

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.

**MOTION FOR ENTRY OF FINAL JUDGMENT  
AND STAY OF JUDGMENT PENDING APPEAL  
AND POINTS AND AUTHORITIES IN SUPPORT THEREOF**

Defendant The University of New Mexico Foundation, Inc. ("Foundation") moves this Court in accordance with NMRA Rules 1-054(B) and 1-062(D) to (1) enter final judgment as to the claims asserted by Plaintiff, and (2) to stay final judgment against the Foundation during pendency of the Foundation's appeal from the Court's decision to grant summary judgment in favor of Plaintiff on all claims asserted against the Foundation.

The Foundation has conferred with counsel for Plaintiff and this Motion is opposed.

In support of this Motion, the Foundation states as follows:

1. Plaintiff Daniel Libit ("Plaintiff") brought suit against the Foundation and the Board of Regents of the University of New Mexico ("UNM") to enforce alleged violations of the New Mexico Inspection of Public Records Act (IPRA). *See* Amended Complaint Under the New Mexico Inspection of Public Records Act, filed September 22, 2017 ("Complaint").

2. Following the May 24, 2018 hearing on the cross-motions for summary judgment filed by Plaintiff and the Foundation, the Court entered an order on June 26, 2018 granting

Plaintiff's motion for summary judgment on all claims against the Foundation and denying the Foundation's motion for summary judgment. *See* Order Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment and Denying Defendant the University of New Mexico Foundation Inc.'s Motion for Summary Judgment ("June 26 Order") at 2.

3. The June 26 Order required the Foundation to "produce the documents requested through Plaintiff's IPRA requests to the Plaintiff for inspection within fifteen (15) days of the entry of [that] Order." *Id.* The Foundation fully complied with this portion of the Order by providing the requested records to counsel for Plaintiff on July 3, 2018.

4. The Court's June 26 Order also contained unnecessarily and inappropriately broad language which gives rise to this motion to stay. After ordering the Foundation to provide Plaintiff with the requested documents, the June 26 Order went on to state "NMSA 1978, Section 6-5A-1(D) may not be relied upon to exempt those records *or information created and/or maintained by the Foundation* from inspection by the public according to IPRA." June 26 Order, at p. 2 (emphasis added). The italicized language is problematic because (a) it is unnecessary and superfluous to the Court's determination that Foundation was required to produce the specific records at issue and (b) it has been interpreted by some, including Plaintiff, to be a sweeping and prospective declaration that all of the Foundation's records are public records notwithstanding the language and legislative intent of § 6-5A-1. Indeed, this extraneous language appears to grant the declaratory relief requested by Plaintiff to the effect that the Foundation is a "public body subject to IPRA" for all purposes. *See* June 26 Order at ¶¶ 2-5. Furthermore, though not properly brought before the Court by Plaintiff, the provisions of the June 26 Order certainly implicate the demand for relief found in the Complaint at 16 that the Court,

Enter an injunction requiring the Defendants to ... comply with future requests for public records by Plaintiff and other requesters.

5. Accordingly, and despite having fully complied with the direction in the June 26 Order that all of the specifically requested documents be produced to Plaintiff, the Foundation filed its Notice of Appeal on July 26, 2018.

6. On November 21, 2018 Plaintiff and Defendant Board of Regents of the University of New Mexico (the "Regents") moved to dismiss with prejudice all claims asserted by Plaintiff against the Regents. The entry on December 4, 2018 of the requested order of dismissal of Plaintiff's claims against the Regents disposes of the issues remaining for decision following the entry of the June 26 Order.

7. For this reason, the Foundation requests that the Court enter a final judgment as to all of Plaintiff's claims against the Foundation from which an appeal will lie.

8. The Foundation also requests that the final judgment include a stay of enforcement of the requested final judgment because, since entry of the June 26 Order, Plaintiff and others have seized on the June 26 Order's broad language to support not less than 12 separate IPRA requests seeking all manner of confidential records, as detailed in the Affidavit of Rod Harder, ¶ 3, attached as **Exhibit A**.

