

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

CELIA VALDEZ, GRACIELA GRAJEDA,
JESSIE RODRIGUEZ, and SHAWNA
ALLERS,

Plaintiffs,

v.

MARY HERRERA, in her official capacity as
Secretary of State of New Mexico, KATHRYN
FALLS, in her official capacity as Director of
the New Mexico Human Services Department,
FRED SANDOVAL, in his official capacity as
Director of the Income Support Division of the
New Mexico Human Services Department, and
CAROLYN INGRAM, in her official capacity
as Director of the Medical Assistance Division
of the New Mexico Human Services
Department, DOROTHY RODRIGUEZ in her
capacity as the Secretary of the New Mexico
Taxation and Revenue Department, and
MICHAEL SANDOVAL, in his capacity as
the Director of the Motor Vehicle Division of
the New Mexico Taxation and Revenue
Department,

Defendants.

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

PRETRIAL ORDER

This matter is before the Court pursuant to Fed. R. Civ. P. 16. The parties conferred and submit the following Pretrial Order. The parties in this case for purposes of trial are Plaintiff Shawna Allers and Defendants Mary Herrera, Kathryn Falls, Fred Sandoval, and Carolyn Ingram.

I. APPEARANCES

Attorneys who will try the action:

For Plaintiff:

The following attorneys likely will participate in the trial of the lawsuit:

Allison L. Kierman
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Mark A. Posner
Lawyers Committee for Civil Rights under Law

Nicole Kovite
Project Vote

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DEMOS: A Network of Ideas and Action

David Urias
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The following attorneys also may participate in the trial:

Cynthia A. Ricketts
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Robert Kengle
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For Defendants:

Scott Fuqua
Assistant Attorney General
NM Attorney General's Office
For Defendant Mary Herrera, Secretary of State

Elaine P. Lujan
Assistant Attorney General
NM Attorney General's Office

For Defendants Kathryn Falls, Fred Sandoval, and Carolyn Ingram of the Human Services Department (collectively "HSD")

II. JURISDICTION AND RELIEF SOUGHT

A. Subject Matter Jurisdiction

1. Was this action removed or transferred from another forum?

No.

2. Is subject matter jurisdiction of this Court contested?

Uncontested.

3. Asserted Jurisdictional Basis

Federal question jurisdiction.

Statutory Provisions Invoked: 28 U.S.C. §§ 1331 and 1343(a).

B. Personal Jurisdiction and Venue

1. Is personal jurisdiction contested?

Uncontested

2. Is venue contested?

Uncontested.

C. Are the proper parties before the Court?

Uncontested.

D. Affirmative Relief Sought in this Action

1. Plaintiff seeks:

a. A declaration, pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 1973gg-

9(B)(2), that the Defendants have violated Section 7 of the National Voter Registration Act

("NVRA"), 42 U.S.C. § 1973gg-5, by failing to provide voter registration services required by

Section 7 to public assistance clients served by the New Mexico Human Services Department (“HSD”);

b. A permanent injunction enjoining the Defendants, their agents and successors in office, and all persons working in concert with them, from implementing practices and procedures that violate Section 7 of the NVRA;

c. A permanent injunction directing the Defendants, under a court-ordered plan with appropriate reporting and monitoring requirements, to take all appropriate measures necessary to remedy the harm caused by their non-compliance with Section 7 of the NVRA, including, without limitation, ensuring that individuals affected by Defendants’ non-compliance with Section 7 of the NVRA are provided immediate opportunities to register to vote or change their voter registration addresses;

d. A permanent injunction directing the Defendants, under a court-ordered plan, to take all steps necessary to ensure ongoing compliance with the requirements of Section 7 of the NVRA, including, without limitation, distributing voter registration applications to all public assistance clients who engage in a statutorily-covered transaction except when a client declines to register in writing, assisting applicants in completing voter registration applications, training personnel to ensure that voter registration applications are being distributed and assistance is being provided as required by Section 7, reporting data and other information regarding the distribution and receipt of voter registration applications and the use of voter information forms, monitoring the distribution and receipt of voter registration applications and the use of voter information forms and reporting information regarding such monitoring, and providing other voter registration services and assistance as required by the NVRA;

e. An award of costs and fees; and

f. Retaining jurisdiction over this action to ensure that the Defendants are complying with their obligations under the NVRA.

2. Defendants do not seek affirmative relief.

III. BRIEF DESCRIPTION OF NATURE OF CLAIMS/DEFENSES

A. Plaintiff's Claims

Plaintiff seeks relief to redress violations of New Mexico's obligations under Section 7 of the NVRA to distribute voter registration applications to public assistance clients served by HSD. Defendants routinely and systematically have failed, and continue to fail, to comply with the NVRA and do not distribute voter registration applications and provide assistance to persons who apply for public assistance, or who submit a recertification, renewal, or change of address form relating to public assistance, as required by Section 7.

B. Defendants' Defenses

Defendants believe they have met and continue to meet their obligations under the NVRA.

IV. FACTUAL CONTENTIONS UNDERLYING CLAIMS/DEFENSES

A. Stipulated Factual Contentions

The parties agree to the following facts listed separately below:

1. The State of New Mexico is subject to the requirements of the NVRA.

2. HSD is a New Mexico state government agency responsible for providing public assistance to qualifying residents of New Mexico and, as such, is subject to the requirements of Section 7 of the NVRA.

3. Defendants Kathryn Falls (sued in her official capacity as the Secretary of HSD), Fred Sandoval (sued in his official capacity as

Director of HSD's Income Support Division), and Carolyn Ingram (sued in her official capacity as Director of HSD's Medical Assistance Division) are among the state officials responsible for ensuring New Mexico's compliance with Section 7 of the NVRA with regard to the distribution of voter registration applications to public assistance clients served by HSD.

4. Defendant Mary Herrera (sued in her official capacity as the New Mexico Secretary of State) is New Mexico's chief election officials and is responsible for coordinating New Mexico's compliance with Section 7 of the NVRA, including the distribution of voter registration applications to public assistance clients served by HSD. The Secretary of State issued regulations in 1994 aimed at enforcing Section 7 of the NVRA; these regulations have not been amended or supplemented since 1994.

5. The public assistance programs administered by HSD include the Supplemental Nutrition Assistance Program (also known as Food Stamps), Medicaid, Temporary Assistance for Needy Families, and general assistance.

6. HSD's current policy is that voter registration applications shall not be attached to applications for public assistance, recertification or renewal applications, or change of address forms, and that voter registration applications shall not otherwise be automatically distributed to public assistance clients.

7. HSD's current policy is to include a so-called "declination provision," i.e., a voter information form, in all applications for assistance

(in both English and Spanish), recertification and renewal applications, and its change of address form. The current language of this “declination provision” or voter information form is as follows:

If YOU are NOT registered to vote where you live now, would you like to register to vote here today? (Please check one) YES NO

IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.

The NATIONAL VOTER REGISTRATION ACT provides you with the opportunity to register to vote at this location. If you would like help in filling out a voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private.

IMPORTANT: Applying to register or declining to register to vote WILL NOT AFFECT the amount of assistance that you will be provided by this agency.

