

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

CELIA VALDEZ, *et al.*,

Plaintiffs,

v.

MARY HERRERA, *et al.*,

Defendants.

CIVIL ACTION NO. 1:09-cv-668 JCH/DJS

**SETTLEMENT AGREEMENT REGARDING PLAINTIFFS' CLAIMS ASSERTING  
VIOLATIONS OF SECTION 5 OF THE NATIONAL VOTER REGISTRATION ACT**

**I. INTRODUCTION**

Plaintiffs and defendants listed below have reached the following Agreement in settlement of the claims of plaintiffs in this action asserting violations of Section 5 of the National Voter Registration Act ("NVRA"), 42 U.S.C. § 1973gg-3.

The parties to this Agreement are plaintiffs Celia Valdez, Graciela Grajeda, and Jesse Rodriguez, and defendants Mary Herrera, in her capacity as the New Mexico Secretary of State, Rick Homans, in his capacity as the Secretary of the New Mexico Taxation and Revenue Department ("TRD"), and Michael Sandoval, in his capacity as the Director of the Motor Vehicle Division ("MVD") of the New Mexico Taxation and Revenue Department. The terms of this Agreement apply to the Secretary of State, and to TRD and MVD, including the administration of MVD driver's licensing services by any private or governmental entity that is designated as an agent of TRD to provide driver's licensing services in New Mexico under NMSA 1978, § 66-2-14 or § 66-2-14.1.

**II. DEFINITIONS**

- A. The term "MVD driver's licensing services" refers to the receiving and processing of initial and renewal applications for state driver's licenses and state identification cards, and requests for change of address submitted for purposes of a state driver's license or state identification card.
- B. The term "TRD Agent" refers to any private or governmental entity that is designated as an agent of TRD to provide driver's licensing services in New Mexico under NMSA 1978, § 66-2-14 or § 66-2-14.1.

### **III. RECITALS**

TRD and the Secretary of State shall implement and maintain the procedures and practices set forth in Sections IV through X, below. Unless otherwise indicated, these procedures and practices shall be implemented immediately upon execution of this Agreement or have already been implemented.

### **IV. STAFFING STRUCTURE**

#### **A. Office of the Secretary of State**

1. The Secretary of State shall designate a staff position whose duties include being the “State NVRA Coordinator” and shall notify plaintiffs’ counsel as to the identity of that individual. The State NVRA Coordinator shall coordinate and oversee statewide compliance with the requirements of Section 5 of the NVRA and the provisions of this Agreement. During the term of this Agreement, the Secretary of State shall notify plaintiffs’ counsel of any change in the identity of the State NVRA Coordinator.
2. The State NVRA Coordinator shall provide support and guidance to TRD, and TRD Agents, including the TRD NVRA Coordinator (defined below) and Voter Registration Contacts, to ensure compliance with Section 5 of the NVRA and the provisions of this Agreement. The State NVRA Coordinator shall consult regularly with the TRD NVRA Coordinator regarding office-level compliance and any corrective action plans, as specified in section VIII. The State NVRA Coordinator shall serve as a liaison between the Secretary of State, TRD, and local election authorities regarding NVRA compliance at TRD.
3. The State NVRA Coordinator shall monitor and evaluate office compliance with the NVRA and this Agreement.
4. Within 14 days of the entry of this Agreement, the State NVRA Coordinator shall provide the TRD NVRA Coordinator with a complete list of the last dates to register to vote in elections in New Mexico for the year 2010. Thereafter, the State NVRA Coordinator shall provide the TRD NVRA Coordinator with a complete list of such voter registration deadlines for the coming year by December 15 of each year.
5. Failure of the State NVRA Coordinator to meet the responsibilities and duties imposed by this Agreement shall be grounds for disciplinary action.

#### **B. TRD**

1. TRD shall designate a staff position whose duties include being the statewide “TRD NVRA Coordinator” and shall notify plaintiffs’ counsel as to the identity of

that individual. During the term of this Agreement, TRD shall notify plaintiffs' counsel of any change in the identity of the TRD NVRA Coordinator.

