IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

KYLE SALAS; VICKY ISLAS; STEPHANIE ORTIZ; ALBERTO ROYBAL; RHONDA D. SANCHEZ; JESSICA SIETERS MARTINEZ; and LORI SIETERS, on behalf of themselves and others similarly situated, Plaintiffs-Respondents, v. GUADALUPE CREDIT UNION, Defendant-Petitioner.	No. 39,641

RESPONDENTS' ANSWER BRIEF

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STATEMENT OF COMPLIANCE

This Answer Brief complies with NMRA 12-318(F)(3). The body of the brief is in Time New Roman and it contains 9,514 words.

STATEMENT OF FACTS

I. Nature of this Lawsuit

Plaintiffs – Respondents in this appeal – seek damages and injunctive relief on behalf of a putative class of persons who were sued by Defendant Guadalupe Credit Union ("GCU") – Petitioner here – in Santa Fe County Magistrate Court. Plaintiffs and all putative class members were sued by GCU in the magistrate court to collect on alleged debt based on consumer loans that had been provided by GCU. **1 RP 3 ¶ 18-25, 4 ¶ 26-31.** GCU, apparently by practice or policy, never retained counsel to represent it. **1 RP 3 ¶ 18-25, 4 ¶ 26-29.** Plaintiffs had judgements entered against them by GCU, or agreed to settlements, via GCU's use of non-attorney employees to prosecute the lawsuits. **1 RP 3 ¶ 18-25, 4 ¶ 26-29.**

On October 7, 2019, Plaintiffs filed the Complaint. **1 RP 1**. Via the Complaint, Plaintiffs seek on a class basis damages and injunctive relief based on GCU's unlicensed practice of law, citing specifically to NMSA § 36-2-28.1 and NMRA 2-107, and for violations of the Unfair Practices Act, NMSA §§ 57-12-1 *et seq.* ("UPA"). 1 RP 6 ¶¶ 39-42, 7 ¶¶ 43-46; 7 ¶¶ A-F, 8 ¶¶ G-I. See also NMSA § 36-2-28.1; NMRA 2-107. In response to the Complaint, GCU filed a Motion to Dismiss pursuant to Rule 12(B)(6) NMRA. **1 RP 17.** After briefing and a telephonic hearing, the trial court granted the Motion and dismissed all of Plaintiffs' claims with prejudice. **1 RP 73-74, 101-102, 111-112.**

II. Summary of Facts as Recited in the Complaint

GCU is a New Mexico corporation engaged in the business of providing loans and other financial services. **1 RP 2 ¶ 8.** It is an NCUA federally insured financial institution, with over $168 million in assets, having grown through merger and acquisition of other local credit unions, to become one of the larger financial organizations in Northern New Mexico. **1 RP 2 ¶¶ 8-11.** Its voting shares or memberships are not held by a single shareholder or member. **1 RP 2 ¶ 13.** Nor are GCU voting shares or memberships held by a closely-knit group of shareholders or members. **1 RP 2 ¶ 14.** GCU shareholders or members cannot all know one another due to the size of GCU, the geographic reach of its branches, and the fact that shareholder members live across Northern New Mexico. **1 RP 2 ¶ 15.** GCU shareholders or members number in the hundreds, if not thousands. **1 RP 2 ¶ 16.**

GCU filed collection lawsuits against Plaintiffs in Santa Fe County Magistrate Court. **1 RP 3 ¶ 18.** In these collection lawsuits, GCU failed to file an Entry of Appearance to show it was represented by an attorney. **1 RP 3 ¶ 19.** Over the course of these collection lawsuits, pleadings filed by GCU were signed by at least three GCU employees: Gabriela Duran, Michael Sandoval, and Juan Treto, none of whom are licensed by the New Mexico Supreme Court to practice

law. **1 RP 3 ¶¶ 20-22.** In fact, none of the pleadings or papers filed on behalf of GCU in these collection lawsuits were signed by an attorney. **1 RP 3 ¶ 22.**

With respect to Plaintiffs individually, on March 12, 2018, GCU filed its collection lawsuit against Kyle Salas. **1 RP 3 ¶ 23.** On April 11, 2018 – exactly 30 days after the filing of the lawsuit – GCU filed a Motion for Default Judgment, resulting in a Default Judgment that was entered against Ms. Salas on April 23, 2018. **1 RP 3 ¶ 23.**

GCU filed a collection lawsuit against Vicky Islas. **1 RP 3 ¶ 24.** After Ms. Islas was made aware of the lawsuit, she entered into a stipulated agreement for payment on the alleged debt. **1 RP 3 ¶ 24.**

With Stephanie Ortiz, GCU filed a collection Lawsuit in which it demanded Ms. Ortiz pay $10,000, the jurisdictional maximum for the magistrate court. **1 RP 3 ¶ 25.** Ms. Ortiz was then presented with a stipulated agreement which she signed, which requires her to pay $10,000 to GCU. **1 RP 3 ¶ 25.**

GCU filed a collection lawsuit against Alberto Roybal. **1 RP 4 ¶ 26.** After Mr. Roybal filed an Answer in which he promised to make payments, GCU failed to appear at the pretrial conference set by the magistrate court. **1 RP 4 ¶ 26.**

With Rhonda D. Sanchez, GCU sued her in magistrate court, demanding that Ms. Sanchez pay $10,000, the jurisdictional maximum. **1 RP 4 ¶ 27.** The

magistrate court dismissed the lawsuit due to GCU's failure to prosecute. **1 RP 4 ¶ 27.**

With the last two Plaintiffs, Jessica Sieters Martinez and Lori Sieters, GCU brought a collection lawsuit against them. **1 RP 4 ¶ 28.** After they filed an Answer in which they promised to make payments, GCU dismissed the lawsuit without prejudice. **1 RP 4 ¶ 28.**

After the filing of the collection lawsuits, and under the auspices of the State of New Mexico, GCU sought, collected or received monies from each Plaintiff. **1 RP 4 ¶ 29.** After filing the collection lawsuits, GCU used the existence of the lawsuits to obtain either payment in full, a payment arrangement, or a judgment. **1 RP 4 ¶ 29.** With the resulting judgments, court process was used by GCU to garnish Plaintiffs. **1 RP 4 ¶ 29.**

III. Dismissal by the Trial Court

In response to the Complaint, GCU filed a motion to dismiss all claims with prejudice pursuant to NMRA 1-012(B)(6). **1 RP 17-27.** In the motion to dismiss, GCU identified itself as a non-profit corporation. **1 RP 17** ("GCU is a New Mexico non-profit corporation duly charted (sic) in New Mexico and having a perpetual existence."). After briefing and a telephonic hearing, the trial court granted the motion dismissing all claims with prejudice. **1 RP 73-74, 101-102,**

111-112, 117-118. At the hearing, in connection with rendering its decision, the trial stated:

> there is no question that the action complained of is not rendering a service to . . . Plaintiffs. The service that was rendered, if any, was rendered to the credit union and the persons that were rendering that service were undoubtedly engaged in the practice of law but with respect to their employer, the credit union. And I think we have a situation that may require the Supreme Court to revisit magistrate Rule 2-107, may require the Legislature to revisit the statute, but the bottom line for this morning is that I think that the motion is well taken and I'm granting the motion.

