

STATE OF NEW MEXICO  
THIRTEENTH JUDICIAL DISTRICT  
COUNTY OF VALENCIA

THE SOCORRO ELECTRIC COOPERATIVE, INC.  
Plaintiff,

v.

CHARLENE WEST, et al  
Defendants.

And

CHARLES WAGNER, individually,  
And as representative of the class of “unnamed  
Defendants”, being owner/members of the  
Socorro Electric Cooperative, Inc.

Cross Claim Plaintiff,

v.

Case No: D-1314-CV-2010-849  
Judge: Davis

SOCORRO ELECTRIC COOPERATIVE, INC.;  
PAUL BUSTAMANTE, individually and in his  
capacities as President and Trustee of SEC;  
DAVE WADE, individually and in his capacities  
as Vice-President and Trustee of SEC;  
LUIS AGUILAR, individually and in his capacities  
as Secretary and Trustee of SEC;  
MILTON ULIBARRI, individually and in his  
capacities as Treasurer and Trustee of the SEC;  
LEROY ANAYA, individually and in his capacity  
as Trustee of SEC; JACK BRUTON, individually  
and in his capacity as Trustee of SEC;  
LEO CORDOVA, individually and in his capacity  
as Trustee of SEC; PRESCILLA MAULDIN,  
individually and in her capacity as Trustee of the SEC;  
MANUEL MARQUEZ, individually and in his capacity  
as former Trustee of SEC; DONALD WOLBERG, individually  
and in his capacity as Trustee of SEC; JUAN GONZALES,

individually and in his capacity as a former Trustee of SEC;  
HAROLD BACA, individually and in his capacity  
as a former Trustee of SEC; HERMAN ROMERO,  
individually and in his capacity as a former Trustee of SEC; and  
LEOPOLDO PINEDA, JR., individually and in his capacity  
as General Manager of SEC;

Cross Claim Defendants,

### CROSS CLAIM, and REQUEST FOR CLASS ACTION CERTIFICATION

COMES NOW THE DEFENDANT, CHARLES WAGNER, by and through the undersigned attorneys, individually, and as representative of all others similarly situated, all of whom are also un-named defendants, as they, too, are owners/members of the SEC, for their cross claim against SOCORRO ELECTRIC COOPERATIVE, INC. ("SEC"), a New Mexico nonprofit corporation organized as an electric cooperative corporation, and the other cross claim defendants identified above, state:

#### A. GENERAL ALLEGATIONS

1. CHARLES WAGNER, Defendant and Cross Claim Plaintiff is a resident of Socorro County, New Mexico and brings this action on his own behalf, as a member/owner, as one of the unnamed defendants herein, and as a representative of the Class hereinafter described.

2. As described more particularly below, the Cross Claim Plaintiffs are "members" of the SEC. Cross Claim Plaintiffs purchase electricity from the SEC for use

at their homes and/or businesses in SEC's service area.

3. Each of the individual Cross Claim Defendants is a current or past trustee, officer, director, or manager of the SEC.

#### B. CLASS ACTION CERTIFICATION REQUEST

4. This action is brought by the Cross Claim Plaintiff as a class action on behalf of himself and on behalf of others similarly situated (the "Class"), under N.M. R. Civ. P. 1-023.

5. The exact number of the members of the Class is not known, but the SEC represents that there are approximately 9,800 member/customers in five counties in Central New Mexico.

6. There are common questions of law and fact that relate to or affect the rights and interests of each member of the Class in connection with his, her or its respective claims against the Cross Claim Defendants. By way of example, these include, but are not limited to:

- a. breach of their fiduciary duties owed to the Class in their operation, administration and management of the SEC;
- b. maintaining a system of grossly unequal election districts contrary to the bylaws;
- c. imposing and maintaining restrictions on voting;
- d. breach of their fiduciary duties in the accounting for and the management,

investment, and disposition of “Patronage Capital” and/or “Patron’s Capital” as hereinafter defined;

e. breach of their fiduciary duties by excessively compensating the officers and/or directors of the SEC;

f. breach of their contractual obligations to the Class, as set out in the Articles of Incorporation of the SEC (“SEC Articles”) and Bylaws of the SEC (“SEC Bylaws”);

g. breach of their respective fiduciary duties, contractual obligations, or other violations of the Rural Electric Cooperative Act, NMSA 1978, §§ 65-15-1, *et seq.* (“RECA”);

h. breach of their fiduciary duties, contractual obligations, and the requirements of the RECA, Articles and/or Bylaws in maintaining and reporting financial information, accounting records and financial reports of the SEC;

i. breach of their fiduciary duties, contractual obligations, and the requirements of the RECA, Articles and/or Bylaws in voting on charitable contributions when a trustee may have a direct or indirect interest; by creating a no-proxy rule in combination with manipulative quorum calls; by engaging in wasteful spending; by engaging in self-dealing and abuse of the per diem and travel expense reimbursement system; by failing to insure accountability and transparency for the Board’s activity.