2. The TRD NVRA Coordinator shall maintain a current list of Voter Registration Contacts designated as specified below. If the TRD NVRA Coordinator learns at any time that a Voter Registration Contact position is unfilled at any office, the Coordinator shall ensure that an employee is appointed to fill that position within fifteen business days of the date of discovery.
3. The TRD NVRA Coordinator shall coordinate and oversee compliance with the requirements of Section 5 of the NVRA and the provisions of this Agreement. Such coordination shall involve regular communication with the State NVRA Coordinator and the Voter Registration Contacts to ensure that TRD, including each MVD and TRD Agent office, fully complies with the requirements of Section 5 and the provisions of this Agreement. The TRD NVRA Coordinator shall serve as a liaison between the Voter Registration Contacts and the local election authorities regarding NVRA compliance at MVD and TRD Agent offices.
4. The TRD NVRA Coordinator shall conduct reviews of compliance with Section 5 of the NVRA and the provisions of this Agreement at each MVD and TRD Agent office in New Mexico.
5. The TRD NVRA Coordinator shall be responsible for ensuring that TRD conducts an NVRA education and training program, as specified in section V of this Agreement.
6. The TRD NVRA Coordinator shall ensure that each MVD and TRD Agent office is equipped with appropriate technology hardware and software and other supplies to comply with the provisions of this Agreement.
7. Within 14 days after receiving the complete list of the last dates to register to vote in elections in New Mexico for the year 2010 from the State NVRA Coordinator, the TRD NVRA Coordinator shall provide every Voter Registration Contact such list. The TRD NVRA Coordinator shall provide every Voter Registration Contact with a complete list of such voter registration deadlines for the coming year by December 31, every year thereafter.
8. Failure of the TRD NVRA Coordinator to meet the responsibilities and duties imposed by this Agreement shall be grounds for disciplinary actions.

**C. Local MVD and TRD Agent Offices**

1. TRD shall designate a staff position in each MVD office and shall require each TRD Agent office to designate a staff position whose duties include being the "Voter Registration Contact" for that office. During the term of this Agreement,

TRD shall notify plaintiffs' counsel of any change in designation for Voter Registration Contacts at regular intervals or as otherwise necessary.

2. The Voter Registration Contact shall be responsible for reading and understanding the voter registration manual prepared per section V of this Agreement.
3. The Voter Registration Contacts shall coordinate and oversee compliance with the requirements of Section 5 of the NVRA and the provisions of this Agreement at their respective MVD and TRD Agent offices. Voter Registration Contacts shall provide support and guidance to MVD and TRD Agent employees at their assigned offices regarding proper MVD NVRA procedures. Voter Registration Contacts shall also be responsible for answering questions from the public relating to voter registration at MVD and TRD Agent offices.
4. The Voter Registration Contacts shall ensure that each employee at their assigned offices who provides MVD driver's licensing services receives NVRA training as provided in Section V of this Agreement.
5. The Voter Registration Contacts shall ensure that signs are posted in each MVD and TRD Agent office as provided in section VII of this Agreement.
6. The Voter Registration Contacts shall be responsible for transmitting all completed voter registration portions of applications for driver's license and identification cards to the appropriate state election official not later than 10 days after the date of acceptance, or, if the registration application is accepted within five days before the last day for registration to vote in an election in New Mexico, not later than five days after the date of acceptance.
7. Failure of Voter Registration Contacts to meet the responsibilities and duties imposed on them by this Agreement shall be grounds for disciplinary action.

## **V. TRAINING**

- A. Within 60 days of the date of the entry of this Agreement, the State NVRA Coordinator and the TRD NVRA Coordinator together shall develop a comprehensive manual on the requirements of Section 5 of the NVRA and all related New Mexico state statutes, and the procedures used by MVD and TRD Agent offices to comply with Section 5. The proposed manual shall be provided to plaintiffs' counsel for review and comment. The Coordinators shall update the manual when needed.
- B. The State NVRA Coordinator shall provide the TRD NVRA Coordinator with supplemental guidance as needed (e.g., to communicate any changes in federal or state law that relate to voter registration at MVD and TRD Agent offices, or to address any problems with NVRA compliance, as determined by the procedures outlined in Section VIII).