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IV. Reversal by the Court of Appeals

Plaintiffs appealed and the Court of Appeals, in a unanimous unpublished opinion, "reverse[d] the district court's dismissal of Plaintiffs' lawsuit and remand[ed] for further proceedings consistent with this opinion." *See* No. A-1-CA-39021 filed 10/11/22 ("Opinion") at 9:18-19.

SUMMARY OF ARGUMENT

The Court of Appeals got it right. The facts, as alleged by Plaintiffs, adequately support their claims under the statutes governing unauthorized practice of law and under the UPA. Because Plaintiffs are consumers, the UPA applies. Because the facts, as alleged, show that non-attorney employees of GCU filed and prosecuted collection lawsuits in the Santa Fe County Magistrate Court, using these proceedings to extract settlements from Plaintiffs, the statutes governing unauthorized practice of law apply.

It does not matter that there exists an ill-phrased statute that suggests non-attorneys can practice in the magistrate courts because there also exists a Supreme Court rule that unambiguously provides only a few narrow exceptions to the prohibition on non-attorneys practicing in the magistrate courts. None of these exceptions apply to GCU. It does not matter that the non-attorneys prosecuting the collection lawsuits against Plaintiffs were providing legal services to GCU and not to Plaintiffs. What matters is that this Court, as evidenced by the ethical and professionalism standards that apply to all attorneys by virtue of their admission to practice before the courts, does all it can to protect the public and the legitimacy of the courts. Robust enforcement of laws that prevent the unauthorized practice of law should be encouraged because such private bar enforcement aids in these laudable and necessary goals.

ARGUMENT

I. Standard of Review

The questions presently before the Court are predicated on statutory interpretation and thus the review is de novo. *See State v. Vest*, 2021-NMSC-20, ¶ 7 ("This is a matter of statutory interpretation, which we review de novo.") (citation omitted). *See also GandyDancer, LLC v. Rock House CGM, LLC*, 2019-NMSC-21, ¶ 6 ("This Court reviews de novo whether a plaintiff has a cause of action or standing to sue under the UPA.") (citation omitted). The "primary goal when interpreting statutes is to further legislative intent." *Vest*, 2021-NMSC-20 at ¶ 14 (citation omitted). Statutory interpretation includes "looking at the language of the statute itself," but it also involves consideration of "the history and background of the statute." *See GandyDancer*, 2019-NMSC-21 at ¶ 13 (citations omitted). *See also* NMSA § 12-2A-18(A) ("A statute . . . is construed, if possible, to: (1) give effect to its objective and purpose; (2) give effect to its entire text; and (3) avoid an unconstitutional, absurd or unachievable result.").

Statutory enactments should be "read as a whole, and harmonized with other statutes." *See State ex rel. Sandel v. New Mexico Public Utility Commission*, 1999-NMSC-19, ¶ 13 (citations omitted). "[T]he overall structure of the statute" should be considered "as well as the particular statute's function within a comprehensive legislative scheme." *See State v. Rivera*, 2004-NMSC-1, ¶ 13 (citation omitted).

"A statute must be construed so that no part of the statute is rendered surplusage or superfluous." *Katz v. New Mexico Department of Human Services, Income Support Division*, 1981-NMSC-12, ¶ 18 (citation omitted).

The Court examines "other statutes *in pari materia* under the presumption that the legislature acted with full knowledge of relevant statutory and common law and did not intend to enact a law inconsistent with existing law." *See State ex rel. King v. B&B Investment Group, Inc.*, 2014-NMSC-24, ¶ 38 (ellipses, editorial parenthesis and citation omitted). "Where statutes may be construed in alternate ways one of which would result in the statutes being constitutional and the other being unconstitutional the former construction will be applied." *State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc.*, 1973-NMSC-87, ¶ 27 (citations omitted).

This matter appears before this Court because the trial court dismissed the lawsuit under Rule 12(B)(6). *See* NMRA 1-012(B)(6). "A district court's decision to dismiss a case for failure to state a claim under Rule 1–012(B)(6) is reviewed de novo." *Delfino v. Griffo*, 2011-NMSC-15, ¶ 9 (citation omitted).

> Dismissal on 12(b)(6) grounds is appropriate only if Plaintiffs are not entitled to recover under any theory of the facts alleged in their complaint. Therefore, we assume the veracity of all the well-pled facts in Plaintiffs' complaint to determine whether Plaintiffs may prevail under any state of the facts alleged.

Callahan v. New Mexico Federation of Teachers – TVI, 2006-NMSC-10, ¶ 4.

II. GCU Misconstrues the UPA and *GandyDancer*'s Effect on the UPA (Responding to Sections A, F, G, I, J and K of GCU's Argument)

The history of the UPA demonstrates that it is intended to broadly protect consumers. The UPA is part of a system of state consumer protection statutes, mostly enacted, like the UPA, in the 1960's, that were modeled after federal statutes for which the Federal Trade Commission ("FTC") has enforcement authority.

> [F]orty-nine states [have] adopt[ed] consumer protection legislation designed to parallel and supplement the FTC [A]ct. The [FTC] encouraged state-level legislation because it recognized that enforcement of the FTC Act's broad Section 5 proscription against "unfair or deceptive acts or practices" could not possibly be accomplished without extra-agency assistance.

Marshall v. Miller, 276 S.E.2d 397, 400 (N.C. 1981) (citations omitted). *See also* 15 U.S.C. § 45 (FTC Act); NMSA § 57-12-4 ("It is the intent of the legislature that in construing Section 3 [57-12-3 NMSA 1978] of the Unfair Practices Act the courts to the extent possible will be guided by the interpretations given by the federal trade commission . . ."); *GandyDancer*, 2019-NMSC-21 at ¶ 15 ("The UPA was modeled after the Uniform Deceptive Trade Practices Act (Uniform Act).") (editorial parenthesis and citation omitted). The UPA, and the analogous consumer protection statutes from other states, are specifically designed to rectify inadequacies that exist with existing state statutes, or with the common law, concerning the enforcement of consumer rights. This intention is directly

expressed in the UPA. "The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this state." NMSA § 57-12-10(D).

Forty years ago, the North Carolina Supreme Court reviewed, summarized, and confirmed these principles – including the mandate for broad interpretation – in its seminal opinion construing the North Carolina version of the UPA.

