S.C. § 1983, the New Mexico Tort Claims Act (“NMTCA”), NMSA 1978, §§ 41-4-1, *et seq.*, the New Mexico Civil Rights Act (“NMCRA”), NMSA 1978, §§ 41-4A-1, *et seq.*, the Racketeering Act, NMSA 1978, §§ 30-42-1, *et seq.*, and the common law. In support thereof, Plaintiffs allege as follows:

JURISDICTION AND VENUE

1. This Court, as a court of original jurisdiction, has concurrent jurisdiction over both the state and federal claims set forth herein. *See Haywood v. Drown*, 556 U.S. 729, 731 (2009) (“In our federal system of government, state as well as federal courts have jurisdiction over suits brought pursuant to 42 U.S.C. § 1983, the statute that creates a remedy for violations of federal rights committed by persons acting under color of state law.”); N.M. Const. art. VI, § 3.

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

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

4. 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.*

5. Plaintiffs 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

6. Plaintiff Pedro Gonzales 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 and 18 of the New Mexico Constitution.

7. Plaintiff Jose David Vasquez 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 and 18 of the New Mexico Constitution.

8. Plaintiff Antonio Barron 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 and 18 of the New Mexico Constitution.

9. Plaintiff Mary Tixier 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 and 18 of the New Mexico Constitution.

10. Plaintiffs John Does 1-5 and Jane Does 1-5 were, at all relevant times, residents of Bernalillo County, New Mexico, and are “person[s]” 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 and 18 of the New Mexico Constitution.

11. 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.

12. Defendant Bernalillo County Board of Commissioners (hereinafter “County”) is a local governmental entity operating within the State of New Mexico and controls the Bernalillo County Sheriff’s Office (hereinafter “BCSO”) and its agents and employees. Defendant County 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.

13. Defendant New Mexico Department of Public Safety (hereinafter “DPS”) is an agency of the State of New Mexico. Defendant DPS 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.

14. 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. Defendant Medina is the final policy maker for APD and Defendant City.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. Defendant Neill Elsmann 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.

22. 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.

23. 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.

24. Defendant Gustavo Gomez 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.

25. Defendant Kyle Curtis 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.

26. Defendant Matthew Chavez 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.

27. Defendant Timothy McCarson 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.

28. Defendant Jeff Hammerel was an individual employed at all material times by Defendant County as a sheriff's deputy with Bernalillo County Sheriff's Office. At all material times, he was acting in the course and scope of his employment and under color of state law.

29. Defendant John Doe 6 was an individual employed at all material times by DPS as a law enforcement officer. At all material times, he was acting in the course and scope of his employment and under color of state law.

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

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

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

A. Conspiracy at APD

32. On information and belief, at all times material, Defendants Montañó, Alba, Johnson, Ortiz, Hunt, DeAgüero, Elsman, Trahan, Landavazo, Gomez, Curtis, Chavez, McCarson, Hammerel, and John Doe 6 (“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.

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

34. Since at least 2008, Defendants Clear and Mendez conspired with Defendant Officers, as well as other sworn law enforcement officers and deputies with the Albuquerque Police Department (APD), New Mexico State Police (NMSP), and the Bernalillo County Sheriff’s Office (BCSO) to engage in a scheme that targeted persons arrested for DWI (DWI Offenders).

35. As part of the scheme, individuals arrested for DWI retained Defendant Clear for legal representation. Defendant Clear and others strongly encouraged that attorney retainer fees be paid in cash.

36. In addition to their law firm salary, Defendant Clear and others received direct cash payments. Defendant Officers were also compensated, often in cash, but also through other benefits such as free legal services, gift cards, hotel stays, and various other property and gifts.

37. Communications regarding these payments were primarily handled by designated individuals who facilitated the exchanges, though Defendant Clear also made payments, whether in the form of cash, gifts, or property, directly to Defendant Officers on occasion.

38. The payment amounts varied based on different factors, including the circumstances of the DWI arrest, the individual's prior criminal history, perceived financial means, and personal relationships with members of the enterprise.

39. Defendant Clear also provided free or significantly discounted legal services to Defendant Officers and their families as a means of securing their continued cooperation and participation in the scheme.

40. The scheme was executed through a coordinated system designed to ensure that Defendant Officers would miss required appearances at MVD hearings and criminal court proceedings.

41. Upon being retained, Defendant Clear, Defendant Officers, and others planned for the officers' absences at these key proceedings, knowing that such absences would likely result in case dismissals.

42. By intentionally failing to appear, Defendant Officers ensured that criminal charges and administrative penalties, such as driver's license revocations and ignition interlock requirements, were not imposed on DWI defendants.

43. This allowed them to continue driving without restrictions and evade the consequences of their offenses.

44. Prior to March 2022, the scheme primarily relied on Defendant Officers missing pretrial interviews (PTIs), which were required for state court discovery.

45. As a sanction for this manufactured discovery violation, the criminal charges were often dismissed.

46. When PTIs were no longer required as of 2022, the scheme adapted by ensuring that Defendant Officers failed to appear at motion hearings and trial settings instead, continuing to secure dismissals.

47. Over time, Defendant Officers began referring additional cases to Defendant Clear, increasing payments and expanding the reach of the scheme. Officers frequently retained MVD paperwork, driver's licenses, and other property from the alleged DWI offenders, providing them to intermediaries who then contacted the individuals and offered legal representation under the scheme's terms.

48. While the scheme involved multiple law enforcement agencies, Defendant Officers within the Albuquerque Police Department (APD) played a significant role. More senior members of APD, who were part of the scheme, helped recruit and train new participants, introducing them to key facilitators and providing their personal contact information for direct communication. They also advised which officers should be avoided due to their likelihood of reporting the scheme's activities.

49. As the scheme evolved, senior Defendant Officers began requesting referral fees for recruiting new participants. When bringing in new recruits, discussions often highlighted the broad participation across multiple agencies, reinforcing the perception that the scheme was both successful and protected. Some senior officers also leveraged their positions within APD to discourage internal investigations or disciplinary actions.

50. The overarching purpose of the enterprise was to generate and protect profits for its members, including Defendant Clear, Defendant Officers, and others involved. By securing

dismissals for clients, the scheme increased referrals and financial gains while maintaining the appearance of legitimate legal representation.

51. The scheme also ensured that Defendant Clear could continue to appear in court and administrative hearings without raising suspicion. The structure of the enterprise facilitated secrecy, protecting its members from scrutiny and prosecution.

52. At all relevant times, Defendant Officers were acting as agents of APD, which is an agency of the City of Albuquerque. APD received more than \$10,000 in federal funding during multiple one-year periods relevant to the scheme.