- C. Within 120 days of the entry of this Agreement, TRD, in conjunction with the Secretary of State, shall develop a mandatory, annual NVRA education and training program to be completed by each Voter Registration Contact. The proposed training plan shall be provided to plaintiffs' counsel for their review and comment. TRD and the Secretary of State's office shall update the annual education and training program when needed.
- D. Upon implementation of the annual NVRA training program, and for the term of this Agreement, all Voter Registration Contacts shall complete and attest to having completed that training. All Voter Registration Contacts on annual, sick or other leave at the time when their annual training is scheduled shall be trained within one month of their return to active work status. All newly appointed Voter Registration Contacts shall receive training equivalent to the annual NVRA training program within one month of their appointment to the position if the employee has not previously received the annual training.
- E. The TRD NVRA Coordinator shall provide for special supplemental training to Voter Registration Contacts on new or amended MVD NVRA policies upon adoption of those policies.
- F. After receiving the annual NVRA training and any supplemental training, each Voter Registration Contact shall be responsible for providing the equivalent of such training to his/her employees who are responsible for providing MVD driver's licensing services at each respective MVD or TRD Agent office.
- G. Voter Registration Contacts in each office shall be responsible for providing NVRA training to each new employee or reassigned employees who are responsible for providing MVD driver's licensing services. Such training shall be provided in conjunction with the on-the-job training provided to such employees and shall be provided before the employee is permitted to provide MVD driver's licensing services without direct supervision.
- H. TRD shall maintain the NVRA training materials and other NVRA support information on its intranet.

## **VI. PROVISION OF FORMS AND ASSISTANCE**

### **A. Registration Form**

All registration forms distributed pursuant to this Agreement shall be coded so that a voter registration official who receives a completed application shall be able to identify that it originated from TRD and identify the MVD or TRD Agent office from which it originated. The Secretary of State shall prepare these registration forms to include the language specified by section 5(c)(2)(C) and (D) of the NVRA, 42 U.S.C. § 1973gg-3(c)(2)(C) and (D).

**B. Applications for Driver's License and State Identification Card**

1. Each MVD and TRD Agent office shall offer every applicant and renewal applicant for a driver's license or state identification card the opportunity to register to vote, as follows:
  - a. The computer program used by MVD and TRD Agent offices to process all applications and renewal applications for a driver's license or state identification card shall, at an appropriate point in the processing, prompt the employee processing the application to offer the applicant the opportunity to register to vote. After this prompt is given, the program shall require the employee to record in the computer that the applicant either indicated that they wanted to register to vote (by selecting "Y" for "Yes") or declined to register to vote (by selecting "N" for "No"). The program shall prevent the employee from proceeding with the processing of an application unless this information is recorded. If the employee selects "Y", the computer program shall automatically print a voter registration form, and in accord with the requirements of Section 5(c)(2), of the NVRA, 42 U.S.C. § 1973gg-3(c)(2), the computer program shall automatically print certain information on the form, obtained from the driver's license or identification-card portion of the application, so as not to require the applicant to enter any information on the form which duplicates information that the applicant is required to provide to obtain a driver's license or state identification card, other than a signature.
  - b. The voter registration prompt described in the previous subparagraph shall be included in the computer program in such a manner as to ensure that the employee processing the application reaches this prompt for all applicants and renewal applicants for a driver's license or state identification card who are not disqualified from obtaining a driver's license or state identification card.
  - c. Any person who is disqualified from obtaining a driver's license or state identification card shall be asked whether s/he would like to register to vote and shall be given a voter registration form if s/he answers "yes" or otherwise affirmatively responds that s/he wishes to be given a registration form; provided, however, that TRD shall not be required to provide a voter registration form to any person that is identified as someone other than the person s/he purports to be (TRD avers that not offering a voter registration form to such person is in accordance with 42 U.S.C. § 1973i).
2. Each MVD and TRD Agent office shall provide the same degree of assistance to the applicant in completing the application for voter registration as is provided for completing the application or renewal application for a state driver's license or identification card. For those applicants who receive a voter registration form under paragraph.1.a above, assistance shall include examination of a completed

voter registration application to determine whether all required information has been provided and that the form has been signed by the applicant.

### **C. Change of Address Requests**

1. Each MVD and TRD Agent office shall notify the appropriate state election official of a change of address for voter registration for all individuals who request a change of address at an office for purposes of a driver's license or state identification card, unless the individual states that the change of address is not for voter registration purposes.
  - a. The computer program used by MVD and TRD Agent offices to process all face-to-face renewal transactions that include a change of address request shall prompt employees to ask if the applicant would like to have MVD notify the Secretary of State of the change of address. The program shall prevent the employee from proceeding with the processing of the renewal unless the employee records in the computer whether the applicant would like the Secretary of State's Office notified of the change of address (by checking the box that states "Please check this box if SOS should be notified.")
  - b. If the employee checks the box for the notification prompt, the program shall automatically print a voter registration form to notify the Secretary of State's office of the change of address or to register the applicant to vote if the applicant is not already registered. The Voter Registration Contact shall collect and transmit all voter registration forms to the Secretary of State's office.
2. Where a request for a change of address for purposes of a driver's license or state identification card is not processed by computer and, instead, is processed using a paper change of address form, the following procedures shall apply.
  - a. The change of address form shall state, prominently and in easily readable font, that MVD is required to report the change of address to the New Mexico Secretary of State as a change of address for voter registration purposes, unless the individual states on the form that the change of address is not for voter registration purposes; and the form shall allow for an appropriate declination box that may be checked-off to indicate that the change of address is not for voter registration purposes.
  - b. MVD and TRD Agents shall transmit any notice of change of address to the Secretary of State's Office for every individual who does not check the declination box on the "change of address" form.