> Such legislation was needed because common law remedies had proved often ineffective. Tort actions for deceit in cases of misrepresentation involved proof of scienter as an essential element and were subject to the defense of puffing. Proof of actionable fraud involved a heavy burden of proof, including a showing of intent to deceive. Actions alleging breach of express and implied warranties in contract also entailed burdensome elements of proof. A contract action for rescission or restitution might be impeded by the parole evidence rule where a form contract disclaimed oral misrepresentations made in the course of a sale. Use of a product after discovery of a defect or misrepresentation might constitute an affirmance of the contract. Any delay in notifying a seller of an intention to rescind might foreclose an action for rescission. Against this background, and with the federal act as guidance, North Carolina and all but one of her sister states have adopted unfair and deceptive trade practices statutes.

Marshall, 276 S.E.2d at 400 (citations omitted).

The structure and language of the UPA further supports its broad applicability in favor of consumers. By enacting the UPA, the New Mexico Legislature intended to bar '[u]nfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce," declaring such practices to be "unlawful." *See* NMSA § 57-12-3.

All that needs to be shown for a valid claim under the UPA is "an act" or "other representation of any kind" – specifically not restricted to "false or misleading oral or written statement[s]" – that "tends to or does deceive or mislead any person," or an "act or practice" that either "takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree" or "results in a gross disparity between the value received by a person and the price paid." *See* NMSA § 57-12-2(D) and (E). The representation can be an action that, by its nature, conveys the message that the actor is entitled to take the action, even though the actor is not legally entitled to do so. *See Jaramillo v. Gonzales*, 2002-NMCA-72, ¶¶ 26-31 (action that misrepresents legal rights is misleading representation covered under the UPA); *Duke v. Garcia*, No. 11-CV-784, 2014 U.S. Dist. LEXIS 48047 at *19-23 (D. N.M. Feb. 28, 2014) (same).

In the UPA definitions section, NMSA § 57-12-2, the Legislature provides a non-exclusive list of specific trade practices that are deemed *per se* unlawful, with the Legislature adding to this list from time to time. *See* NMSA § 57-12-2(D) and (E). *See also GandyDancer*, 2019-NMSC-21 at ¶ 11 (describing this list as "nonexhaustive"). Several of these *per se* unlawful trade practices are defined very broadly. For example, "using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive" is an unlawful trade practice. *See* NMSA § 57-12-2(D)(14). It violates the UPA to

convey "that a transaction involves rights, remedies or obligations that it does not involve." *See* NMSA § 57-12-2(D)(15). Moreover, as mentioned above, it is unlawful under the UPA to "take[] advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree." *See* NMSA § 57-12-2(E).

In addition, other sections of the UPA address more specifically targeted unlawful trade practices, such as "chain referral sales technique[s]," *see* NMSA § 57-12-5, selling a vehicle without disclosure of prior wreck damage or repairs, *see* NMSA § 57-12-6, door-to-door sales, *see* NMSA § 57-12-21, telephone solicitation, *see* NMSA § 57-12-22, loan solicitations, *see* NMSA § 57-12-25, or gift cards, *see* NMSA § 57-12-26. The UPA also includes a section that provides the New Mexico Attorney General the authority to promulgate regulations aimed at outlawing specific trade practices. *See* NMSA § 57-12-13.

Examining the UPA as a whole, the intent behind it emerges. While efforts are made to enumerate the most typical tactics that serve to deceive or cheat consumers, the UPA's definitions section includes broad definitions to encompass unnamed trade practices that likewise can be used to deceive or cheat consumers. Consumer protection can resemble a game of cat-and-mouse. Unfair, deceptive or unconscionable trade practices constantly take new shape or form. And the future will no doubt reveal additional unscrupulous tactics that are yet to be invented. In

the UPA, the New Mexico Legislate wisely accounted for this reality, via broad definitions that bring into coverage all species and varieties of unfair, deceptive or unconscionable trade practices.

GCU asks this Court to blind its eyes to this reality. GCU argues because the specific conduct at issue here – a financial institution's use of non-attorney employees to file collection actions against borrowers in Santa Fe County Magistrate Court – does not appear in any list recited in the UPA, it is not conduct covered by the UPA. *See* Brief in Chief filed 2/24/23 ("BIC") at 32. This construction, if adopted, would turn on its head the purpose and intent of the UPA.

Coverage by industry or activity is also broad. An "unfair or deceptive trade practice" can be "in connection with the sale, lease, rental or loan of goods or services or in the extension of credit or in the collection of debts by a person in the regular course of the person's trade or commerce." *See* NMSA § 57-12-2(D). "[T]rade" or "commerce" is defined to include "advertising, offering for sale or distribution of any services and any property and any other article, commodity or thing of value, including any trade or commerce directly or indirectly affecting the people of this state." *See* NMSA § 57-12-2(C). An "unconscionable trade practice" can include any "act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any

goods or services, including services provided by licensed professionals, or in the extension of credit or in the collection of debts." *See* NMSA § 57-12-2(E).

The UPA does not require a "direct transaction between the consumer and a defendant" provided "the plaintiff [] sought or acquired goods or services and the defendant [] provided goods and services." *See GandyDancer*, 2019-NMSC-21 at ¶¶ 32-33 (citations omitted); *Lohman v. Daimler-Chrysler Corporation*, 2007-NMCA-100, ¶ 33 ("both the plain language of the act and the underlying policies suggest that a commercial transaction between a claimant and a defendant need not be alleged in order to sustain a UPA claim").

The New Mexico Attorney General is the agency with UPA enforcement authority, but the Attorney General can delegate that authority to District Attorneys. *See* NMSA § 57-12-15. Moreover, consistent with its broad enforcement mandate, a robust private right of action is provided for in the UPA, including attorney fee and cost shifting, allowing for enforcement by any private attorney. *See* NMSA § 57-12-10. Such private enforcement provisions are often termed "private attorney general" provisions, as they provide for enforcement by the private bar, encouraged by fee and cost shifting, in recognition of the limited resources of state attorney general offices. *See e.g. Cieri v. Leticia Query Realty, Inc.*, 905 P.2d 29, 36-37 (Haw. 1995) (fee-and-cost-shifting provision in Hawaii's version of the UPA was enacted "in part to ease the burden on the state attorney

general's limited resources" by providing for "the assistance of the general public in combating the perpetration of unfair and deceptive acts in trade and commerce and allow[ing] members of the consuming public to act as 'private attorneys general' to enforce" the Act).

The UPA private right of action provision gives broad enforcement access to the general public. It allows any "person likely to be damaged by an unfair or deceptive trade practice or by an unconscionable trade practice of another" to seek injunctive relief. *See* NMSA § 57-12-10(A). "Proof of monetary damage, loss of profits or intent to deceive or take unfair advantage of any person is not required" for injunctive relief to be granted. *See id.* The New Mexico Legislature expressly authorized the UPA to be utilized in a class action. *See* NMSA § 57-12-10(E).