Signature _____

Date _____

CONFIDENTIALITY: Whether you decide to register to vote or not, your decision will remain confidential. **IF YOU BELIEVE THAT SOMEONE HAS INTERFERED with your right to register or to decline to register to vote, or your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with the Office of the Secretary of State, 419 State Capital, Santa Fe, NM, 87503, (phone: 1-800-477-3632.)**

8. In addition to including the “declination provision” in all applications for assistance, HSD’s current policy is to verbally ask all applicants if they would like to register to vote.

9. HSD’s current policy is that a voter registration application is provided to public assistance clients who check “yes,” and a registration application is not provided to clients who check “no.” HSD’s current policy is that a registration application is not provided to clients who leave both boxes blank, except if such clients verbally indicate that they desire to register to vote, HSD’s current policy is that a voter registration application then is provided.

10. The versions of the ISD 100 benefits application form utilized by Ms. Allers in September 2008 and March 2009 all contain a declination provision.

11. Ms. Allers submitted an Application for Assistance, ISD 100, on March 23, 2010, and indicated in the declination provision of the application that she wanted to register to vote.

12. HSD staff is prohibited from seeking to influence the political preference or party registration of a person registering to vote, displaying any political preference or party alliance, making any statement or taking any action for the purpose of discouraging the person from registering to vote, making any statement or taking any action that would lead a person to believe that a decision to register or not to register has any bearing on the availability of services or benefits, seeking or inducing any person to register to vote in any particular manner, revealing the office at which a person registered to vote, and revealing any information on voter registration or declination of voter registration forms for any purpose other than voter registration purposes.

13. HSD's monthly voter registration report is a tally of the total voter registration forms sent to the county clerk and the number of voter registration forms handed out.

14. Pursuant to Section 11 of the NVRA, 42 U.S.C. § 1973gg-9, written notices asserting violations of Section 7 of the NVRA were sent to Secretary of State Herrera on June 12, 2007 and March 23, 2009. Pursuant to rules issued by the Office of the Secretary of State, the Secretary was required to conduct an investigation to determine whether a violation had occurred and, if a violation was found, was required to take necessary steps to correct the violation.

B. Contested Material Facts

1. Plaintiffs' Contentions:

a. Deputy Director of Field Operations, Ted Roth, testified as Defendant Hyde's 30(b.) (6.) designee that he had no information regarding voter registration activity performed by his predecessor at HSD. (Roth Dep. Tr. 168:24-25.)

b. State Agency Voter Registration Agent Manual: Ted Roth, the ISD NVRA Coordinator, claimed that he used the SOS' manual to train his staff about once a year when he was an office manager, but both Rochelle Radloff, the County Director for the Southwest Bernalillo Field Office, and Cindy Salazar, the Regional Operations Manager for Region 5, stated that they received no written voter registration guidance of any kind prior to January 22, 2008, indicating that Mr. Roth's practice was not uniform. (Roth Dep. Tr. 12:8-10; 14:9-16.); (Salazar Dep. Tr. 61:5-7.); (Radloff Dep. Tr. 29:23-30:19.).

c. Cindy Salazar, Regional Operations Manager for Region 5, testified (1.) that she did not know if the 11 offices under her supervision received the SOS's manual, and (2.) that she never reissued it to her staff during her tenure. (Salazar Dep., pgs 72:22-73:2.)

d. Rita Espinosa, the Regional Operations Manager for Region 3, remembers receiving a handout when the NVRA was passed, but she does not remember what it was, indicating that her offices did not widely use the manual. (Espinosa Dep., pg 21:13-

15.)

e. From 1995 until 2008, the SOS' manual, which was not even distributed to all employees, was the only policy that HSD had regarding voter registration. (Roth Dep. Tr. 150:16-20.)

f. Even though the NVRA became effective in 1995, Defendant failed to issue its own internal voter registration policies (ISD-GI 08-01, dated January 22, 2008, and ISD-GI 08-37, dated September 5, 2008.) until 2008.

g. Defendant HSD also failed to create a training manual until 2009 on how employees must carry out their voter registration duties. (Roth Dep. Tr. 192:15-193:1.)

h. Agency silence from 1995 through 2008 on how employees must carry out their voter registration duties resulted in an agency-wide neglect of the law: the ISD NVRA

Coordinator, Ted Roth, does not know how voter registration activities were monitored before the first ISD-GI was issued in September of 2008, because no memos had been issued before that date and no trainings had been mandated (of which he was aware.) (Roth Dep. Tr., pg 167:20-168:9.)

i. Regional Operations Managers in the agency confirm that voter registration was not a priority: Ms. Espinosa does not recall what her Region 3 offices did regarding voter registration before the January 2008 ISD-GI was issued (Espinosa Dep. Tr., pgs 76:8-20.)

j. Dorothy Fisher, the County Director for the West Dona Ana County Field Office, does not recall if she or any of the five or six employees in her unit offered voter registration services to clients while she was a unit supervisor at the Las Cruces office between approximately 1994 and August of 2003. (Fisher Dep. Tr. 7:24-8:19.)

k. Mr. Delgado, the Regional Operations Manager for Region 1, did not recall much happening with voter registration at all: he does not recall voter registration being brought up by his managers prior to January 2008 or being discussed during conversations with directors and deputy directors (Delgado Dep. Tr. 45:8-12; 54:25-55:8.). Mr. Delgado does not recall any specific occasion when he brought up voter registration with a county manager prior to January 2008. (Delgado Dep. Tr. 45:13-46:2.)

l. When Cindy Salazar, Regional Operations Manager for Region 5, was a caseworker she visited hospitals to assist patients in applying for Medicaid, but did not bring voter registration forms with her. (Salazar Dep. Tr., 19:19-20:2; 25:22-26:7.)

m. In addition to agency-wide failures to provide voter registration services, defendant HSD also failed to provide many clients with the legally-required “declination” form. As recently as 2008 and 2009, some of the agency’s forms still lacked the “declination” form. (Roth Dep. Tr., pg 89:16-19.) Moreover, the agency did not require staff to attach “declination” forms to benefits applications lacking same. (Roth Dep. Tr. 154:9-23.)

n. Such failure to include the “declination” in all materials resulted in widespread violations of the NVRA. The ISD NVRA Coordinator, Ted Roth, admitted that, while he was the office manager in Ruidoso from 1990 to 2000, not every client received a “declination” form (Roth Dep. Tr., 12:8-10, 20:13-15, 21:2-5.) “Sometimes it happened, sometimes it didn’t.” (Id. at 22:12-14.)

o. Cindy Salazar, Regional Operations Manager for Region 5, testified that she does not know whether staff in the 11 offices she supervises used

“declination” forms before January 2010, when they were incorporated into benefits forms. (Salazar Dep. Tr. 85:4-12.) “The truth is,” she said, “if [caseworkers] didn’t have the [declination] form attached to the application, they would have just gone with, you know, those little signs they put by their desk, ‘You can ask me to register to vote,’ or ‘Register to vote here.’” (Id. at 63:17-21.) In other words, the client – not the caseworker – would need to be proactive about voter registration. (Id. at 64:20-65:3.) Ms. Espinosa’s offices had also been reluctant to use “declination” forms. (Espinosa Dep. Tr. 36:25-37:1.)