- c. Voter Registration Contacts for each MVD and TRD Agent office shall be responsible for ensuring that each MVD and TRD Agent office has an adequate supply of hard-copy change of address forms.

#### **D. Remedial Mailing**

From the date of this Agreement, if TRD determines that an applicant for an initial or renewal driver's license or state identification card, or an individual submitting a change of address notification at an MVD or TRD Agent office, was not given the opportunity to register to vote, an MVD or TRD Agent employee shall immediately notify the TRD NVRA Coordinator who shall send a letter and a New Mexico voter registration form, addressed to the Secretary of State, return postage prepaid by the Secretary of State, to the individual, offering him/her the opportunity to register to vote. This mailing shall include instructions to the individual advising that (1) s/he may receive assistance in filling out the voter registration form by calling or visiting a county clerk's office; (2) s/he may return the completed form by mailing it to the Secretary of State or by delivering or mailing it to the local election authority whose address shall be provided; (3) s/he is receiving the mailing because the office has determined that it has a record of the individual not being offered the opportunity to register to vote, and that the mailing does not affect the individual's registration status if the individual is already registered to vote at the individual's current address, and (4) receipt of this mailing does not indicate any information about the individual's eligibility to register to vote. A copy of the letter shall be maintained in the central file regarding voter registration maintained by the TRD NVRA Coordinator.

#### **E. Additional Voter Registration Opportunity**

MVD and TRD Agent offices shall maintain an additional supply of voter registration forms and make them available to anyone who visits a MVD or TRD Agent office. Voter Registration Contacts for each MVD and TRD Agent office shall be responsible for coordinating with the State NVRA Coordinator to ensure that each MVD and TRD Agent office has an adequate supply of such registration forms, and the Secretary of State shall ensure their availability.

#### **F. Future Changes to Processes**

1. TRD shall be permitted to make any technical changes, including computer or software changes, to its licensing processes, as necessary, so long as such technical changes do not impact compliance with Section 5 of the NVRA and this Agreement.
2. During the term of this Agreement, TRD shall provide notice to Plaintiffs' counsel of any proposed substantive changes to voter registration processes. Nothing in this paragraph alters the rights of Plaintiffs under section XII of this Agreement to enforce the substantive terms of this Agreement.



## **VII. OFFICE SIGNS**

TRD shall prominently post signs at every MVD and TRD Agent office generally advising the public of the opportunity to register to vote when an individual submits an application, a renewal application, or a change of address notification for driver's license or identification card at the office. These signs will include language indicating that the process is simple for the applicant and that the licensing agent will print a registration form for the person with the identification information which the applicant previously provided to the MVD agent.

## **VIII. NVRA MONITORING AND COMPLIANCE ASSURANCE**

### **A. Data Collection and Reporting**

1. The TRD NVRA Coordinator shall provide plaintiffs' counsel with a monthly report containing the following data for the preceding month: (i) the total number of initial and renewal driver's license and identification card applications processed to completion; (ii) the number of "yes" and "no" answers recorded in response to the computerized voter registration prompt in the application procedure (section VI.B.1.a of this Agreement); (iii) the number of remedial mailings; and (iv) the number of change of address notifications forwarded to the Secretary of State pursuant to section VI.C.2 of this Agreement. The foregoing data shall be provided in the aggregate on a statewide basis, as well as by MVD and TRD Agent office. This report shall be provided on or before the fifteenth day of the month following the month reported.
2. The State NVRA Coordinator shall provide the TRD NVRA Coordinator and plaintiffs' counsel with a quarterly report containing the following data for the preceding quarter: (i) the number of voter registration forms coded as having originated from MVD and TRD Agent offices that were received by election officials; (ii) the number of such forms that resulted in new registrations or a change in registration address; and (iii) the number of such forms which could not be processed because required information was missing from the form. The foregoing data shall be provided in the aggregate on a statewide basis, as well as by MVD and TRD Agent office. This report shall be provided on or before the fifteenth day of the month following the quarter reported.
3. On a quarterly basis, the TRD NVRA Coordinator shall provide a report to plaintiffs' counsel in which the Coordinator analyzes the data from the TRD and Secretary of State monthly or quarterly reports, as applicable, and describes any corrective actions undertaken during the preceding quarter. Quarterly reports may also include other NVRA-related information, including changes to coordinators and contacts. The quarterly report shall be provided by July 25 for the quarter ending June 30, October 25 for the period ending September 30, January 25 for the period ending December 31 and April 25 for the period ending March 31.