In addition, "[a]ny person who suffers any loss of money or property, real or personal, as a result of any employment by another person of a method, act or practice declared unlawful by the [UPA]" is entitled to actual or statutory damages, "whichever is greater," with any damage award potentially trebled if the unlawful trade practice is found to have been "willfully engaged in." *See* NMSA § 57-12-10(B). "Person" is broadly defined to include "natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates." *See* NMSA § 57-12-2(A).

Consistent with its broad consumer protection purpose, courts have given the

UPA broad interpretation in several respects. The "good heart, empty head" defense has been eliminated. *See e.g. Pedroza v. Lomas Auto Mall, Inc.*, 600 F.Supp.2d 1200, 1208 (D. N.M. 2009) ("a good-faith, but mistaken, legal conclusion does not prevent a statement from being knowingly false" under the UPA). Instead, liability attaches if the defendant "knowingly made" the misleading representation. *See* NMSA § 57-12-2(D). This "knowingly made" standard is a term of art. Under this standard, a plaintiff is not required to show actual knowledge or falsity; a plaintiff need only show that the defendant should have known that the representation or action would likely be misleading had the defendant exercised reasonable diligence. *See Stevenson v. Louis Dreyfus Corporation*, 1991-NMSC-51, ¶ 17 ("The 'knowingly made' requirement is met if a party was actually aware that the statement was false or misleading when made, or in the exercise of reasonable diligence should have been aware that the statement was false or misleading."). Moreover, the UPA can be enforced without regard to proof of intent and without regard to proof of reliance. *See Ashlock v. Sunwest Bank of Roswell, N.A.*, 1988-NMSC-26, ¶ 5 ("Had the legislature wished intent to deceive to be an essential element of the [UPA] offense, it would have so specified."); *Lohman*, 2007-NMCA-100 at ¶ 35 (to prosecute a successful UPA claim, "a claimant need not prove reliance upon a defendant's deceptive conduct").

This Court has explained that the UPA is the primary building block of New Mexico's "fundamental policy" to ensure that consumers have broad and adequate redress for unfair and deceptive trade practices. *See Fiser v. Dell Computer Corporation*, 2008-NMSC-46, ¶¶ 9-11. This Court and the Court of Appeals has repeatedly affirmed that the UPA should be given "the broadest possible application" to fulfill its consumer protection purpose. *See Ashlock*, 1988-NMSC-26 at ¶ 7 (UPA should be interpreted to ensure "the protection of its broad application to innocent consumers"); *Lohman*, 2007-NMCA-100 at ¶ 25 ("The remedial purpose of the [UPA], as a consumer protection measure, is also consistent with the broadest possible application."); *State ex rel. Stratton v. Gurley Motor Company*, 1987-NMCA-63, ¶ 27 ("Because the Unfair Practices Act constitutes remedial legislation, we interpret the provisions of this Act liberally to facilitate and accomplish its purposes and intent.").

This Court most recently reaffirmed the UPA's broad consumer protection purpose in *GandyDancer*. "With consumer interests in mind, we again observe that this Court has directed New Mexico courts to 'ensure that the Unfair Practices Act lends the protection of its broad application to innocent consumers.'" *See* 2019-NMSC-21 at ¶ 24 *quoting King*, 2014-NMSC-24 at ¶ 48. In *GandyDancer*, this Court further reaffirmed that the UPA must be construed "liberally to facilitate and accomplish its purposes and intent" to broadly protect consumers. *See id.*

quoting Truong v. Allstate Insurance Company, 2010-NMSC-9, ¶ 30. *See also GandyDancer*, 2019-NMSC-21 at ¶ 29 ("New Mexico cases have historically interpreted the UPA to focus exclusively on consumer protection, protecting innocent consumers.") (quotation marks and citation omitted).

In several overlapping arguments, GCU argues that *GandyDancer* limits the reach of the UPA, rendering the conduct at issue here – a financial institution's use of non-attorney employees to file and pursue collection actions against borrowers in Santa Fe County Magistrate Court – not covered by the UPA. *See* BIC at 10-12, 19-23, 26-35. GCU is wrong.

In *GandyDancer*, this Court was asked to review the specific and narrow question of "whether the [UPA] supports a cause of action for competitive injury." *See* 2019-NMSC-21 at ¶ 1. This Court held that one business suing another business should not normally be within the ambit of the UPA "because the Legislature excluded competitive injury from the causes of action permitted under the statute." *See id.* The standing analysis and the zone of interest analysis in *GandyDancer* was in recognition that the plaintiff in that lawsuit – unlike Plaintiffs here – could not be characterized as a consumer. *See id.* at ¶¶ 7-36.

Although this fact is not dispositive, as exemplified by *GandyDancer*, Plaintiffs and GCU both fit within the definition of "person" as set forth in the UPA. *See* 2019-NMSC-21, ¶¶ 11-14. GCU has defined itself in this lawsuit as a

"corporation," which qualifies as a "person" under the UPA. *See* BIC at 12 ("[a]s a non-profit corporation GCU is a 'person'"). *See also* NMSA § 57-12-2(A); *Ashlock*, 1988-NMSC-26 (upholding application of UPA to bank). Plaintiffs, as "natural persons," are also each a "person" under the UPA. *See* NMSA § 57-12-2(A). Thus, the UPA private right of action provision is applicable to the Parties here. *See* NMSA § 57-12-10(A) and (B).

More importantly, Plaintiffs in this lawsuit are plainly consumers entitled to the protections provided by the UPA. Plaintiffs took out loans from GCU, making them consumers of the financial services offered by GCU, with GCU then engaging in the unauthorized practice of law in the collection suits it filed against Plaintiffs. *See* NMSA § 57-12-2(D) (UPA covers services rendered "in connection with the sale . . . or loan of goods or services or in the extension of credit or in the collection of debts"); NMSA § 57-12-2(E) (UPA covers services rendered "in connection with the sale . . . or loan . . . of any goods or services, including services provided by licensed professionals, or in the extension of credit or in the collection of debts").

The conduct at issue – pursuing collection suits via non-attorney employees – is a *per se* unlawful trade practice at least three times over. First, this conduct represents a "fail[ure] to state [] material fact[s]," namely, GCU failed to state that the collection suits could not be lawfully pursued unless GCU was represented by

an attorney, plus GCU failed to state to Plaintiffs that GCU was not represented by an attorney. *See* NMSA § 57-12-2(D)(14). *See also Billsie v. Brooksbank*, 525 F.Supp.2d 1290, 1295 (D. N.M. 2007) ("the filing of a false, misleading, or deceptive court document would violate the UPA") (quotation marks, editorial parenthesis and citation omitted). Second, GCU's collection suits were actions that conveyed "that a transaction involves rights . . . that it does not involve." *See* NMSA § 57-12-2(D)(15). *See also Jaramillo, supra.* Third, GCU's collection suits took "advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree" as consumers would not typically know – and Plaintiffs did not know – that an entity like GCU must be represented by an attorney in collection suits filed in magistrate court. *See* NMSA § 57-12-2(E)(1).