53. During each of these periods, individuals within the enterprise provided valuable items, including cash, legal services, property, and gifts, to Defendant Officers in connection with their participation in the scheme. These exchanges directly influenced official actions, including the intentional failure to appear at legal proceedings, allowing DWI offenders to evade consequences.

54. Separate from the broader enterprise, additional conspiracies existed involving specific Defendant Officers and others to solicit payments from DWI offenders in exchange for ensuring that criminal charges were never filed. In such instances, Defendant Officers made arrests but did not process the charges, instead coordinating with intermediaries to collect payments from individuals seeking to avoid prosecution.

55. The scheme had significant effects on interstate commerce. The avoidance of convictions reduced the collection of fines and fees that would otherwise contribute to state funds used in interstate transactions. Additionally, by circumventing ignition interlock requirements, the scheme deprived manufacturers engaged in interstate commerce of business. The scheme's

facilitation of repeat offenses also contributed to economic losses associated with DWI-related accidents, impacting interstate highways and commerce.

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

57. 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.

58. Defendant Montañño, 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 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.”¹

59. Upon information and belief, the City of Albuquerque Police and the department personnel were mandated to Check the Court Docket that is posted on SharePoint each work week; and check their email for any subpoena or court hearing notices. Defense attorney subpoenas will be served to Department personnel, their direct supervisor, or staff at the employee’s area command. Notifications to Courts of Vacation, Leave Time, or Schedule Changes required that Department personnel must submit an online Court Services Request Leave form to Court Services Unit personnel a minimum of twenty (20) calendar days before taking leave or attending training. Department personnel are prohibited from submitting an excessive amount of leave requests for their regular days off. Department personnel shall notify the United States Attorney's Office to reschedule any cases pending in the U.S. District Court. If Department personnel do not submit

¹ 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/>.

the online Court Services Request Leave form a minimum of twenty (20) calendar days before taking leave or attending training, they shall not be relieved of their responsibility to appear in court when they have been properly notified. Department personnel shall notify Court Services Unit personnel of permanent schedule changes. Department personnel shall notify Court Services Unit personnel of extended temporary duty (TDY) assignments or schedule changes over forty-five (45) days.

60. When Logging Out for Court Appearances On-duty Department personnel shall log on to their Mobile Dispatch Terminal (MDT) when en route to a court hearing and shall clear when the hearing is complete. Off-duty Department personnel who are en route to a court appearance shall log on with a court-out status (10-92) and shall specify the court at which the hearing will be held. Department personnel shall log on with a court-out status (10-92), specify the court in attendance and shall indicate the case number in the Computer-Aided Dispatch (CAD) entry comments section. When Department personnel are scheduled for court or MVD hearings and are unable to appear or will be late due to unforeseen conditions, they shall notify Court Services Unit personnel or court personnel at the earliest possible time and before the scheduled appearance. Failure of Department personnel to properly notify Court Services Unit personnel or court personnel of their absence from or tardiness for a court hearing shall be considered failing to attend the hearing. When Department personnel contact Court Services Unit personnel and get their voicemail, they shall leave a message on the voicemail system to include their name, man number, the court hearing information, and the reason they are unable to attend the court hearing. Supervisors, at their discretion, may require a doctor's note should personnel call in sick for court. If Officers are on a call for service and are unable to attend the court hearing Department executive personnel may grant an exception if the employee is needed elsewhere for the betterment of the

Department. Department executive personnel shall review each exception on a case-by case basis and determine the precedence the exception holds over the hearing in question.

61. The Court Services Unit was tasked with, among other things, ensuring that officers adhered to their duties to appear in court on any charges they made against an individual and in which they were named to appear to testify or be interviewed. When officers were unable or failed to appear, upon information and belief, Court Services Unit would be the ones who would be notified or would otherwise be able to track the officers absence and failure to appear. Upon information and belief, APD was on notice that officers and the named officers in particular were not attending court and PTI.

B. Deprivation of Plaintiff Gonzales' Constitutional Rights by Defendant Montaño

62. On August 26, 2023, Defendant Montaño saw a blue Volvo sedan facing northbound and stopped in the middle of the intersection.

63. The officer pulled behind the vehicle, activated emergency equipment, and made contact with the driver, later identified as Plaintiff Gonzales.

64. Plaintiff Gonzales was on his phone and his vehicle was not functioning.

65. Plaintiff Gonzales stated that his vehicle had stalled and that he could not get it to start.

66. Defendant Montaño observed that the fuel gauge appeared to be on empty and thus the vehicle could not be driven.

67. Plaintiff Gonzales stated that he was on his way home from Socorro, NM, when his vehicle stalled.

68. Plaintiff Gonzales stated that he had drank two beers in Socorro.

69. Defendant Montaño requested that Plaintiff Gonzales exit the vehicle and perform standard field sobriety tests (“SFSTs”).

70. Defendant Montaño alleged that Plaintiff Gonzales did not pass the SFSTs.

71. Defendant Montaño placed Plaintiff Gonzales under arrest for driving while intoxicated.

72. Defendant Montaño transported Plaintiff Gonzales back to the scene to collect his dog, which was in the vehicle at the time of the incident.

73. Plaintiff Gonzales was then transported to his residence in Albuquerque, where he was released from custody.

74. Plaintiff Gonzales was informed that he would be issued a criminal summons.

75. Defendant Montaño provided Plaintiff Gonzales with copies of his formal documents and explained the process for setting up a hearing regarding his license.

76. However, Defendant Montaño never planned on actually prosecuting Plaintiff Gonzales.

77. Defendant Montaño retained Plaintiff Gonzales’ driver's license which was then given to Defendant Mendez.

78. Defendant Mendez called Plaintiff Gonzales the next day.

79. Defendant Mendez informed Plaintiff Gonzales that he had his driver’s license and that he could get it back and get the DUI charge dismissed if he paid \$8,000 in cash that day.

80. Defendant Mendez informed Plaintiff Gonzales that he should meet him at a local restaurant’s parking lot. Plaintiff Gonzales agreed.

81. Defendant Mendez again informed him of the process to get his DUI charges dismissed through the law firm of Defendant Clear.

82. He then stated that if he did not pay \$8,000 in cash that day, the charge would increase to \$10,000.

83. Plaintiff Gonzales decided to inform federal law enforcement of the extortion.

84. Plaintiff Gonzales' DUI charge was ultimately dismissed on January 18, 2024.

C. Deprivation of Plaintiff Vasquez's Constitutional Rights by Defendants Alba and Ortiz

85. On September 27, 2020, Plaintiff Vasquez was driving down Paseo del Norte when Defendants Alba and Ortiz initiated a traffic stop for speeding.

