

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 JOSEPH HERRERA'S MOTION FOR LEAVE TO FILE
FIRST AMENDED VERIFIED CLASS ACTION COMPLAINT FOR DAMAGES AND FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff Joseph Herrera, through his counsel the Law Office of Matthew J. Bouillon Mascareñas LLC (Matthew J. Bouillon Mascareñas, Esq.), moves this Court pursuant to Rule 1-015(A) NMRA for leave to file his *First Amended Verified Class Action Complaint for Damages and for Declaratory and Injunctive Relief* (the “First Amended Complaint”), attached hereto as Exhibit 1. Plaintiff seeks to conform his pleadings to the developed factual record; to assert refined and expanded constitutional and remedial allegations under the New Mexico Civil Rights Act (“CRA”), NMSA 1978, §§ 41-4A-1 to -13 (2021), the Declaratory Judgment Act (“DJA”), NMSA 1978, §§ 44-6-1 to -15 (1975), and Rule 1-023 NMRA; and to convert this case from purely an individual action into a putative class action complaint on behalf of similarly situated licensees, all arising from the same nucleus of operative facts as his original complaint. The parties have reached a settlement as to Count IV (Inspection of Public Records Act Violation); accordingly, its dismissal is imminent and it is kept in the First Amended Complaint solely as a procedural placeholder.

Consistent with New Mexico’s liberal amendment policy, and because the amendment is timely, made in good faith, arises from the same operative events, and will not unduly prejudice Defendant Regulation & Licensing Department (“RLD”), leave to amend should be freely granted. *See* Rule 1-015(A) NMRA; *Snow v. Warren Power & Mach., Inc.*, 2015-NMSC-026, ¶ 9. While the First Amended Complaint adds proposed class allegations and seeks to proceed on behalf of a putative Rule 1-023 class, the only named defendant remains RLD, and no additional governmental or individual defendants are added. Plaintiff has conferred with Defendant, who has indicated it opposes the relief sought herein.

BACKGROUND AND PURPOSE OF AMENDMENT

1. Plaintiff filed his original *Verified Complaint for Damages and for Declaratory and Injunctive Relief* in this action arising from the Construction Industries Division’s (“CID”) use of a standardized Code Violation Determination (“CVD”) form and related practices that, as alleged, deprived Plaintiff of due process in connection with CID’s investigation, notice, and escalation of alleged code violations at the Subject Property. The original pleading was brought solely on Plaintiff’s individual capacity and did not purport to be a class action or to assert claims on behalf of other licensees.

2. Since filing the original complaint, Plaintiff has obtained additional documents, discovery admissions, and agency records bearing on: (a) the 2014 rulemaking history and purpose of section 14.5.9.9(B) NMAC; (b) the content and uniform use of CID’s statewide CVD template from April 30, 2015 through at least April 23, 2025 omitting the appeal instructions set out in 14.5.9.9(B) NMAC (the “Appeal Advisements”) (hereinafter, CID’s standard CVD form omitting the Appeal Advisements is referred to as the “Deficient CVD Template”); and (c) the actual operation—and atrophy—of the internal appeal pathway created by that rule. These materials

confirm and sharpen the allegations that the Deficient CVD Template systematically omitted any written advisement of the mandatory 10-day director appeal and 20-day commission appeal, and that CID had no uniform backup practice to give licensees that notice.

3. Plaintiff's investigation and public records efforts also yielded additional detail regarding the timeline and handling of his own case, including the issuance of the January 16, 2025 CVD/Notice of Violation, agency non-responsiveness to his written submissions, *ex parte* communications with the complaining homeowner, and referral of his matter to the Construction Industries Commission ("CIC" or the "Commission") and the New Mexico Department of Justice ("NMDOJ") without his knowledge while portraying him as uncooperative.

4. The attached First Amended Complaint incorporates these facts, clarifies the scope and theory of Plaintiff's individual CRA due process claims, and, for the first time, asserts putative Rule 1-023 NMRA class claims and classwide relief grounded in the same challenged Deficient CVD Template and uniform practices. It does not add any new named defendants; rather, it restyles the pleading and seeks to represent a proposed class of similarly situated CID licensees allegedly affected by the same form omissions and procedural deficiencies.

SUMMARY OF PRINCIPLE AMENDMENTS

5. The First Amended Complaint restates the case as a verified class action and more fully sets out the factual and legal foundation for Plaintiff's claims. Key categories of amendment include:

I. Expanded Factual Narrative on the CVD Appeal Process and Form Omission

6. The amended pleading details the 2014 Construction Industries Commission rulemaking that added the internal CVD appeal sequence—a 10-day written appeal to the CID director, followed by a 20-day appeal to the Commission—and documents the agency's express

understanding that this appeal mechanism was necessary “so that due process is afforded” and to allow appeals within the two-year surety bond window.

7. The First Amended Complaint alleges that, despite this rulemaking history, CID’s uniform statewide CVD template used from April 30, 2015 through at least April 23, 2025 omitted any conspicuous mention of the Appeal Advisements, and that RLD has identified no standardized written or oral practice by which CID licensees were otherwise advised of these short, mandatory appeal deadlines.

8. Plaintiff further alleges, with reference to discovery responses verified under penalty of perjury, that: (a) his CVD was issued on the “standard CVD template then in use;” (b) the template contained “no advisement” of the 10-day director appeal; (c) RLD provided him no written advisement of these appeal rights within 10 days; (d) CID had no standard operating procedures, scripts, or training materials for such advisements; and (e) CID does not track CVDs, director appeals, or commission appeals, and maintains no field in any form in which to log such information.

II. Clarified Individual Due Process Allegations (Counts I and II)

9. Count I is refined to focus on the “fundamentally unfair process” applied to Plaintiff, including CID’s failures to substantively respond to his written inquiries and requests for guidance, its selective *ex parte* communications with the homeowner, its failure to prepare the director’s report required by NMSA 1978, § 60-13-27(B), its non-disclosure of the NMDOJ referral, and its use of a materially misleading Commission memorandum that added a “failure to cooperate” charge against him.

10. Count II isolates and expands the due process claim arising specifically from the omission of the Appeal Advisements on the Deficient CVD Template issued to Plaintiff. The

amendment alleges that: (a) Plaintiff did not pursue the internal appeals because he was never advised of them; (b) this omission proximately caused the loss of his only internal review windows and accelerated enforcement, bond, and Certificate of Uncorrected Violation (“CUV”) exposure; and (c) under *Dep’t of Workforce Solutions v. Garduño*, 2016-NMSC-002, ¶ 27, due process turns on whether defective notice deprived a claimant of the ability to participate in the proceeding.

11. Count II also expressly alleges that RLD’s own 2014 rulemaking record shows it understood timely advisement of the internal appeal as essential to due process and bond timing, making the harms suffered by Mr. Herrera foreseeable consequences of the Deficient CVD Template.

III. Conversion to a Putative Class Action; Declaratory, Injunctive, and Damages Class Allegations (Counts III, V, and VI)

12. The most significant structural amendment is that Plaintiff now seeks to proceed on behalf of a putative Rule 1-023(B)(2) NMRA injunctive and declaratory class and, in a later phase, a Rule 1-023(B)(3) or 1-023(C)(4) damages class or issue class. The First Amended Complaint thus converts what began as a purely individual case into a proposed class action under New Mexico law.

13. Count III (Declaratory and Injunctive Relief) is amended to: (a) define the Rule 1-023(B)(2) NMRA injunctive and declaratory class; (b) describe the common questions regarding the constitutionality of the Deficient CVD Template and RLD’s uniform practices; and (c) detail the programmatic relief sought, including form revision, curative notice, reopened appeal windows, an enforcement moratorium, and ongoing Court supervision.

14. The class definition targets all New Mexico CID licensees who, from April 30, 2015 through the date of class certification, were issued at least one CVD on the Deficient CVD

Template, subject to specified exclusions (*e.g.*, RLD and its employees, those who received substantially compliant separate written appeal notice, and those who resolve claims by settlement or final judgment). These allegations identify the putative class but do not alter the identity of the named defendant.