9. Plaintiff and his counsel contend that the Court's June 26 Order applies prospectively and beyond this case, citing the June 26 Order as the basis for numerous of Plaintiff's recent IPRA requests to the Foundation and as support for further threatened litigation against the Foundation. *See* Hart Letter, dated November 6, 2018; attached as **Exhibit B** and Hart Email, dated November 23, 2018, attached as **Exhibit C**, stating, "If necessary, Mr. Libit is prepared to litigate every IPRA request he submits until the Foundation believes it is necessary to comply with a binding order by the Court."

10. Due to the deluge of IPRA requests since entry of the June 26 Order, the Foundation has been required to hire additional staff to process and respond to the requests, at an annual cost in excess of \$70,000. Exhibit A, (Harder Affidavit) at ¶ 4.

11. At least one of the IPRA requests recently submitted to the Foundation seeks information about donors who specifically requested to remain anonymous. Requiring the Foundation to violate the wishes of anonymous donors by disclosing their identity would have immediate and catastrophic consequences for the Foundation and the University. As stated in the Affidavit of UNM School of Law Dean Sergio Pareja, such forced disclosure:

- Would have resulted in the loss of a recent anonymous gift of \$2.5 million that funds three full-ride scholarships to the law school;
- Would expose the Foundation and the University to litigation by donors who previously made gifts on the condition of anonymity, and the risk of having to return donations to those anonymous donors;
- Would result in the loss of substantial funding from those for whom anonymity is important.

Affidavit of Sergio Pareja at ¶ 8, attached as **Exhibit D**.

12. Based on his experience as law school dean and as an estate planning lawyer working with high wealth clients who insisted on anonymity in their charitable giving, Dean Pareja knows there are several very good reasons why charities must be able to protect donor anonymity when requested. For example:

- Public disclosure of large gifts can expose the donor and/or the donor's family to an increased risk of crime;
- Public disclosure often exposes the donor to an unwanted barrage of requests from other charitable organizations;
- Some donors wish to keep their estate plans confidential, either out of a personal desire for privacy, or out of a desire to avoid discord with family members or other potential heirs; and
- For a variety of reasons, some donors simply prefer to avoid any public recognition for their generosity.

Exh. D, Affidavit of Sergio Pareja at ¶¶ 11-14.

## **ARGUMENT**

### **I. Final Judgment Should be Entered Because All Claims Asserted by Plaintiff Have Been Resolved**

The Foundation seeks entry of a final judgment at this time because, with the entry of an order dismissing the claims asserted by Plaintiff against the Regents, all claims will have been decided. Neither the Foundation nor the Regents asserted any counterclaims. Accordingly, the dismissal of the claims against the Regents causes the June 26 Order to become a final decision as to the claims against the Foundation upon which a final judgment should be entered in accordance with Rule 1-054(B).

### **II. Equity Favors Granting a Stay of the Court's Order Pending Resolution of The Issues on Appeal**

"Although a notice of appeal ordinarily divests the trial court of jurisdiction to take any further action in the matter, a clear exception exists by reason of the language of Section 39-3-22 and Rule 62 which permits the district court to grant a stay to the appellant." *Devlin v. State ex rel. New Mexico State Police Dept.*, 1988-NMSC-102, ¶ 5, 108 N.M. 72. Rule 1-062(D) authorizes the Court to stay enforcement of a judgment during the pendency of an appeal.

The decision whether to grant a stay is committed to the sound discretion of the trial court. *Id. See also Wood v. Millers National Ins. Co.*, 1981-NMSC-086, ¶ 8, 96 N.M. 525. The propriety of the issuance of a stay is dependent on the circumstances of each individual case. *Alpers v. Alpers*, 1990-NMCA-015, ¶ 8. The *Alpers* Court articulated the following factors to consider in deciding whether such motion should be granted pending disposition of an appeal: "(1) the likelihood of hardship or harm to the children if the stay is denied; (2) whether the appeal is taken in good faith and the issues raised are not frivolous; (3) the potential harm to the

interests of the non-moving party if the stay is granted; and (4) a determination of other existing equitable considerations, if any.” *Id* at ¶ 10. *See also Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (identifying similar factors regulating the issuance of a stay).