7. Furthermore, the relief sought by these causes of action is common to the entire Class.

8. The claims of the Cross Claim Plaintiff, representative of the Cross Claim Plaintiff Class, are typical of the claims of the Class, in that the claims of all members of the Class, including Cross Claim Plaintiff depend on the showing of the acts or omissions of the Cross Claim Defendants giving rise to the right of the Class to the relief sought herein. There is no conflict as between the Cross Claim Plaintiff and other members of the Class with respect to this action, or with respect to the claims for relief set forth herein.

9. CHARLES WAGNER ( "Cross Claim Plaintiff") is the representative party for the Cross Claim Plaintiff's Class and is able to fairly and adequately protect the interests of the Class. No conflict exists between Cross Claim Plaintiff and the Class.

10. The attorneys for the Cross Claim Plaintiff are experienced and capable in the type of litigation involved here.

11. This action is properly maintained as a class action because;

(A) the prosecution of separate actions by individual members of the Class would create the risk of (i) inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the Cross Claim Defendants, or (ii) adjudications with respect to individual members of the Class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; and

(B) questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

12. The Cross Claim Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

13. This action is brought as a “hybrid” class action seeking the court to bifurcate the proceedings, certifying a class for equitable relief and a class for damages. *See Jefferson v. Ingersoll International, Inc.*, 195 F. 3d 894, 898-9 (7th Cir. 1999); *Barnes v. District of Columbia*, 242 F.R.D. 113, 123-4 (D.D.C. 2007).

14. All of the claims alleged by the Cross Claim Plaintiff on behalf of himself and the Class were caused by the action or omission of the Cross Claim Defendants.

15. This class action is superior to other available, alternative methods, if any, for the fair and efficient adjudication of these causes of action.

16. The Cross Claim Plaintiff brings this action on behalf of himself and on behalf of all others similarly situated. The Class is defined as:

All persons who are current “members” of the SEC, as “member” is defined in RECA, on the date judgment is entered, and excluding from this class the undersigned Cross Claim Plaintiff’s counsel, members of their immediate families and lawyers and staff at their law firms; Cross Claim Defendants and members of their immediate families and lawyers and staff at their law firms; and federal, state and local governmental entities and political subdivisions.

## C. BACKGROUND AND FACTUAL ALLEGATIONS

### 1. SOCORRO ELECTRIC COOPERATIVE, INC. (SEC)

17. The SEC is a New Mexico nonprofit corporation, organized as an electric cooperative corporation and owned by its members. As a member-owned nonprofit electric cooperative, the SEC receives benefits from the government that for-profit electric utilities do not receive, including an exemption from federal income taxes pursuant to Section 501(c)(12) of the Internal Revenue Code of 1986 (“IRC”). In return, the SEC and its Board of Trustees owe duties to the SEC’s members that for-profit electric utilities do not owe their customers. SEC is a nonprofit corporation and all revenues over the cost of doing business for a year are assigned as capital and returned to its members when feasible.

18. This class action lawsuit is not intended to harm the SEC or its service to its members, and neither is it aimed at the rank-and-file dedicated employees. Instead, this lawsuit seeks to place responsibility on the trustees and officers for a variety of wrongful practices, to recover on behalf of the member/owners for the damages caused by these wrongful practices, and to reform the organization so that it operates democratically, transparently, and in the best interest of its members.

### 2. MEMBERSHIP

19. Qualifications for membership are iterated in RECA 62-15-8

20. The RECA qualifications for membership are adopted by and reiterated in

the SEC's Bylaws in Article I, section 1, entitled "Requirements for Membership." A true and correct copy of the SEC Bylaws is attached hereto as Exhibit "A". A member is one who agrees "to purchase from the Cooperative electric energy as herein specified." Art. I, § 1(b). And a member agrees to "comply with and be bound by the Articles of Incorporation and By-Laws of the Cooperative and any rules and regulations adopted by the Board of Trustees..." Art. I, § 1(c).

21. The SEC Bylaws form a contract between the SEC and its members. By its terms members agree to pay rates that the SEC Board of Trustees fixes from time to time. The SEC and its members also agree that amounts paid for SEC electric service in excess of the cost of the service is furnished to SEC as capital. SEC Bylaws, Art. I, § 4. ("It is expressly understood that amounts paid for electric energy in excess of the cost of service are furnished by the members as capital and each member shall be credited with the capital so furnished as provided by these Bylaws.").

### 3. SEC ARTICLES & BYLAWS

22. The SEC was formed, pursuant to RECA, by filing Articles of Incorporation with the New Mexico State Corporation Commission in March of 1945.