p. The agency’s change of address forms also did not include the “declination” form. (Roth Dep., 122:25-123:14.)

q. In addition to failing to provide all clients with declination forms, some offices did not have enough voter registration forms on hand. The San Juan County clerk, for example, only provided 50 voter registration forms at a time to the local HSD office, which was an hour to an hour-and-a-half round trip from the clerk’s office. (Burton Dep. Tr., pg 64:3-5, 68:8-13.) It was not until a year ago that the San Juan County clerk’s office began providing forms in blocks of 100 and, up until that time, the office would occasionally run out of forms, which could not be replenished until the next day. (Id. at 64:15-17, 65:25-66:3.) The HSD offices in Bernalillo County have also had problems obtaining voter registration forms from the county clerk’s office; they too could only receive 100 (50 English, 50 Spanish.) forms at a time and would have to send two workers to get more forms so that one can drive around the block because there is no parking at the county clerk’s office. (Espinosa Dep. Tr., pg 113:3-15.)

r. In addition to the above failures, before 2008, HSD did not provide training to all of its employees regarding providing voter registration services. (Delgado Dep. Tr. 79:1-8.) (testifying that he is not aware of voter registration being discussed at any HSD training session at any level prior to January 2008.); (Salazar Dep. Tr. 100:10-13.) (testifying that she has never received or conducted a training that included information regarding voter registration services.)

s. Cindy Salazar has never given a specific instruction to her County Directors about voter registration services. (Salazar Dep. Tr. 119:23-120:7.) Prior to 2008, Ms. Salazar discussed voter registration services with her County Directors “maybe twice in a year.” (Salazar Dep. Tr., 42:4-18.)

t. By Defendants’ own count, in 2005, twenty-six HSD offices failed to turn in any completed voter registration applications to the county clerk for at least three months in a row.

u. By Defendants’ own count, in 2006, twenty-one HSD offices failed to turn in any completed voter registration applications to the county clerk for at least three months in a row.

v. By Defendants’ own count, in 2007, twenty-one HSD offices failed to turn in any completed voter registration applications to the county clerk for at least three months in a row.

w. By Defendants’ own count, in 2008, two HSD offices failed to turn in any completed voter registration applications to the county clerk for at least three months in a row.

x. By Defendants' own count, in 2009, fourteen HSD offices failed to turn in any completed voter registration applications to the county clerk for at least three months in a row.

y. By Defendants' own count, nine HSD offices failed to turn in any completed voter registration applications to the county clerk for at least three months in a row for four out of the five years from 2005 through 2009.

z. Investigations conducted of HSD offices in 2008 and 2009 confirm what the data suggest: staff are not providing voter registration to all clients who apply for, recertify, or change an address in connection with benefits. Also, in January of 2009, Project Vote interviewed 42 individuals exiting HSD offices who had conducted transactions triggering the NVRA's voter registration obligations. Only one individual received a voter registration application.¹

aa. Ms. Salazar testified that, as Regional Operations Manager for Region 5, she monitors the number of applications for public benefits processed at her office and, if the number of applications dropped, she would contact the office and find out why the numbers were low. (Salazar Dep. Tr. 115:8-24.)

bb. Ms. Salazar also testified that, for the entire year of 2006, her office did not transmit a single voter registration form to the county clerk and she never talked to anyone in her office about that issue. (Salazar Dep. Tr. 116:17-25, 117:6.) In her deposition, Ms.

Salazar revealed that she "didn't even know [they] had zero [voter registrations.]" (Salazar Dep. Tr. 117:20.)

¹ These findings prompted Project Vote and Demos to send a letter, dated June 12, 2007, to the Secretary of State in her capacity as Chief State Election Official responsible for coordinating NVRA matters in New Mexico; a copy was sent to Defendant HSD, notifying them of widespread Section 7 violations and the intent to sue if the problems were not resolved.

cc. When asked to explain the numbers, Ms. Salazar testified that those numbers were the result of “very poor counting” (Salazar Dep. Tr. 116:17-117:3.), and that, on the occasions when the offices in her region reported zero voter registrations,² she simply “trust[ed]” that “no one wanted to register to vote.” (Salazar Dep. Tr. 114:2-15.)

dd. Mr. Delgado, the Regional Operations Manager for Region 1, testified that as far as voter registration applications are concerned, “anything other than zero is good.” (Delgado Dep. Tr. 38:18-22.) He also testified that he does “nothing in particular” with the monthly voter registration report, even though three offices in his region posted zeros for at least four months in a row in 2009. (Delgado Dep. Tr. 23:23-25.)

ee. Ms. Fisher, the County Director for the West Dona Ana County Field Office, testified that zero voter registration forms completed and returned to the county clerk in a month would not indicate a problem, and that she has “no idea” why her office returned zero voter registration forms for two full months. (Fisher Dep. Tr. 88:12-14; 91:4-8.)

ff. Although her office had zeros for five straight months in 2007, Rochelle Radloff, the former County Director of the Southeast Albuquerque office, never determined that the office was deficient with regards to voter registration in any way, and does not recall taking any action in response to those numbers. (Radloff Dep. Tr. 61:1-6; 88:11-21.)

² Ms. Salazar’s region reported zero voter registrations in the Lincoln office for eleven months in 2009. The Torrance office reported zero voter registrations for seven months in 2009.

gg. Roger Burton, the County Director for the San Juan County Field Office, agreed that any number of voter registrations higher than zero may not lead to any action on his part. (Burton Dep. Tr. 110:8-11.)

hh. Ms. Espinosa, who insisted that she would “ask[] what’s going on” if there were zero voter registrations returned by an office in her region (Bernalillo County.) for even one month, and who agreed that zero voter registrations returned for five months in a row would be a “red flag,” did not recall any instance in which an office in her region was identified as having a problem because of zero registrations prior to January 2008. (Espinosa Dep. Tr. 99:6-15; 100:13-20.)

ii. Moreover, the Northeast Bernalillo office reported zero voter registrations returned for eight months in a row in 2005, and again reported zeros for six months in a row in 2006. The Southeast Bernalillo office reported zeros for eleven months in a row from 2005 through 2006, and another five months in a row in 2007.

jj. The NVRA Coordinator, Ted Roth, usually reviews the reports on a monthly basis. (Roth Dep. Tr. 43:1-12.) It is not clear whether anyone at the agency reviewed these reports before Roth became the Coordinator, as he could not attest to what the agency did regarding registration number reviews before July of 2007. (Roth Dep. Tr. 168:24-25;201:14-25.)

kk. HSD does not monitor its staff to determine whether they are providing voter registration services, as required by law. Whereas the agency ensures county offices are providing benefits in a timely way, it takes no such measures to ensure that staff are properly providing voter registration. (Roth Dep. Tr. 140:5-10; 141:2-16; 165:12-25.)