15. The First Amended Complaint elaborates on numerosity, commonality, typicality, and adequacy under Rule 1-023(A) NMRA, drawing on RLD's admissions about uniform statewide template use, lack of tracking, and centralized OneDrive, Salesforce logs, and email distributions to show that class relief and curative notice are feasible and appropriate under Rule 1-023(B)(2) NMRA.

16. Count V adds and refines a CRA damages claim on behalf of a proposed Rule 1-023(B)(3) NMRA damages class (or subclass(es), or an issue class under Rule 1-023(C)(4) NMRA) for the period beginning July 1, 2021 (the CRA's effective date) through class certification, grounded in the same uniform omission of Appeal Advisements on the Deficient CVD Template. Plaintiff pleads that class members suffered foreseeable, common-type harms, including loss of prescribed internal review, escalation to the Commission/NMDOJ, CUV and bond exposure, project delay, added remediation expense, and reputational and economic damages.

17. Count VI asserts equitable and ancillary relief necessary to effectuate the classwide declaration, including vacatur and expungement of discipline premised on Deficient CVD Templates, reinstatement of licenses, and disgorgement and restitution of administrative penalties, fees, and bond disbursements collected on or after April 30, 2015, to be administered through an escrow and special master process.

IV. IPRA Allegations (Count IV)

18. As noted *supra*, Count IV has been resolved via settlement. Neither side will litigate liability or further merits relief on Count IV absent further order or agreement.

LAW AND ARGUMENT

I. Standard

Under Rule 1-015(A) NMRA, after a responsive pleading is served, “a party may amend the party’s pleading only by leave of court or by written consent of the adverse party; and leave shall be given freely when justice so requires.”

New Mexico courts “have consistently maintained a policy of allowing parties freely to amend their complaints so long as it does not interfere with the administration of justice.” *Snow*, 2015-NMSC-026, ¶ 9. Leave to amend should be denied only for substantial reasons such as undue delay, bad faith, repeated failure to cure deficiencies, futility, or undue prejudice to the opposing party. *See Crumpacker v. DeNaples*, 1998-NMCA-169, ¶¶ 16-18.

II. Argument

i. **The amendment is timely and in good faith.**

Plaintiff brings this motion promptly after reviewing discovery responses, public records productions, and other agency materials that clarified the scope and operation of the CVD appeal process, the uniform omission of Appeal Advisements, and the detailed chronology of his own case.

The First Amended Complaint is not an attempt to inject unrelated theories into the litigation; instead, it refines and deepens the factual and legal allegations already implicit in Plaintiff’s original CRA, DJA, and IPRA claims and, based on the same operative facts, adds structured Rule 1-023 NMRA class allegations and classwide remedial theories. The amendment

is thus in good faith, conforms the pleadings to the evidence, and clarifies the class framework and requested relief.

ii. The amendment arises from the same nucleus of operative facts.

All counts in the First Amended Complaint arise from the same core events: (a) the 2014 adoption and subsequent implementation of section 14.5.9.9(B) NMAC; (b) CID's statewide use of the Deficient CVD Template; (c) RLD's uniform lack of backup notice, standard operating procedures, and tracking for CVD appeals; and (d) the handling of Mr. Herrera's investigation, CVD/NOV, communications, and referral.

The class allegations and requested remedies in Counts III, V, and VI merely systematize and extend to similarly situated licensees the same due process concerns and consequences alleged by Mr. Herrera individually in Counts I and II. They do not add new episodes, transactions, or agency programs outside those already placed at issue.

Count IV's IPRA claim has been settled between the parties and remains only as a placeholder.

iii. The amendment does not unduly prejudice Defendant.

Although the First Amended Complaint converts this matter from a strictly individual case into a putative class action and identifies proposed class members as additional represented parties for Rule 1-023 NMRA purposes, the only defendant remains RLD, and the claims asserted continue to focus on the same challenged CVD template, uniform practices, and IPRA compliance.

Discovery remains open, no trial date has been set, and no dispositive motion has been resolved on the merits. Defendant will have a full and fair opportunity to answer the amended pleading, to contest class certification, to conduct class-related and merits discovery as appropriate, and to litigate any defenses to both individual and putative class claims.

To the extent Plaintiff's amendments add putative class allegations, clarify the proposed class definitions, refine the articulation of common issues, and more concretely describe requested programmatic and equitable relief, they will assist the Court and the parties in managing class certification, merits, and potential settlement discussions, rather than causing prejudice or delay. Any incremental discovery that Plaintiff may wish to pursue in light of the class allegations is limited and directly tied to matters already within Defendant's possession, including its own forms, logs, and internal communications concerning CVD issuance and appeal practices. There is no unfair surprise as to the underlying factual matrix.

iv. The amendment is not futile.

The First Amended Complaint states facially plausible claims under the CRA, the DJA, and Rule 1-023, supported by specific factual allegations and documentary admissions.

On the due process claims, Plaintiff pleads protected property and liberty interests in his contractor license, surety bond, and professional reputation; identifies specific procedural deficiencies and arbitrary agency conduct; and applies the *Mathews v. Eldridge* balancing test, contending that low-burden safeguards—such as clear Appeal Advisements on the initiating CVD/NOV, standardized responses to licensee inquiries, and notice of referrals to enforcement—would reduce the risk of erroneous deprivation.

On the CVD form omission and class claims, Plaintiff alleges: (a) a uniform template omitting mandatory Appeal Advisements; (b) RLD's failure to adopt any standardized backup practice; (c) foreseeable classwide loss of the only internal appeal windows and escalation risk; and (d) programmatic relief that directly addresses those deficiencies while operating within the agency's rule framework.

On the class components, Plaintiff alleges numerosity, commonality, typicality, and adequacy, as well as the predominance of common issues and superiority of a class action as the logical adjudicative method for a damages class or issue class, and sets forth a phased approach to certification consistent with New Mexico authority. Nothing in the record at this stage forecloses the Court from certifying an appropriate class if the Rule 1-023 NMRA criteria are satisfied.

Under these circumstances, amendment cannot be deemed futile, and the liberal standard in Rule 1-015(A) NMRA is satisfied.

CONCLUSION

Plaintiff has acted diligently and in good faith to conform his pleadings to the developed factual record and to the uniform practices revealed through discovery and public records productions. The First Amended Complaint arises from the same operative events as the original pleading, adds no new named defendants, and, while converting the case into a putative class action and identifying additional represented parties in the form of a proposed class of CID licensees, does so based on the same alleged form defects and agency conduct already at issue. Consistent with New Mexico's strong policy favoring liberal amendment where justice so requires, the Court should grant leave to file the First Amended Complaint.

PRAYER FOR RELIEF

Wherefore, Plaintiff Joseph Herrera respectfully requests that this Court:

1. Grant this Motion for Leave to Amend;
2. Deem the attached *First Amended Verified Class Action Complaint for Damages and for Declaratory and Injunctive Relief* filed as of the date of the Court's order granting this motion; and
3. Grant such other and further relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of January, 2026, the foregoing was electronically filed via the Odyssey File and Serve system, with a courtesy copy via email to:

James J. Grubel, Esq.
Park & Associates, LLC
jgrubel@parklawnm.com & jertsgaard@parklawnm.com

/s/ MJB

Matthew J. Bouillon Mascareñas

Exhibit 1 to Motion for Leave to Amend Complaint

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

JOSEPH HERRERA, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

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

REGULATION & LICENSING DEPARTMENT

Defendant.

**FIRST AMENDED VERIFIED CLASS ACTION COMPLAINT
FOR DAMAGES AND FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff Joseph Herrera, through his counsel the Law Office of Matthew J. Bouillon Mascareñas LLC (Matthew J. Bouillon Mascareñas, Esq.), brings this *First Amended Verified Class Action Complaint for Damages and for Declaratory and Injunctive Relief* (the “First Amended Complaint”) against Defendant Regulation and Licensing Department (“RLD”) under the New Mexico Civil Rights Act (“CRA”), NMSA 1978, §§ 41-4A-1 to -13 (2021), the Declaratory Judgment Act (“DJA”), NMSA 1978, §§ 44-6-1 to -15 (1975), the Inspection of Public Records Act (“IPRA”), NMSA 1978, §§ 14-2-1 to -12 (2023), and Rule 1-023 NMRA. In support thereof, he states as follows:

INTRODUCTION

This case challenges the Construction Industries Division’s (“CID”) uniform use since April 30, 2015 of a Code Violation Determination (“CVD”) form that omits conspicuous, step-by-step advisement of the only internal appeal sequence governing alleged building code violations: a 10-day written appeal to the CID director followed by a 20-day appeal to the

Construction Industries Commission (“CIC” or the “Commission”), as set out in section 14.5.9.9(B) NMAC (the “Appeal Advisements”). This omission systematically deprives licensees of notice reasonably calculated to apprise them of short, mandatory deadlines and how to participate in the appeal process, violating due process under Article II, Section 18 of the New Mexico Constitution.