23. The SEC is bound by the RECA to operate in accordance with its provisions. Neither the SEC Articles nor the SEC Bylaws may be inconsistent with RECA; if there are inconsistencies, RECA's provisions are controlling and any conflicting provision of the SEC Bylaws and/or SEC Articles is void. RECA §62-15-7. Similarly, if there are



inconsistencies between the SEC Articles and SEC Bylaws, the SEC Articles' provisions are binding, and any conflicting SEC Bylaws are void. RECA §62-15-6.

24. The SEC Bylaws provide for the regulation and management of the affairs of SEC, as required by the RECA, § 62-15-7.

#### 4. FRAUDULENT CONCEALMENT

25. All allegations contained in the preceding paragraphs are re-pled hereat as if fully set forth.

26. As used herein the "Relevant Time Period" means that period of time that any Cross Claim Defendant breached a fiduciary duty and/or a contractual obligation to any member of the SEC.

27. Any relevant statute of limitations and/or doctrine of laches, waiver or estoppel are, and have been, deferred until the filing of this cross claim because the Cross Claim Defendants have, and continue to, deceitfully conceal their wrongdoing and fraudulently conceal their unlawful conduct in order to avoid liability for it. On several occasions, the General Manager has refused to release requested documents to a Trustee and to members.

#### COUNT ONE - EXCESSIVE COMPENSATION - GENERAL ALLEGATIONS

28. All allegations contained in the preceding paragraphs are re-pled hereat as if fully set forth.

29. The SEC Bylaws set forth the number and general powers of the Board of

Directors:

The business and affairs of the Cooperative shall be managed by a board of eleven trustees which shall exercise all of the powers of the Cooperative except such as are by law, the Article of Incorporation or these By-Laws conferred upon or reserved to the members. - SEC Bylaws, Art. V, § 1.

30. The Bylaws also provide that:

Trustees shall not receive any salary for their services as such, except that members of the cooperative may, by resolution, or by amendment to these By-Laws authorize a fixed sum for each day or portion thereof spent on Cooperative business, such as attendance at meetings, conferences, and training programs or performing committee assignments when authorized by the Board. If authorized by the Board, trustees may also be reimbursed for expenses actually and necessarily incurred in carrying out such Cooperative business or granted a reasonable per diem allowance by the Board in lieu of detailed accounting for some of these expenses. No trustee shall receive compensation for serving the Cooperative in any other capacity, nor shall any close relative of a trustee receive compensation for serving the Cooperative, unless the payments and amount of compensation shall be specifically authorized by a vote of the members or the service by the trustee or his/her close relative shall have been certified by the Board as an emergency measure. - SEC Bylaws, Art. V, § 7.

31. The SEC Board of Trustees appoints the President to “perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Trustees from time to time.” Bylaws, Art. VII, § 4(c).

32. The President of SEC is Paul Bustamante. According to the Bylaws, the “President shall . . . be the principal executive officer of the Cooperative and, unless otherwise determined by the members of the Board of Trustees, shall preside at all

meetings of the members and of the Board of Trustees.” Bylaws, Art. VII, § 4(a).

33. According to recent Form 990s filed by the SEC, Bustamante received compensation of \$25,907 in 2008. 2008 IRS Form 990s, Part VII-A. The average hours per week devoted to the position was reported by SEC as 7.70. *Id.* The IRC requires that nonprofit corporations such as the SEC report the compensation of and average hours per week devoted to the position by each of its trustees, officers and key employees on its Form 990, Return of Organization Exempt from Income Tax, the IRC’s required annual information return for nonprofit corporations (“Form 990”).

34. The Vice-President of the SEC was Leo Cordova until his retirement in 2009. In 2008, the SEC paid Cordova \$10,628 in compensation for a reported average of 6.90 hours devoted to the position per week. SEC 2008 IRS Form 990, Part VII-A.

35. The Secretary of the SEC was Leroy Anaya until January 2010. In 2008, the SEC paid Anaya \$27,985 in compensation. 2008 IRS Form 990s, Part VII-A. The SEC reported that Anaya devoted 5.50 hours per week to the position. *Id.*

36. The Treasurer of the SEC is Milton Ulibarri. In 2008, the SEC paid Ulibarri \$29,343 in compensation. 2008 IRS Form 990s, Part VII-A. The SEC reported that Ulibarri devoted 8.90 hours per week to the position. *Id.*

37. In 2008, the remaining Trustees were paid compensation as follows: Bruton \$16,114, 2.30 hours per week; Marquez \$32,400, 5.80 hours per week; Wade \$21,608, 20.90 hours per week.

38. On information and belief, compensation received by the aforementioned cross claim defendants and compensation received by other cross-claim defendants, including former trustees and officers, are many multiples of the compensation paid other similar persons working in similar positions for similar organizations, and therefore are not reasonable as required by the IRC and are excessive. Not only were these amounts unreasonable, excessive and paid in violation of the IRC's requirements and the SEC Bylaws, but they constituted a waste of the SEC's assets, and self-dealing transactions by the SEC's Trustees.