ll. Corrective Action Responses, for example, are issued when offices fail to process benefits applications in a timely manner; whereas no such remediation plans are issued when voter registration problems arise. (Roth Dep. Tr. 136:17-137:7; 141:2-16; 165:12-25.) (stating that no corrective action response for voter registration has ever been required). (Delgado Dep. Tr. 28:6-30:3; 30:6-10; 32:23-33:5.) (stating that none of the county offices in his region has ever done a corrective action plan for voter registration). (Burton Dep. Tr. 101:17-21.) (stating that he does not recall his office ever being marked as deficient for voter registration on a ME review); (Espinosa Dep. Tr. 69:4-24.) (stating that no interim corrective action plan in Region 3 has ever dealt with voter registration.)

mm. Indeed, there is no evidence that any HSD employee has ever been disciplined for failure to conduct voter registration activities as required. (Delgado Dep. Tr. 102:1-4; 102:9-18.) (stating that, to his knowledge, no HSD employee has ever been disciplined for failure to conduct voter registration activities as required.)

nn. Although Ted Roth began reviewing the number of voter registration applications received by offices on a monthly basis in late 2007, he has not required regional managers to take any corrective action with their staff, even if an office's numbers range in the single digits or zero. (Roth Dep. Tr. 72:16-73:7.)

oo. In 2007, for example, Ted Roth took no action in response to low numbers. (Roth Dep. Tr. 200:15-16.) He did not start addressing voter registration problems until November or December of 2007. (Id. at 201:1-13.) Even then, he would only "remind[] offices and the regional managers ... to become attentive to this [voter registration] requirement." (Id. at 202:1-5.) Despite having conversations with managers, during which he

reminded” them of their duties, Roth never discovered any information about how offices were providing voter registration. (Id. at 202:6-18.) Mr. Roth has visited over 20 offices since February 2008, but has never checked to see whether caseworkers were providing voter registration. (Id. at 94:16-18.)

pp. For example, despite Farmington’s high population that office had low numbers for months on end that did not improve, but Mr. Roth never told Mr. Delgado, the Regional Operations Manager for that office, that he should take any corrective actions to comply with the law. (Id. at 207:1-24.) Roth also failed to ask the regional managers or county directors whose offices reported zeros why that was the case. (Id. at 208:11-14.)

qq. Since 2008, HSD has implemented two voter registration policies, and since the filing of the instant lawsuit it has issued a training manual.

rr. Still, not all HSD employees have been trained in their voter registration duties since 2008: Ms. Salazar does not know if voter registration is covered in employee job training. (Salazar Dep. Tr. 98:16-21.) If it is covered, then it was likely included just in the last year, but she has not seen it. (Id. at 100:20-24.) In any case, she has not required her county directors to review this training. (Id. at 101:4-6.)

ss. Mr. Delgado had not seen the HSD training as of the date of his deposition on April 26, 2010. (Delgado Dep. Tr. 82:12-19.) He does not know whether the county offices for which he is responsible have conducted a semi-annual voter registration training (Delgado Dep., 77:22-78:17.)

tt. Ms. Fisher was not even sure if the initial training packet for staff members, or the program regulations given to new staff members, included voter registration. (Fisher Dep. Tr. 72:16-19.)

uu. Site coordinators at all offices are “expected” to train staff on voter registration, but Mr. Roth cannot confirm that they have been doing so. (Roth Dep. Tr. 132:17-20.) Cindy Salazar, on the other hand, says there is no specific training for site coordinators, who are supposed to be the point persons for NVRA compliance at each HSD office. (Salazar Dep. Tr. 94:14-19.)

vv. At the time of Mr. Roth’s deposition, on February 24, 2010, only four offices had been trained in voter registration by a state agency trainer. (Roth Dep. Tr. 127:7-14.) He does not know if agency trainers had ever provided voter registration training to staff before Rachel Reta became HSD’s training coordinator in the past year. (Roth Dep. Tr. 130:11-19.)

ww. Moreover, these new training materials, which are to be used by all state offices for training contain a confusing statement: “It is vital that the applicant/recipient is provided with a voter registration application or declination form” (emphasis added.) To be sure, other parts of the training do require employees to review the declination form with all clients. But this statement, inserted at the top of the training packet, indicates that a caseworker may either provide a voter registration application or a declination form. Such statement contradicts the language of the NVRA and the guidelines issues by the Department of Justice, available to the public at http://www.justice.gov/crt/voting/nvra/nvra_faq.php.

xx. Also, because many benefits forms still did not include the “declination” form until January 1, 2010, clients continued to miss out on voter registration opportunities: the State Coverage Insurance (SCI), which provides health benefits (Medicaid and non-Medicaid related), only began offering voter registration services in December of 2009 because, up until

recently, the forms did not include the “declination” question, and such benefit did not require a face-to-face interview. (Salazar Dep. Tr. 33:16-36:16.)

yy. With regard to the higher levels of management within HSD, Deputy Director Roth claims to have repeatedly contacted the Regional Operations Managers regarding voter registration since 2008. His claims are contradicted by the testimony of those Regional Operations Managers, however. Specifically, Mr. Roth claims to have spoken with Mr. Delgado between six and ten times each year regarding low voter registration numbers. (Roth Dep. Tr. 45:8-14.) Mr. Delgado, however, testified that he doesn’t recall any specific occasion when Mr. Roth brought up voter registration with him since January 2008. (Delgado Dep. Tr. 48:20-49:2.)

zz. Similarly, according to Mr. Roth, he spoke with Cindy Salazar, Regional Operations Manager for Region 5, about eight times each year regarding low voter registration numbers in her county offices. (Roth Dep. Tr. 44:22-24; 47:3-5.) Ms. Salazar, on the other hand, does not remember Mr. Roth ever calling her to mention that voter registration numbers were low at the offices in her region. (Salazar Dep. Tr. 58:18-22.)

aaa. At Ms. Fisher’s office in Dona Ana West, the office ran low on voter registration forms because the office from which they obtain them ran out of voter registration forms. (Fisher Dep. Tr. 48:9-23.)

bbb. Moreover, to this day, HSD does not require employees to provide clients with voter registration applications unless the client checks “yes” on the declination form. (Roth Dep. Tr. 180:18-181:1.) Accordingly, HSD caseworkers, then, do not provide voter registration forms alongside benefits forms. (Id.)

ccc. As of 2008, all offices may be required to have posters on the walls, but the reality is quite different: Cindy Salazar, for example, does not remember seeing voter registration posters in any of the 11 offices for which she is responsible. (Salazar Dep. Tr. 38:14-16.)

