

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

JOSEPH HERRERA

Plaintiff,

v.

Case No.: D-101-CV-2025-02352

REGULATION & LICENSING DEPARTMENT

Defendant.

**PLAINTIFF'S AMENDED RESPONSE IN OPPOSITION TO DEFENDANT'S  
MOTION TO CONTINUE EXPEDITED HEARING<sup>1</sup>**

Plaintiff Joseph Herrera, through his counsel the Law Office of Matthew J. Bouillon Mascareñas LLC (Matthew J. Bouillon Mascareñas, Esq.), hereby submits his Amended Response in Opposition to Defendant Regulation and Licensing Department's *Motion to Continue Expedited Hearing*, filed today. Mr. Herrera asks that the Court deny RLD's motion and maintain the current setting for September 29, 2025 at 9:30 a.m. In support of his position, he states as follows:

**FACTUAL BACKGROUND**

1. The facts are set forth in detail in the Complaint and incorporated herein by reference.
2. In addition to the incorporated facts, Mr. Herrera states the following supplementary facts.

***a. Service of the Summons and Complaint***

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<sup>1</sup> This version supersedes Plaintiff's informal chambers submission dated September 26, 2025.

3. On Thursday, September 18, 2025, Plaintiff filed a Request for Expedited Hearing on his *Emergency Motion for Temporary Restraining Order, Application for Preliminary Injunction, Request for Expedited Hearing, and Memorandum in Support*.

4. On Friday, September 19, 2025, the Court issued a notice that the expedited hearing would be held on September 29, 2025 at 9:30 a.m., denying Plaintiff's request for emergency *ex parte* relief.

5. Also on Friday, September 19, Plaintiff submitted a summons to the Clerk of Court for issuance. Exhibit 1—Automated Email from File&Serve System Showing Dates of Summons Submission & Issuance (Sept. 23, 2025).

6. On Tuesday, September 23, 2025 at 1:52 p.m., the Clerk returned the issued summons to Plaintiff, enabling proper service. *See* Exhibit 1.

7. Plaintiff then immediately printed a copy of every pleading on file in this case and sent them via FedEx Priority Overnight to Defendant and the New Mexico Department of Justice (NMDOJ) at 3:34 p.m., less than two hours after receiving the issued summons. Exhibit 2—FedEx Receipt with Tracking Data (RLD); Exhibit 3—FedEx Receipt with Tracking Data (NMDOJ).

8. Priority Overnight service guarantees delivery on or before 10:30 a.m. the following day.

9. Tracking information for both envelopes demonstrate that they did, in fact, arrive at their intended destinations on or before 10:30 a.m. on Wednesday, September 24, 2025, not on Thursday, September 25, 2025 as Defendant alleges in paragraph five of its motion. *See* Exhibit 2 (showing delivery to RLD on 9/24/2025 at 10:14 a.m.); Exhibit 3 (showing delivery to NMDOJ at 9/24/2025 at 10:30 a.m.).

***b. Mr. Herrera's imminent, irreparable harm***

10. Plaintiff was denied an opportunity to contest his code violation determinations (CVDs) because the form apprising him of the alleged violations did not contain an advisement of his appeal rights under section 14.5.9.9(B) NMAC.

11. Defendant's referral of Plaintiff to the NMDOJ was nonetheless approved by the Construction Industries Commission on May 21, 2025 thanks, in part, to at least one false statement of material fact knowingly made by CID Investigations Manager Carla Roybal.

12. On June 13, 2025, Ms. Roybal submitted a "Disciplinary Referral & Request for Prosecution" form to the NMDOJ. Exhibit 4—Form Completed by Ms. Roybal (June 13, 2025).

13. The form Ms. Roybal submitted includes the additional "failure to cooperate" charge against Plaintiff. *Id.*

14. The inclusion of the "failure to cooperate" charge in a handwritten addition "per Commissioner" suggests that Ms. Roybal's selective retelling of Defendant's investigation caused the Commission to seek additional sanctions against Plaintiff. *See, e.g.,* Exhibit 5 to Verified Complaint.