39. On information and belief, the SEC underreports compensation, per diem, and travel expense paid to its trustees and officers and reimburses them for expenses that were never incurred or were substantially less than the reimbursed amount having adopted a policy which does not require vouchers, receipts or other documentation of such alleged expenses.

#### COUNT TWO – EXCESSIVE COMPENSATION -BREACH OF FIDUCIARY DUTY

40. All allegations contained in the preceding paragraphs are re-pled hereat as if fully set forth.

41. The above and foregoing described conduct concerning the payment and non-disclosure of excessive compensation constitutes breach of fiduciary duties owed by the Cross Claim Defendants to the Cross Claim Plaintiff and to the Class.

42. The Cross Claim Defendants owe a fiduciary duty to the Cross Claim

Plaintiff and to the Class as evidenced by: (a) the Bylaws and Articles as a matter of contract; (b) the RECA; and (c) the common law of this state.

43. The SEC and the Cross Claim Defendants who are and who were trustees or officers of the SEC owe, and owed, to the Cross Claim Plaintiff and to the Class the following fiduciary duties: (a) of loyalty and utmost good faith; (b) of candor; (c) to refrain from self-dealing; (d) to act with integrity of the strictest kind; (e) of fair, honest dealing; and (f) of full disclosure.

44. The Cross Claim Defendants have an immutable duty to make sure that the SEC complies with all applicable laws, including the IRC, which, *inter alia*, requires that the SEC pay no more than reasonable compensation to its officers and directors and to report the compensation paid to “Key Employees”.

45. Cross Claim Defendants' conduct in failing to report or reporting inaccurate information to the IRS constitutes a breach of their fiduciary duty to the Cross Claim Plaintiff and to the Class.

46. The Cross Claim Defendants' conduct in the payment of excess compensation, per diem, and travel expense reimbursement as described above constitutes violations of the RECA described *supra*, and as proved at trial, each constitute a breach of fiduciary duty or duties owed by the Cross Claim Defendants to Cross Claim Plaintiff and to the Class.

47. The Cross Claim Defendants' flagrant breaches of fiduciary duties have gone

on uninterrupted for decades. Such longstanding behavior has been fraudulently concealed from Cross Claim Plaintiff and from the Class.

48. The Cross Claim Plaintiff and the Class have suffered injury as a result of the Cross Claim Defendants' breaches of fiduciary duties and seek the remedies set forth below.

### COUNT THREE –EXCESSIVE COMPENSATION - BREACH OF CONTRACT

49. All allegations contained in the preceding paragraphs are re-pled hereat as if fully set forth.

50. In addition, the above and foregoing described conduct concerning the payment and non-disclosure of excessive compensation, per diem, and travel expense reimbursement constitutes breach of contractual duties owed by the SEC and by the Cross Claim Defendants to the Cross Claim Plaintiff and to the Class.

51. The SEC Bylaws, by their explicit terms, constitute a valid, enforceable contract. The SEC Articles also, according to the common law of this state, constitute a contract between the SEC (and the Cross Claim Defendants) and its members, i.e. Cross Claim Plaintiff and the Class.

52. The Cross Claim Plaintiff and the Class, as members of the SEC, are parties to the contract evidenced by the SEC Bylaws and SEC Articles and thus have standing to sue for its breach.

53. The Cross Claim Plaintiff and the Class have performed and continue to

perform their contractual obligations under the SEC Bylaws and SEC Articles.

54. The conduct of the individual Cross Claim Defendants in the payment of excess compensation, per diem, and travel expense reimbursement constitutes a breach of the contractual obligations under the SEC Bylaws and SEC Articles, in particular Art. V, § 7 of the Bylaws.

55. The breaches of the SEC Bylaws and SEC Articles have been uninterrupted and longstanding, continuing for decades; and have been intentionally and fraudulently concealed from Cross Claim Plaintiff and the Class.

56. The Cross Claim Plaintiff and the Class have suffered injury as a result of the Cross Claim Defendants' breaches and seek the remedies set forth below.

57. All conditions precedent required by Cross Claim Plaintiffs have been met.

#### COUNT FOUR – EXCESSIVE COMPENSATION - NEGLIGENCE

58. All allegations contained in the preceding paragraphs are re-pled hereat as if fully set forth.

59. In addition, the above and foregoing described conduct concerning the payment of and non-disclosure of such payment of excessive compensation, per diem, and reimbursement of travel expense constitute negligence that was a proximate cause of damages to the Cross Claim Plaintiff and to the Class and which was fraudulently concealed from them.

60. The Cross Claim Defendants owe a duty to exercise reasonable and ordinary

care in serving the SEC's members, including Cross Claim Plaintiff and the Class.

61. In their acts and omissions described above, the Cross Claim Defendants, at a minimum violated their duty of care and were negligent.

62. The Cross Claim Plaintiffs and the Class have suffered injury as a result of the Cross Claim Defendants' breaches of duties of care. As compensation, therefore, Cross Claim Plaintiffs seek the remedies set forth below.