86. Defendants Alba and Ortiz alleged that Plaintiff Vasquez was driving under the influence of alcohol.

87. Defendants Alba and Ortiz alleged that Plaintiff Vasquez had an odor of alcohol emanating from his face, bloodshot watery eyes, and slurred speech.

88. Plaintiff Vasquez indicated that he was diabetic so his eyes appear that way.

89. Moreover, Plaintiff Vasquez was wearing a mask since this occurred during the pandemic.

90. Defendants Alba and Ortiz requested that Plaintiff Vasquez submit to SFSTs.

91. Plaintiff Vasquez declined.

92. Plaintiff Vasquez was immediately placed under arrest by Defendants Alba and Ortiz.

93. Defendants Alba and Ortiz then had Plaintiff Vasquez submit to a breathalyzer.

94. The breathalyzer indicated that Plaintiff Vasquez had not drank alcohol.

95. Nevertheless, Defendants Alba and Ortiz proceeded to arrest Plaintiff Vasquez and charged him with Aggravated DWI, Resisting, Evading, or Obstructing an Officer, Negligent Use of a Deadly Weapon, Speeding, and Open Container.

96. Defendants Alba and Ortiz then told Plaintiff Vasquez to call Defendant Clear's law firm and that he would get his charges dismissed.

97. Defendants Alba and Ortiz took Plaintiff Vasquez's driver's license.

98. Plaintiff Vasquez retained his own criminal defense attorney and proceeded to trial.

99. At trial, all criminal charges were dismissed except for the Speeding charge.

C. Deprivation of Plaintiff Tixier's Constitutional Rights by Defendant Alba

100. On December 11, 2021, Plaintiff Tixier was driving when she passed through a sobriety checkpoint.

101. Defendant Alba was assigned to the checkpoint line.

102. Plaintiff Tixier admitted to consuming one beer before driving.

103. Plaintiff Tixier consented to performing field sobriety tests.

104. Plaintiff Tixier informed Defendant Alba that she had a prior knee replacement.

105. During the field sobriety tests, Defendant Alba alleged to have observed signs of impairment.

106. As a result, he placed Plaintiff Tixier under arrest for driving under the influence of an intoxicating liquor.

107. Plaintiff Tixier submitted two breath samples, both of which were allegedly at or above the New Mexico per se legal limit for driving under the influence of alcohol.

108. However, Defendant Alba never planned on actually prosecuting Plaintiff Tixier for the DUI charge.

109. Defendant Alba retained Plaintiff Tixier's driver's license, which was then given to Defendant Mendez.

110. The next day, Defendant Mendez called Plaintiff Tixier.

111. Defendant Mendez informed Plaintiff Tixier that he had her driver's license and that she could get it back and have the DUI charge dismissed if she paid \$8,000 in cash that day.

112. Defendant Mendez directed Plaintiff Tixier to meet with him.

113. Defendant Mendez reiterated the process to have her DUI charge dismissed through the law firm of Defendant Clear.

114. Defendant Mendez further stated that if Plaintiff Tixier did not pay \$8,000 in cash that day, the cost of having the charge dismissed would increase to \$10,000.

115. Ultimately, Plaintiff Tixier's DUI charge was dismissed on June 2, 2022.

D. Deprivation of Plaintiff Barron's Constitutional Rights by Defendant Alba

116. On August 23, 2023, Plaintiff Barron was arrested for DWI, but authorities waited several weeks before filing formal charges against him.

117. On that day, Plaintiff Barron was initially stopped for speeding.

118. Upon contact, Defendant Alba alleged to have observed that Plaintiff Barron had bloodshot, watery eyes and detected the odor of alcohol emanating from his facial area.

119. Plaintiff Barron allegedly admitted to consuming alcohol before driving.

120. Defendant Alba instructed Plaintiff Barron to call an individual named Rick, later to be identified as Defendant Mendez.

121. Defendant Alba took Plaintiff Barron's driver's license.

122. Subsequently, Defendant Mendez contacted Plaintiff Barron and arranged to meet him at his workplace during Plaintiff Barron's break.

123. Defendant Mendez arrived at Plaintiff Barron's workplace in possession of Plaintiff Barron's criminal complaint, despite the fact that it had not yet been filed in court.

124. Defendant Mendez stated that he and Defendant Alba could make the DWI charge disappear if Plaintiff Barron paid them \$6,000.

125. Plaintiff Barron reported this bribery attempt to federal law enforcement.

126. On January 18, 2024, all charges against Plaintiff Barron were dismissed.

E. Deprivation of Plaintiffs John Does 1-5 and Jane Does 1-5's Constitutional Rights by Defendants

127. Upon information and belief, Plaintiffs John Does 1-5 and Jane Does 1-5 were stopped and arrested for DUI by Defendant Officers.

128. Upon information and belief, Defendant Officers' detentions and arrests of Plaintiffs John Does 1-5 and Jane Does 1-5 were not supported by reasonable suspicion or probable cause.

129. Upon information and belief, Defendant Officers unlawfully took property, including driver's licenses and personal belongings, from Plaintiffs John Does 1-5 and Jane Does 1-5.

130. Upon information and belief, Defendant Officers transmitted that personal property to Defendants Mendez or Clear, or otherwise retained that property, to induce Plaintiffs John Does 1-5 and Jane Does 1-5 to participate in the extortion scheme described herein.

131. Upon information and belief, Defendant Officers and/or Defendants Mendez or Clear represented to Plaintiffs John Does 1-5 and Jane Does 1-5 that if they paid a sum of money to Defendants Mendez and/or clear for legal representation, their DUI charges would disappear.

132. Upon information and belief, Plaintiffs John Does 1-5 and Jane Does 1-5 agreed to pay Defendants Mendez or Clear a sum of money for legal representation.

133. Upon information and belief, DUI charges against Plaintiffs John Does 1-5 and Jane Does 1-5 were subsequently dismissed.

F. Defendants Alba, Montaña, Ortiz, Clear, and Mendez's Extortion of Plaintiffs

134. After Plaintiffs were released from custody, they received calls from Defendants Montaña, Alba, Ortiz, and/or Mendez.

135. Defendants Montaña, Alba, Ortiz, and/or Mendez would inform Plaintiffs that they had their possessions whether it was personal property or their driver's license.

136. Defendants Montaña, Alba, Ortiz, and/or Mendez took possession of Plaintiffs' property by fraudulently charging them with DUI, arresting them, transferring them to MDC or a local station, and then obtaining control over the property after MDC employees took possession of it prior to Plaintiffs' incarceration or by retaining their driver's license rather than forwarding the license to the MVD for the license revocation process.