The agency’s own 2014 rulemaking record shows the Commission adopted the internal CVD appeal to afford due process to licensees and to fit the appeal process within surety bond timelines. Yet, CID’s statewide, standardized CVD form omitted the Appeal Advisements through at least April 23, 2025, and CID never adopted any backup practice to properly give that notice in any way. Discovery admissions confirm the uniform nature of the omissions as well as CID’s total lack of standard operating procedures, tracking, or training. What’s more, CID appears to have historically conducted only a single director appeal—in November 2015—evidencing a once-functioning pathway that quickly atrophied in practice.

Plaintiff is a GB98 contractor in good standing since 2005 who received a CVD on January 16, 2025 that omitted the Appeal Advisements. While Plaintiff promptly engaged, requested documents, sought direction, and ultimately submitted written responses to the agency, CID did not provide prescriptive guidance, failed to acknowledge his submissions, and escalated the matter to the Commission and the New Mexico Department of Justice (“NMDOJ”) without notice to him—all while selectively communicating with the complainant and falsely portraying him as non-responsive to the Commission. These acts, combined with the form omission, denied him a meaningful opportunity to be heard, caused reputational and economic harm, and increased his exposure to adverse licensing consequences.

Plaintiff now seeks: (a) individual CRA relief for CID's fundamentally unfair process and for the unconstitutional CVD form as applied; (b) certification of a Rule 1-023(B)(2) NMRA class; (c) declaratory relief due to the unconstitutional CVD form, and prospective and remedial injunctive relief requiring form fixes, curative notice, reopened appeal windows, and compliance monitoring for himself and the class; (d) ancillary equitable relief to effectuate the declaration (*e.g.*, discipline vacatur/expungement, license reinstatement, and fee and fine restitution/d disgorgement); and (e) in a second, later phase, Rule 1-023(B)(3) or (C)(4) NMRA certification and individualized proceedings as needed to determine class members' actual damages accruing on and after July 1, 2021, the date on which the CRA went into effect. Lastly, the parties have settled Count IV; thus, Plaintiff only pleads such relief as is necessary to implement the parties' settlement agreement.

PARTIES

1. Plaintiff Joseph Herrera is a GB98 contractor residing in Santa Fe, New Mexico. His supporting affidavit is attached hereto as Exhibit 1.

2. Defendant Regulation & Licensing Department is a New Mexico state agency located in Santa Fe. CID is an RLD division, and its employees acted on behalf of, under color of, and within the scope of RLD's authority as alleged. The challenged conduct is investigatory, administrative, and advocacy-oriented in nature (*e.g.*, intake, template content, communications, referrals, and records responses), not adjudicative, and therefore not shielded by judicial or quasi-judicial immunity.

JURISDICTION & VENUE

3. This Court has subject matter jurisdiction and authority to grant all requested relief under the CRA and the DJA; to certify a class; and to award fees and costs where authorized.

4. Venue is proper in Santa Fe County pursuant to NMSA 1978, § 38-3-1.

DEFINITIONS

5. “Deficient CVD Template” means CID’s standardized CVD form in use statewide that (a) bears “CID Compliance Revised: Dec 2011” or “CID Compliance Revised: April 2025,” and (b) omits any written advisement of the 10-day director appeal and 20-day commission appeal as set forth in section 14.5.9.9(B) NMAC.

FACTUAL ALLEGATIONS

I. 2014 Commission Rulemaking Established Internal CVD Appeals to Protect Due Process and Accommodate Bond Timelines

6. In 2014, the Commission adopted section 14.5.9 NMAC *et seq.*, expressly adding a short, internal appeal process for code violations in 14.5.9.9(B) NMAC to afford due process and to accommodate appeals within the two-year surety bond window.

7. The rulemaking minutes, executive summary, and redlines of the draft rule reflect the agency’s knowledge that timely advisement and access to an internal appeal process are essential to protect licensees’ right to due process.

8. The Commission adopted the rule on November 19, 2014, with an effective date of April 30, 2015.

9. CID’s files reflect at least one director-level appeal decision in November 2015, indicating the appeal pathway was operational immediately post-adoption.

II. Uniform Omission of Appeal Advisements on CID’s Statewide CVD Template (2015-2025)

10. From April 30, 2015 through at least April 23, 2025, CID’s statewide, standardized CVD form omitted the Appeal Advisements (*i.e.*, the Deficient CVD Template). RLD has

identified no standardized written or oral practice by which CID advised licensees otherwise. Exemplars include the “Revised: Dec 2011” and “Revised: April 2025” CVDs and a 2020 Notice of Violation (NOV).

11. RLD’s discovery admissions have established: (a) Mr. Herrera’s CVD was issued on the “standard CVD template then in use;” (b) the template contains “no advisement” of the 10-day director appeal; (c) RLD gave no written appeal advisement to Mr. Herrera within 10 days; (d) CID had no standardized form, letter, template, portal, or script to advise licensees of the 10-day appeal; (e) CID issued no standard operating procedures, checklists, or training materials for such advisements; and (f) CID does not track CVDs, director appeals, or commission appeals nor is there any database field in any form maintained by CID for logging this information.

12. On December 15, 2025, Investigations Manager Carla Roybal verified RLD’s discovery responses under penalty of perjury.

III. Mr. Herrera’s Individual Matter: Timeline and Agency Escalation without Due Process

13. On March 20-21, 2024, CID approved final inspection and issued a certificate of occupancy for 277 Tano Road, Santa Fe, NM 87506 (the “Subject Property”).

14. Eight days later, on March 29, 2024, CID opened Investigation No. 105-24-03 following a homeowner complaint, assigning the matter internally.

15. On April 2, 2024, CID sent Mr. Herrera a Notice of Investigation.

16. On April 18, 2024, Mr. Herrera responded in writing, addressing the complaint and requesting no investigation in light of the recent certificate of occupancy, which underscored the Subject Property’s code compliance and suitability for habitation.

17. In his letter, Mr. Herrera also highlighted the purely cosmetic nature of the matters raised in the homeowner's complaint, the private nature of any dispute between them, and the fact that he had already made various repairs to the homeowner's apparent satisfaction.

18. CID did not respond to Mr. Herrera but shared his letter with the homeowner and internally indicated its willingness to "deal directly" with a homeowner attorney if one were hired.

19. On October 11, 2024, CID reinspected the Subject Property but was ultimately silent as to the reason why.

20. On January 16, 2025, CID emailed Mr. Herrera a CVD and NOV identifying alleged code violations in the Subject Property's exterior envelope. True and correct copies of the CVD and NOV are attached hereto as Exhibit 2. Neither document contained the Appeal Advisements.

21. Mr. Herrera sought guidance and documents, but CID provided no prescriptive remediation path, instead directing him to "work it out with the homeowner."

22. Mr. Herrera requested and received an extension of time to answer the CVD/NOV, but unbeknownst to him, CID had sought the homeowner's approval prior to granting him that extension.

23. On April 2, 2025, Mr. Herrera submitted a detailed written response explaining why the CVD was too vague to implement without additional technical direction. CID did not respond.

24. By May 21, 2025, CID had presented the matter to the Commission and had secured referral of Mr. Herrera's matter to the NMDOJ for license enforcement without notice to Mr. Herrera or any opportunity to cure.

25. Public records later produced to Mr. Herrera revealed a Commission memorandum containing materially misleading statements (the "CIC Memo") that had been used to refer Mr.

Herrera's case to the NMDOJ. In it, Investigations Manager Carla Roybal asserted that an NOV had been mailed to Mr. Herrera on December 18, 2024, and that CID had received no response to it.

