

STATE OF NEW MEXICO
SECOND JUDICIAL DISTRICT COURT
BERNALILLO COUNTY

DANIEL LIBIT,

Plaintiff,

v.

No. D-202-CV-2017-01620

THE UNIVERSITY OF NEW MEXICO
FOUNDATION, INC. and THE BOARD
OF REGENTS OF THE UNIVERSITY
OF NEW MEXICO,

Defendants.

**DEFENDANT BOARD OF REGENTS OF THE UNIVERSITY OF NEW MEXICO'S
ANSWER TO PLAINTIFF'S COMPLAINT UNDER THE
NEW MEXICO INSPECTION OF PUBLIC RECORDS ACT**

COMES NOW Defendant Board of Regents of the University of New Mexico ("BORUNM"), by and through its undersigned counsel of record, and for its Answer to Plaintiff Daniel Libit's ("Plaintiff's") Complaint Under the New Mexico Inspection of Public Records Act ("Complaint") states as follows:

I. Answer to Introductory Paragraphs.

Plaintiff's Complaint begins with summary statements regarding his view of the Complaint and the basis therefor, as well as recitations of New Mexico's Inspection of Public Records Act statute. In response, Defendant BORUNM admits that Defendant University of New Mexico Foundation ("UNMF") is a non-profit corporation established in 1979, which functioned as a part of the University of New Mexico until 2008, when it transitioned to a separate and independent entity. To the extent, if any, that one or more of the remaining statements in the first two paragraphs are intended to constitute allegations by Plaintiff against BORUNM, BORUNM

is without sufficient information to form a belief as to the truth of such allegations and on that basis, the allegations are denied. BORUNM further denies that Plaintiff is legally entitled to the declaratory or other relief he seeks. To the extent that Plaintiff cites or quotes one or more existing statutes, no response is required.

II. Parties.

1. In response to numbered paragraph 1 of the Complaint, BORUNM is without sufficient information to admit or deny the allegation, and on that basis, the allegation is denied.
2. In response to numbered paragraph 2 of the Complaint, BORUNM admits that the University of New Mexico Foundation was originally established by BORUNM, that UNMF is a tax-exempt corporation, that it is incorporated in New Mexico, and that its principle place of business is in Albuquerque, New Mexico. To the extent that the allegations in paragraph 2 quote information from an exhibit attached to the Complaint, BORUNM states that the exhibits speak for themselves and no response is required. All other allegations in paragraph 2 are denied.
3. In response to numbered paragraph 3 of the Complaint, BORUNM states that it is the governing body for the University of New Mexico, established by Article XII, Section 13 of the constitution of the State of New Mexico. All other allegations in paragraph 3 are denied.

III. Jurisdiction and Venue.

4. In response to numbered paragraph 4 of the Complaint, BORUNM admits that this Court has jurisdiction over the Complaint.
5. In response to numbered paragraph 5 of the Complaint, BORUNM admits that venue is proper in the County of Bernalillo. BORUNM denies the other allegations in paragraph 5.

IV. Factual Allegations.

6. In response to numbered paragraph 6 of the Complaint, BORUNM admits that the Regents of the University of New Mexico established a University of New Mexico Foundation in 1979 for the purpose of raising, investing and managing private gifts on behalf of the University of New Mexico. The other allegations of paragraph 6 are denied.

7. In response to numbered paragraph 7 of the Complaint, to the extent that the allegations in paragraph 7 quote and/or reference information from an exhibit attached to the Complaint, BORUNM states that the exhibits speak for themselves and no response is required. BORUNM admits that the University of New Mexico President, up two of its college deans, and one Regent may serve as members of the UNMF Board of Trustees, and that the University President may also serve on the UNMF Executive Committee and Committee on Trustees. BORUNM also admits that up to twenty-five percent of the UNMF Board of Trustees may be employees, officers or Regents of the University. All other allegations in paragraph 7 are denied.

8. In response to numbered paragraph 8 of the Complaint, to the extent that the allegations in paragraph 8 quote and/or reference information from an exhibit attached to the Complaint, BORUNM states that the exhibits speak for themselves and no response is required. All other allegations in paragraph 8 are denied.

9. In response to numbered paragraph 9 of the Complaint, to the extent that the allegations in paragraph 9 quote and/or reference information from an exhibit attached to the Complaint, BORUNM states that the exhibits speak for themselves and no response is required. All other allegations in paragraph 9 are denied.

10. In response to numbered paragraph 10 of the Complaint, to the extent that the allegations in paragraph 10 quote and/or reference information from an exhibit attached to the

Complaint, BORUNM states that the exhibits speak for themselves and no response is required.

All other allegations in paragraph 10 are denied.

11. In response to numbered paragraph 11 of the Complaint, to the extent that the allegations in paragraph 11 quote and/or reference information from an exhibit attached to the Complaint, BORUNM states that the exhibits speak for themselves and no response is required.

All other allegations in paragraph 11 are denied.