**A. The Appeal Was Brought in Good Faith**

The fact that the Foundation is not appealing the portion of the Court’s June 26 Order directing the Foundation to produce the specific records requested by Plaintiff, and has in fact provided those records to Plaintiff, demonstrates that the purpose of the Foundation’s appeal is not to merely postpone enforcement of the Court’s June 26 Order.

Instead, the Foundation’s appeal pertains to the implications of the Court’s award of summary judgment which arguably includes a declaration that the Foundation is a public body for all purposes under IPRA, irrespective of the language of § 6-5A-1, thereby rendering all of the Foundation’s records subject to public disclosure. The issues raised in the Foundation’s appeal include, (1) whether the Court has subject matter to declare that the Foundation is a public body for purposes of IPRA (2) whether the Court of Appeal’s decision in *State ex rel. Toomey v. Truth or Consequences*, 2012-NMCA-104, 287 P.3d 364, 370 can be extended to declare the Foundation a public body for purposes of IPRA and require disclosure of all the Foundations records; (3) whether § 6-5A-1(A)(3) of the Public Finance Act exempts the Foundation’s records from public disclosure in order to protect privacy rights and expectations of donors; and (4) whether donors’ federal and state constitutional rights to privacy, free speech, and free association entitle donors to protect the confidentiality of their donations (issues that the District Court did not reach because it granted summary judgment to Plaintiff). As for the latter two issues, it is worth noting that § 6-5A-1 specifically excludes “lists of donors and donations” from information that must be included in its publicly disclosed annual audit; New Mexico’s

Charitable Solicitations Act clearly evinces legislative intent to protect donor information<sup>1</sup>; and the Internal Revenue Code pertaining to a charitable organization's publicly disclosed IRS Form 990 requires such organizations to list the amounts of their top donors, but allows the organizations to redact the names of the donors themselves.<sup>2</sup> These are issues of first impression in this state and concern the future ability of the Foundation to accomplish its declared purpose of providing financial support for the University. These issues "clearly show that the appeal is taken in good faith and that the issues raised are not frivolous and are fairly debatable." *Alpers*, 1990-NMCA-015, ¶ 18.

#### **B. The Stay of Judgment Will Not Harm Plaintiff**

In granting summary judgment, the Court directed the Foundation to "produce the documents requested through Plaintiff's IPRA requests to the Plaintiff for inspection within fifteen (15) days of the entry of the Order." *See* Order at 2. As stated above, the Foundation is not appealing that portion of the judgment and has provided those records to Plaintiff. As such, Plaintiff has received the relief available under IPRA and a stay of judgment will not cause damage to or otherwise prejudice Plaintiff. Because the stay will not cause Plaintiff to suffer damages, it is not necessary for the Court to require a supersedeas bond to secure the rights of Plaintiff or to ensure status quo pending appeal. *See* Rule 1-062 NMRA; *Grassie v. Roswell Hosp. Corp.*, 2008-NMCA-076, ¶ 12, 144 N.M. 241 ("The Rule is intended to ensure that the amount of the bond is sufficient to maintain the status quo while the case is pending on appeal.").

#### **C. The Foundation and Others Will be Irreparably Harmed if the Stay of Judgment is Denied**

---

<sup>1</sup> Although according to NMSA 1978, § 57-22-4(B) of the Charitable Solicitations Act (the "Act") organizations subject to § 6-5A-1 are exempt from the reporting and registration requirements of the Act, the other provisions of the Act apply to the Foundation. The Act contains several provisions that recognize and preserve the privacy of donor information. *See, eg.*, §§ 57-22-5, -6.4(C)(1), -9.1(A), -9.1(F), and -9.2.

<sup>2</sup> *See* 26 U.S.C. § 6104(d)(3)(A).

The threatened harm to the Foundation derives from implications of the Court's award of summary judgment which arguably includes a declaration that the Foundation is a public body for all purposes under IPRA, and a mandatory injunction requiring the Foundation to designate a records custodian and fully comply with all of IPRA's requirements.