26. In truth, internal comments by Ms. Roybal showed the December 18, 2024 mailing was never dispatched, with the CVD/NOV having first been sent to Mr. Herrera on January 16, 2025.

27. The CIC Memo's misstatements caused a commissioner to add a charge for "failure to cooperate," compounding prejudice to Mr. Herrera.

28. Upon information and belief, the CVD appeal process was replaced by an *ad hoc* regime essentially invented by CID staff like Ms. Roybal that, in practice, operates outside of CID's duly promulgated rule framework.

29. Mr. Herrera's January 29, 2025 and August 27, 2025 IPRA requests revealed withheld internal communications and documents, which were later produced on September 26, 2025, eleven days after Mr. Herrera filed his original Complaint. Eight documents responsive to his January 29 request were received 224 days late.

30. Among the withheld documents, Mr. Herrera found: a March 29, 2024 internal email thread opening the case; the unsent December 18, 2024 NOV; partially completed April 1, 2024 CVD templates; and communications between the homeowner and CID regarding extensions and the status of the investigation.

IV. Resulting Harms

31. The omitted Appeal Advisements on the Deficient CVD Template and CID's persistent non-responsiveness foreclosed Mr. Herrera's director and commission appeals,

accelerated his referral to enforcement, increased his bond exposure, and caused him reputational and economic harm.

32. These outcomes were foreseeable to RLD and CID since they had already recognized in 2014 that internal appeals were added “so that due process is afforded” and that bond-timing required allowing “appeals of a violation determination” to occur before surety certification.

33. Omitting the Appeal Advisements on the Deficient CVD Template has likewise predictably caused licensees to miss the only internal review windows available to address code violations before they escalate.

V. Class Allegations

i. Class Definition

34. Mr. Herrera seeks certification of the following injunctive and declaratory class under Rule 1-023(B)(2) NMRA:

(a) All New Mexico CID licensees who, from April 30, 2015 through the date of class certification, were issued at least one CVD by CID on a Deficient CVD Template.

35. The following parties are to be excluded from the above definition: Defendant RLD and its division and employees; members of the Commission; any judicial officer and court personnel; any person who timely invoked the 10-day director appeal after receiving separate written notice that substantially complied with 14.5.9.9(B) NMAC for the same CVD; and any person who releases claims by settlement or final judgment.

ii. Potential Subclasses for Targeted Remedial Relief

36. A notice subclass containing all class members above (for curative notice and reopened appeal windows).

37. Referral and outcome subclasses for all class members whose CVDs: (a) were referred to the Commission and/or NMDOJ, (b) resulted in a Certificate of Uncorrected Violation (CUV), or (c) led to bond claims premised on alleged non-correction during the un-noticed appeal period.

iii. Rule 1-023(A) NMRA Requirements

38. Upon information and belief, more than 1,000 CVDs were issued statewide during the class period, rendering joinder impracticable. The identities of affected licensees are ascertainable from CID's central records of CVD issuances and templates. Feasibility is shown by CID's statewide form rollouts (*e.g.*, by Ms. Roybal via email on April 23, 2025), demonstrating that a court-ordered form fix and curative notices can be implemented quickly.

39. Questions of law and fact common to all putative class members include: whether due process requires written advisement of the short, mandatory internal appeals on the initiating CVD/NOV; whether CID uniformly omitted such advisements; whether CID's uniform practices (*e.g.*, no advisement, no SOPs, no training, no tracking) are unlawful; and what indivisible, programmatic injunctive relief is warranted (*e.g.*, form fixes, curative re-notice, reopened appeal windows, and compliance monitoring). All are determinable in one stroke with classwide, common proof drawn from RLD's admissions and form exemplars.

40. Mr. Herrera's claim arises from the same practice and seeks the same indivisible injunctive and declaratory relief appropriate for the class as a whole.

41. Mr. Herrera has no conflicts and will fairly and adequately protect class interests. Likewise, his attorney, an experienced civil litigator, will seek appointment as class counsel.

42. Because CID used the Deficient CVD Template uniformly statewide, together with no standardized backup notice, final declaratory and injunctive relief is appropriate classwide under Rule 1-023(B)(2) NMRA.

iv. Notice and Ascertainability Allegations

43. Although RLD does not maintain historical counts of CVDs or appeals, CID does maintain active compliance/referral logs in OneDrive and Salesforce since approximately July 2021 and uses centralized Outlook and SharePoint distributions for form rollouts.

44. A short, court-supervised protocol (with reasonable restoration efforts for relevant gaps from 2015-2022 due to a cyberattack) can export logs and run targeted searches to compile class lists for curative notice and restitution, enabling efficient identification of affected licensees for the class period and beyond via targeted exports and searches.

45. Feasibility of class relief does not depend on pre-existing appeal tracking fields because remedial relief is driven by uniform form revision and curative re-notice with reopened appeal windows.

v. Additional Certification Sought for Actual Damages

46. Mr. Herrera proposes a phased approach: Phase I to pursue certification under Rule 1-023(B)(2) NMRA for declaratory and injunctive relief and adjudication of liability (Counts II-III). Phase II to seek certification of a damages class or subclass(es) under Rule 1-023(B)(3) NMRA or an issue class under Rule 1-023(C)(4) NMRA, with subsequent individualized damages proceedings (Count V), in tandem with ancillary relief necessary to fully give effect to the declaration (Count VI). *See Davis v. Devon Energy Corp.*, 2009-NMSC-048, ¶ 24 (endorsing a “hybrid” certification approach in which notice and opt-out requirements are provided only after first determining liability).

47. For certification under Rule 1-023(B)(3) NMRA or Rule 1-023(C)(4) NMRA, common issues predominate over individual ones, since all class members experienced the same injury (with varying degrees of harm), and generalized evidence can prove classwide elements.

48. Likewise, a class action is the most efficient and fair way to adjudicate this controversy since (a) a review of claims against Defendant suggests minimal related litigation; (b) the desirability of having all claims in one court is high; (c) class members are not likely to wish to control their own lawsuit given the expense and uncertainty of litigation; and (d) the potential difficulties in managing the case as a class action are low compared to hundreds of individual suits.

CAUSES OF ACTION

COUNT I

Civil Rights Act Violation

Right to Due Process – N.M. Const. art. II, § 18

Fundamentally Unfair Process

(as to Mr. Herrera)

49. Plaintiff incorporates all preceding allegations as if fully set forth herein.

50. Plaintiff is a person entitled to assert rights, privileges, and immunities under the New Mexico Constitution, including the right to due process under Article II, Section 18.

51. Defendant is a public body as defined by NMSA 1978, § 41-4A-2(D), and its employees acted on behalf of, under color of, and within the scope of Defendant's authority in matters under the purview of the Construction Industries Division.

52. Plaintiff enjoys a protected property interest in his GB98 license and his bond, and a protected liberty interest in his professional reputation.

53. Defendant's acts and omissions caused a deprivation of Plaintiff's constitutional right to due process, jeopardizing the aforementioned interests, by:

- (a) failing to substantively respond to Plaintiff's repeated requests for information, clarification, and guidance (*e.g.*, letters dated April 18, 2024; January 16, 2025; April 2, 2025; August 27, 2025; August 28, 2025; and September 3, 2025);
- (b) failing to provide clear, accurate, and timely notice and guidance in connection with the reinspection and ensuing enforcement referral;
- (c) telling Plaintiff to "work it out with the homeowner," thereby empowering the homeowner to pursue capricious ends at Plaintiff's expense, untethered from the regulatory matters at issue, and exceeding Defendant's authority under section 14.5.3.8 NMAC pertaining to inspections;
- (d) failing to prepare the director's report called for in NMSA 1978, § 60-13-27(B), depriving Plaintiff of the information necessary to participate in, and respond to, the investigation and alleged violations in a timely, effective manner;
- (e) willfully withholding the fact that Plaintiff's inquiries and legal arguments had been rejected *sub silentio*;
- (f) willfully withholding the fact that Plaintiff's case had been referred to NMDOJ for an enforcement action against his license;
- (g) willfully withholding the fact that Defendant and the homeowner were colluding *ex parte* against Plaintiff to prematurely issue a CUV against his bond;
- (h) falsely telling the homeowner that Plaintiff had "failed to respond" to the NOV and CVD, maligning Plaintiff's reputation;
- (i) showing obvious bias against Plaintiff and for the homeowner by willfully withholding public information relevant to internal decision-making processes from Plaintiff; obtaining homeowner approval as a precondition to granting an

extension to Plaintiff; responding to the homeowner's inquiries while ignoring Plaintiff's; and selectively notifying only the homeowner that Plaintiff had been referred to the NMDOJ for enforcement while withholding material case status information from Plaintiff; and

- (j) compromising the processes of the Construction Industries Commission by submitting a materially misleading memorandum to them that falsely portrayed Plaintiff as uncooperative and unreliable, omitted important procedural history unfavorable to CID, and caused the inclusion of the prejudicial handwritten directive: "Add failure to cooperate per Commissioner."