137. Defendants Montaña, Alba, Ortiz, and/or Mendez would do so to induce Plaintiffs to meet with Defendant Clear, with the intent to deprive Plaintiffs of that property for the time necessary to transfer it to Defendant Clear.

138. Defendants Montaña, Alba, Ortiz, and/or Mendez informed Plaintiffs that they would be referred to an attorney that could help them get the DUI charge dismissed.

139. Plaintiffs would meet with Defendant Clear's office and his paralegal, Defendant Mendez.

140. Defendant Mendez informed Plaintiffs that their office would guarantee that the DUI would not go on Plaintiffs' record if Plaintiffs retained Defendant Clear.

141. Defendant Mendez demanded payments of \$6,000 or \$8,000 up front or installment payments towards \$10,000.

142. Defendants Clear and Mendez planned to use some of that money to compensate Defendants Montaña, Ortiz, and Alba for their participation in the enterprise.

G. Honorio Alba's Admissions of Guilt in Federal Court

143. Defendant Alba was a sworn law enforcement officer with the Albuquerque Police Department (APD) since 2014, later joining the DWI unit in 2017.

144. From 2018 onward, Defendant Alba conspired with Defendants Clear, Mendez, and other officers in a bribery scheme targeting individuals arrested for DWI.

145. Defendant Alba admitted to accepting bribes in cash and other valuables (jewelry, tires) in exchange for intentionally failing to appear in required DWI-related court and administrative proceedings.

146. Defendant Alba collaborated with Defendants Clear and Mendez to arrange dismissals by strategically skipping court and administrative hearings.

147. Defendant Alba helped recruit and introduce new officers to the scheme, ensuring the enterprise's continuity and shielding it from scrutiny.

148. In addition to cash bribes, Defendant Alba and his family received free or discounted legal services from Defendant Clear.

149. Defendant Alba acknowledged violating his duty as an APD officer and manipulating legal proceedings to ensure case dismissals, thereby obstructing justice.

150. Defendant Alba and other officers used their positions to influence internal APD decisions and prevent investigations into their illegal activities.

151. Over multiple years, Defendant Alba knowingly engaged in transactions exceeding \$5,000 involving bribery while APD received more than \$10,000 in federal funds.

152. Defendant Alba recognized his role in a structured criminal enterprise engaged in racketeering, bribery, and obstruction of justice.

H. Joshua Montaña's Admissions of Guilt in Federal Court

153. Defendant Montaña joined APD in 2005, became a sworn officer in 2008, and later joined the DWI unit in 2017.

154. Defendant Montaña engaged in the same scheme as Defendant Alba, collaborating with Defendants Clear, Mendez, and other officers.

155. Defendant Montaña accepted cash bribes, free legal services, hotel rooms, and other valuables in exchange for failing to perform his duties.

156. Defendant Montaña knowingly skipped crucial hearings to facilitate dismissals, ensuring that DWI offenders avoided convictions.

157. Defendant Montaña admitted that senior officers trained and recruited newer officers into the conspiracy, making it a generational scheme within APD.

158. Defendant Montaña benefited from free legal services for himself and his family, along with other financial rewards.

159. Defendant Montaña's deliberate inaction led to unwarranted dismissals of criminal charges, compromising public safety.

160. Defendant Montaña engaged in bribery involving \$5,000 or more per year while APD received over \$10,000 in federal funds.

161. Defendant Montaña acknowledged his role in obstructing justice and engaging in a structured criminal enterprise for personal and collective gain.

I. Ricardo Mendez's Admissions of Guilt in Federal Court

162. Defendant Mendez was an investigator at Defendant Clear's law firm, which specialized in DWI defense.

163. Since 2008, Defendant Mendez conspired with Defendant Clear and law enforcement officers to manipulate DWI proceedings.

164. Defendant Mendez facilitated payments in cash and gifts to officers in exchange for their failure to appear in court.

165. Defendant Mendez orchestrated the bribery system, scheduling hearings in a way that ensured dismissals by coordinating officers' non-appearances.

166. Defendant Mendez played a key role in recruiting new officers and maintaining the continuity of the enterprise.

167. Defendant Mendez and Defendant Clear collected extra cash from retainer fees, distributing portions to corrupt officers.

168. Defendant Mendez directly engaged in bribery and extortion under the guise of legal assistance.

169. Defendant Mendez was involved in illegal transactions exceeding \$5,000 per year while APD received substantial federal funding.

170. Defendant Mendez admitted to orchestrating and profiting from a long-term bribery scheme that infiltrated multiple law enforcement agencies, including Defendant City's Police Department.

CLASS ACTION AND COLLECTIVE ALLEGATIONS

171. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

172. Defendants have a custom and policy of violating the civil rights of people arrested for and charged with DUI offenses.

173. Defendants have a custom of depriving criminal defendants charged with DUI of due process through fraud, extortion, and bribery by attempting to induce Plaintiffs to pay them for favorable judicial outcomes.

174. Defendants' conduct has caused harm and injuries.

175. Plaintiffs bring this class action pursuant to Rule 1-023 NMRA on behalf of themselves and on behalf of other similarly situated individuals who have been deprived of their rights under the New Mexico and United States Constitutions and who have been extorted by Defendants and otherwise subject to the unlawful scheme described herein.

176. The proposed classes include the "Non-Payment Class" and the "Payment Class."

177. Plaintiffs Gonzales, Vasquez, Barron, and Tixier seek to represent the "Non-Payment Class" made up of the following persons: all individuals whose liberty interests have been impaired by Defendants from January 1, 2008, to the filing of this Complaint by Defendants' practice of extorting and attempting to extort persons arrested for and charged with DUI offenses, who **did not** submit payment to Defendants.

178. Plaintiffs John Does 1-5 and Jane Does 1-5 seek to represent the "Payment Class" made up of the following persons: All individuals whose liberty interests have been impaired by Defendants from January 1, 2008, to the filing of this Complaint by Defendants' practice of extorting and attempting to extort persons arrested for and charged with DUI offenses, who **did** submit payment to Defendants.

179. Plaintiffs are similarly situated to other individuals who were deprived of their constitutional rights because of the agreement between Defendant Officers and Defendants Clear and Mendez.

180. For this reason, this case should be certified as a collective action.

181. Plaintiffs and the proposed class have similar claims arising from similar factual circumstances, will be subject to the same defenses from Defendants, and there are no fairness or procedural considerations weighing against certification of a collective action.