That there exist statutes governing unauthorized practice of law does not mean there is not also a UPA claim where the unauthorized practice of law is employed to mislead, deceive or work an unconscionable result on a consumer. Holding otherwise would negate clear statutory language: "The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this state." *See* NMSA § 57-12-10(D).

Here, the statutes and rules governing unauthorized practice of law act akin to a statute or regulation that sets the standards for a particular duty – like the requirement to come to a complete stop and yield the right-of-way at a stop sign –

in a negligence lawsuit. The existence of a statute more specific to the conduct at issue does not mean a plaintiff harmed by the violation of the statute cannot bring a negligence claim predicated on the defendant's violation of the statute. Likewise, the existence of statutes and rules governing unauthorized practice of law does not mean Plaintiffs, who are consumers potentially harmed by the unauthorized practice of law, cannot bring a UPA claim predicted on the particular species of unauthorized practice of law that has been employed by GCU.

GCU's argument otherwise, which relies heavily on *GandyDancer*, misreads *GandyDancer*. *See* BIC at 27-32. In *GandyDancer*, this Court rejected the Court of Appeals' reliance on New Mexico's "strong public policy against unlicensed contractors," as embodied in the Construction Industries Licensing Act, NMSA §§ 60-13-1 *et seq.* ("CILA"), to find that the competitive injury alleged by one business against another is covered by the UPA. *See* 2019-NMSC-21, ¶ 24 *quoting GandyDancer, LLC v. Rock House CGM, LLC*, 2018-NMCA-64, ¶ 24. Here, the situation is very different.

Plaintiffs in this lawsuit are consumers that have been harmed by GCU's unauthorized practice of law. Unlike how the CILA was employed in *GandyDancer*, the statutes and rules governing unauthorized practice of law are not being used to wrongly shoehorn Plaintiffs here into the role of consumers. Plaintiffs in this lawsuit are consumers without regard to the statutes and rules

governing unauthorized practice of law. Plaintiffs here are consumers because they are at the receiving end of GCU's loan services and debt collection practices.

The statutes and rules governing unauthorized practice of law are being employed in this lawsuit for a very different purpose that how the CILA was employed in *GandyDancer*. Here, the statutes and rules governing unauthorized practice of law demonstrate that GCU, by having non-attorney employees pursue collection lawsuits against Plaintiffs to extract settlements and payments from them, conveyed "that a transaction involves rights, remedies or obligations that it does not involve." *See* NMSA § 57-12-2(D)(15). Here, the statutes and rules governing unauthorized practice of law show that GCU was misrepresenting its legal rights and thus violating the UPA, just as the business in *Jaramillo* mispresented its legal rights, and thus violated the UPA, by its refusal to honor the FTC Holder Rule. *See* 2002-NMCA-72 at ¶¶ 26-31.

Of course, any plaintiff, as the master of the complaint, can bring more than one claim based on the same conduct. *See Self v. United Parcel Service, Inc.*, 1998-NMSC-46, ¶ 17 *quoting Caterpillar, Inc. v. Williams*, 482 U.S. 386, 398-99 (1987) ("the plaintiff is the master of the complaint"). A plaintiff that does so may have to elect one recovery over the other once judgment is obtained, but more than one claim predicated on the same conduct is commonplace. *See Hood v. Fulkerson*, 1985-NMSC-48, ¶ 12 ("Duplication of damages or double recovery for

injuries received is not permissible. Where there are different theories of recovery and liability is found on each, but the relief requested was the same, namely compensatory damages, the injured party is entitled to only one compensatory damage award.") (citations omitted).

There are strong, practical reasons for Plaintiffs to bring both a claim under the statutes and rules governing authorized practice of law and a claim for violation of the UPA. As shown above, the case law interpreted the UPA – including what mental-state standard is to be applied, and whether intent or reliance are required – is relatively well developed. The UPA also expressly authorizes class treatment. *See* NMSA § 57-12-10(E). And, as also shown above, to fulfill its consumer protection purpose, the UPA has consistently been given a liberal and robust interpretation in favor of consumers. Plaintiffs in this lawsuit should be allowed to benefit from this liberal treatment. Allowing them to do so supports the very reason that the UPA came to be adopted in New Mexico.

The Court of Appeals got it right. It was correct to conclude that "Plaintiffs have standing to pursue claims against GCU." *See* Opinion at 9:10-14.

The Court of Appeals held that Plaintiffs have stated a valid claim under the UPA because the UPA "creates a private right of action for '[a] person likely to be damaged" – quoting the UPA's injunctive relief provision (§ 57-12-10(A)) – plus a private right of action for "[a]ny person who suffers any loss of money or

property" – quoting the UPA's damages provision (§ 57-12-10(B)). *See id.* at 8:15-18. Based on Plaintiffs' allegations that "GCU employees who were not attorneys filed lawsuits on behalf of GCU in magistrate court alleging unpaid debt and used the existence of the lawsuits to obtain either payment in full, a payment arrangement, or a judgment against Plaintiffs," the Court of Appeals found a cognizable unlawful trade practice. *See id.* at 7:2-9 (parenthesis and quotation marks omitted). It reasoned that the "filing [of] unauthorized legal pleadings – in connection with the sale of services – debt servicing and collection," if proven, would constitute a violation of § 57-12-2(D). *See id.* at 7:8-11. It also determined that GCU's conduct, as alleged, constitutes unconscionable debt collection in violation of § 57-12-2(E). *See id.* at 8:15-18.

The Court of Appeals also addressed the UPA's mental-state standard. It correctly determined that "GCU at least knowingly" engaged in unlawful trade practices. *See id.* at 7:9. This "knowingly" standard required GCU to exercise "reasonable diligence." *See Stevenson, supra. See also* NMSA § 57-12-2(D). As will be further explained below, had GCU exercised reasonable diligence, it would have known that the prior case law interpreting NMSA § 36-2-27 harmonized that statute's exception, which permits non-attorney practice in the magistrate courts, with the Supreme Court rule, Rule 2-107, that provides non-attorneys can only

practice in the magistrate courts under a few narrowly defined exceptions, none of which apply to GCU. *See* NMSA § 36-2-27.