54. Analyzing Defendant's foregoing acts and omissions in light of the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), favors Plaintiff because:

- (1) Defendant's acts and omissions deprive Plaintiff of significant constitutionally protected interests;
- (2) CID's existing procedures create a high risk of the erroneous deprivation of Plaintiff's rights because they are neither accurate nor reliable, and additional or substitute procedures—such as mandatory responses to licensee inquiries, clear prescriptive guidance for code violation remediation, clear printed appeal instructions, notice of referrals to enforcement, and advisement of the licensee's option to have an informal hearing—would reduce this risk; and
- (3) CID's interest in maintaining the current procedures is outweighed by Plaintiff and the public's interest in reliable, uniform, and predictable administrative processes, especially given the low-cost burden of additional safeguards and the high importance of the construction industry to the state's economy. These safeguards

were anticipated by the agency's own 2014 rulemaking record and can be implemented at minimum cost via standardized form advisements, standard operating procedures, and basic tracking fields.

55. Furthermore, Defendant's acts and omissions have deprived Plaintiff of notice and a meaningful opportunity to be heard; lack a rational basis; and are otherwise arbitrary or capricious, rendering the administrative inquiry into him fundamentally unfair and unsound.

56. As a direct and proximate result of Defendant's pattern of procedural abuses, Plaintiff has suffered actual damages, including but not limited to legal fees, mental anguish, lost opportunities, and reputational harm, in an amount to be determined at trial.

COUNT II

Civil Rights Act Violation

Right to Due Process – N.M. Const. art. II, § 18

Deficient CVD Template

(as to Mr. Herrera)

57. Plaintiff incorporates all preceding allegations as if fully set forth herein.

58. Defendant's omission of the Appeal Advisements on the Deficient CVD Template denied Plaintiff effective notice of a short 10-day written appeal to the CID Director and a subsequent 20-day appeal to the Commission.

59. This omission proximately caused concrete prejudice, including loss of the prescribed internal review, advancement toward commission referral and contemplated license discipline, and increased bond and CUV exposure while Plaintiff was attempting to engage with CID and the homeowner.

60. Had the Appeal Advisements been printed on the Deficient CVD Template, Plaintiff would have timely appealed one or more of the code violations at the Subject Property.

61. By omitting Appeal Advisements on a form that initiates short, mandatory deadlines, Defendant failed to provide notice reasonably calculated to apprise Plaintiff of the need to act and of the available procedures, depriving Plaintiff of his ability to participate in the internal proceeding. *See Dep't of Workforce Solutions v. Garduño*, 2016-NMSC-002, ¶ 27 (“the distinguishing factor used to determine whether there was or was not a violation of due process rights depends on whether the defective notice deprived the claimant of the ability to participate in the proceeding.”)

62. Viewing the omission of Appeal Advisements on the Deficient CVD Template through the lens of *Mathews*, 424 U.S. 319, also favors Plaintiff because the Deficient CVD Template presents a high risk of erroneous deprivation of important constitutional rights, and the public’s interest in including the Appeal Advisements outweighs any government interest in maintaining the status quo.

63. By 2014, Defendant understood the appeal step was both essential to due process and time-sensitive within the bond claim process. Against that backdrop, omitting Appeal Advisements from the initiating document made it foreseeable that recipients—including Plaintiff—would miss the only short internal review windows available, suffering escalation and other adverse consequences.

64. As a direct and proximate result of omitting the Appeal Advisements, Plaintiff suffered actual damages, including but not limited to: costs incurred responding to the Deficient CVD Template without clear appeal guidance; loss of prescribed internal review; escalation and referral to the Commission and NMDOJ; exposure to CUV issuance; project delay and added remediation expense; and reputational and economic harms.

65. There is no genuine dispute that the Deficient CVD Template issued to Plaintiff omitted the Appeal Advisements or that Defendant provided no alternative advisement to him within ten days. Similarly, Defendant concedes it used a standard statewide template containing no such advisements. These admissions establish the defective notice element as a matter of law.

COUNT III

**Declaratory and Injunctive Relief
under the Declaratory Judgment Act and the Civil Rights Act
Deficient CVD Template
(as to Mr. Herrera and the Rule 1-023(B)(2) NMRA Class)**

66. Plaintiff incorporates all preceding allegations as if fully set forth herein.

67. Plaintiff brings this Count under both the DJA and the CRA, which authorize equitable and injunctive relief for violations of rights secured by Article II, Section 18 of the New Mexico Constitution.

68. An actual controversy exists between Plaintiff and Defendant regarding the constitutionality and legal sufficiency of CID's Deficient CVD Template, which deprived licensees of effective notice and their ability to participate in administrative review of their alleged code infractions. *See Garduño*, 2016-NMSC-002, ¶ 27.

69. Plaintiff seeks declaratory and injunctive relief on behalf of himself and the class pursuant to Rule 1-023(B)(2) NMRA.

70. A favorable declaration would redress this injury by enjoining use of the Deficient CVD Template and requiring Defendant to revise it.

71. Defendant's continued use of the Deficient CVD Template creates uncertainty about licensees' rights under the Construction Industry Licensing Act (CILA), the Uniform Licensing Act (ULA), and constitutional due process pursuant to the DJA and CRA, warranting a judicial declaration to define the parties' legal relations.

72. Defendant admits it has never adopted a policy or practice to deliver Appeal Advisements by any standardized written or oral method; it maintains no field or log for director appeals; it does not track the number of CVDs or CVD appeals; and it last modified the CVD in April 2025 without adding Appeal Advisements. These uniform practices render the Deficient CVD Template unconstitutional prospectively and warrant programmatic injunctive relief.

73. Accordingly, Plaintiff is entitled to a declaration that:

- (a) As applied to Plaintiff, the CVD issued to him on January 16, 2025 is unenforceable unless and until reissued with clear Appeal Advisements.
- (b) As a matter of classwide relief, any CVD issued during the class period on the Deficient CVD Template is unenforceable unless and until reissued with Appeal Advisements; and
- (c) Any ongoing enforcement based on the Deficient CVD Template is unconstitutional unless and until reissued with Appeal Advisements.

74. Plaintiff seeks the following prospective and remedial class relief, ordering Defendant to do the following:

- (a) Form Fix and Notice: Revise the Deficient CVD Template (and any accompanying NOV templates) to include conspicuous Appeal Advisements and step-by-step, destination-specific filing instructions; publish finalized templates on CID's website; train staff; and require exclusive use of the new, corrected forms statewide.
- (b) Implementation and Records Protocol: Court-supervised exports from OneDrive and Salesforce logs; targeted Outlook, OneDrive, and SharePoint searches; and reasonable restoration efforts for the period 2015–2022 (due to cyber incident) to identify impacted licensees.

- (c) Curative Re-Notice and Reopened Appeal Windows: Mail or email curative notices to all recipients of Deficient CVD Templates from April 30, 2015 through judgment, attach the revised CVD, reopen the 10-day and 20-day appeal windows, and explain applicable tolling and equitable relief.
- (d) Moratorium: Stay all enforcement actions (discipline, CUVs, referrals, *etc.*) predicated on a Deficient CVD Template pending proper re-notice.
- (e) Compliance and Monitoring: Within 90 days, adopt standard operating procedures for CVD issuance and Appeal Advisements; implement tracking fields and logs for director and commission-level CVD appeals; and file quarterly compliance reports for two years.