15. The form was accompanied by the same Construction Industries Commission Memorandum, likely also prepared by Ms. Roybal, containing the false statement that Plaintiff had been sent a Notice of Violation on December 18, 2024 with a remediation deadline of January 25, 2025.

16. As Ms. Roybal herself noted in internal logs some five months prior to the creation of the Construction Industries Commission Memorandum, no Notice of Violation was ever sent to Plaintiff on December 18, 2024.

17. Plaintiff has never refused to remediate any alleged code violation, nor has he been afforded a real opportunity to correct any code violations of which he has been accused.

18. Defendant's acts and omissions, through its agents like Ms. Roybal, have compromised the integrity of its own processes.

19. Publication of a Notice of Contemplated Action (NCA) against Plaintiff poses a serious risk of irreparable harm due to its foreseeable impact on his reputation and livelihood. This harm is all the more acute given Defendant's deceptive and unethical conduct in securing the referral in the first instance.

20. As Ms. Roybal recorded internally on August 27, 2025 at 2:47 p.m., the Homeowner had "been working on bond request estimates" to remediate Plaintiff's work. Thus, the uncorrected code violation certification process is well underway, and a certificate of uncorrected violation (CUV) could be issued at any time.

21. The required language in a CUV provides in relevant part as follows: "This notice serves to inform the surety company, the indemnitee and the licensee that the specified licensee(s) has refused or failed to correct a code violation(s) and therefore the construction industries division, under Section 60-13-49 NMSA 1978, is informing the surety company that the code bond must be released for the sole purpose of correcting the code violation(s) identified herein." § 14.5.9.10(B)(9) NMAC.

22. Issuance of a CUV to Plaintiff's surety also poses a serious risk of irreparable harm since it would be materially false, baselessly signal financial instability and non-compliance with regulations, and would be likely to result in termination of Plaintiff's bond relationship through no fault of his own. Since a code bond is a regulatory requirement, premature CUV issuance realistically threatens to deprive Plaintiff of his ability to earn a living in the construction industry, particularly if he is subsequently unable to find a new surety.

23. A continuance leaves Plaintiff exposed to these harms with no remedy.

## ARGUMENT

### I. **Mr. Herrera's defense of his liberty and property interests cannot wait.**

It is true, as RLD states in its motion, that it cannot legally take adverse action against Mr. Herrera's license without complying with the Uniform Licensing Act. Just as it is true that "no contested case hearing can be scheduled" unless and until an NCA issues. This, however, misses the point. It is not the conclusion of these processes that threatens irreparable harm to Mr. Herrera's livelihood and reputation, it is their commencement based on a fraudulent premise. This is also true of CUV issuance. Once an NCA or a CUV is issued, Mr. Herrera will experience immediate, irreparable harm that no sum of money can mend.

RLD notes that "the CVD process affords a correction window and appeal, and any discipline proceeds separately under 14.5.8 NMAC following notice." While this might be true in some instances, it is not the case here. Not only does the "CVD process" appear to basically not exist at all in practice, at least as applied to Mr. Herrera, but the department referred him to the NMDOJ due to his alleged non-compliance in failing to correct a code violation which he did not fully understand and whose potentially five-figure remediation the department took precisely zero effort to explain. In essence, RLD told Mr. Herrera, out of nowhere, that he had a problem that was going to vaguely cost anywhere from \$5,000.00 to \$30,000.00 or more to fix, and the fix had to happen essentially immediately. But when he dared ask why any of this was necessary or why the department evidently disagreed with what Mr. Herrera believed was his compliant use of a specialized, cement-based product that bonds expanded polystyrene foam to concrete (*i.e.*, Foam Kote)—that the department itself had already affirmatively approved back in 2023 and again in 2024—RLD delegated its regulatory role to the Homeowner, went silent, and inexplicably proceeded to undermine Mr. Herrera's good faith efforts at compromise and resolution. This is not

intelligent regulation befitting a key state industry. Rather, under the pall of such practices, the planning and logistical balancing acts inherent in successful commerce become essentially impossible.