As stated above, since the Order was issued the Foundation has received IPRA requests from numerous individuals and entities seeking financial and other private records of the Foundation and the Foundation's private donor information (including anonymous donor information) based on the argument that the broad language of the June 26 Order renders all of the Foundation's records subject to IPRA. *See* Exh. A (Harder Affidavit) at ¶ 3. This has and will cause harm to the Foundation and the University in several ways.

First, it will result in a decrease in donations to the Foundation and the University, as noted by Exh. D, Dean Pareja's Affidavit.

Second, it will create the potential of litigation against the Foundation or the University by donors who made gifts based on the promise or expectation of anonymity. This will certainly result in litigation costs, but will also expose the Foundation and the University to the possibility of having to return gifts to such donors.

Third, it will expose the Foundation to additional and unnecessary litigation costs associated with new IPRA enforcement actions – like those threatened by Plaintiff and his counsel, *see* Exh. C (Hart Email) – while the parties wait for an appellate court decision that will likely resolve the dispositive legal issues underlying those new enforcement actions.

Fourth, it has and will cause the Foundation to incur substantial costs, including but not limited to the cost of newly hired staff, in order to process and respond to a deluge of IPRA requests.



Fifth, disclosure of much of the information requested over the past several months would unfairly place the Foundation at a significant disadvantage in a competitive fundraising environment. For example, the Foundation's competitors could gain unfair competitive advantages by obtaining the Foundation's list of donors or donor prospects; the Foundation's research related to donors and prospective donors; the Foundation's employee compensation structure; the terms of the Foundation's executive contracts; the research and detailed investment information compiled and purchased by the Foundation to inform its prudent management of the endowment.

Even if the Foundation ultimately prevailed on the merits of the appeal, the harm from disclosing records such as those records already sought in recent IPRA requests, cannot be undone. And it is not a stretch to say this harm could endanger the very existence of the Foundation.

The Court should also be mindful of the harm that will be caused to other individuals. For example, Foundation employees will have their private information such as salary and terms of their employment contracts disclosed publicly, even though they are not public employees. Donors will have their private information disclosed publicly, despite their expectation of confidentiality and potentially a violation of their constitutional rights to privacy, free speech, and free association. And the Foundation's investment advisors will have their valuable research disclosed for all to see. These harms, too, cannot be undone.

As the Supreme Court held in *State v. Holloman*, 1918-NMSC-138, ¶, 25 N.M. 117 such a "mandatory injunction, i. e. one which compels affirmative action by the defendant instead of merely preserving the status quo, cannot be enforced pending a duly perfected appeal."

If the requested stay of enforcement is denied the Foundation will be forced to either (1) comply with each IPRA request by disclosing private and confidential information that will cause harm to the Foundation, the University, and others, or (2) deny each IPRA request putting the Foundation at risk for endless litigation which includes expenditure of resources to defend such suits, continued damage to the Foundation's reputation, and frustration of already limited court resources. Again, even if the Foundation succeeds on the merits of the appeal, the harm incurred from either disclosing private records or defending ongoing litigation for alleged violations of IPRA cannot be undone.

### CONCLUSION

For the reasons stated, the Foundation's Motion should be granted.

Respectfully Submitted,

MONTGOMERY & ANDREWS, P.A.

By: /s/ Randy S. Bartell  
Randy S. Bartell  
Kari Olson  
P. O. Box 2307  
Santa Fe, New Mexico 87504  
(505) 986-2504  
[rbartell@montand.com](mailto:rbartell@montand.com)  
[kolson@montand.com](mailto:kolson@montand.com)  
and

By: /s/ Patrick D. Allen  
Patrick D. Allen  
General Counsel  
The University of New Mexico Foundation, Inc.,  
700 Lomas NE, Two Woodward Center, Ste. 108  
Albuquerque, NM 8710

*Attorneys for Defendant/Appellant*  
*The University of New Mexico Foundation, Inc.*

### CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2018, I filed the foregoing electronically, which caused the following to be served by electronic means, and reflected by the Court's NEF system:

Nicholas T. Hart  
Law Offices of Nicholas T. Hart, LLC  
nick@nicholasthartlaw.com

Charles R. Peifer  
Gregory P. Williams  
Peifer, Hanson & Mullins, P.A.  
cpeifer@peiferlaw.com  
gwilliams@peiferlaw.com

David A. Ferrance  
Office of University Counsel  
DFerrance@salud.unm.edu

By: /s/ Randy S. Bartell  
Randy S. Bartell

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.