75. The need for clear, front-end notice is heightened given that the Commission’s CVD appeal decision is “final and not subject to judicial review,” making the initial 10-day/20-day appeal windows the only avenue for error correction within the agency. *See* § 14.5.9.9(B) NMAC.

76. Such declarations will serve the DJA’s purpose of affording relief from uncertainty and insecurity, and promoting the public interest in fair, unbiased administrative processes under CILA and ULA.

77. Because the omission described above arises from a uniform practice and form that affect numerous licensees, Plaintiff seeks certification of a Rule 1-023(B)(2) NMRA class as defined above, appointment as class representative, and appointment of his counsel as class counsel.

COUNT IV
Inspection of Public Records Act Violation
March 29, 2024 Email

(as to Mr. Herrera)

78. Plaintiff incorporates all preceding allegations as if fully set forth herein.

79. Plaintiff is a member of the public entitled to inspect public records maintained by Defendant.

80. Defendant is a public body subject to IPRA and is, therefore, required to maintain and make available for inspection all public records in its custody.

81. The email referred to in Carla Roybal's March 29, 2024 internal message to Mary Page regarding the investigation into the Subject Property is a public record pursuant to NMSA 1978, § 14-2-6(H), as it is a document made or received in connection with official public business, and its withholding does not fall under any statutory exemption.

82. Plaintiff made a valid, written IPRA request for the email and related records on January 29, 2025, which was sufficiently specific and complied with IPRA requirements.

(a) In particular, Plaintiff's IPRA request stated in relevant part as follows:

"2. For the period May 2022-present, any and all communications among CID staff regarding Ms. Garcia, Mr. Herrera, the subject matter of her complaint, Mr. Herrera's response, the notice of violation, or, in general, any matters related to the property at 277 Tano Road, however tangentially."

83. Despite Plaintiff's request and the email's explicit reference in produced documents, Defendant wrongfully failed to produce the email for inspection or copying, constituting a violation.

84. Defendant's failure is arbitrary and capricious, as the email is integral to the produced records and essential for transparency in public administrative processes, with no showing of undue burden or exemption.

85. As a direct and proximate result of Defendant's violation, Plaintiff has suffered actual damages to be determined at trial, which include but are not limited to attorney fees and prejudice to Plaintiff's ability to contest the CVD and its underlying administrative procedure.

86. The denial continued for 224 days as of the filing of this First Amended Complaint.

87. **Plaintiff pleads this count solely to give fair notice. Count IV has been settled by the parties, its dismissal with prejudice is imminent, and it is maintained herein as a placeholder. Plaintiff does not seek any additional adjudication of Count IV beyond relief necessary to effectuate the settlement (of which none is presently contemplated).**

COUNT V

Civil Rights Act Violation

Right to Due Process – N.M. Const. art. II, § 18

Actual Damages

(as to the Class, Damages Subclasses, or an Issue Class)

88. Plaintiff incorporates all preceding allegations as if fully set forth herein.

89. For the period July 1, 2021 through class certification, CID issued CVDs on the Deficient CVD Template, causing classwide deprivation of effective notice and meaningful licensee participation in code violation appeals. *See Garduño*, 2016-NMSC-002, ¶ 27.

90. This claim presents common, classwide issues capable of uniform resolution, including: (a) whether CID used a uniform form omitting the Appeal Advisements; (b) whether due process requires that the Appeal Advisements be written clearly on the initiating notice; and (c) whether the omission of Appeal Advisements foreseeably causes loss of the director or commission appeal opportunities and escalation risks.

91. As a foreseeably direct and proximate result of the uniform omission, class members suffered actual damages, including but not limited to: costs incurred responding to CVDs without clear Appeal Advisements; loss of prescribed internal review; escalation and referral to the Commission and NMDOJ; issuance of or exposure to a CUV; bond exposure to claims; project delays; remediation expenses; and reputational and economic harms. These injuries were reasonably foreseeable consequences of using the Deficient CVD Template (apparently last

substantively revised in December 2011) that failed to communicate the only available code violation appeal process within the agency.

92. Plaintiff seeks certification of a Rule 1-023(B)(3) NMRA damages class; alternatively, targeted damages subclasses (comprising *inter alia* those referred to enforcement, those who received a CUV, and those who experienced escalation risks); or, alternatively, an issue class under Rule 1-023(C)(4) NMRA on common liability issues, followed by individualized damages proceedings.

93. Plaintiff, on behalf of the class, seeks judgment for actual damages under the CRA, fees, costs, interest, and such other equitable or injunctive relief as is necessary to make class members whole, without duplicating the prospective, remedial, or ancillary relief sought in Counts III or VI.

94. Plaintiff requests the Court defer any Rule 1-023(B)(3) or (C)(4) NMRA certifications, notices, or damages discovery until after adjudication of Defendant's liability on Count III. *See, e.g., Davis*, 2009-NMSC-048, ¶ 24.

COUNT VI

Equitable and Ancillary Relief to Effectuate the Declaration under the Declaratory Judgment Act and Civil Rights Act

(Restitution/Disgorgement; Vacatur/Expungement; Reinstatement; Special Master)

(as to the Rule 1-023(B)(2) NMRA Class)

95. Plaintiff incorporates all preceding allegations as if fully set forth herein.

96. The Court's equitable powers under the DJA and CRA authorize ancillary orders necessary to effectuate declaratory relief, including restitution, disgorgement, vacatur, expungement, and reinstatement.

97. Defendant's uniform omission of Appeal Advisements on the Deficient CVD Template rendered ensuing fines, fees, censures, suspensions, revocations, CUVs, and bond certifications constitutionally defective.

98. Plaintiff seeks the following equitable and ancillary class relief needed to effectuate the declaration sought in Count III:

(a) Vacatur, Expungement, and Reinstatement Protocol: Vacate any pending or existing discipline predicated on a Deficient CVD Template unless and until a corrected CVD is reissued and appeal rights are exhausted; notify sureties that any CUVs or claims premised on a Deficient CVD Template are withdrawn pending proper re-notice; and for vacated discipline that will not be reissued, grant reinstatement and expungement.

(b) Restitution and Disgorgement Protocol: Establish an escrow and claim process administered by a special master to refund all administrative penalties, fees, and bond disbursements collected on or after April 30, 2015 where the underlying CVD was issued on a Deficient CVD Template, without prejudice to post-July 1, 2021 actual damages under Count V.

JURY DEMAND

99. Mr. Herrera demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

Wherefore, Plaintiff Joseph Herrera, individually and on behalf of all others similarly situated, respectfully requests that this Court enter judgment:

A. CRA–Due Process (Mr. Herrera; Counts I & II)

- i. Declaring that CID’s internal administrative process as applied to Mr. Herrera was fundamentally unfair and a violation of his right to due process under Article II, Section 18 of the New Mexico Constitution.
 - ii. Declaring that CID’s omission of the Appeal Advisements on Mr. Herrera’s January 16, 2025 CVD violated due process.
 - iii. Awarding actual damages, costs, reasonable attorney fees, and other equitable relief as necessary.
- B. CRA and DJA–Declaratory and Prospective Injunctive Relief (Mr. Herrera and Rule 1-023(B)(2) NMRA Class; Count III)
 - i. Certifying a Rule 1-023(B)(2) NMRA class, appointing Mr. Herrera as class representative and his counsel as class counsel.
 - ii. Declaring the Deficient CVD Template used from April 30, 2015 until at least April 23, 2025 unconstitutional for prospective use.
 - iii. Enjoining prospective use of the Deficient CVD Template in agency processes and requiring form revision, curative re-notice, reopened appeal windows, and compliance monitoring.
- C. CRA and DJA–Ancillary Equitable Relief Implementing the Declaration (Rule 1-023(B)(2) NMRA Class; Count VI)
 - i. Ordering equitable restitution and disgorgement of administrative penalties, fees, and bond disbursements collected on or after April 30, 2015 based on the Deficient CVD Template.