12. In response to numbered paragraph 12 of the Complaint, to the extent that the allegations in paragraph 12 quote and/or reference information from an exhibit attached to the Complaint, BORUNM states that the exhibits speak for themselves and no response is required.

All other allegations in paragraph 12 are denied.

13. In response to numbered paragraph 13 of the Complaint, to the extent that the allegations in paragraph 13 quote and/or reference information from exhibits attached to the Complaint, BORUNM states that the exhibits speak for themselves and no response is required.

All other allegations in paragraph 13 are denied.

14. In response to numbered paragraph 14 of the Complaint, BORUNM admits that University of New Mexico staff are bound by the policies, procedures, practices and employment privileges of the University of New Mexico. To the extent that the allegations in paragraph 14 quote and/or reference information from an exhibit attached to the Complaint, BORUNM states that the exhibits speak for themselves and no response is required. All other allegations in paragraph 14 are denied.

15. In response to numbered paragraph 15 of the Complaint, to the extent that the allegations in paragraph 15 quote and/or reference information from exhibits attached to the

Complaint, BORUNM states that the exhibits speak for themselves and no response is required.

All other allegations in paragraph 15 are denied.

16. In response to numbered paragraph 16 of the Complaint, to the extent that the allegations in paragraph 16 quote and/or reference information from an exhibit attached to the Complaint, BORUNM states that the exhibits speak for themselves and no response is required.

All other allegations in paragraph 16 are denied.

17. In response to numbered paragraph 17 of the Complaint, the allegations in paragraph 17 are denied.

18. In response to numbered paragraph 18 of the Complaint, to the extent that the allegations in paragraph 18 quote and/or reference information from an exhibit attached to the Complaint, BORUNM states that the exhibits speak for themselves and no response is required.

All other allegations in paragraph 18 are denied.

19. In response to numbered paragraph 19 of the Complaint, to the extent that the allegations in paragraph 19 quote and/or reference information from websites, BORUNM states that the referenced website content speaks for itself and no response is required. All other allegations in paragraph 19 are denied.

20. In response to numbered paragraph 20 of the Complaint, BORUNM admits that Stu Starner and Kole McKamey may have attended meetings where University Athletic Department staff were also present. In the absence of more specific information regarding specific meetings, the other allegations in paragraph 20 are denied.

21. In response to numbered paragraph 21 of the Complaint, BORUNM admits that on or about December 1, 2014, the University announced a cash gift to the University of New Mexico Foundation by Wise Pies Franchise Services intended to support UNM Athletics.

BORUNM further admits that the University announced that, in recognition of the gift, University Arena would be named “Wise Pies Arena (aka The Pit).” All other allegations in paragraph 21 are denied.

22. In response to numbered paragraph 22 of the Complaint, to the extent that the allegations in paragraph 22 reference information from an exhibit attached to the Complaint, BORUNM states that the exhibits speak for themselves and no response is required. All other allegations in paragraph 22 are denied.

23. In response to numbered paragraph 23 of the Complaint, to the extent that the allegations in paragraph 23 quote and/or reference information from an exhibit attached to the Complaint, BORUNM states that the exhibits speak for themselves and no response is required. All other allegations in paragraph 23 are denied.

24. In response to numbered paragraph 24 of the Complaint, to the extent that the allegations in paragraph 24 reference information from an exhibit attached to the Complaint, BORUNM states that the exhibits speak for themselves and no response is required. All other allegations in paragraph 24 are denied.

25. In response to numbered paragraph 25 of the Complaint, to the extent that the allegations in paragraph 25 reference information from an exhibit attached to the Complaint, BORUNM states that the exhibits speak for themselves and no response is required. All other allegations in paragraph 25 are denied.

26. In response to numbered paragraph 26 of the Complaint, the allegations in paragraph 26 are denied.

27. In response to numbered paragraph 27 of the Complaint, to the extent that the allegations in paragraph 27 reference information from an exhibit attached to the Complaint,

BORUNM states that the exhibits speak for themselves and no response is required. BORUNM is without information sufficient to form a belief as to the truth of the other allegations, and on that basis, the other allegations in paragraph 27 are denied.

28. In response to numbered paragraph 28 of the Complaint, to the extent that the allegations in paragraph 28 reference information from exhibits attached to the Complaint, BORUNM states that the exhibits speak for themselves and no response is required. BORUNM is without information sufficient to form a belief as to the truth of the other allegations, and on that basis, the other allegations in paragraph 28 are denied.

29. In response to numbered paragraph 29 of the Complaint, to the extent that the allegations in paragraph 29 reference information from an exhibit attached to the Complaint, BORUNM states that the exhibits speak for themselves and no response is required. BORUNM is without information sufficient to form a belief as to the truth of the other allegations, and on that basis, the other allegations in paragraph 29 are denied.

30. In response to numbered paragraph 30 of the Complaint, BORUNM is without information sufficient to form a belief as to the truth of the allegations in paragraph 30, and on that basis, the allegations in paragraph 30 are denied.