## **B. Compliance Office Checks**

1. The TRD NVRA Coordinator or MVD Bureau Chiefs will provide periodic “spot checks” of licensing services activities at MVD and TRD Agent offices to determine whether applicants for MVD licensing services are being offered the opportunity to register to vote in accordance with the NVRA and this Agreement. TRD shall make reasonable efforts to ensure that every MVD and TRD Agent office is inspected in accordance with this paragraph at least once every other year, or as otherwise necessary, subject to the limitations of staff, budget, and other resources. In addition, when the TRD NVRA Coordinator or MVD Bureau Chiefs have occasion to visit a MVD or TRD Agent office, TRD shall make reasonable efforts to provide a review of whether that office is offering voter registration in accordance with the NVRA and this Agreement.
2. TRD NVRA Coordinator shall provide plaintiffs’ counsel with those portions of TRD’s Tax Fraud Investigations Division’s audit reports for TRD Agents that relate to voter registration when such reports are completed. Presently, private retail TRD Agents are subject to a three-year audit cycle; municipal TRD Agents are subject to a five-year audit cycle.
3. TRD shall implement a “Secret Shopper” program, contingent upon sufficient appropriations by the New Mexico Legislature, during the term of this Agreement to provide “spot checks” to determine whether applicants for licensing services or change of address are being offered the opportunity to register to vote in accordance with the NVRA and this Agreement. The “Secret Shopper” program, if and when implemented, shall conduct “spot checks” through the use of applicants for MVD licensing services, including those services that require simultaneous application for voter registration.
4. TRD shall provide plaintiff’s counsel, in each quarterly report, with the results of any “secret shopper” program, pertaining to voter registration, and any compliance actions taken as a result of these reviews.

## **C. Evaluation of Office and Employee Compliance with the NVRA**

1. Should the TRD NVRA Coordinator determine that a particular MVD or TRD Agent office is not complying with Section 5 of the NVRA or the provisions of this Agreement or otherwise needs corrective action to assure compliance, the TRD NVRA Coordinator, in conjunction with the local Voter Registration Contact and management employees and in consultation with the State NVRA Coordinator, shall determine the source of the problem and develop and implement an appropriate corrective action plan. The local Voter Registration Contact and the TRD NVRA coordinator shall monitor the implementation of the corrective action plan.

2. MVD or a TRD Agent shall take appropriate corrective action when it is determined that individual employees at a particular office are not complying with Section 5 of the NVRA or the provisions of this Agreement, or otherwise are in need of corrective action to assure compliance.

**D. TRD/MVD Website and Public Relations, and Secretary of State Website**

1. TRD and/or MVD shall provide information on its website to notify the public of the opportunity to register to vote during the application for a driver's license, identification card, or license or identification card renewal. The information to be placed on the website shall be submitted to plaintiffs' counsel for review and comment. TRD and/or MVD in its sole discretion, may consider recommendations from plaintiffs' counsel for any improvements to the website regarding voter registration.
2. During the three-month period prior to the close of registration for any statewide primary or general election, TRD and/or MVD shall conduct a public relations campaign to publicize the availability of voter registration services at MVD and TRD Agent offices.
3. The Statewide NVRA Coordinator shall, on a quarterly basis, post on the Secretary of State website the following statewide data for the immediately preceding quarter: the total number of driver's license and identification card applications (new and renewal) processed to completion; and the data specified in paragraph VIII.A.2. As new quarterly data is posted, prior quarterly data shall remain posted.

**IX. BILINGUAL PROVISIONS**

The voter registration processes and notices specified in sections VI and VII shall be undertaken in compliance with Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a. See also 28 C.F.R. § 55.17 (targeting of minority language materials and assistance).