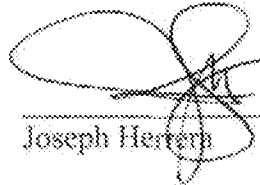
Albuquerque, NM 87102
Tel: (505) 317-6953
Fax: (505) 416-4323
matt@mjbm.law
Attorney for Plaintiff Joseph Herrera

VERIFICATION

I, Joseph Herrera, declare as follows:

1. I am the Plaintiff in this case, a citizen of the United States of America, and a resident of Santa Fe, NM.
2. I have personal knowledge of the matters set forth in the foregoing *First Amended Verified Class Action Complaint for Damages and for Injunctive and Declaratory Relief*. If called to testify, I would competently do so as to those matters.
3. I affirm under penalty of perjury and the laws of the State of New Mexico that to the best of my knowledge, information, and belief, the foregoing information contained in this First Amended Complaint is true and correct.

Executed on Dec 30, 2025.



Joseph Herrera

Exhibit 1 to First Amended Complaint

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

JOSEPH HERRERA, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

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

REGULATION & LICENSING DEPARTMENT

Defendant.

**AFFIDAVIT OF JOSEPH HERRERA IN SUPPORT OF
FIRST AMENDED VERIFIED CLASS ACTION COMPLAINT FOR DAMAGES AND
FOR DECLARATORY AND INJUNCTIVE RELIEF**

I, Joseph Herrera, being first duly sworn upon oath, do hereby state as follows:

1. I am the Plaintiff in this case, over the age of 18, a citizen of the United States, and a resident of Santa Fe, New Mexico.

2. I am a GB98 contractor licensed by the State of New Mexico. My contractor's license has been in good standing since November 14, 2005.

3. I have personal knowledge of the facts set forth in this Affidavit and in the *First Amended Verified Class Action Complaint for Damages and for Declaratory and Injunctive Relief* ("First Amended Complaint"), and I am competent to testify to those facts.

4. I have reviewed the First Amended Complaint before signing this Affidavit. To the best of my knowledge, information, and belief, the factual allegations in the First Amended Complaint that pertain to me, to my project at 277 Tano Road, to my interactions with the

Regulation & Licensing Department (“RLD”) and its Construction Industries Division (“CID”), and to the Code Violation Determination (“CVD”) process are true and correct.

5. I understand that this case challenges CID’s uniform use, since approximately April 30, 2015, of a CVD form that does not contain step-by-step instructions of a licensee’s right to a 10-day written appeal to the CID director followed by a 20-day appeal to the Construction Industries Commission (“CIC” or “Commission”) as set forth in section 14.5.9.9(B) NMAC (the “Appeal Advisements”).

6. I further understand, and it is my experience, that CID’s standardized CVD form used statewide during the relevant period omitted any written notice of these internal appeal rights and deadlines, and that CID did not follow any uniform backup practice to provide this information to either myself or other licensees.

I. Project at 277 Tano Road and Initial Investigation

7. I was the contractor employed to work on a residential project located at 277 Tano Road, Santa Fe, New Mexico 87506 (the “Subject Property”).

8. On or about March 20–21, 2024, CID conducted a final inspection of the Subject Property and issued a certificate of occupancy, indicating that the property met applicable code requirements and was suitable for habitation.

9. Approximately eight days later, on March 29, 2024, a homeowner complaint led CID to open Investigation No. 105-24-03 relating to the Subject Property.

10. On April 2, 2024, CID sent me a Notice of Investigation concerning the Subject Property.

11. On April 18, 2024, I responded in writing to CID. In my letter, I addressed the homeowner's complaint and requested that CID not pursue an investigation in light of the recent certificate of occupancy that confirmed code compliance.

12. I also explained in that letter that the issues raised by the homeowner were primarily cosmetic in nature, that any dispute between me and the homeowner was essentially private, and that I had already performed various repairs and work free of charge that I understood had been to the homeowner's satisfaction.

13. CID did not provide me with a substantive written response to my April 18, 2024 letter.

14. Instead, CID shared my April 18, 2024 letter with the homeowner and stated to the homeowner that the agency was willing to "deal directly" with an attorney for the homeowner if one was hired.

15. On October 11, 2024, CID reinspected the Subject Property. Other than the homeowner complaint, CID did not provide any clear explanation or reason to me for conducting this reinspection.

II. January 16, 2025 CVD and NOV; Lack of Appeal Advisements

16. On January 16, 2025, CID emailed me a CVD and Notice of Violation ("NOV") regarding alleged code violations on the exterior envelope of the Subject Property.

17. True and correct copies of the CVD and NOV that I received on January 16, 2025 are attached to the First Amended Complaint as Exhibit 2.

18. The January 16, 2025 CVD did not contain any written advisement of my right to file a written appeal with the CID Director within 10 days or to pursue a further appeal to the Commission within 20 days pursuant to section 14.5.9.9(B) NMAC.

19. The January 16, 2025 NOV also did not contain any instructions or advisement about these internal CVD appeal rights.

20. I now understand that the CVD form used for me was the same standardized CVD template then in use by CID statewide and that this template has never contained any advisement of the 10-day director appeal or the subsequent 20-day commission appeal.

21. CID did not provide me with any separate written advisement of the 10-day director appeal or the 20-day commission appeal within the 10-day period after I received the CVD.

22. I also now understand that CID has never had any standardized form, letter, email, online portal, or staff script that it used during this period to consistently advise licensees like me of the 10-day or 20-day appeal procedure, and that CID has never maintained any standard operating procedures, checklists, training materials, or tracking fields for CVD appeals.

23. In reliance on the CVD and NOV as received, and without knowledge of an internal 10-day director appeal or a 20-day commission appeal opportunity, I did not file a written appeal with the CID director within 10 days, nor did I pursue a commission appeal during that time.

24. Had the January 16, 2025 CVD clearly and conspicuously stated my 10-day right to appeal to the director and the subsequent 20-day right to appeal to the Commission, with step-by-step instructions, I would have timely appealed one or more of the code violations alleged in the CVD.

III. My Attempts to Engage with CID After Receiving the CVD/NOV

25. After receiving the January 16, 2025 CVD and NOV, I promptly sought clarification and guidance from CID about the alleged violations and how I should address them.

26. CID did not provide prescriptive, technical guidance about how to remedy the alleged code issues.

27. Instead of giving clear direction to me as the licensed contractor, CID told me to “work it out with the homeowner,” which effectively placed the homeowner in a position to influence or control the outcome in a way that was not tied to clear code-based standards.

28. I requested an extension of time from CID to respond to the CVD/NOV, which CID granted.

29. I later learned through produced records that, before granting me this extension, CID had sought and obtained the homeowner’s approval for the extension. At the time, I was unaware that CID and the homeowner had such a seemingly close relationship.

30. On April 2, 2025, I submitted a detailed written response to CID explaining my concerns with the vagueness of the CVD and why I could not accurately implement remediation without additional technical direction from the agency.

31. CID did not substantively respond to my April 2, 2025 letter.

IV. Escalation to the Commission and NMDOJ Without My Knowledge

32. By May 21, 2025, and without my knowledge, CID had presented my matter to the Construction Industries Commission and obtained a referral of my case to the New Mexico Department of Justice (“NMDOJ”) for license enforcement.

33. CID did not provide me with notice that my case had been presented to the Commission or that a referral to NMDOJ was being sought or had been secured.

34. Through later-produced public records, I obtained a copy of a memorandum to the Commission (the “CIC Memo”) regarding my case.

35. In the CIC Memo, CID Investigations Manager Carla Roybal stated that an NOV had been mailed to me on December 18, 2024 and that CID had received no response to it, thereby suggesting that I had somehow failed to cooperate with CID’s investigation.

35. However, no NOV or CVD was ever sent to me on December 18, 2024.

36. In fact, internal communications that RLD eventually produced confirm that Ms. Roybal first sent the CVD and NOV to me not in December 2024 but on January 16, 2025.

37. Thus, Ms. Roybal's assertion in the CIC Memo that I failed to respond to the December 18, 2024 NOV was inaccurate and misleading. Based on the documents RLD later produced, this misstatement appears to have led at least one commissioner to request that a "failure to cooperate" charge be assessed against me.

38. I understand from at least one other contractor that Ms. Roybal has described to him a so-called "special consideration" process for appealing adverse Commission decisions, even though no such procedure appears in CID's statutes or rules. This reinforces my belief that CID's actual practices have drifted away from what CID is legally authorized to do.