For its part, RLD is hardly a paragon of efficiency. It took six months to re-inspect the Subject Property (Mar. 29, 2024 to Oct. 11, 2024) and another three months to merely transmit the alleged code violations to Mr. Herrera (Oct. 11, 2024 to Jan. 16, 2025). In short, the rules seem to apply in only one direction: contractors are held to an exacting standard while elements in the department do what they like under the mirage of even-handed regulation. Irrespective, the adverse licensing proceeding at issue here likely arose in direct response to Ms. Roybal or her superiors' evident desire to punish Mr. Herrera for his insolence for asking technical questions to which they perhaps did not have ready-made answers. Thus, the NOV and CVD processes are on separate tracks only in theory; in this case, they are each integral to the other.

Since the department's procedure as applied to Mr. Herrera is compromised and cannot meet constitutional standards in its current form, this Court should enjoin the status quo as soon as possible so that no further harm comes to Mr. Herrera's due process rights until final adjudication on the merits of his claims. While Mr. Herrera regrets any scheduling inconvenience to defense counsel, he simply cannot relent in view of the urgent danger RLD's actions pose to his ability to live and work in his home state.

## **II. The balance of equities favors denying Defendant's motion.**

As stated in his original application, Mr. Herrera has a far stronger interest in enjoining an improvident process than RLD has in enforcing it. His interest, after all, is significant: protection from a systemically deficient process. The department has no similar interest, let alone one in jeopardy of deprivation. Its motion should be denied.



Filing Received for Case: D-101-CV-2025-02352; Joseph Herrera v. Regulation & Licensing Department; Envelope Number: 13198727

From no-reply@efilingmail.tylertech.cloud <no-reply@efilingmail.tylertech.cloud>

Date Tue 9/23/2025 1:52 PM

To matt@mjbm.law <matt@mjbm.law>



## Receipted Filing

Envelope Number: 13198727

Filing Code: ISSUANCE OF SUMMONS

Filing Type: EFile

This is a receipted filing notification for Case/Envelope: D-101-CV-2025-02352 (\$\$casestyle).

Filing Details	
<b>Court</b>	1st District
<b>Case Number</b>	D-101-CV-2025-02352
<b>Case Style</b>	Joseph Herrera v. Regulation & Licensing Departmentr
<b>Date Submitted</b>	9/19/2025 5:44 PM MST
<b>Date Received</b>	9/23/2025 1:51 PM MST
<b>Filing Type</b>	EFile
<b>Filing Description</b>	Issuance of Summons
<b>Activity Requested</b>	EFile
<b>Filed By</b>	Matthew Bouillon Mascarenas

Document Details	
<b>Lead Document</b>	Summons 4-206 RLD.pdf
<b>Lead Document Page Count</b>	3
<b>File Stamped Copy</b>	<a href="#">Download Document</a>
This link is active for 90 days. To access this document, you will be required to enter your email address. Click <a href="#">here</a> for more information.	

If the link above is not accessible, copy this URL into your browser's address bar to view the document:

<https://newmexico.tylertech.cloud/ViewDocuments.aspx?FID=1ac85a06-a670-483b-b787-6c93a7c1d0ae>

For technical assistance, contact your service provider

Odyssey File & Serve

(800) 297-5377

Please do not reply to this email. It was automatically generated.

**DELIVERED**

Wednesday


9/24/25 at 10:14 AM

Signed for by: E.Cassidy

↓ Obtain proof of delivery

**DELIVERY STATUS**

Delivered 



 Report missing package

**ADD YOUR EMAIL TO STAY UPDATED ON THIS SHIPMENT**

GET UPDATES

**MORE OPTIONS**

**TRACKING ID**

884615925995  

**FROM**

ALBUQUERQUE, NM US

*Label Created*

9/23/25 4:34 PM

**WE HAVE YOUR PACKAGE**

ALBUQUERQUE, NM

9/23/25 5:14 PM

**ON THE WAY**

SANTA FE, NM

9/24/25 8:55 AM

**OUT FOR DELIVERY**

SANTA FE, NM  
9/24/25 8:58 AM

**DELIVERED**

SANTA FE, NM US  
*Delivered*  
9/24/25 at 10:14 AM

↓ [View travel history](#)