ddd. Problems such as those described above likely still occur because voter registration is not included in the agency's quality control review. (Burton Dep. Tr. 116:15-117:6.) (stating that he does not recall that voter registration is included in the quality control review.); (Espinosa Dep. Tr. 118:23-119:5.) (stating that she does not believe that voter registration is one of the elements of the quality control review.) Voter registration is also not included in employee performance reviews. (Radloff Dep Tr.. 50:22-51:2.) (stating that neither her own performance review nor her review of the supervisors below her include voter registration.); (Burton Dep. Tr. 106:19-21.) (stating that his own performance review does not include voter registration.); (Delgado Dep. Tr. 16:4-9.) (stating that neither his own performance review, nor the performance reviews of the county directors below him include voter registration.) The Management Evaluation Reports (MER.) review only whether or not the office has a voter registration poster visible. Although the MER reviews the timeliness of benefits processing and the accuracy of application screening, approval, denial, and payment as well as the "courteous[ness]" and responsiveness of the receptionists, the MER contains no other information relating to voter registration procedures and staff compliance

with the law. (Delgado Dep. Tr. 102:1-4.) Indeed, no HSD employee has ever been disciplined for failure to perform their duty with regard to voter registration activities. (Delgado Dep. Tr. 102:1-4; 102:9-18.)

eee. Further, the agency still does not track voter registration along with benefits. The computer system used by HSD tracks whether benefits are paid in a timely manner, which clients are due to file semi-annual reports, and the number of new applications and recertifications done by each caseworker, among other things. (Burton Dep. Tr. 71:25-72:24; 33:14-20; 34:21-24.) No tracking regarding voter registration takes place on the computer system at all, however. (Roth Dep. Tr. 178:5-179:1.)

fff. This lawsuit, and the resulting attention paid to voter registration issues, has affected an increase in the number of completed voter registration forms the Farmington office now receives. (Burton dep., 129:13-130:11.)

ggg. Secretary of State Herrera has failed and is continuing to fail to monitor or review HSD's compliance with the NVRA. There is no internal procedure within the Secretary of State's office to investigate voter registration compliance at HSD offices. The Secretary of State's office receives data regarding the number of persons who complete voter registration applications each year at HSD offices, but does not require that anyone in the office review the data for purposes of assessing Section 7 compliance. The Secretary of State did not conduct the required investigation of HSD's compliance with Section 7 following the violation notices sent on June 12, 2007 and March 23, 2009. (Defendant Mary Herrera's Response to Plaintiff's First Set of Interrogatories, Answer to Interrogatory No. 9; Trujillo Dep. Tr. 54:19-55:25, 73:11-74:11, 76:11-77:1.)

hhh. The Secretary of State has not provided any NVRA-related training to officials or employees of HSD since at least 2004, and does not require that HSD conduct its own NVRA training. (Trujillo Dep. Tr. 28:17-19; 29:19-25; 85:3-5.)

iii. The Secretary of State does not know whether or not the State of New Mexico is acting in compliance with Section 7 of the NVRA as to public assistance clients served by HSD. (Defendant Mary Herrera's Response to Plaintiff's First Set of Interrogatories, Answer to Interrogatory No. 12.)

jjj. Plaintiff Shawna Allers applied for the Food Stamp Program for the first time in or about February 2002 at an HSD and recertifies about every six months. She was not offered a voter registration application when she initially applied in 2002, or thereafter when she recertified her benefits. Ms. Allers most recently completed and delivered her paperwork for recertification on March 23, 2010. The State's records indicate that she was offered the opportunity to register at that time, and that she is registered to vote. In the past couple months, Ms. Allers has moved to a new location and is not registered to vote at her new address.

kkk. On June 25, 2009, the State of Missouri entered into an out-of-court settlement agreement to resolve a lawsuit filed against state and local officials alleging that the State was failing to properly distribute voter registration applications to its public assistance clients (SNAP, TANF, and Medicaid clients), as required by Section 7 of the NVRA. *ACORN v. Levy*, No. 08-4084-CV-C-NKL (W.D. Mo.).

lll. On November 25, 2009, the State of Ohio entered into a settlement agreement to resolve a lawsuit filed against state officials alleging that the State was failing to properly distribute voter registration applications to its public assistance clients

(SNAP, TANF, and Medicaid clients), as required by Section 7 of the NVRA. *Harkless v. Brunner*, No. 1:06-cv-2284 (N.D. Ohio).

mmm. Both the Missouri settlement agreement and the Ohio settlement agreement specify procedures for compliance with Section 7 of the NVRA, including procedures for: distributing voter registration applications to all public assistance clients who engage in a covered transaction except when a client declines to register in writing; assisting applicants in completing voter registration applications; training personnel to ensure that voter registration applications are being distributed and assistance is being provided as required by Section 7; reporting data and other information regarding the distribution and receipt of voter registration applications and the use of voter information forms; and monitoring the distribution and receipt of voter registration applications and the use of voter information forms and reporting information regarding such monitoring.

nnn. In the ordinary course of business, the States of Missouri and Ohio file monthly reports as to the number of public assistance clients who submitted applications to register to vote after having received a voter registration application pursuant to the provisions of the above-referenced settlement agreements.

ooo. Adjusting for the different numbers of public assistance clients in New Mexico, Missouri, and Ohio, the average monthly number of public assistance clients who are submitting voter registration applications in Missouri and Ohio, following the settlements, is substantially greater than the average monthly number of public assistance clients who are submitting voter registration applications through HSD in New Mexico.

1. **Defendant HSD Contentions:** Defendant HSD contends that there are no contested *material* facts as demonstrated in its Motion for

Summary Judgment [Doc. 57], accompanying Memorandum [Doc. 58], and Reply [Doc. 92]. HSD's policy, procedures, and practices under the NVRA, including those in place when this lawsuit was filed, as well as supplemental measures it has taken recently to ensure continued compliance, and the end result of such policies, procedures, and practices, are undisputed. However, as HSD's motion is still pending with the Court, HSD submits the following factual assertions:

a. HSD's current NVRA policy and procedure

includes procedures for: distributing voter registration applications to all public assistance clients who engage in a covered transaction except when a client declines to register in writing; assisting applicants in completing voter registration applications; training personnel to ensure that voter registration applications are being distributed and assistance is being provided as required by Section 7; reporting data and other information regarding the distribution and receipt of voter registration applications; and monitoring the distribution and receipt of voter registration applications and the use of voter information forms (or the "declination provision") and reporting information regarding such monitoring.

b. HSD's chief NVRA policy documents are the

Secretary of State's New Mexico State Agency Voter Registration Agent Manual and its Interdepartmental Memorandums titled ISD-GI 08-01 and ISD-GI 08-37.

c. HSD's policy and procedure regarding the distribution of voter registration applications to all public assistance clients is not in dispute, and is addressed in HSD's Motion for Summary Judgment [Doc. 57] and related pleadings, and is the subject of Plaintiff's Motion for Partial Summary Judgment and related pleadings [Doc. 109].

d. Plaintiff has not specifically alleged that HSD fails to assist applicants in completing voter registration applications.

e. New employees are trained on HSD's policies and procedures regarding the NVRA at their initial three-week basic new employee training.

f. At the time this lawsuit was filed, in addition to the NVRA training provided to new employees, all employees received NVRA training on an annual basis.

g. Since at least February of 2010, HSD increased NVRA training to occur on a bi-annual basis.

h. HSD updated its NVRA training material in March 2010. Prior to this update, HSD utilized the Secretary of State's New Mexico State Agency Voter Registration Agent Manual, as its training material.

i. HSD's monthly voter registration report provides data and information regarding the distribution and receipt of voter registration applications. (*See* No. 12 of Stipulated Factual Contentions).

j. The voter registration report is emailed to and reviewed on a monthly basis by HSD's Deputy Director and regional managers, among others.

k. In addition to the voter registration report, HSD monitors the distribution and receipt of voter registration applications and the use of voter information forms, or the "declination provision" and reports information regarding such monitoring by including NVRA review in its Management Evaluation Reports that are conducted by HSD's Quality Assessment Bureau ("The QA Bureau").

l. At the time this lawsuit was filed, the QA Bureau only reviewed and included in Management Evaluation Reports whether or not an HSD office had a voter registration posted displayed in its lobby.

m. HSD has since expanded the QA Bureau's review to include reviewing a sampling of cases for NVRA compliance.

n. As part of the normal procedure involved in Management Evaluation Reports, if a deficiency is identified regarding NVRA compliance, the office under review is required to provide a response to the deficiency, which can include providing additional NVRA training to its employees, among other things.