**AFFIDAVIT OF RODNEY L. HARDER**

I, Rodney L. Harder, being first duly sworn, depose and state:

1. I am over the age of 18 and I am competent to make the statements contained herein which are based on my experience, knowledge, and information.

2. From January 2010 to June 30, 2018, I served as Chief Financial Officer of the University of New Mexico Foundation, Inc. ("Foundation"). From July 1, 2018 to present, I have served as Vice President of Administration of the Foundation. In my positions of Chief Financial Officer and Vice President of Administration, I have been and continue to be involved in the overall management and operation of the Foundation. I am authorized by the Foundation to submit this affidavit on its behalf.

3. Since entry of this Court's June 26, 2018 Order, Plaintiff Daniel Libit and others have submitted numerous IPRA requests to the Foundation seeking all manner of confidential Foundation records, including but not limited to the following:

- A July 16, 2018 request for a list of all Foundation employees and all compensation they were paid in 2017;

- An August 1, 2018 request from a private hedge fund manager seeking detailed information regarding the Foundation's investment strategies related to the endowment fund managed by the Foundation;
- An August 12, 2018 request to the Lobo Club seeking, among other things, all information for the Lobo Club's electronic donor database regarding its top 10 donors;
- A September 6, 2018 request for records of payments made by an anonymous donor for the purpose of reimbursing the University's Athletics Department for expenses related to a donor trip to Scotland;
- A September 12, 2018 request for records related to the Branch law firm's naming-rights donation;
- A September 26, 2018 request for records related to donations from various physicians and Southwest Women's Options;
- A September 27, 2018 request for records related to all bonuses paid to Foundation employees from 2013 to present;
- A September 28, 2018 request for the employment contracts of four Foundation employees;
- A September 30, 2018 request for pledge agreements from all members of the "Forever Lobo Society";
- An October 2, 2018 request for all minutes from the Foundation Board's compensation committee from 2014 to present;
- An October 2, 2018 request for all gift agreements between the Foundation and a specific individual donor; and
- An October 2, 2018 request for all written communications from May 2018 to present sent or received by the Foundation's general counsel and several other executives to/from any donor in which the words IPRA, Libit, lawsuit or appeal appear.

4. Due to the deluge of IPRA requests since entry of the June 26 Order, the Foundation has been required to hire additional staff to process and respond to the requests, which will cost the Foundation in excess of \$70,000 on an annual basis.

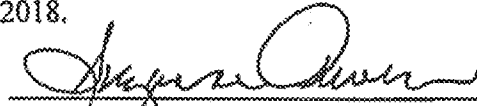
FURTHER AFFIANT SAYETH NAUGHT.



RODNEY L. HARDER

STATE OF NEW MEXICO     )  
  ) ss.  
COUNTY OF BERNALILLO    )

The Following Affidavit of Rodney L. Harder was subscribed and sworn to before  
me this 12<sup>th</sup> day of December, 2018.

  
Notary Public

My Commission Expires: 9/22/2022

THE LAW OFFICES OF NICHOLAS T. HART, LLC

515 GRANITE AVE, NW  
ALBUQUERQUE, NEW MEXICO 87102

TELEPHONE  
(505) 373-0924

FACSIMILE  
(505) 344-9340

Nicholas T. Hart

E-mail: [Nick@NicholasTHartLLC.com](mailto:Nick@NicholasTHartLLC.com)