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## Shipment facts

### Shipment overview

**TRACKING NUMBER** 884615925995

**DELIVERED TO** Shipping/Receiving

**SHIP DATE**  9/23/25

**STANDARD TRANSIT**  9/24/25 before 10:30 AM

**DELIVERED** 9/24/25 at 10:14 AM

### Services

**SERVICE** FedEx Priority Overnight

**SPECIAL HANDLING SECTION** Deliver Weekday, Adult Signature Required

**SIGNATURE SERVICES**  Adult Signature Required

### Package details

**WEIGHT** 0.5 lbs / 0.23 kgs

**TOTAL PIECES** 1


**TOTAL SHIPMENT WEIGHT** 0.5 lbs / 0.23 kgs

**PACKAGING** FedEx Envelope


[↑ Back to top](#)

## Travel history

### SORT BY DATE/TIME

Ascending 

### Time zone

Local Scan Time 

Tuesday, 9/23/25

- 3:34 PM  
Shipment arriving On-Time  
ALBUQUERQUE, NM
- 3:34 PM  
Picked up  
ALBUQUERQUE, NM
- 4:34 PM  
Shipment information sent to FedEx
- 5:14 PM  
Picked up  
ALBUQUERQUE, NM
- 6:53 PM  
Left FedEx origin facility  
ALBUQUERQUE, NM
- 7:13 PM  
At destination sort facility  
ALBUQUERQUE, NM

Wednesday, 9/24/25

- 12:10 AM  
At local FedEx facility  
ALBUQUERQUE, NM
- 12:15 AM  
Delivery updated  
Delivery updated  
ALBUQUERQUE, NM
- 8:55 AM  
Shipment arriving On-Time  
SANTA FE, NM
- 8:55 AM  
At local FedEx facility  
SANTA FE, NM
- 8:58 AM  
On FedEx vehicle for delivery  
SANTA FE, NM
- ✔ 10:14 AM  
Delivered  
SANTA FE, NM

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FedEx® Tracking

Exhibit 3 to Plaintiff's Response in Opposition to Defendant's Motion for Continuance

**DELIVERED**

Wednesday

9/24/25 at 10:30 AM

Signed for by: R.Riveria

Obtain proof of delivery

**DELIVERY STATUS**

Delivered

Report missing package

**ADD YOUR EMAIL TO STAY UPDATED ON THIS SHIPMENT**

[Empty email input field]

GET UPDATES

**MORE OPTIONS**

**TRACKING ID**

884615975853

**FROM**

ALBUQUERQUE, NM US

*Label Created*

9/23/25 4:34 PM

**WE HAVE YOUR PACKAGE**

ALBUQUERQUE, NM

9/23/25 5:14 PM

**ON THE WAY**

SANTA FE, NM

9/24/25 8:56 AM

**OUT FOR DELIVERY**

SANTA FE, NM

9/24/25 9:08 AM

**DELIVERED**

SANTA FE, NM US

*Delivered*

9/24/25 at 10:30 AM

[View travel history](#)



## Shipment facts

### Shipment overview

**TRACKING NUMBER** 884615975853

**DELIVERED TO** Shipping/Receiving

**SHIP DATE** ⓘ 9/23/25

**STANDARD TRANSIT** ⓘ 9/24/25 before 10:30 AM

**DELIVERED** 9/24/25 at 10:30 AM

### Services

**SERVICE** FedEx Priority Overnight

**SPECIAL HANDLING SECTION** Deliver Weekday, Adult Signature Required

**SIGNATURE SERVICES** ⓘ Adult Signature Required

### Package details

**WEIGHT** 0.5 lbs / 0.23 kgs

**TOTAL PIECES** 1

**TOTAL SHIPMENT WEIGHT** 0.5 lbs / 0.23 kgs

**PACKAGING** FedEx Envelope

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## Travel history

**SORT BY DATE/TIME**

Ascending

**Time zone**

Local Scan Time



- 3:31 PM  
Picked up  
ALBUQUERQUE, NM
- 4:34 PM  
Shipment information sent to FedEx
- 3:35 PM  
Shipment arriving On-Time  
ALBUQUERQUE, NM
- 5:14 PM  
Picked up  
ALBUQUERQUE, NM
- 6:53 PM  
Left FedEx origin facility  
ALBUQUERQUE, NM
- 7:13 PM  
At destination sort facility  
ALBUQUERQUE, NM