#### COUNT FIVE - WASTEFUL SPENDING – BREACH OF FIDUCIARY DUTY

63. All allegations contained in the preceding paragraphs are re-pled hereat as if fully set forth.

64. The SEC Bylaws provide that any amount paid by members above the cost of their service is patronage capital and must be allocated according to the SEC Articles, SEC Bylaws and RECA. But the Board of Trustees, by and through the Cross Claim Defendants, has spent without authority untold sums of money. These unlawful expenses include among other things, receiving advances for mileage even though the Trustee(s) did not drive, excessive hotel room charges, excessive money spent on dinners, and excessive money spent on training schools and traveling.

65. The above and foregoing conduct relating to the wasting of Cross Claim Plaintiffs' capital and the failure and refusal to disclose it to Cross Claim Plaintiff and the Class constitutes a further breach of the fiduciary duty owed by Cross Claim Defendants to Cross Claim Plaintiffs. Such conduct involved self dealing, dishonesty,



disloyalty and fraudulent concealment and was committed intentionally. Cross Claim Plaintiffs have been injured by such breach of fiduciary duty and seek the remedies set forth below.

#### COUNT SIX - WASTEFUL SPENDING - BREACH OF CONTRACT

66. All allegations contained in the preceding paragraphs are re-pled hereat as if fully set forth.

67. The above and foregoing conduct relating to the wasting of Cross Claim Plaintiffs' capital and the failure and refusal to disclose it to the Cross Claim Plaintiff and to the Class constitute a breach of the contractual duties and obligations created by the SEC Bylaws and SEC Articles and owed by the SEC and Cross Claim Defendants to Cross Claim Plaintiff and the Class.

68. These breaches of contractual duties were fraudulently concealed from and have caused injury to the Cross Claim Plaintiff and the Class for which they seek the remedies set forth below.

#### COUNT SEVEN- WASTEFUL SPENDING - NEGLIGENCE

69. All allegations contained in the preceding paragraphs are re-pled hereat as if fully set forth.

70. The above and foregoing conduct relating to the wasting of Cross Claim Plaintiff's and the Class' capital and the failure and refusal to disclose it to the Cross Claim Plaintiff and the Class constitute a breach of the duty owed to them by the SEC

and the current and former trustees and officers of the SEC, i.e. the Cross Claim Defendants, to exercise reasonable and ordinary care in serving the members of SEC, i.e. the Class. These acts were fraudulently concealed from the Cross Claim Plaintiff and the Class and were the result of negligence and proximately caused injury to the Cross Claim Plaintiff and the Class for which they seek the remedies set forth below.

71. The individual Cross Claim Defendants are not required to turn in itemized travel expenditures, such as gas bills, hotel bills, entertainment bills, etc..., making it impossible for the Class to discover the true financial activities of the individual Cross Claim Defendants thereby requiring an independent accounting to determine the true extent of improper compensation.

#### COUNT EIGHT - "PATRON'S CAPITAL" - GENERAL ALLEGATIONS

72. All allegations contained in the preceding paragraphs are re-pled hereat as if fully set forth.

73. The terms "patronage capital" and/or "Patron's Capital" as used by the SEC represents SEC's accumulated retained excess of revenues over expenses that have been allocated annually to its members based upon a member's total annual purchases of electricity to total annual SEC sales of electricity, in accordance with SEC's Bylaws.

74. It is expressly understood that amounts paid for electric and other services, in excess of the cost of these services, are furnished by members as capital, and each member shall be credited with the capital so furnished as provided in the SEC Bylaws.

Patronage Capital belongs to the SEC members (i.e. the Class), not the SEC. By virtue of the contractual relationship created by the Bylaws, the SEC holds the Patronage Capital in trust for the benefit of the members, i.e. the Class. Under this arrangement, the SEC, its trustees and officers of the SEC are the trustees of that patronage capital-trust.

75. "The books and records of the Cooperative shall be set up and kept in such a manner that at the end of each fiscal year the amount of capital, if any, so furnished by each patron is clearly reflected and credited in an appropriate record to the capital account of each patron ("Patron Capital Account"), and the Cooperative shall within reasonable time after the close of the fiscal year notify each patron of the amount of capital so credited to his account." Bylaws, Art. VIII, § 2.

76. In 2008, SEC reported \$14,611,891 in Patronage Capital. SEC Notes to the Financial Statements March 31, 2009 and 2008, at 3. In 2009, SEC reported \$16,789,295 in Patronage Capital. *Id.*

77. In 2008, SEC has not reported, published or given notice of individual patron's capital account to which each patron or member as required by and in open violation of the SEC Bylaws.

78. SEC does not have a patronage capital retirement plan and carries on its books enormous amounts of "Patron's Capital", also known as "patronage capital", in violation of RECA § 62-15-20, which acts, omissions and failures are directly and proximately attributed to the Cross Claim Defendants.