1. **Defendant SOS Contentions.** The Secretary of State believes that there are no material disputed facts in this case as indicated by her Motion for Summary Judgment. Because that motion is pending, the Secretary submits in this Pretrial Order the following facts:

a. The Secretary of State coordinates the State of New Mexico's responsibilities under the NVRA and has since the effective date of that law. Such coordination includes the production and distribution of voter registration manuals to all State agencies responsible for registering voters under the NVRA, the promulgation of regulations intended to implement the NVRA on a statewide basis, and the provision of New Mexico voter registration data to the federal government. The Secretary also responds to complaints of NVRA non-compliance, provides voter registration training upon request, and answers NVRA-related questions posed by State agencies.

b. The Secretary provides blank voter registration forms to each State agency tasked with registering voters under the NVRA.

c. New Mexico's obligations under the NVRA have not changed since the effective date of the law.

V. APPLICABLE LAW

Do the parties agree which law controls the actions?

Yes, the NVRA, 42 U.S.C. §§ 1973gg-5, 1973gg-8.

VI.CONTESTED ISSUES OF LAW

A. Plaintiff

See Plaintiff's pending Motion for Partial Summary Judgment [Doc. 109].

B. Defendants

See Defendant HSD's pending Motion for Summary Judgment [Doc. 57] and Defendant Secretary of State's pending Motion for Summary Judgment [Doc. 111].

VII.MOTIONS

A. Pending Motions

1. Plaintiff: Currently pending is Plaintiff Allers' Motion for Partial Summary Judgment [Doc. 109] (filed on September 9, 2010). Also pending is Plaintiff's Motion for Attorneys' Fees [Doc. 103] (filed on August 23, 2010), which arises out of the settlement of Plaintiffs' claim under Section 5 of the NVRA, 42 U.S.C. § 1973gg-3.

1. Defendants:

- HSD's Motion for Summary Judgment [Doc. 57] (filed on May 13, 2010)
- HSD's Motion to Strike [Doc. 91] (filed on July 26, 2010)
- HSD's Motion for Extension of Time [Doc. 119] (filed on September 27, 2010)
- SOS's Motion for Summary Judgment [Doc. 111] (filed on September 7, 2010)

B. Motions which may be filed:

1. Plaintiff: Plaintiff may file a motion in limine to exclude from testifying at trial on behalf of the Defendants any of the 47 individuals Defendants list below as witnesses they "may call," other than Cindy Salazar, Rita Espinosa, Dorothy Fisher, Albert Delgado, Roger Burton, Rochelle Radloff, and Denise Lamb.

2. Defendants: None

VIII. DISCOVERY

A. Has discovery been completed? Yes.

B. Are there any discovery matters of which the Court should be aware? No.

IX. ANTICIPATED WITNESSES

Each party is under a continuing duty to supplement this list and the description of anticipated testimony. This does not, however, apply to a rebuttal witness. Indicate if the witness will testify in person or by deposition and include a brief description of the anticipated testimony. If the testimony is by deposition, identify the deposition by page number and line number. A witness who has not been identified and whose testimony has not been disclosed may not testify at trial unless good cause is shown.

A. Plaintiffs' Witnesses:

Plaintiff will call or have available at trial the following witnesses:

1. Shawna Allers: Ms. Allers will testify in person and will testify as to those facts alleged in Plaintiffs' Amended Complaint to the extent that they are within her personal knowledge. Ms. Allers will also testify as to her personal experiences in applying, recertifying, and changing her address for the purpose of receiving public assistance benefits in New Mexico as they relate to her opportunity to register to vote through HSD, in the past and to the present time.

2. Ted Roth (called as a hostile witness): Mr. Roth's testimony will include but not be limited to HSD's oversight of local offices' voter registration practices; his knowledge as to all voter registration processes and procedures at HSD offices, including but not limited to the agency's current and past policies regarding distribution of voter registration forms and the provision of assistance in completing registration forms; the agency's current and

past training program on voter registration matters; the agency's current and past monitoring and evaluation of voter registration in all agency offices; the agency's current and past review of voter registration reports received from HSD offices; all matters discussed in his February 24, 2010 deposition; and those matters on which Mr. Roth was previously disclosed.

3. Alice Cochran: Alice Cochran, Research Associate at Project Vote, will testify as to all facts related to the August 2008 survey referenced in Plaintiffs' Amended Complaint.

4. Scott Novakowski or Youjin Kim: Scott Novakowski, Senior Policy Analyst at Demos, or Youjin Kim, Policy Analyst at Demos, will testify as to authenticity and circumstances relevant to the preparation of the reports submitted by Missouri and Ohio regarding voter registration conducted at and through public assistance agencies in those states following the entry of litigation settlement agreements.

Plaintiff will seek to have the following witnesses testify by deposition; however, if that is not allowed, Plaintiff will call these individuals as hostile witnesses. The deposition citations are listed above; Plaintiff reserves the right to designate additional portions of these individuals' depositions.

1. Cindy Salazar: Ms. Salazar's testimony will include but not be limited to the voter registration practices and policies for the HSD offices in Region 5, for which she is or was the Regional Operations Manager; the Region 5 offices' current and past policies regarding distribution of voter registration forms and provision of assistance in completing forms; the offices' current and past training on voter registration matters; the offices' current and

past monitoring and evaluation of its employees' voter registration practices; the offices' current and past compilation of voter registration reports; any and all communications with HSD agency personnel and/or the Secretary of State's office regarding voter registration practices; and all matters discussed in her May 5, 2010 deposition.

2. Rita Espinosa: Ms. Espinosa's testimony will include but not be limited to the voter registration practices and policies for the HSD offices in Region 3, for which she is or was the Regional Operations Manager; the Region 3 offices' current and past policies regarding distribution of voter registration forms and provision of assistance in completing those forms; the offices' current and past training on voter registration matters; the offices' current and past monitoring and evaluation of its employees' voter registration practices; the offices' current and past compilation of voter registration reports; any and all communications with HSD agency personnel and/or the Secretary of State's office regarding voter registration practices; and all matters discussed in her April 27, 2010 deposition.