V. IPRA Requests and Withheld Documents

38. On January 29, 2025, I submitted a written request under the New Mexico Inspection of Public Records Act ("IPRA") for records related to my matter, including communications among CID staff concerning the homeowner, myself, the investigation, and the Subject Property.

39. On August 27, 2025, I submitted a second written IPRA request for additional records concerning my matter. On October 8, 2025, I submitted a third such request.

40. For months, CID failed to produce certain responsive records described or referenced in other documents, including internal emails concerning the opening of the investigation, partially completed CVD templates, the unsent December 18, 2024 NOV, and communications with the homeowner about extensions and case status.

41. On about September 26, 2025, approximately eleven days after I filed my original Verified Complaint, CID produced additional records that had not been produced in response to my January 29, 2025 request, including eight documents that were eventually produced 224 days late.

42. Among the records produced only after litigation was initiated were: a March 29, 2024 internal email thread opening the case; the unsent December 18, 2024 NOV; partially completed April 1, 2024 CVD templates; and internal communications with the homeowner, including discussions of extensions and investigation status.

43. These withheld records were important to my ability to understand the timeline of CID's actions in my case, to challenge their portrayal of me as unresponsive, and to contest the fairness and accuracy of the CVD and subsequent escalation.

VI. Harms Suffered

44. As a licensed contractor, I have a constitutionally protected interest in my GB98 license, in my bond, and in my professional reputation.

45. CID's omission of the Appeal Advisements on the CVD I received, combined with CID's failure to respond to my requests for information and guidance, deprived me of a meaningful opportunity to invoke the internal director and commission appeals provided for in section 14.5.9.9(B) NMAC.

46. The omission of these Appeal Advisements and the agency's handling of my matter subjected me to an accelerated enforcement referral, increased the risk of a Certificate of Uncorrected Violation ("CUV") against my bond, harmed my business, and damaged my reputation in the eyes of regulators and others.

47. I incurred attorney fees and expenses, project disruptions, lost opportunities, mental and emotional distress, and reputational harm as a result of CID's acts and omissions.

48. Based on the agency's own rulemaking history as set forth in the First Amended Complaint, I understand that CID and the Commission were aware as early as 2014 that an internal CVD appeal was necessary to afford due process to licensees and to accommodate surety bond timeframes.

49. Nevertheless, I have since learned through discovery that CID used CVD templates that did not include the Appeal Advisements from April 30, 2015 through at least April 23, 2025.

VII. Classwide Practices

50. Through information obtained in this case, I understand that CID used the same or substantially similar CVD templates statewide during the class period, that these templates did not contain the required Appeal Advisements, and that CID did not have standardized backup procedures to provide such notice orally or in writing.

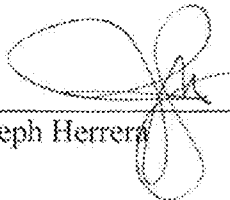
51. I also understand, based on what has been produced and admitted, that CID does not maintain fields or logs for CVD appeals, does not track the number of CVDs or appeals, and has revised its CVD form as recently as April 23, 2025 without adding the Appeal Advisements.

52. I believe, based on my experience and the agency's own admissions, that other CID licensees who received CVDs on the same or similar deficient forms have also been deprived of effective notice of their appeal rights and have faced similar risks of escalation, CUVs, bond exposure, and economic and reputational harm.

53. I am willing to serve as class representative in this matter and will fairly and adequately protect the interests of the class members described in the First Amended Complaint.

54. To the best of my knowledge, I have no conflicts of interest that would prevent me from serving as class representative.

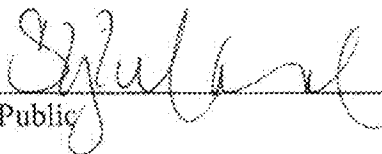
FURTHER AFFIANT SAYETH NAUGHT.



Joseph Herrera

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

This Affidavit was signed and sworn to before me on December 30, 2025 by Joseph Herrera.



Notary Public

My commission expires: 4.18.2027

**State of New Mexico
Notary Public
Sylvia Mariscal
Commission Number 1097458
Expiration Date 04/18/2027**

NOTICE OF VIOLATION

01-16-2025

INVESTIGATION CASE NUMBER: 105-24-03
LICENSE NO. 361866
Qualifying Party: Joseph Herrera #252662

Joseph Herrera
Santa Fe Sustainable Living by J LLC
110 Spruce Street
Santa Fe, NM 87501

LOCATION OF VIOLATION: 277 Tano Road Santa Fe, NM 87506

CORRECTION DUE DATE: February 16, 2025

You are receiving this Notice due to the Construction Industries Division (CID) compliance investigation has resulted in confirmation of the following code violation(s) at the location noted above.

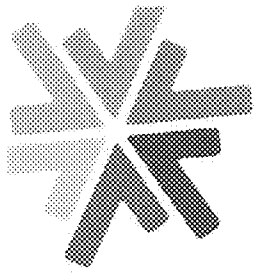
Failure to correct the violation(s) and have the work re-inspected by CID **BEFORE** the correction due date noted above will subject you to disciplinary action.

TRADE BUREAU CODE/ ADMINISTRATIVE VIOLATIONS:

PLEASE SEE ATTACHED

To schedule a re-inspection, you must do the following:

1. Contact the project owner to schedule the correction work.
2. Fully perform the correction work
3. Pay a re-inspection fee at any of the CID locations:
 - o Albuquerque – 5500 San Antonio Drive NE
 - o Santa Fe - 2550 Cerrillos Road
 - o Las Cruces - 505 S. Main St., Suite 103
4. Call the call center to schedule a final inspection (505) 222-9813.



STATE OF NEW MEXICO
Regulations & Licensing Department
MICHELLE LUJAN GRISHAM, GOVERNOR
Clay Bailey, Superintendent

ALL RE-INSPECTION FEES MUST BE PAID BY CONTRACTOR PRIOR TO SCHEDULING.

The investigator will send an Amended Notice of Violation if code violations still exist after the re-inspection.

If you have questions, please contact me at the email provided below.

Sincerely,

Carla Roybal

Carla Roybal- Carla.Roybal@rld.nm.gov
Investigations Manager
Construction Industries Division
Investigations and Enforcement
505-231-1438
5500 San Antonio Dr. NE
Albuquerque, NM 87109

CODE VIOLATION DETERMINATION

DATE: 04-01-2024 General build

Initial

Final

INVESTIGATION NO: 105-24-03

LICENSEE; 361866 Santa Fe Sustainable living by J. llc

PROJECT ADDRESS; 277 Tano Rd Sant Fe NM 87506 (outside of SF)

Homeowner Phone 505-470-0684

- No code violation confirmed
 Code violation(s) confirmed

1. 703.1.1 / 2015 Water Resistance.

Location: Entire House

Description: Contractor did not provide a water resistance barrier that prevents the accumulation of water from entering the wall assembly. The exterior wall envelope is not preventing the accumulation of water within the wall assembly. There is no water-resistant barrier behind the exterior veneer preventing water from entering and passing through the wall assembly as required by Section R703.2. Water accumulating behind the exterior veneer does not properly drain to the exterior of the enter assembly.

2. R703.4 / 2015 Flashing

Location: Windows

Description: The flashing was not applied in shingle-fashion to prevent entry of water into the wall cavity or penetration of water to the building structural framing components

3. R703.4.1 Flashing #1.1.

Location: Windows

Description: The fenestration manufacturer's installation and flashing instructions were not followed or if flashing instructions or details were not provided, the pan flashing should have been installed at the sill of exterior window and door openings and the pan flashing should have been sealed or

CODE VIOLATION DETERMINATION

sloped in such a manner as to direct water to the resistive barrier for subsequent drainage. There was no uninterrupted resistive water barrier for the purpose of direct water to the exterior for subsequent drainage

4. R703.4.1 Flashing #3

Location: Exterior wall to slab transition

Description: Flashing is required under and at the ends of masonry sills. There is not a flashing or seal at the transition from concrete slab to the vertical wall assembly, this is allowing water to enter under the wall seal.

- Undetermined
- Code violations corrected

Inspector Signature: *Cedric Chavez* Print Name: Cedric Chavez

Date of Inspection: 10/11/24

Chief Initials: MR Date: 12-10-2024