COUNT NINE– PATRON’S CAPITAL- BREACH OF FIDUCIARY DUTY

79. All allegations contained in the preceding paragraphs are re-pled hereat as if fully set forth.

80. The above and foregoing conduct relating to the manner in which Cross Claim Defendants treated Cross Claim Plaintiff’s and the Class’ patronage capital constitutes a breach of the fiduciary duties owed by Cross Claim Defendants to Cross Claim Plaintiff and the Class. Cross Claim Plaintiffs have been injured by such breach of fiduciary duty and seek the remedies set forth below.

COUNT TEN– PATRON’S CAPITAL - BREACH OF CONTRACT

81. All allegations contained in the preceding paragraphs are re-pled hereat as if fully set forth.

82. The above and foregoing conduct relating to the manner in which Cross Claim Defendants treated Cross Claim Plaintiff’s and the Class’ patronage capital constitutes a breach of the contractual duties and obligations created by the SEC By-Laws and SEC Articles owed by the SEC and Cross Claim Defendants to Cross Claim Plaintiff and to the Class.

83. These breaches of contractual duties were fraudulently concealed from and have caused Cross Claim Plaintiffs and the Class damages, for which they seek the remedies set forth below.

#### COUNT ELEVEN– PATRON’S CAPITAL – NEGLIGENCE

84. All allegations contained in the preceding paragraphs are re-pled hereat as if fully set forth.

85. The above and foregoing conduct relating to Cross Claim Defendants' treatment of and fraudulent concealment relating to the Cross Claim Plaintiff's and the Class' patronage capital constitutes negligence and proximately caused injury to the Cross Claim Plaintiff and the Class for which they seek the remedies set forth below

#### COUNT TWELVE - DENIAL OF VOTING RIGHTS – GENERAL ALLEGATIONS

86. All allegations contained in the preceding paragraphs are re-pled hereat as if fully set forth.

87. The SEC By-Laws lay out the quorum requirements but do not require a quorum present to conduct a meeting. Art. III, § 6. In addition, the By-Laws do not allow for proxy voting. Art. III, § 8. The Cross Claim Defendants have manipulated these rules to create a system of scheming quorum calls and an ineffective means of having proposals heard, denying to Cross Claim Plaintiff and the Class any semblance of democratic participation in the affairs of the SEC.

#### COUNT THIRTEEN– VOTING RIGHTS - BREACH OF FIDUCIARY DUTY

88. All allegations contained in the preceding paragraphs are re-pled hereat as if fully set forth.

89. The above and foregoing conduct relating to the voting constitutes a breach

of the fiduciary duties owed by Cross Claim Defendants to Cross Claim Plaintiff and to the Class. Cross Claim Plaintiffs have been injured by such breach of fiduciary duty and seek the remedies set forth below.

#### COUNT FOURTEEN– VOTING RIGHTS - BREACH OF CONTRACT

90. All allegations contained in the preceding paragraphs are re-pled hereat as if fully set forth.

91. The above and foregoing conduct by the Cross Claim Defendants relating to the voting constitutes a breach of the contractual duties and obligations created by the SEC By-Laws and SEC Articles owed by the SEC to Cross Claim Plaintiff and to the Class.

92. These breaches of contractual duties were fraudulently concealed from and have caused injury to Cross Claim Plaintiff and to the Class, by the Cross Claim Defendants, for which they seek the remedies set forth below.

#### COUNT FIFTEEN – VOTING RIGHTS - NEGLIGENCE

93. All allegations contained in the preceding paragraphs are re-pled hereat as if fully set forth.

94. The above and foregoing conduct relating to Cross Claim Defendants' treatment of and fraudulent concealment relating to voting constitutes negligence and proximately caused injury to Cross Claim Plaintiff and to the Class for which they seek the remedies set forth below.

## COUNT SIXTEEN - REMEDIES SOUGHT

95. All allegations contained in the preceding paragraphs are re-pled hereat as if fully set forth.

### a. DECLARATORY RELIEF

96. An actual controversy exists between the parties, and pursuant to Rule 1-057 NMRA 2007 and the Declaratory Judgment Act NMSA 1978 § 44-6-1 *et seq.*, Cross Claim Plaintiffs and the Class are entitled to a judgment declaring and establishing the respective rights and obligations of the parties with respect to the claims set forth.

97. In as much as the Cross Claim Plaintiff brings this action on behalf of himself and on behalf of the Class, *inter alia*, for the purposes of determining their rights, duties, obligations and interests in the SEC Bylaws, SEC Articles, and the RECA, which are adverse to and in conflict with those asserted by on on behalf of the Cross Claim Defendants, there presently exists a live, actual, real and ripe dispute among the parties. As a matter of law, therefore, a justiciable controversy exists and invokes this Court's subject matter jurisdiction.