182. Based on the fact that Defendant Officers and Defendants Clear and Mendez targeted dozens, if not hundreds, of arrestees over the last ten years, it appears that the class of plaintiffs is so numerous that joinder of all is impracticable.

183. Common questions of law and fact predominate over questions affecting only individual members, including among others:

- a. Whether the Defendant Officers' conduct of detaining and arresting people to advance their extortion scheme constituted unlawful seizure under the United States Constitution;
- b. Whether the Defendant Officers' conduct of detaining and arresting people to advance their extortion scheme constituted unlawful seizure under the New Mexico Constitution;
- c. Whether Defendant Officers' conduct of extorting or attempting to extort criminal defendants by offering not to testify against them in exchange for payment violated those criminal defendants' procedural and substantive due process rights under the United States Constitution;
- d. Whether Defendant Officers' conduct of extorting or attempting to extort criminal defendants by offering not to testify against them in exchange for payment violated those criminal defendants' Due Process rights under the New Mexico Constitution;

- e. Whether Defendants engaged in a conspiracy to deprive DUI offenders of their rights under the United States Constitution;
- f. Whether Defendant City had a custom, practice, or policy which facilitated Defendant Officers' violations of DUI offenders' rights under the United States Constitution;
- g. Whether Defendant Officers maliciously abused legal process initiated against DUI offenders, in violation of the New Mexico Constitution;
- h. Whether Defendant City was negligent in their hiring, training, supervision, and retention of Defendant Officers and those tasked with their supervision;
- i. Whether Defendant Officers, Defendant Medina, and Defendants Clear and Mendez engaged in a pattern of racketeering activity in violation of New Mexico anti-racketeering laws;
- j. Whether Defendant Officers, Defendant Medina, and Defendants Clear and Mendez engaged in a pattern of racketeering activity in violation of federal anti-racketeering laws;
- k. Whether Defendants' actions as set forth above injured class members, and if so, the extent of the harm and injury.

184. Claims and defenses of the class are typical of claims and defenses of the representative party as the claims arise from the same course of conduct of Defendants.

185. Defendants have acted in a manner generally applicable to the whole class.

186. Plaintiffs will fairly and adequately represent class interests. Plaintiffs

187. Final relief will benefit the class as a whole.

188. Plaintiffs have retained competent counsel experienced in civil rights law and class action litigation.

189. This action should proceed as a class action under Rule 1-023(B)(1) NMRA because the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for Defendants.

190. In the alternative, this action should proceed as a class action under Rule 1-023(B)(3) NMRA because the questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and thus a class action is superior to other available methods for the fair and efficient adjudication of the controversy. As such,

- a. Common or generalized proof will predominate with respect to the essential elements of the claims at issue;
- b. Any member of the class who has a substantial interest in individually controlling the prosecution of a separate action may exclude themselves from the class upon the receipt of notice;
- c. Upon information and belief, no other cases have been filed and no litigation has already been commenced by or against members of the class;
- d. It is desirable to concentrate the litigation of these claims in this forum because the determination of the claims of all members of the class in a single forum, and in a single proceeding, would be a fair and efficient means of resolving the issues raised in this litigation as between Defendants and the putative class; and

- e. The difficulties likely to be encountered in the management of a class action in this litigation are reasonably manageable, especially when weighed against the difficulty of affording adequate relief to the members of the class through numerous separate actions.
191. Maintaining this action as a class will:
- a. Avoid inconsistent adjudications with respect to the individual members;
 - b. Avoid the risk that any adjudication of Plaintiffs' claims will impair or impede the rights of other individuals similarly affected;
 - c. Ensure that other individuals affected by Defendants' common practice might be compensated without unnecessary hardship that would result from duplicative discovery, effort, and expense.

COUNT I
FOURTH AMENDMENT VIOLATION
AGAINST DEFENDANTS MONTAÑO, ALBA, ORTIZ, AND CITY
(Unlawful Detention and Arrest)

192. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.
193. Plaintiffs have, and had, a Fourth Amendment right to be free from unreasonable searches and seizures.
194. Defendants Montaña, Alba, and Ortiz initiated an investigation into Plaintiffs without reasonable suspicion that a crime had been or was being committed.
195. Defendants Montaña, Alba, and Ortiz never received consent from Plaintiffs for a police encounter.
196. Defendants Montaña, Alba, and Ortiz unlawfully arrested Plaintiffs without probable cause.

197. Defendants Montañó, Alba, and Ortiz unlawfully arrested Plaintiffs in order to extort Plaintiffs.

198. Defendants Montañó, Alba, and Ortiz's unlawful arrest of Plaintiffs without probable cause was not justified or privileged under clearly established law and constituted an unreasonable seizure under the Fourth Amendment.

199. As a direct and proximate result of Defendants Montañó, Alba, and Ortiz's actions, Plaintiffs suffered and continue to suffer substantial past and future damages, including, but not limited to, loss of freedom, loss of income, loss of reputation, severe emotional distress, mental anguish, embarrassment, and humiliation.

200. Defendants Montañó, Alba, and Ortiz's actions were motivated by evil motive or intent, and/or involved a reckless or callous indifference to the federally protected rights of Plaintiffs, and therefore an award of punitive damages is appropriate to the fullest extent permitted by law.

201. Defendants Montañó, Alba, and Ortiz's actions were undertaken pursuant to the policy, practice, and/or custom of Defendant City.

202. Defendants Montañó, Alba, and Ortiz' actions were the direct and proximate result of Defendant City's failure to supervise and train Defendants Montañó, Alba, and Ortiz.

COUNT II
FOURTH AMENDMENT VIOLATION
AGAINST DEFENDANTS MONTAÑO, ALBA, ORTIZ, AND CITY
(Unlawful Seizure)

203. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

204. Plaintiffs have, and had, a Fourth Amendment right to be free from unreasonable seizures.

205. Defendants Montaña, Alba, and Ortiz initiated an investigation into Plaintiffs without reasonable suspicion that a crime had been or was being committed.

206. Defendants Montaña, Alba, and Ortiz never received consent from Plaintiffs for a police encounter.

207. Defendants Montaña, Alba, and Ortiz unlawfully arrested Plaintiffs without probable cause.

208. Defendants Montaña, Alba, and Ortiz unlawfully arrested Plaintiffs in order to extort Plaintiffs.

209. Defendants Montaña, Alba, and Ortiz's unlawful arrest of Plaintiffs without probable cause was not justified or privileged under clearly established law and constituted an unreasonable seizure under the Fourth Amendment.

210. Defendants Montaña, Alba, and Ortiz seized property from Plaintiffs in the course of their unlawful arrests of Plaintiffs, including but not limited to driver's licenses and personal effects.