31. In response to numbered paragraph 31 of the Complaint, BORUNM admits that on or about November 7, 2016, Plaintiff sent an Inspection of Public Records Act (“IPRA”) request to the University of New Mexico, and that the content of the request was as described in the indented paragraph of the letter identified as Exhibit N of Plaintiff’s Complaint. To the extent that any additional allegations are contained in paragraph 31, they are denied.

32. In response to numbered paragraph 32 of the Complaint, BORUNM admits that on or about November 11, 2016, the University of New Mexico’s Custodian of Public Records

sent the letter identified as Exhibit N of Plaintiff's Complaint to Plaintiff, and BORUNM further states that that the letter identified as Exhibit N speaks for itself. To the extent that any additional allegations are contained in paragraph 32, they are denied.

33. In response to numbered paragraph 33 of the Complaint, BORUNM is without information sufficient to form a belief as to the truth of the allegations in paragraph 33, and on that basis, the allegations in paragraph 33 are denied.

34. In response to numbered paragraph 34 of the Complaint, BORUNM is without information sufficient to form a belief as to the truth of the allegations in paragraph 34, and on that basis, the allegations in paragraph 34 are denied.

35. In response to numbered paragraph 35 of the Complaint, BORUNM is without information sufficient to form a belief as to the truth of the allegations in paragraph 35, and on that basis, the allegations in paragraph 35 are denied.

36. In response to numbered paragraph 36 of the Complaint, BORUNM admits that on or about January 12, 2016, Plaintiff sent an Inspection of Public Records Act ("IPRA") request to the University of New Mexico, and that the content of the request was as described in the indented paragraph of the letter identified as Exhibit Q of Plaintiff's Complaint. To the extent that any additional allegations are contained in paragraph 36, they are denied.

37. In response to numbered paragraph 37 of the Complaint, BORUNM admits that on or about January 27, 2017, the University of New Mexico's Custodian of Public Records sent the letter identified as Exhibit Q of Plaintiff's Complaint to Plaintiff, and BORUNM further states that that the letter identified as Exhibit Q speaks for itself. To the extent that any additional allegations are contained in paragraph 37, they are denied.

38. In response to numbered paragraph 38 of the Complaint, BORUNM is without information sufficient to form a belief as to the truth of the allegations in paragraph 38, and on that basis, the allegations in paragraph 38 are denied.

39. In response to numbered paragraph 39 of the Complaint, BORUNM is without information sufficient to form a belief as to the truth of the allegations in paragraph 39, and on that basis, the allegations in paragraph 39 are denied.

40. In response to numbered paragraph 40 of the Complaint, BORUNM is without information sufficient to form a belief as to the truth of the allegations in paragraph 40, and on that basis, the allegations in paragraph 40 are denied.

41. BORUNM incorporates by references its responses, admissions, and denials to the facts alleged in the initial unnumbered paragraphs and the numbered paragraphs 1 through 40 of the Complaint.

42. In response to numbered paragraph 42 of the Complaint, the allegations are denied.

43. In response to numbered paragraph 43, BORUNM denies that it has ever asserted that the University of New Mexico is not subject to IPRA, and further denies the other allegations contained paragraph 43 of the Complaint.

44. In response to numbered paragraph 44 of the Complaint, the allegations are denied.

45. In response to numbered paragraph 45 of the Complaint, this allegation does not appear to be directed to BORUNM and therefore no response is required. To the extent that paragraph 45 of the Complaint makes any allegation(s) against BORUNM, the same is/are denied.

46. In response to numbered paragraph 46 of the Complaint, both the allegations and applicability of the relief requested against BORUNM are denied.

47. In response to numbered paragraph 47 of the Complaint, both the allegations and applicability of the relief requested against BORUNM are denied.

48. In response to numbered paragraph 48 of the Complaint, both the allegations and applicability of the relief requested against BORUNM are denied.

V. Response to Plaintiff's Prayer for Relief

In response to Plaintiff's Prayer for Relief, BORUNM states that, with respect to any and all relief sought against BORUNM, the requested relief is not supported by the Complaint, any legal theory, or any provable fact, and should be denied. With respect to the requested writ of mandamus, Plaintiff's Complaint does not conform to the appropriate procedure for seeking a writ of mandamus and Plaintiff has not articulated appropriate grounds for a writ of mandamus; therefore, no writ should issue. Plaintiff's requested relief is not sufficiently specific with respect to the party against whom relief is sought, nor has Plaintiff alleged any wrongful conduct by BORUNM, and as a result, all requested relief against BORUNM should be denied.

BORUNM AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted against BORUNM.

2. All allegations to which BORUNM has not specifically admitted are denied.

WHEREFORE, having fully responded to all allegations in Plaintiff's Complaint, BORUNM respectfully requests that it be dismissed with prejudice and that BORUNM is awarded all other relief the Court deems just and proper.

Respectfully Submitted,

OFFICE OF UNIVERSITY COUNSEL

By: /s/ Kimberly Bell
Kimberly Bell

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I hereby certify that on April 17, 2017,
a true and correct copy of the foregoing pleading
was served on the following counsel of record via the
Court's Electronic Filing System and via electronic mail:

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