98. A live, actual, real and ripe dispute exists between the Cross Claim Plaintiffs and the Cross Claim Defendants regarding the Cross Claim Defendants' interpretation, application and operation of certain terms and provisions of the SEC Bylaws, SEC Articles and the RECA, and/or regarding certain conflicts between and among the terms and provisions of the Bylaws, Articles and the RECA.

99. Accordingly, the Cross Claim Plaintiff and the Class seeks a judicial declaration that:

(a) The SEC Bylaws and SEC Articles constitute a binding and enforceable contract between the SEC and the SEC Board on the one hand and the SEC members on the other;

(b) The SEC Bylaws and SEC Articles are contemplated by and as a matter of law must not be inconsistent or in conflict with each other, or inconsistent or in conflict with or in violation of the RECA, or interpreted in such a way as to be inconsistent with, in conflict with or in violation of the RECA;

(c) To the extent any terms or provisions of the SEC Bylaws or SEC Articles or interpretations thereof are in conflict with or in violation of the RECA, such conflicting terms or provisions of the SEC Bylaws, SEC Articles and/or interpretations thereof are void and unenforceable, and the terms and provisions of RECA prevail and are binding and enforceable; and to the extent any provisions or terms of the SEC Bylaws and SEC Articles or interpretations thereof are in conflict with each other, the conflicting provisions or terms of the SEC Bylaws are void and unenforceable, and the provisions of the SEC Articles or interpretations thereof prevail and are binding and enforceable;

(d) Under the relevant provisions of the SEC Bylaws, a trust is created with respect to Patron's Capital, under which the Cross Claim Defendants are trustees for the benefit of the member patrons (Cross Claim Plaintiff and Class) and by which Cross



Claim Defendants are held to the highest standard of fiduciary duty owed to the Cross Claim Plaintiff and to the Class;

(f) The Cross Claim Plaintiff and the Class are entitled to an accounting of the “Patron’s Capital” accounts; and

(g) The Cross Claim Plaintiff and the Class are entitled to an award of reasonable and necessary attorneys’ fees to the undersigned attorneys for their prosecution of this declaratory judgment.

#### b. INJUNCTIVE RELIEF

100. Cross Claim Plaintiff and the Class request that the Court order that each individual Cross Claim Defendant be removed as an SEC trustee, officer, director or manager of the SEC and appoint new trustees, officers or managers in a manner the Court deems practicable in accordance with the spirit of the SEC Bylaws and RECA, including re-districting the trustee’s election districts in a manner the Court deems practicable in accordance with the spirit of “one man, one vote” and thereafter to insure that democratically elected trustees and officers may take office and act in the best interest of the SEC's members.

#### c. ACCOUNTING AND DISGORGEMENT

101. Cross Claim Plaintiff and the Class request that the Court order the Defendants to provide an accounting of:

(a) All compensation and benefits paid to the Cross Claim Defendants and to

any other employees, officers, advisory trustees or directors, advisory trustees or directors-at-large, agents or representatives, during their respective terms in office, including but not limited to reimbursement for expenses, per diem, mileage, etc., that is, all monies or benefits actually paid to or received by said individuals, however denominated, from the funds otherwise belonging to or under the control of SEC;

(b) The "Patrons' Capital", or patronage capital, however denominated; and

(c) The financial status, profits, losses, revenues, expenses and liabilities of the SEC, or any other subsidiary for the past ten (10) years.

102. Cross Claim Plaintiff and the Class request that the Court order the disgorgement of all excessive compensation and benefits, including but not limited to expenses for which no legitimate expense receipts or vouchers are produced and of all monies spent on expenses which are deemed excessive or which are for any reason disallowed, and all amounts of "Patron's Capital" which otherwise should have been retired and repaid, and such other funds or benefits improperly expended as are revealed by the accounting; and that the same be held as and for the benefit of the Class, together with pre-judgment and post-judgment interest thereon as allowed by law.

#### d. CONSTRUCTIVE TRUST

103. The conduct of the individual Cross Claim Defendants in the breach of their fiduciary duty owed to Cross Claim Plaintiff and to the Class and described herein, creates a presumption of unfairness as a matter of law. As a result, the burden of

persuasion rests squarely on the individual Cross Claim Defendants to show that the transactions were fair and equitable to the beneficiary, i.e. that the compensation and other benefits received conferred a real and substantive value on the SEC of good and sufficient consideration.