III. Only this Court Possesses the Authority to Decide Who Can Practice in New Mexico Courts (Responding to Section A of GCU's Argument)

Fifty years ago, this Court made clear that it is the ***only*** entity with authority to govern the practice of law before all New Mexico courts. *See Norvell,* 1973-NMSC-87 at ¶ 26 ("the regulation of the practice of law is the exclusive constitutional prerogative of this court"). This Court's authority to govern the practice of law is derived from the New Mexico Constitution. *See id. See also* New Mexico Constitution, Art. VI, § 1 ("The judicial power of the state shall be vested in . . . a supreme court, a court of appeals, district courts; probate courts, magistrate courts and such other courts inferior to the district courts as may be established by law from time to time in any district, county or municipality of the state."). This authority extends to all courts, including magistrate courts. *See Norvell,* 1973-NMSC-87 at ¶ 26 ("We will not permit the practice of law by unlicensed magistrate courts' lawyers who are unfettered by the strictures which apply to the rest of the legal profession.").

This truth – that this Court is the ***only*** entity with authority to govern the practice of law before all New Mexico courts – has been reflected in New Mexico statutes since 1941. With § 36-2-1, the New Mexico Legislature recognized what

has been true since New Mexico became a State: this Court has the authority to promulgate rules governing the practice of law in New Mexico. *See* NMSA § 36-2-1 ("The supreme court of the state of New Mexico shall, by rules promulgated from time to time, define and regulate the practice of law within the state of New Mexico."). This Court asserted its rule making authority – recognized by statute but derived from the Constitution – in Rule 2-107. Rule 2-107, as explained more fully below, *see infra* at § V, sets forth clearly delineated and narrow exceptions for the prohibition on non-attorney practice in the magistrate courts.

IV. It Is Well Established that § 36-2-27 Must Be Read in Harmony with the Supreme Court Rules Governing the Practice of Law in Magistrate Courts (Responding to Section A of GCU's Argument)

Fifty years ago, in *Norvell*, this Court addressed an enforcement action taken by the New Mexico Attorney General against a collection agency that had filed collection suits in magistrate court "acting without its attorneys, control[ling] the entire litigation in magistrate court." 1973-NMSC-87 at ¶¶ 9-13. In an argument that mirrors the argument advanced by GCU here, the collection agency argued:

> § 18-1-26, N.M.S.A.1953, in prohibiting unlicensed persons from practicing law "in any of the courts of this state except courts of justice of the peace," coupled with the provisions of § 36-1-38, N.M.S.A. 1953 which provides that "whenever the term 'justice of the peace' may be used in the laws, it shall be construed to refer to the magistrate courts" means that unlicensed persons may practice in magistrate courts.

Id. at ¶ 26. The Court rejected this argument, reasoning "[i]t is reasonable to

construe the statutes to mean that it is not unlawful for an unlicensed person to appear in magistrate courts, under, for example, the situations outlined in the trial court's finding number twenty-six." *See id.* This finding – Finding No. 26 – was quoted in its entirety in the *Norvell* opinion. *See id.* at ¶ 15. It reads:

> In appropriate circumstances the preparation of pleadings, orders, judgments, and court appearances are permitted: (1) by individual persons appearing pro se (2) by a nonlawyer in an isolated instance, assisting an individual person appearing prc se, and with permission of the court (3) by a law student pursuant to Rule 94, Rules of Civil Procedure. There may be other circumstances not covered by the foregoing, e. g., "guardhouse lawyers" preparing and filing briefs for prison inmates less familiar with criminal law. Subject to these exceptions, the applicable statute, rules, and decisions do not authorize such activities by non-lawyers, acting for or on behalf, of an individual, partnership, corporation, association, or group of any kind, on a recurring or consistent basis, irrespective of whether payment or other consideration, direct or indirect, is involved. Such activities constitute the unauthorized practice of law.

See id.

Eleven years ago, in *State v. Rivera*, 2012-NMSC-3, this Court addressed § 36-2-27 directly, specifically considering the exception for magistrate courts that is part of this statute. In *Rivera*, a bench trial had been conducted in Bernalillo County Metropolitan Court with the District Attorney allowing a law student to conduct the trial. *See id. at* ¶ 3. This Court noted that § 36-2-27, read broadly, restricts "the practice of law 'in a court of this state' to duly licensed attorneys, 'except [in] a magistrate court.'" *See id.* at ¶ 7 *quoting* NMSA § 36-2-27. It further noted that the statute considered in *Norvell* – NMSA § 18-1-26 – was an

earlier version of § 36-2-27 from a time when magistrates were still called justices of the peace. *See id.*

In *Rivera*, this Court held that § 36-2-27 was necessarily limited by this Court's rule that reads "[e]xcept as otherwise provided by the rule adopted by the Supreme Court, no person shall practice law in this state or hold himself or herself out as one who may practice law in this state unless such person is an active member of the state bar." *See id.* at ¶ 9 *quoting* NMRA 24-101(A). This Court expressed impatience with having to address, yet again, the issue of who can practice in magistrate courts.

> Our holding in *Norvell*, later supplemented by rule, could not be clearer. Only attorneys properly admitted to the Bar may practice law in any court of this state, subject to those few exceptions provided in our rules . . .

Id. at ¶ 12. This Court emphasized that its rules limiting practice in New Mexico courts to duly licensed attorneys – except, with magistrate courts only, in very narrow circumstances – must be given effect over any statute that could be construed to provide for broader exceptions. In the second sentence of the *Rivera* opinion, the Court stated:

> [P]ractice of law in any court is limited to duly licensed attorneys who are members of the State Bar or otherwise authorized by this Court's rules in specific, limited circumstances. Because the Court of Appeals relied on statutory expressions that appear to permit the unauthorized practice of law in our magistrate courts, we reverse the Court of Appeals while affirming the conviction below.

Id. at ¶ 1.

The reason that rules from this Court trump any statute that purports to address who can practice in New Mexico courts is equally clear. As was stated fifty years ago in *Norvell*, "the regulation of the practice of law is the exclusive constitutional prerogative of this court." *See* 1973-NMSC-87 at ¶ 26 (citation omitted). *See also Rivera*, 2012-NMSC-3 at ¶ 7 ("Notwithstanding this legislative expression, the ultimate authority to regulate all pleading, practice and procedure resides in the judicial branch of government, and specifically in the Supreme Court. The authority to define and regulate the practice of law is inherently contained in the grant of judicial power to the courts by the Constitution.") (quotation marks and citations omitted). The separation of powers doctrine is the basis for elevating this Court's rules concerning who may practice in the courts over any seemingly contrary legislative pronouncement. *See State ex. rel. Village of Los Ranchos de Albuquerque v. City of Albuquerque*, 1994-NMSC-126, ¶15 ("the reviewability of executive and legislative acts is implicit and inherent in the common law and in the division of powers between the three branches of government") (citations omitted).

When a statute addressing who can practice in the magistrate courts appears to allow for broader exceptions that those that appear in this Court's rules, that statute must be construed to incorporate the narrowness of this Court's rules. *See*

Norvell, 1973-NMSC-87 at ¶ 26 ("If the cited statutes were construed as the Credit Bureau would have us do, they would be unconstitutional."). Such harmonization is consistent with the time-honored cannon of statutory construction that instructs "[w]here statutes may be construed in alternate ways one of which would result in the statutes being constitutional and the other being unconstitutional the former construction will be applied." *See id.* at ¶ 27 (citations omitted).