Wednesday, 9/24/25

- 12:10 AM  
At local FedEx facility  
ALBUQUERQUE, NM
- 12:15 AM  
Delivery updated  
Delivery updated  
ALBUQUERQUE, NM
- 8:55 AM  
At local FedEx facility  
SANTA FE, NM
- 8:56 AM  
Shipment arriving On-Time  
SANTA FE, NM
- 9:08 AM  
On FedEx vehicle for delivery  
SANTA FE, NM
- 10:30 AM  
Delivered  
SANTA FE, NM

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**STATE OF NEW MEXICO**  
**OFFICE OF THE ATTORNEY GENERAL**  
**DISCIPLINARY REFERRAL & REQUEST FOR PROSECUTION**  
**CID/MHD REFERRAL FORM (rev. 100521)**

Exhibit 4

Agency Name: Regulation and Licensing Dept. Case No.: 105-24-03 Date of Referral: 06-13-2025

Date Complaint Received by Agency: 03-29-2024 Statute of Limitations Expiration Date: 03-29-2026

**CONTACTS:**

Form Completed By: Carla Roybal Tel: 505-231-1438 Email: carla.roybal@rld.nm.gov  
 Investigation/Settlement Questions: same Tel: Email:  
 Administrative Prosecutor: Tel: Email:  
 Hearing Clerk: Tel: Email:

Respondent Name/Lic. No: Santa Fe Sustainable Living By J #361886 Complainant Name: Julie Garcia  
 Qualifying Party/Cert. No: Joseph Herrera # 2 52882  
 Tel: 505-660-8137 Email: JSANTAFESUSTAINABLE@GMAIL.COM Tel: 505-470-0684 Email: juliegarcia1970@gmail.com

Expediting Circumstances (if any, and explain):  Yes

- Threat to public safety: \_\_\_\_\_
- Unlicensed practice: \_\_\_\_\_
- Imminent statute of limitations: \_\_\_\_\_
- Application denial: \_\_\_\_\_

**ALLEGED VIOLATIONS (cite rule/statute):**

**(EXPLANATION):**

- |                         |   |  |
|-------------------------|---|--|
| 1. 703.1.1 / 2015       | → | Water Resistance- Entire House               |
| 2. 703.4 / 2015         | → | Flashing- Windows                            |
| 3. 703.4.1              | → | Flashing 1.1 windows                         |
| 4. 703.4.1              | → | Flashing #3 Exterior wall to slab transition |
| 5. NMAC 14.5.8.8. A (2) | → | Failure to cooperate                         |
| 6. _____                | → | _____  |

**CID and Other External Witnesses Able to Testify (include telephone number or email address):**

- |                               |          |
|-------------------------------|----------|
| 1. Cedric Chavez 505-379-6846 | 2. _____ |
| 3. _____                      | 4. _____ |

**Summary of the Evidence, Notable History, Special Considerations:**

This case was taken to the CIC meeting in May of 2025. The commission voted on the issuance of an NCA based on the investigation. Notice of Violation (NOV) was sent out and was not completed. An extension was given on the NOV and was still not met. Contractor's attorney submitted letters on behalf of his client. Contractor's license has been canceled but the QP certificate is still valid and under a different company.

- Potential for Settlement:  Yes (recommended resolution, if any) \_\_\_\_\_  
 No---Hearing Required
- Has a Pre-Referral Settlement been offered?  Yes  No
- Other Current Complaints?  Yes
- Prior discipline, e.g., settlements or D&Os, against Respondent(s)?  Yes [include copies]  No
- Known Litigation:  Yes Case No. \_\_\_\_\_  No

**List Attachments Included in Referral Package**

- |                      |                  |
|----------------------|------------------|
| 1. Case file pt 1- 5 | 2. Referral form |
| 3. _____             | 4. _____         |
| 5. _____             | 6. _____         |
| 7. _____             | 8. _____         |

PLEASE ATTACH ADDITIONAL PAGES AS NECESSARY AND MAY INCLUDE MORE DETAILED NARRATIVE