104. Cross Claim Plaintiff and the Class request that the Court place a constructive trust on all monies, proceeds, funds or property obtained by the Cross Claim Defendants as a result of their breaches of fiduciary duty, including but not limited to all compensation or funds ordered to be disgorged, to protect the rights and interests of the Cross Claim Plaintiff and of the Class in them, and to return such monies, proceeds, funds or property to Cross Claim Plaintiff and the Class in a fair and equitable proportion and in any event in proportion to the individual class plaintiff's interest in the "Patron's Capital".

e. COMPENSATORY DAMAGES

105. Cross Claim Plaintiff and the Class seek actual compensatory damages for the injury caused by Cross Claim Defendants' breaches. Cross Claim Plaintiff and the Class seek the return of the compensation wrongfully paid and other wasteful and self-dealing expenditures; the return of excess revenues ; in an amount not less than the plaintiff's individual patron's capital; and monetary damages from the individual Cross Claim Defendants in an amount not less than their patron's capital; and monetary damages from the individual Cross Claim Defendants in an amount at least equal to the

total excessive compensation and benefits paid by SEC to the individual Cross Claim Defendants and such other compensatory damages as may be revealed by the accounting, together with such pre-judgment and post-judgment interest thereon as allowed by law.

f. EXEMPLARY or PUNITIVE DAMAGES

106. The Cross Claim Defendants' conduct, acts and omissions as alleged above, were done either with malice; or were done willfully, recklessly and in wanton disregard for the rights of the Class; or were done in a fraudulent manner; or were done in bad faith; and as a result of any one of these, Plaintiff and the Class are entitled to recover exemplary and/or punitive damages to punish this outrageous conduct and to deter similar conduct by others similarly situated in the future, together with such pre-judgment and post-judgment interest thereon as allowed by law.

g. ATTORNEY'S FEES

107. If, as and when the Cross Claim Plaintiffs' Class is certified as requested *infra*, Cross Claim Plaintiff and the Class request attorneys' fees and costs authorized by law or by agreement of the parties under the procedures set out in N.M. Dist. Ct. R.C.P. 1-023 (NMRA 2009).

PRAYER FOR RELIEF

WHEREFORE, Cross Claim Plaintiff on behalf of himself and the Cross Claim Plaintiffs' Class, respectfully request that the Court grant to them all relief sought in

Count Sixteen, a. through g., inclusive, including but not limited to, the following:

A. Certify the Cross Claim Plaintiffs' Class as described herein and that the Cross Claim Plaintiff is representative of the Cross Claim Plaintiffs' Class and appoint the undersigned attorneys as class counsel for the Class;

B. Enter judgment requiring an independent accounting of all transactions of the SEC for the past ten (10) years, including but not limited to: (a) Patron's Capital accounts and the use of such funds by the SEC; (b) compensation actually paid to trustees and officers during the past (10) years; (c) actual expenses reported by trustees and officers, such as per diem, mileage, travel, etc.; (d) any other funds or benefits paid to or on behalf of any trustee or officer during the past (10) years; and (e) all expenses claimed by the SEC for the past ten (10) years regardless of recipient;

C. Order disgorgement of all amounts misappropriated by the Defendants and impose a constructive trust on such amounts to be held solely for the member/owners of SEC, i.e. Cross Claim Plaintiff and the Class;

D. Enter judgment that all Cross Claim Defendants, jointly and severally, are liable for actual damages, including, but not limited to: (i) all excessive compensation and benefits and all improper expenditures paid by SEC during the relevant time period; (ii) the patronage capital which should have been distributed or retired to the Cross Claim Plaintiff and the Class during the relevant time period; and all other such damages as may be revealed by an accounting;

E. Enter judgment that all Defendants, jointly and severally, are liable for exemplary damages based on malice, willful, reckless or wanton behavior, fraudulent behavior or acts or omissions done in bad faith in an amount sufficient to punish Cross Claim Defendants and to deter similar conduct in the future;

F. Enter judgment declaring that all amounts so disgorged shall be held in a constructive trust for the benefit of the member/owners, i.e. Cross Claim Plaintiff and the Class pending distribution of the same in an equitable manner to be determined;

G. Enter judgment declaring that the SEC, by and through the acts and omissions of the Cross Claim Defendants, has breached its contractual obligations, covenants, agreements and duties set out in the SEC Bylaws and the SEC Articles;

H. Order removal of all Defendants who are trustees, officers or managers of SEC and to replace them in a manner determined by the Court which is consistent with the SEC Bylaws, SEC Articles, and RECA, including but not limited to retaining oversight to enjoin further violations and to enjoin any redistricting of trustee's electoral districts which would, in the Court's opinion, violate fundamental principles of democracy, including but not limited to "one man, one vote";

I. Enter judgment declaring the rights, duties, interests and status of the Cross Claim Plaintiff and Cross Claim Plaintiffs' Class under the SEC Bylaws and the RECA;

J. Award Cross Claim Plaintiffs and Cross Claim Plaintiffs' Class pre-judgment and post-judgment interest, as permitted by law, on all damages;

K. Award Cross Claim Plaintiff and Cross Claim Plaintiffs' Class their reasonable and necessary attorneys' fees, expenses and costs of court; and

L. Award Cross Claim Plaintiff and Cross Claim Plaintiffs' Class such further relief at law and equity to which they are entitled.

Respectfully submitted,

**Ikard Wynne LLP**

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