MAILING ADDRESS:  
P.O. BOX 27721  
ALBUQUERQUE, NM 87125-0326

November 6, 2018

**Via E-Mail: [pat.allen@unmfund.org](mailto:pat.allen@unmfund.org)**

Patrick Allen, Esq.  
General Counsel  
The University of New Mexico Foundation  
Two Woodward Center  
700 Lomas NE, Ste 108  
Albuquerque, NM 87102

**Re: Daniel Libit's IPRA Requests**

Dr. Mr. Allen ---

I am writing in reference to my client, Daniel Libit's, IPRA requests which he has submitted to the University of New Mexico Foundation since Judge Franchini issued her order in *Libit v. University of New Mexico Foundation*. The Foundation has produced certain documents responsive to those requests, and Mr. Libit appreciates the Foundation's willingness to do so. But the Foundation has refused to turn over other documents requested by Mr. Libit, asserting that those documents do not need to be turned over according to NMSA 1978, § 6-5A-1(D), that the Foundation is a private entity, that the records sought by the requests are not public records, that the records contain proprietary information exempted from disclosure by IPRA, and that turning over the records would violate donors' rights of privacy and free association.

These asserted exceptions to turning over public records are baseless. Judge Franchini made clear in her ruling, which has not been stayed by any court, that the Foundation engages in public activities and therefore must turn over records according to IPRA. She also rejected the Foundation's arguments that its records are exempt from disclosure by NMSA 1978, § 6-5A-1(D), that the Foundation is a private entity, and that its records are not public records.

I am writing to ask you to reconsider the Foundation's position that the records requested by Mr. Libit are not subject to disclosure. If the Foundation is unwilling to change its position and produce records responsive to his IPRA requests before the close of business on November 21, 2018, I will be left with no choice but to file an additional lawsuit.

**EXHIBIT B**

THE LAW OFFICES OF NICHOLAS T. HART, LLC

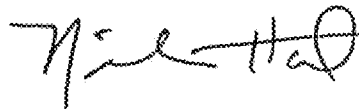
Page 2

November 6, 2018

I hope that we can come to a resolution of these issues without litigation. But Mr. Libit is ready and willing to file additional lawsuits to compel the productions of documents that are clearly public in nature and must be disclosed for public inspection.

Please contact me at (505) 373-0924 or [Nick@NicholasTHartLaw.com](mailto:Nick@NicholasTHartLaw.com) if there are any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick Hart", with a stylized flourish at the end.

Nicholas T. Hart



From: Nicholas Hart [<mailto:nick@nicholashartlaw.com>]

Sent: Friday, November 23, 2018 12:05 PM

To: Pat Allen <[Pat.Allen@unmfund.org](mailto:Pat.Allen@unmfund.org)>

Subject: Re: Daniel Libit

Pat -

I hope you had a Happy Thanksgiving. And thank you for engaging in conversation regarding continuing IPRA issues experienced by Mr. Libit.

Unfortunately, if the Foundation's position is that Judge Franchini's order is limited to just the IPRA requests in that case, and that the Foundation is therefore not under an obligation to respond to any other IPRA requests even though that decision has not been stayed, and even though the Foundation has not even filed a motion to stay, then I do not see any path towards resolving these issues.

As for specificity regarding the requests, Mr. Libit believes that any request that was denied because of allegations of donor confidentiality or because 6-5A-1(D) applies were denied improperly. Unfortunately, the Foundation has denied every request he has submitted, either in whole or in part, on those grounds. Based on this, we may have no choice but to file a second lawsuit.

The Foundation's position is unfortunate. The likelihood of the Foundation succeeding on appeal is low, and Judge Franchini's order made clear that the operations of the Foundation meet every element of the *Toomey* test. If necessary, Mr. Libit is prepared to litigate every IPRA request he submits until the Foundation believes it is necessary to comply with a binding order by the Court.

Please let me know whether the Foundation intends to alter its interpretation of Judge Franchini's order.

Regards,  
Nick

-----  
Nicholas T. Hart  
Law Offices of Nicholas T. Hart, LLC  
515 Granite Ave NW  
Albuquerque, NM 87102  
(505) 373-0924  
[Nick@NicholasTHartLaw.com](mailto:Nick@NicholasTHartLaw.com)

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT

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.