3. Dorothy Fisher: Ms. Fisher's testimony will include but not be limited to the voter registration practices and policies for the West Dona Ana County Field Office, of which she is or was the County Director; the office's current and past policies regarding distribution of voter registration forms and the provision of assistance in completing registration forms; the office's current and past training on voter registration matters; the office's current and past monitoring and evaluation of its employees' voter registration practices; the office's current and past compilation of voter registration reports; any and all communications

with HSD agency personnel and/or the Secretary of State's office regarding voter registration practices; and all matters discussed in her May 5, 2010 deposition.

4. Albert Delgado: Ms. Delgado's testimony will include but not be limited to the voter registration practices and policies for the HSD offices in Region 1, for which he is or was the Regional Manager; the offices' current and past policies regarding distribution of voter registration forms and the provision of assistance in completing registration forms; the offices' current and past training on voter registration matters; the offices' current and past monitoring and evaluation of its employees' voter registration practices; the offices' current and past compilation of voter registration reports; any and all communications with HSD agency personnel and/or the Secretary of State's office regarding voter registration practices; and all matters discussed in his April 26, 2010 deposition.

5. Roger Burton: Mr. Burton's testimony will include but not be limited to the voter registration practices and policies of the San Juan County Field Office, for which he is or was the County Director; the office's current and past policies regarding distribution of voter registration forms and the provision of assistance in completing registration forms; the office's current and past training on voter registration matters; the office's current and past monitoring and evaluation of its employees' voter registration practices; the office's current and past compilation of voter registration reports; any and all communications with HSD agency personnel and/or the Secretary of State's office and/or the local clerks' offices regarding voter registration practices; and all matters discussed in his April 29, 2010 deposition.

6. Rochelle Radloff: Ms. Radloff's testimony will include but not be limited to the voter registration practices and policies for the Southwest Albuquerque Field Office, for which she is or was the County Director; the office's current and past policies regarding distribution of voter registration forms; the office's current and past training on voter registration matters; the office's current and past monitoring and evaluation of its employees' voter registration practices; the office's current and past compilation of voter registration reports; any and all communications with HSD agency personnel and/or the Secretary of State's office and/or the local clerks' offices regarding voter registration practices; and all matters discussed in her April 26, 2010 deposition.

7. Don Francisco Trujillo: Mr. Trujillo's testimony will include but not be limited to the voter registration practices and policies for the Secretary of State's office, for which he is or was the Deputy Secretary of State and Director for the Bureau of Elections; the office's current and past policies regarding state agencies' distribution of voter registration forms; the office's current and past training on voter registration matters; the office's current and past monitoring and evaluation and oversight of state agencies' voter registration practices; the office's current and past compilation and review of state agencies' voter registration reports; any and all communications with HSD agency personnel and/or the local clerks' offices regarding voter registration practices; and all matters discussed in his May 26, 2010 deposition.

B. Defendants' Witnesses:

Defendants will call or have available at trial the following witnesses:

1. Ted Roth: It is anticipated that Mr. Roth will testify as to HSD's NVRA policies, practices and procedures and HSD's overall compliance with the NVRA.

2. Don Francisco Trujillo: It is anticipated that Mr. Trujillo will testify about the actions taken by the SOS to coordinate New Mexico's compliance with the NVRA.

Defendants may call the following witnesses:

1. Albert Delgado: It is anticipated that Mr. Delgado will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for the HSD offices included in Region 1, for which he is the Regional Operations Manager.

2. Roger Burton: It is anticipated that Mr. Burton will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Farmington office, for which he is the County Director.

3. Donna Mirabal: It is anticipated that Ms. Mirabal will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Bernalillo office, for which she is the County Director.

4. Edna Ashley: It is anticipated that Ms. Ashley will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's McKinley office, for which she is the County Director.

5. Nora Destea: It is anticipated that Ms. Destea will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's McKinley office, for which she is also the County Director.

6. David Klumpenhower: It is anticipated that Mr. Klumpenhower will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Cibola office, for which he is the County Director.

7. Dennis Salas: It is anticipated that Mr. Salas will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Belen and Los Lunas offices, for which he is the County Director.

8. Lorelei Almanzar: It is anticipated that Ms. Almanzar will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for the HSD offices included in Region 2, for which she is the Regional Operations Manager.

9. Phillip Rodriguez: It is anticipated that Mr. Rodriguez will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Raton and Clayton office, for which he is the County Director.

10. Delfino Torres: It is anticipated that Mr. Torres will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Taos office, for which he is the County Director.

11. Antonette Cordova: It is anticipated that Ms. Cordova will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Espanola office, for which she is the County Director.

12. Seth Conkle: It is anticipated that Mr. Conkle will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Las Vegas office, for which he is the County Director.

13. Laura Galindo: It is anticipated that Ms. Galindo will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Santa Fe office, for which she is the County Director.

14. Rita Espinosa: It is anticipated that Ms. Espinosa will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for the HSD offices included in Region 3, for which she is the Regional Operations Manager.

15. Juli Lindsey: It is anticipated that Ms. Lindsey will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Albuquerque NW office, for which she is the County Director.

16. Dennis Davis: It is anticipated that Mr. Davis will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Albuquerque NE office, for which he is the County Director.

17. Rochelle Radloff: It is anticipated that Ms. Radloff will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Albuquerque SW office, for which she is the County Director.

18. Victoria Hernandez: It is anticipated that Ms. Hernandez will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Albuquerque SE office, for which she is the County Director.

19. Van Horner: It is anticipated that Mr. Horner will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for the HSD offices included in Region 4, for which he is the Regional Operations Manager.

20. Rita Romero: It is anticipated that Ms. Romero will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Tucumcari and Santa Rosa offices, for which she is the County Director.

21. Fertisha Hall: It is anticipated that Ms. Hall will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Artesia office, for which she is the County Director.

22. Nina Payen: It is anticipated that Ms. Payen will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Portales office, for which she is the County Director.

23. Leann Buss: It is anticipated that Ms. Buss will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Hobbs office, for which she is the County Director.

24. Jerry Barnes: It is anticipated that Mr. Barnes will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Carlsbad office, for which he is the County Director.

25. Sarah R. MacArthur: It is anticipated that Ms. MacArthur will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Roswell office, for which she is the County Director.

26. Olga Aldaz: It is anticipated that Ms. Aldaz will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Clovis office, for which she is the County Director.

27. Cindy Salazar: It is anticipated that Ms. Salazar will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for the HSD offices included in Region 5, for which she is the Regional Operations Manager.

28. Rebecca Schuyler-Avila: It is anticipated that Ms. Avila will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Alamogordo office, for which she is the County Director.

29. Lori C. Medina: It is anticipated that Ms. Medina will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's T or C office, for which she is the County Director.

30. Juan Ramos: It is anticipated that Mr. Ramos will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Anthony office, for which he is the County Director.

31. Corina Rivera: It is anticipated that Ms. Rivera will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Silver City and Lordsburg offices, for which she is the County Director.

32. James McClelland: It is anticipated that Mr. McClelland will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Ruidoso Downs office, for which he is the County Director.