211. Defendants Montaña, Alba, and Ortiz's seizure of property from Plaintiffs was not justified or privileged under clearly established law and constituted an unreasonable seizure under the Fourth Amendment.

212. As a direct and proximate result of Defendants Montaña, Alba, and Ortiz's actions, Plaintiffs suffered and continue to suffer substantial past and future damages, including, but not limited to, loss of freedom, loss of income, loss of reputation, severe emotional distress, mental anguish, embarrassment, and humiliation.

213. Defendants Montaña, Alba, and Ortiz's actions were motivated by evil motive or intent, and/or involved a reckless or callous indifference to the federally protected rights of

Plaintiffs, and therefore an award of punitive damages is appropriate to the fullest extent permitted by law.

214. Defendants Montañó, Alba, and Ortiz's actions were undertaken pursuant to the policy, practice, and/or custom of Defendant City.

215. Defendants Montañó, Alba, and Ortiz' actions were the direct and proximate result of Defendant City's failure to supervise and train Defendants Montañó, Alba, and Ortiz.

COUNT III
FOURTEENTH AMENDMENT VIOLATION
AGAINST DEFENDANTS CITY, MEDINA, AND OFFICERS
(Deprivation of Procedural Due Process)

202. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

203. Plaintiffs have, and had, a Fourteenth Amendment right to fundamental fairness in criminal proceedings brought against them.

204. As described above, Defendants Montañó, Alba, and Ortiz, while acting individually, jointly, and in conspiracy with the other Defendants, deprived Plaintiffs of their constitutional right to a fair trial by conspiring to control the testimony presented in pre-trial and trial proceedings, as well as administrative proceedings, in exchange for money.

205. Defendants Montañó, Alba, and Ortiz conspired with the other Defendants to manipulate the legal system by extorting Plaintiffs in exchange for a favorable termination of judicial and administrative proceedings that Defendants Montañó, Alba, and Ortiz had initiated against Plaintiffs, such that Plaintiffs were deprived of their constitutional right to a fundamentally fair trial.

206. As a direct and proximate result of Defendant Montañó, Alba, and Ortiz's actions, Plaintiffs suffered and continue to suffer substantial past and future damages, including, but not

limited to, loss of freedom, loss of income, loss of reputation, severe emotional distress, mental anguish, embarrassment, and humiliation.

207. Defendants' actions were motivated by evil motive or intent, and/or involved a reckless or callous indifference to the federally protected rights of Plaintiffs, and therefore an award of punitive damages is appropriate to the fullest extent permitted by law.

208. Defendants Montaño, Alba, and Ortiz's actions were undertaken pursuant to the policy, practice, and/or custom of Defendant City.

209. Defendants Montaño, Alba, and Ortiz's actions were the direct and proximate result of Defendant City's failure to supervise and train Defendants Montaño, Alba, and Ortiz.

COUNT III
FOURTEENTH AMENDMENT VIOLATION
AGAINST DEFENDANTS CITY, MEDINA, AND OFFICERS
(Deprivation of Substantive Due Process)

210. Plaintiffs incorporate the preceding paragraphs as though set forth fully herein.

211. Plaintiffs have, and had, a Fourteenth Amendment right to a presumption of innocence in criminal proceedings.

212. Defendants Montaño, Alba, and Ortiz, while acting individually, jointly, and in conspiracy with the other Defendants, deprived Plaintiffs of their constitutional right to a presumption of innocence in criminal proceedings.

213. Defendants conspired to manipulate the legal system by extorting Plaintiffs in exchange for a favorable termination of judicial proceedings that Defendants Montaño, Alba, and Ortiz had initiated against Plaintiffs, such that Plaintiffs were deprived of their right to a presumption of innocence in criminal proceedings.

214. As a direct and proximate result of Defendant Montaño's actions, Plaintiffs suffered and continue to suffer substantial past and future damages, including, but not limited to, loss of

freedom, loss of income, loss of reputation, severe emotional distress, mental anguish, embarrassment, and humiliation.

215. Defendants' actions were motivated by evil motive or intent, and/or involved a reckless or callous indifference to the federally protected rights of Plaintiffs, and therefore an award of punitive damages is appropriate to the fullest extent permitted by law.

216. Defendants Montaña, Alba, and Ortiz's actions were undertaken pursuant to the policy, practice, and/or custom of Defendant City.

217. Defendants Montaña, Alba, and Ortiz's actions were the direct and proximate result of Defendant City's failure to supervise and train Defendants Montaña, Alba, and Ortiz.

COUNT IV
FOURTEENTH AMENDMENT VIOLATION
AGAINST DEFENDANTS CITY, MEDINA, AND OFFICERS
(Deprivation of Procedural and Substantive Due Process)

218. Plaintiffs incorporate the preceding paragraphs as though set forth fully herein.

219. Plaintiffs have, and had, a protected property interest in their driver's licenses.

220. Plaintiffs have, and had, a Fourteenth Amendment right to due process of law.

221. Defendants Montaña, Alba, and Ortiz, while acting individually, jointly, and in conspiracy with the other Defendants, deprived Plaintiffs of their constitutional right to due process and their property interest in their driver's licenses.

222. Defendants conspired to unlawfully seize Plaintiffs' driver's licenses through Defendant Officers' unlawful seizure and arrest of Plaintiffs, such that Plaintiffs were deprived of their property interest in their driver's licenses without due process of law.

223. As a direct and proximate result of Defendant Montaña's actions, Plaintiffs suffered and continue to suffer substantial past and future damages, including, but not limited to, loss of

freedom, loss of income, loss of reputation, severe emotional distress, mental anguish, embarrassment, and humiliation.

224. Defendants' actions were motivated by evil motive or intent, and/or involved a reckless or callous indifference to the federally protected rights of Plaintiffs, and therefore an award of punitive damages is appropriate to the fullest extent permitted by law.

225. Defendants Montaña, Alba, and Ortiz's actions were undertaken pursuant to the policy, practice, and/or custom of Defendant City.

226. Defendants Montaña, Alba, and Ortiz's actions were the direct and proximate result of Defendant City's failure to supervise and train Defendants Montaña, Alba, and Ortiz.

COUNT V
42 U.S.C. SECTION 1983 CONSPIRACY
AGAINST ALL DEFENDANTS
(Conspiracy to Deprive Constitutional Rights)

227. Plaintiffs incorporate the preceding paragraphs as though set forth fully herein.

228. Defendants, acting in concert with other co-conspirators, known and unknown, reached an agreement among themselves to extort Plaintiffs by agreeing to not proffer testimony accusing plaintiff of a crime in exchange for money.