**AFFIDAVIT OF SERGIO PAREJA**

I, Sergio Pareja, state the following from personal knowledge and under penalty of perjury.

1. I currently serve as Dean at the University of New Mexico School of Law.
2. I joined the UNM law faculty in 2005 after nearly nine years in private law practice in Colorado and Indiana. Most recently, I was a partner at a large Denver law firm. While in private practice, the majority of my work was in the area of high-end estate planning.
3. In my capacity as a lawyer for high net worth individuals in Indiana and Colorado, I regularly advised clients regarding charitable giving. Occasionally, their gifts were made anonymously.
4. At the UNM School of Law, I primarily teach courses in the areas of business, tax, and estate planning. Since I started teaching at UNM School of Law, I have taught Federal Income Tax, Contracts, Practicum, Estate and Gift Tax, Taxation of Business Enterprises, International Business Transactions, Wills & Trusts, and Estate & Retirement Planning. I also have taught in the law school's Business & Tax Clinic (now called the Economic Justice Clinic).
5. In my role as Dean of the UNM School of Law, in late 2017 I worked with a donor who desired to make an anonymous gift of \$2.5 million to the law school. That donor insisted that the gift would only be made if it could be made anonymously. UNM did not provide the donor with any personal benefit for making the gift, and the donor did not express a reason for wanting to make the gift anonymously but made it clear that the law school would only receive the gift if it could be made anonymously.

6. I assured the donor that we would not reveal his or her identity and that the gift would remain anonymous.
7. In late 2017, we received the anonymous gift of \$2.5 million. The gift was designated by the donor to establish an endowment to fund three full-ride scholarships, awarding one per year for all three years of study, at UNM School of Law.
8. If UNM or the UNM Foundation were required to disclose the name of this recent donor, I believe they could be at risk of litigation by the donor. Based on my assurances of anonymity, I also would be concerned about being ordered to return the donation if we are unable to honor our promise of anonymity. Return of the donation would result in the loss of the endowment and the three full-ride scholarships. These same risks would likely arise in connection with other prior donors who contributed to UNM or to the Foundation upon the condition of anonymity.
9. Based on my experience with this recent donor, and based on my prior experience as an estate planning lawyer for other high wealth individuals who donated money to public entities and charities, I can state without hesitation that UNM is likely to lose a substantial source of funding from certain donors if it is unable to protect the anonymity of these types of donors.
10. Based on my prior experience as an estate planning lawyer, I can also relate the primary concerns expressed to me by certain high wealth clients that led them to insist upon anonymity.
11. First, some high wealth individuals, particularly elderly people who live by themselves, have concerns that public disclosure of a large donation can subject them to an increased risk of crime. Over the years, several of my clients expressed to me concerns for their physical safety, the physical safety of their family members (especially concerns over kidnapping of family members), as well as their potential exposure to financial crimes. These concerns led several of them to the conclusion that anonymity was the best way to help charities while protecting themselves and their families from being a victim of crime.
12. Second, public disclosure of a large donation often exposes donors to a barrage of requests from other charitable organizations. Several of my clients expressed a desire to avoid such a barrage.
13. Third, some donors wish to keep their estate plans confidential, either out of their personal desire for privacy, or out of a desire to avoid discord with family members or other potential heirs who might question why they are giving their money to charity rather than to family members. Several of my clients were motivated by such concerns.

14. Fourth, some individuals, including some of my former clients, simply prefer to avoid any public recognition of their generosity. Sometimes those concerns are motivated by religious reasons. Other times, it simply is out of humility and desire to help others without public recognition.

FURTHER AFFIANT SAYETH NAUGHT.



Sergio Pareja  
Sergio Pareja

THE STATE OF NEW MEXICO  
COUNTY OF BERNALILLO

This instrument was acknowledged before me on Dec 13, 2018 by Sergio Pareja.

[Signature]  
Notary Public Signature  
Print Beverly Akin

Title or Office: Unm School of Law  
Asst to Dean

My commission expires: Aug 15, 2020