**X. NOTIFICATION OF SETTLEMENT**

TRD shall provide notice to all MVD and TRD Agent employees of this settlement Agreement, including a statement notifying all such employees of TRD's requirement to provide simultaneous voter registration pursuant to the Section 5 of the NVRA. Within 60 days of the entry of this Agreement each MVD and TRD Agent office shall hold a meeting for all employees who are responsible for providing MVD driver's licensing services to discuss the procedures for offering voter registration, including any changes to office procedures resulting from the Agreement.

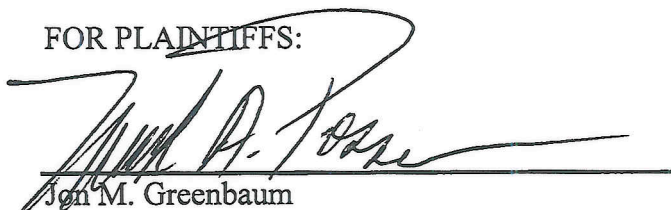
## **XI. ATTORNEYS' FEES AND EXPENSES**

Plaintiffs shall be entitled to recover reasonable attorneys' fees and litigation expenses. The parties shall confer in good faith to resolve the amount and payment of attorneys' fees and litigation expenses. If the parties are unable to reach agreement with respect to attorneys' fees for Plaintiffs' TRD claim within thirty days of the execution of this Agreement, the Plaintiffs shall submit their attorneys' fee application for that claim to Judge Herrera no later than forty-five days after execution of this Agreement.

## **XII. TERM AND ENFORCEMENT**

- A. This Agreement shall remain in effect for four years, until June 30, 2014.
- B. During the first two years of this Agreement, the United States District Court for the District of New Mexico shall have continuing jurisdiction to enforce its provisions.
- C. Before bringing an enforcement action during the period of time when the United States District Court has retained jurisdiction, plaintiffs shall provide defendants with written notice of any claim of breach of this Agreement. Defendants shall have 30 days to respond to such notice. The parties shall then attempt to resolve plaintiffs' concerns within 30 days of the date that the plaintiffs receive the response. In the event that the parties are not able to resolve their dispute within 30 days, the parties shall submit the case to mediation of the dispute under the supervision of a mediator to be designated by U.S. District Judge Judith C. Herrera. If the mediator determines that the parties are unable to resolve the dispute then the mediator shall notify the parties and the plaintiffs' may file a motion for specific performance of the Agreement within 15 days of the determination that the matter cannot be resolved by mediation.
- D. Within ten days of June 30, 2012, the parties shall file a stipulation of dismissal with the United States District Court of plaintiffs' claims asserting violations of Section 5 of the NVRA, 42 U.S.C. § 1973gg-3. Thereafter, during the remainder of time that this Agreement remains in effect, this Agreement shall be enforceable in New Mexico district court.
- E. After plaintiffs' claims asserting violations of Section 5 of the NVRA are dismissed pursuant to paragraph D above, if plaintiffs conclude that defendants are in breach of this Agreement plaintiffs first shall notify defendants in writing of the asserted breach. Plaintiffs then shall allow defendants 30 days to respond to the notice and take action to cure the asserted breach before filing an enforcement action in New Mexico district court.

FOR PLAINTIFFS:



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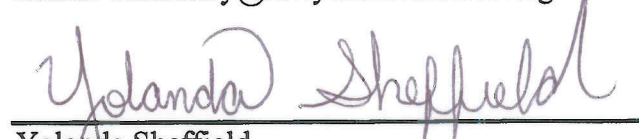
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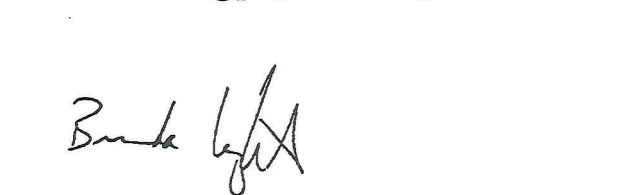
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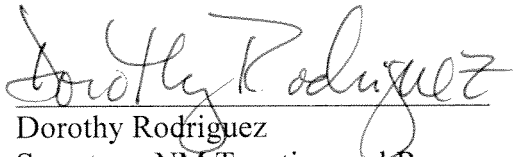
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Dorothy Rodriguez  
Secretary, NM Taxation and Revenue Department

FOR DEFENDANT HERRERA:

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Mary Herrera  
NM Secretary of State