229. In so doing, these co-conspirators conspired, and had a meeting of the minds, to deprive Plaintiffs of their constitutional rights.

230. In furtherance of their conspiracy, each of these co-conspirators committed overt acts and were otherwise willful participants in joint activity.

231. In furtherance of their conspiracy, Defendants violated Plaintiffs' rights under the Fourth and Fourteenth Amendments to the United States Constitution, as described above.

232. The conduct described in this count was objectively unreasonable and was undertaken intentionally, with malice, with reckless indifference to the rights of others, and in total disregard for the truth.

233. As a result of Defendants' conduct described in this Count, Plaintiffs suffered and continue to suffer substantial past and future damages, including, but not limited to, loss of freedom, loss of income, loss of reputation, severe emotional distress, mental anguish, embarrassment, and humiliation.

COUNT VI
MONELL CLAIM
AGAINST DEFENDANT CITY

234. Plaintiffs incorporate the preceding paragraphs as though set forth fully herein.

235. Plaintiffs' injuries were caused by the policies, practices, and/or customs of the Albuquerque Police Department, in that employees and agents of the Albuquerque Police Department regularly unlawfully detained and arrested persons without probable cause that they had committed a DUI offense, exchanged promises not to testify against criminal defendants for money, and otherwise violated the due process rights of criminal defendants in a similar manner to that alleged herein.

236. This widespread practice, which was so pervasive as to constitute the de facto policy of the Albuquerque Police Department, was allowed to exist because municipal policymakers with authority over the same, including Defendant Medina, exhibited deliberate indifference to the problem, thereby effectively ratifying it.

237. Furthermore, the above-described widespread practices were allowed to flourish because the Albuquerque Police Department declined to implement sufficient training,

supervision, audit, or any legitimate mechanism for oversight or punishment of officers and agents who unlawfully detained, arrested, and extorted criminal defendants.

238. The policies, practices, and customs set forth above were the moving force behind the numerous constitutional violations alleged above and directly and proximately caused Plaintiffs to suffer the grievous and injuries and damages set forth above.

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

239. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

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

241. Plaintiffs have, and had, a right to be free from unreasonable and pretextual seizures under Article II, Section 10 of the New Mexico Constitution.

242. Defendants Montañño, Alba, and Ortiz unlawfully seized Plaintiffs with the intent to advance a conspiracy to directly or indirectly defraud Plaintiffs and request a bribe from Plaintiffs in exchange for a promise not to participate in the prosecution of criminal charges Defendants Montañño, Alba, and Ortiz brought or threatened to bring against Plaintiffs.

243. Defendants Montañño, Alba, and Ortiz initiated DUI investigations into Plaintiffs without reasonable suspicion that Plaintiffs had committed or were committing DUI.

244. Defendants Montañño, Alba, and Ortiz arrested Plaintiffs without sufficient probable cause.

245. As a direct and proximate result of Defendants Montañño, Alba, and Ortiz's actions, Plaintiffs suffered and continue to suffer substantial past and future damages, including, but not

limited to, loss of freedom, loss of income, loss of reputation, severe emotional distress, mental anguish, embarrassment, and humiliation.

246. Defendant City is liable for the actions of Defendants Montaño, Alba, and Ortiz under the NMCRA.

COUNT VIII
NMCRA CLAIM
AGAINST DEFENDANT CITY
(Violation of Article II, Section 10: Unlawful Seizure)

247. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

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

249. Plaintiffs have, and had, a right to be free from unreasonable and pretextual seizures under Article II, Section 10 of the New Mexico Constitution.

250. Defendants Montaño, Alba, and Ortiz unlawfully seized Plaintiffs' driver's licenses and other personal property with the intent to advance a conspiracy to directly or indirectly defraud Plaintiffs and request a bribe from Plaintiffs in exchange for a promise not to participate in the prosecution of criminal charges Defendants Montaño, Alba, and Ortiz brought or threatened to bring against Plaintiffs.

251. Defendants Montaño, Alba, and Ortiz initiated DUI investigations into Plaintiffs without reasonable suspicion that Plaintiffs had committed or were committing DUI.

252. Defendants Montaño, Alba, and Ortiz arrested Plaintiffs without sufficient probable cause.

253. As a direct and proximate result of Defendants Montaño, Alba, and Ortiz's actions, Plaintiffs suffered and continue to suffer substantial past and future damages, including, but not

limited to, loss of freedom, loss of income, loss of reputation, severe emotional distress, mental anguish, embarrassment, and humiliation.

254. Defendant City is liable for the actions of Defendants Montaño, Alba, and Ortiz under the NMCRA.

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

255. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

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

257. Defendants Montaño, Alba, and Ortiz misused the legal process against Plaintiffs.

258. Defendants Montaño, Alba, and Ortiz did not have a reasonable belief, based on the facts known to them, that the DUI charges against Plaintiffs could be established to the satisfaction of a court or jury.

259. Defendants Montaño, Alba, and Ortiz's primary motive in misusing the legal process was to accomplish an illegitimate end, to wit: to induce Plaintiffs to participate in Defendants' extortion scheme.

260. As a direct and proximate result of Defendants Montaño, Alba, and Ortiz's actions, Plaintiffs were arrested and charged with driving while intoxicated even though Defendants Montaño, Alba, and Ortiz did not have probable cause to believe that Plaintiffs had committed this crime.

261. As a direct and proximate result of Defendants Montaño, Alba, and Ortiz's actions, Plaintiffs suffered and continue to suffer substantial past and future damages, including, but not

limited to, loss of freedom, loss of income, loss of reputation, severe emotional distress, mental anguish, embarrassment, and humiliation.

262. Defendant City is liable for the actions of Defendants Montañó, Alba, and Ortiz under the NMCRA.

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

263. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

264. 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.”

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

266. Plaintiffs’ rights under Article II, Section 18 are afforded greater protection than his rights under the United States Constitution.

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

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

269. 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.

270. Defendants Montañó, Alba, and Ortiz deprived Plaintiffs of their rights secured by Article II, Section 18 of the New Mexico Constitution by demanding and/or agreeing to receive money from Plaintiffs in exchange for not testifying or otherwise participating in the prosecution of criminal charges Defendants Montañó, Alba, and Ortiz had filed against him.

271. As a direct and proximate result of Defendants Montañó, Alba, and Ortiz's actions, Plaintiffs suffered and continue to suffer substantial past and future damages, including, but not limited to, loss of freedom, loss of income, loss of reputation, severe emotional distress, mental anguish, embarrassment, and humiliation.

272. Defendant City is liable for the actions of Defendants Montañó, Alba, and Ortiz under the NMCRA.

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

273. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

274. 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."