Here, the Court of Appeals correctly followed *Rivera* and *Norvell*. Citing to both opinions, the Court of Appeals stated, "We perceive no conflict [between § 36-2-1 and Rule 2-107] given our Supreme Court's constitutional authority to regulate the practice of law." *See* Opinion at 5:10-11. It concluded:

> Indeed, prior to our Supreme Court's adoption of Rule 2-107, it recognized in *Rivera* that it had previously limited Section 36-2-27 by rule and by judicial decision. Consequently, by adopting Rule 2-107, our Supreme Court exercised its constitutional authority to regulate the practice of law and limited Section 36-2-27 such that corporations may only appear pro se in magistrate court under limited circumstances.

See id. at 6:1-6 (citation omitted).

V. GCU Does Not Fit Within the Narrow Exceptions Set Forth in Rule 2-107 (Responding to Sections B and E of GCU's Argument)

In NMRA 2-107, this Court asserted its inviolable authority to limit who can practice in New Mexico's magistrate courts. Non-attorneys may appear in magistrate court in a representative capacity only:

(1) on a writ of garnishment or attachment;

(2) on an action under the Uniform Owner-Resident Relations Act or Mobile Home Park Act;
(3) for a corporation or limited liability company if its membership or voting shares are held by a closely-knit group;
(4) for a general partnership meeting certain qualifications;
(5) for a governmental entity; or
(6) for a wage claimant, with representation of the wage claimant limited to certain non-attorneys employed by the state agency that is charged with prosecuting wage claims.

See NMRA 2-107.

GCU states that "circumstances exist[]" where non-attorneys may lawfully appear in magistrate court. *See* BIC at 14. Those circumstances are limited to the ones delineated in Rule 2-107.

GCU does not argue that any of the exceptions stated in Rule 2-107 apply to it. The only one that could apply is that for a corporation or limited liability company whose membership or voting shares are held by a closely-knit group. However, the Court of Appeals considered this exception and correctly found that Plaintiffs had sufficiently alleged facts that showed this exception did not apply. *See* Opinion at 4:21-5:6.

> Turning to the question of whether GCU employees were engaged in the unauthorized practice of law, Plaintiffs specifically alleged that GCU is not a closely held corporation because GCU's voting shares are not held by a single or close-knit group of shareholders or members. Plaintiffs also alleged that to the extent GCU has shareholders or members, the number of either is in the "hundreds, if not thousands" who "do not all know each other." Accepting Plaintiffs' allegations as true, GCU does not meet the qualifications to appear through a non-attorney in magistrate court under Rule 2-107(B)(3).

See id. at 6:8-16 (citation omitted).

VI. By Filing and Prosecuting Lawsuits, GCU Engaged in the Practice of Law (Responding to Sections B and E of GCU's Argument)

"[I]ndicia of the practice of law, insofar as court proceedings are concerned, include" the "representation of parties before judicial or administrative bodies," or "preparation of pleadings and other papers incident to actions and special proceedings," or "management of such action[s] and proceeding[s]." *See Norvell,* 1973-NMSC-87 at ¶ 20 (citations omitted). As recited by the Court of Appeals in its opinion below, GCU engaged in conduct that constitutes the practice of law when it "file[d] and prosecute[d] cases in magistrate court pro se." *See* Opinion at 3:17. Even the trial court had determined that GCU was "undoubtedly engaged in the practice of law," a finding quoted by the Court of Appeals. *See id.* at ¶ 3:1-11.

Regarding this issue, GCU insists that both the trial court and the Court of Appeals got it wrong. But it is GCU that has it wrong.

GCU insists that because it used pre-printed form pleadings, it was not engaged in the practice of law. It argues that this Court's decision in *Guardian Abstract I* creates a broad rule that the filing in of blanks on legal forms cannot constitute the practice of law. *See* BIC at 13-14. *See also State Bar of New Mexico v. Guardian Abstract and Title Company*, 1978-NMSC-16 ("*Guardian Abstract I*").

In *Guardian Abstract I*, this Court held that it was lawful for non-attorney employees of a title company to fill in blanks on deeds and other pre-printed forms in connection with closings held in the sales of properties. 1978-NMSC-16 at ¶ 30. This holding was expressly narrow and limited to the unique circumstances present in that lawsuit. *See id.* at ¶ 25 ("We make our decision within the narrow parameters of the facts of this case.").

Simply put, there exists no broad rule in New Mexico that the filing in of blanks on pre-printed legal forms can never constitute the practice of law. This Court has been hesitant to precisely define the practice of law because such a definition could never encompass all situations that could constitute the practice of law. "We have declined to define what constitutes the practice of law because of the infinite number of fact situations which may be presented, each of which must be judged according to its own circumstances." *Norvell*, 1973-NMSC-87 at ¶ 19.

Moreover, when it comes to the Plaintiffs, GCU did much more than simply fill in blanks. As alleged in the Complaint, it filed motions, obtained judgments, and used the mechanisms of the court process to extract payments from consumers. GCU's conduct plainly constitutes the practice of law.

VII. New Mexico Has Always Been and Strongly Remains a Notice Pleading State (Responding to Sections C, D and F of GCU's Argument)

In *Zamora v St. Vincent Hospital*, 2014-NMSC-35, the Court "reaffirm[ed]

New Mexico's longstanding commitment to the nontechnical fair notice requirements" that make up New Mexico's notice pleading regimen. *See id.* at ¶ 1. "If rules of procedure work as they should in an honest and fair judicial system, they not only permit, but should nearly as possible guarantee that bona fide complaints be carried to an adjudication on the merits." *See id.* at ¶ 12. *See also Biebelle v. Norero*, 1973-NMSC-52, ¶ 8 (New Mexico courts follow the "general policy of providing maximum opportunity for each claim to be decided on its merits rather than on procedural technicalities").

Because New Mexico follows a liberal notice pleading standard, a party that files a motion to dismiss must show that the facts as alleged cannot reasonably lead to any valid legal claim.

> Dismissal on 12(b)(6) grounds is appropriate only if Plaintiffs are not entitled to recover ***under any theory of the facts*** alleged in their complaint. Therefore, we assume the veracity of all the well-pled facts in Plaintiffs' complaint to determine whether Plaintiffs may prevail ***under any state of the facts alleged***.

Callahan, 2006-NMSC-10 at ¶ 4 (emphasis added). "The only question is whether the plaintiff might prevail under any ***state of the facts*** provable under the claim." *Valles v. Silverman*, 2004-NMCA-19, ¶ 6 (quotation marks and citation omitted) (emphasis added).