33. Joseph Mascarena: It is anticipated that Mr. Mascarena will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Socorro office, for which he is the County Director.

34. Ricardo Gil: It is anticipated that Mr. Gil will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Las Cruces, Dona Ana East office, for which he is the County Director.

35. Dorothy Fisher: It is anticipated that Ms. Fisher will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Las Cruces, Dona Ana West office, for which she is the County Director.

36. Brenda Garland: It is anticipated that Ms. Garland will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Moriarty office, for which she is the County Director.

37. Rebecca Joe: It is anticipated that Ms. Joe will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's Deming office, for which she is the County Director.

38. Michael Rogers: It is anticipated that Mr. Rogers will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for the HSD offices/units included in Region 6, for which he is the Regional Operations Manager.

39. Gary Wold: It is anticipated that Mr. Wold will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's CAP, QMB, and SLIMB office, for which he is the Director.

40. Brenda Troelsen: It is anticipated that Ms. Troelsen will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's CPU and MRP office, for which she is the Director.

41. David Saxton: It is anticipated that Mr. Saxton will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's SCI Las Cruces office, for which he is the Director.

42. Gwen Manfre: It is anticipated that Ms. Manfre will testify as to the NVRA policies, practices and procedures and overall compliance with the NVRA for HSD's SCI Sandoval County office, for which she is the County Director.

43. Kelli Fulgenzi: It is anticipated that Ms. Fulgenzi will testify about the actions taken by the SOS to coordinate New Mexico's compliance with the NVRA.

44. Denise Lamb: It is anticipated that Ms. Lamb will testify about the actions taken by the SOS to coordinate New Mexico's compliance with the NVRA.

45. Daniel A. Ivey-Soto: It is anticipated that Mr. Ivey-Soto will testify about the actions taken by the SOS to coordinate New Mexico's compliance with the NVRA.

46. Gerald Gonzalez: It is anticipated that Mr. Gonzalez will testify about the actions taken by the SOS to coordinate New Mexico's compliance with the NVRA.

47. Rebecca Vigil-Giron: It is anticipated that Ms. Vigil-Giron will testify about the actions taken by the SOS to coordinate New Mexico's compliance with the NVRA.

X. TRIAL PREPARATION

A. Exhibits *Please see attached Pretrial Deadlines and Instructions*

The parties must confer over all trial exhibits. This does not apply to rebuttal exhibits that cannot be anticipated before trial.

No later than January 24, 2011 (15 working days before trial), the parties shall exchange exhibits. Exhibits shall be marked and identified, with plaintiff's exhibits identified on yellow labels by number and defendants' exhibits identified on blue labels by letter.

No later than February 7, 2011 (five working days before trial), the parties must file an original plus three copies of the parties' consolidated exhibit list identifying all exhibits that the parties have stipulated are admissible and a consolidated exhibit list identifying all exhibits the parties have stipulated to be authentic, but to which there are other objections.

For those exhibits on which a stipulation could not be reached, the offering party must file an original plus three copies of a separate contested exhibit list no later than February 7, 2011 (five working days before trial).

In addition, two courtesy copies of the contested and uncontested exhibit lists must be delivered to the judge's chambers.

All exhibits must be marked before trial. Exhibits must be marked numerically and identify the party offering the exhibit. The identification number or letter will remain the same whether the exhibit is admitted or not.

B. Witness Lists Please see attached Pretrial Deadlines and Instructions

Witnesses shall be identified in accordance with the provisions of this Pretrial Order (as set forth above), but, in any event, shall be identified no later than January 24, 2011 (15 working days before trial).

No later than February 7, 2011 (five working days before trial), an original and three copies of a party's witness list, of persons who are to testify at trial, must be filed with the Clerk and served on all parties.

No later than January 24, 2011 (15 working days before trial), each party shall notify the opposing party of any intended use of depositions at trial (excluding use in cross-examination or in rebuttal), and shall highlight the parts to be used. Plaintiff must use a yellow highlighter and defendant must use a blue highlighter.

Objections to use of deposition testimony are due January 31, 2010 (ten working days before trial). The objecting party must highlight those portions of the requested deposition testimony to which the party objects. Plaintiff must use a yellow highlighter and defendant must use a blue highlighter. The parties must confer about any disputes and seek to resolve differences, prior to a party filing an objection.

C. Motions in Limine Please see attached Pretrial Deadlines and Instructions

Any motion in limine or other motion relating to admissibility issues (not including *Daubert* motions) shall be filed on or by January 24, 2011 (15 working days before trial).

Responses to motions in limine and other motions relating to admissibility issues shall be filed on or by February 2, 2011 (eight working days before trial).

D. Voir Dire, Jury Instructions and Verdict, and Statement of Case

This will be a bench trial.

E. Submissions for Bench Trials Please see attached Pretrial Deadlines and Instructions

The parties must submit one mutually approved set of proposed findings of fact and conclusions of law no later than January 31, 2011 (ten working days before trial). For those findings of fact and conclusions of law the parties were unable to agree upon, each party must submit its own proposed findings of fact and conclusions of law at the same time as submission of the mutually approved set.

Findings of fact and conclusions of law shall be filed with the Clerk, and shall be emailed to the Court, in a format compatible with WordPerfect, to jchproposedtext@nmcourt.fed.us.

No later than February 7, 2011 (five working days before trial), the parties shall file with the Clerk trial briefs outlining the basic legal theories, anticipated evidence in support of such theories, and the legal basis of any anticipated evidentiary disputes.

XI. OTHER MATTERS

A. Settlement Possibilities

1. The possibility of settlement in this case is considered:

_____ Poor **X** Fair _____ Good _____ Excellent _____ Unknown

2. Do the parties have a settlement conference set with the assigned Magistrate Judge?

A settlement conference was held by Magistrate Judge Svet on June 9, 2010. No additional settlement conference is scheduled as of now.

A follow-up settlement conference may be beneficial following the resolution of the pending summary judgment motions.

3. Does either party wish to explore any alternatives for dispute resolution such as mediation or a summary jury trial?

Plaintiff does not favor use of any method of alternative dispute resolution. The public interest in enforcement of federal law and the need for a court-ordered equitable remedy if an acceptable settlement is not reached make this type of case unsuitable for binding ADR.

Defendants wish to explore alternatives for dispute resolution. Defendants dispute that a court-ordered equitable remedy is necessary for successful resolution of the issues raised in this lawsuit.

B. Length of Trial and Trial Setting

1. This action is a bench trial.
2. The case is set for trial on February 14, 2011.
3. The estimated length of trial is four days.

XII. EXCEPTIONS

None.

XIII. MODIFICATIONS-INTERPRETATION

The Pretrial Order when entered will control the course of trial and may only be amended *sua sponte* by the Court or by consent of the parties and Court approval. The pleadings will be deemed merged herein.

The foregoing proposed Pretrial Order (prior to execution by the Court) is hereby approved this 18th day of October, 2011.

Attorneys for Plaintiff Allers:

/s/ Mark A. Posner

Jon M. Greenbaum

Robert A. Kengle

Mark A. Posner

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UNITED STATES DISTRICT JUDGE