275. Plaintiffs' rights under Article II, Section 18 are afforded greater protection than his rights under the United States Constitution.

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

277. 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.

278. Plaintiffs have, and had, a protected property interest in their driver's licenses and the rights conferred thereby.

279. Defendants Montañó, Alba, and Ortiz deprived Plaintiffs of their rights secured by Article II, Section 18 of the New Mexico Constitution by depriving Plaintiff of their driver's licenses without due process of law.

280. As a direct and proximate result of Defendants Montañó, Alba, and Ortiz's actions, Plaintiffs suffered and continue to suffer substantial past and future damages, including, but not limited to, loss of freedom, loss of income, loss of reputation, severe emotional distress, mental anguish, embarrassment, and humiliation.

281. Defendant City is liable for the actions of Defendants Montañó, Alba, and Ortiz under the NMCRA.

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

282. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

283. Defendants Montañó, Alba, and Ortiz misused the legal process against Plaintiffs.

284. Defendants Montañó, Alba, and Ortiz did not have a reasonable belief, based on the facts known to him, that the DUI charges against Plaintiffs could be established to the satisfaction of a court or jury.

285. Defendants Montañño, Alba, and Ortiz's primary motive in misusing the legal process was to accomplish an illegitimate end, to wit: induce Plaintiffs to participate in Defendants' extortion scheme.

286. As a direct and proximate result of Defendants Montañño, Alba, and Ortiz's actions, Plaintiffs were arrested and charged with driving while intoxicated, even though Defendants Montañño, Alba, and Ortiz did not have probable cause to believe that Plaintiffs had committed this crime.

287. As a direct and proximate result of Defendants Montañño, Alba, and Ortiz's actions, Plaintiffs suffered and continue to suffer substantial past and future damages, including, but not limited to, loss of freedom, loss of income, loss of reputation, severe emotional distress, mental anguish, embarrassment, and humiliation.

288. Defendant City is liable for the actions of Defendants Montañño, Alba, and Ortiz under the NMTCA.

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

289. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

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

291. Defendant City owed a duty to Plaintiffs 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 Plaintiffs.

292. 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 Plaintiffs or deprive Plaintiffs of their civil rights; and by the continued retention of Defendants Officers, Defendant City breached its duty to Plaintiffs.

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

294. As a direct and proximate result of Defendant Officers' actions, Plaintiffs suffered and continue to suffer substantial past and future damages, including, but not limited to, loss of freedom, loss of income, loss of reputation, severe emotional distress, mental anguish, embarrassment, and humiliation.

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

COUNT XIV
RACKETEERING

(In Violation of NMSA 1978, § 30-42-4)

**AGAINST DEFENDANTS MEDINA, MONTAÑO, ALBA, JOHNSON, ORTIZ,
HUNT, DEAGUERO, ELSMAN, TRAHAN, LANDAVAZO, GOMEZ, CURTIS,
CHAVEZ, MACCARSON, HAMMEREL, JOHN DOE 6, CLEAR, AND MENDEZ**

296. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

297. 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).

298. 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).

299. 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.

300. 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.

301. 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.

302. 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.

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

304. 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.

305. 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.

306. 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.

307. 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.

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

309. As a direct and proximate result of Defendants' pattern of racketeering activity, Plaintiffs sustained damages to their person.

COUNT XV
RACKETEERING

(In Violation of 18 USC § 1962)

**AGAINST DEFENDANTS MEDINA, MONTAÑO, ALBA, JOHNSON, ORTIZ,
HUNT, DEAGUERO, ELSMAN, TRAHAN, LANDAVAZO, GOMEZ, CURTIS,
CHAVEZ, MACCARSON, HAMMEREL, JOHN DOE 6, CLEAR, AND MENDEZ**

310. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

311. Defendants are each entities capable of holding a legal or beneficial interest in property and are thus "persons" as defined by 18 USC § 1961(3).

312. Defendants are each legal entities and/or groups of individuals associated in fact and are thus "enterprises" as defined by 18 USC § 1961(4).

313. 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, acts chargeable under New Mexico law and punishable by imprisonment for more than one year.

314. 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, acts chargeable under New Mexico law and punishable by imprisonment for more than one year.

315. 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, acts chargeable under New Mexico law and punishable by imprisonment for more than one year.

316. 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, acts chargeable under New Mexico law and punishable by imprisonment for more than one year.

317. Defendants Officers, Clear, and Mendez collectively and individually engaged in at least two instances of extortion or conspiracy to commit extortion under color of official right in such a way that affected commerce or the movement of articles in commerce, acts indictable under 18 USC § 1951 and 18 USC § 2.

318. These actions are racketeering activity as defined by 18 USC § 1961(1).

319. Defendants Officers, Clear, and Mendez, as persons who derived income from a pattern of racketeering activity in which they participated as a principal within the meaning of 18 USC § 2, used or invested some part of such income in the establishment or operation, or acquisition of an interest in, of an enterprise which is engaged in, or the activities of which affect, interstate commerce.

320. Defendants Officers, Clear, and Mendez acquired or maintained, directly or indirectly, an interest in or control of an enterprise which is engaged in, or the activities of which affect, interstate commerce through a pattern of racketeering activity.

321. Defendant Officers, as employees of Defendant City, an enterprise engaged in, or the activities of which affect, interstate commerce, conducted or participated, directly and/or indirectly, in the conduct of Defendant City's affairs by engaging in a pattern of racketeering activity.

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

323. Defendants, including Defendant Medina, each conspired with and amongst each other to violate 18 USC § 1962 (a) – (c).

324. As a direct and proximate result of Defendants' pattern of racketeering activity, Plaintiffs sustained damages to their person.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Certify the Class under Rule 1-023(B)(1) or Rule 1-023(B)(3) as described in this Complaint;
- B. Appoint Plaintiffs' counsel to represent the Class;
- C. Enter judgment on Plaintiffs' behalf and on behalf of the Class and against Defendants for:
 - 1. Compensatory damages;
 - 2. Hedonic damages;

3. Punitive damages;
4. Pre-judgment interest;
5. Post-judgment interest;
6. Declaratory relief;
7. Treble damages, pursuant to NMSA § 30-42-6(A) and 18 USC § 1964(c);
8. Reasonable attorneys' fees and costs incurred in bringing this action, including expert fees, pursuant to 42 U.S.C. § 1988, NMSA 1978, § 41-4A-5, NMSA § 30-42-6(A), and 18 USC § 1964(c); and
9. Such other and further relief as the Court deems just.

DATED: February 12, 2025

Respectfully Submitted,

/s/ Frances C. Carpenter

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