GCU insists that because not every applicable statutory citation appears in the Complaint, this lawsuit cannot proceed. *See* BIC at 14-17. But the real inquiry does

not concern statutory citations. The real inquiry concerns the facts that were pled. As the Court of Appeals determined, GCU's hyper-technical argument fails because sufficient facts were pled. *See* Opinion at 3:17-24. Moreover, given the arguments GCU has made to this Court and to the courts below, the Complaint clearly provided GCU adequate notice as to the claims made against it.

VIII. The Statutes Governing Unauthorized Practice of Law Contain a Private Right of Action and Plaintiffs Have Standing to Invoke this Private Right of Action (Responding to Sections A, C, D and E of GCU's Argument)

New Mexico statutes concerning unauthorized practice of law appear in three statutes, two of which are relevant here. The first, codified in § 36-2-27, provides "[n]o person shall practice law in a court of this state, except a magistrate court, nor shall a person commence, conduct or defend an action or proceeding unless he has been granted a certificate of admission to the bar . . .." *See* NMSA § 36-2-27.

The second – designated "[u]nauthorized practice of law; private remedies" – appears at § 36-2-28.1. *See* NMSA § § 36-2-28.1. It has four subsections. The first subsection – subsection (A) – provides that any "person likely to be damaged by an unauthorized practice of law" may "bring an action for an injunction against the alleged violator," with "[p]roof of monetary damage or loss of profit [] not required." *See* NMSA § 36-2-28.1(A). It closely mirrors the UPA injunctive relief provision. *See* NMSA § 57-12-10(A). The second subsection – subsection (B) –

provides that any "person who suffers a loss of money or other property as a result of an unauthorized practice of law" is entitled to actual or statutory damages, "whichever is greater," with any damage award potentially trebled if the unauthorized practice of law is found to have been "willfully engaged in." *See* NMSA § 36-2-28.1(B). It closely mirrors the UPA actual and statutory damages provision. *See* NMSA § 57-12-10(B). The third subsection – subsection (C) – is a fee and cost shifting provision for the prevailing plaintiff, mimicking the UPA fee and cost shifting provision. *Compare* NMSA § 36-2-28.1(C) *with* NMSA § 57-12-10(C). The last subsection – subsection (D) – reads "[t]he relief provided by this section is in addition to other remedies available at law or equity." *See* NMSA § 36-2-28.1(D). Again, it is functionally identical to the corresponding provision in the UPA which reads, "[t]he relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this state." *See* NMSA § 57-12-10(D).

The third statute concerning unauthorized practice of law in New Mexico, codified in § 36-2-28.2, deals with private enforcement mechanisms potentially available to "the attorney general, the state bar of New Mexico or a local bar association." *See* NMSA § 36-2-28.2(A).

The Court of Appeals examined this statutory scheme and correctly concluded that a private "party thus has standing to bring a lawsuit under Section

36-2-28.1(B)" where there exists unauthorized practice of law that caused damages. *See* Opinion at 8:10-12. The Court of Appeals, no doubt cognizant of the similarity between the private right of action and damages provisions of the UPA and the same provisions in the statutes governing unauthorized practice of law, considered both claims together when concluding that valid claims have been brought by Plaintiffs in this lawsuit.

> Consequently, to the extent Plaintiffs alleged that GCU engaged in the unlawful practice of law when its non-attorney employees filed collection actions in magistrate court, and Plaintiffs also alleged that they suffered monetary damages resulting from judgments obtained by those non-attorney employees, Plaintiffs have standing to pursue claims against GCU.

See id. 9:10-14. Although not expressly stated by the Court of Appeals, it is also true, as it is with the UPA, that Plaintiffs can also maintain, without regard to actual damages, an action for injunctive relief under the statutes governing unauthorized practice of law. *Compare* NMSA § 36-2-28.1(A) *with* NMSA § 57-12-10(A).

The Court of Appeals correctly held that maintaining an action for the unauthorized practice of law statutes does not require "a predicate representative relationship to create standing to sue for the unlawful practice of law." *See* Opinion at 8:12-13. The trial court had ruled otherwise, dismissing this lawsuit in its entirety, reasoning that because GCU was not rendering legal services to Plaintiffs but, instead, "[t]he service that was rendered, if any, was rendered to

[GCU]." *See id.* at 3:3-7 (quoting trial court; editorial parentheses added by Court of Appeals). The Court of Appeals rejected the trial court's reasoning because it determined there was no basis for the trial court's distinction in the relevant statutory language or otherwise. *See id.* at 7:14-9:19. The Court of Appeals correctly determined that "the district court erred in concluding that claims for the unauthorized practice of law are essentially limited to the 'client' of the non-attorney." *See id.* at 3:24-4:2.

That claims based on unauthorized practice of law can only be brought by the party represented by the non-attorney makes no sense. There is no principled basis for the distinction that underlies this idea. And it flies in the face of this Court's precedent.

In *Rivera*, this Court did not examine the harm perpetrated on the District Attorney when he allowed a law student to prosecute claims at a criminal trial. At issue was the harm to the other party: the criminal defendant. *See* 2012-NMSC-3 at ¶¶ 16-22. Similarly, in *Norvell*, this Court was not focused on harm potentially suffered by the collection agency that had its non-attorney employees prosecute magistrate court collection actions. Rather, this Court stated:

> We will not permit the practice of law by unlicensed magistrate courts' lawyers who are unfettered by the strictures which apply to the rest of the legal profession.

See Norvell, 1973-NMSC-87 at ¶ 26.

This Court employs and enforces ethical and professionalism standards that apply to all attorneys by virtue of their admission to practice before the courts. *See* NMRA 15-101 *et seq.* (rules governing admission to the bar); NMRA 16-100 *et seq.* (rules of professional conduct); NMRA 17-101 *et. seq.* (rules governing attorney discipline); NMRA 17A-001 *et seq.* (rules governing the client protection fund). These ethical and professionalism standards exist, first and foremost, to protect the public. *See In re Key*, 2005-NMSC-14, ¶ 8 ("the ultimate purpose of attorney discipline is the protection of the public") (citations omitted). The public includes Plaintiffs that brought this lawsuit.

If courts became haphazard forums unchecked by ethical and professionalism standards, the public would suffer, plus the courts would lose legitimacy. Robust enforcement of laws aimed at preventing the unauthorized practice of law helps stave off this outcome. Preventing this outcome by the private attorney general regimen set up by both the statutes that govern the unauthorized practice of law and the UPA helps ensure that courts remain legitimate forums for justice.

CONCLUSION

Plaintiffs respectfully request that this Court affirm the Court of Appeals and remand this lawsuit to the trial court to take action consistent with the opinion of the Court of Appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This certifies that on the 27th day of March 2023 a copy of the foregoing pleading was filed electronically and served by US Mail and email to Stevan Douglas Looney, Attorney for Defendant-Petitioner, at:

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