

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

TAMMY DUGGAN, EFREN ROMERO,
ANGIE VALDEZ, and those similarly situated,

Plaintiffs,

v.

No. D-202-CV-~~2018~~-202-CV-2019-02064

ADELANTE DEVELOPMENT CENTER, INC.,

Defendants.

CLASS ACTION COMPLAINT
FOR VIOLATIONS OF THE NEW MEXICO MINIMUM WAGE ACT AND THE
ALBUQUERQUE MINIMUM WAGE ORDINANCE

INTRODUCTION

1. Here in Albuquerque, there are hundreds of people with physical and intellectual disabilities who are employed in a “sheltered workshop,” segregated from the rest of the labor market, where they scan and shred documents, remove staples from paper with their hands, drive around town to retrieve boxes for shredding, fix tears in documents, and perform a variety of other tasks. For their labor, these workers are paid less than the New Mexico or Albuquerque minimum wage—sometimes as little as 18 cents per hour according to recent filings with the United States Department of Labor. This suit seeks an injunction against this anachronistic practice and backpay for these illegal and unfair wages.

2. Tammy Duggan, Efren Romero, and Angie Valdez are current and former employees of Adelante Development Center, Inc. (“Adelante”) in Albuquerque, New Mexico, where they work alongside other individuals with intellectual and physical disabilities. Adelante pays them and

hundreds of their co-workers substantially less than New Mexico and Albuquerque minimum wage.

3. Adelante profits tremendously off this practice. It profits first in the form of all the savings it pockets by paying its workers substantially less than minimum wage. Most businesses in New Mexico, including most of Adelante's competitors in the document imaging and destruction markets, play by the rules. In Albuquerque, they pay their workers at least \$9.20 per hour (or \$8.20 with benefits). But Adelante skirts these rules and has tried for years to get away with paying its hundreds of workers substantially less than that. In doing so, it pockets thousands of dollars a day that belong to its workers.

4. Adelante also profits by collecting state and private funds paid to the service providers of individuals with intellectual and developmental disabilities. Among these funds are those issued pursuant to the Developmental Disabilities Waiver ("DDW"). These funds are administered by the New Mexico Department of Health and are paid to service providers that help people with intellectual and developmental disabilities "participate as active members of their communities." Through the DDW, Adelante is paid by the state for every hour that some of its employees work. Adelante also collects checks from some supportive living programs for each hour worked by residents of those programs employed by Adelante.

5. Often the payments Adelante receives from these funding sources per hour of work performed by an Adelante worker exceed New Mexico and Albuquerque minimum wage. For example, Plaintiff Valdez's supportive living program pays Adelante at least \$9.50 for each hour Valdez works, while Adelante pays Valdez only \$4.00 per hour. That's over \$5.00 of profit for

Adelante for every hour that Valdez works, not even including the revenue it generates from the customers who pay Adelante for the fruits of Valdez's labor.

6. Adelante's operations are inconsistent with the best interests of its workers and the express terms of the DDW program. The work Adelante requires its employees to perform does not involve them "participating as active members of their communities." While Adelante claims that its sheltered workshops offer people with disabilities a chance to learn skills in a rehabilitative environment that will prepare them for other jobs in the community, in reality Plaintiffs and their coworkers perform rote, repetitive tasks in a setting where they are isolated and entirely segregated from the broader community.

7. Additionally, Adelante's workers with disabilities receive no training in new skills or techniques that would prepare them for outside employment. It is indicative of Adelante's dead-end work environment that increases in seniority and proficiency do not translate into higher levels of responsibility for these workers. In exchange for the subminimum wages it pays its workers with disabilities, Adelante offers dead-end sweatshop jobs with few chances for advancement or transition to better employment. Plaintiffs' work at Adelante is far from rehabilitative.

8. These practices are in direct conflict with New Mexico and Albuquerque law. New Mexico law allows employers to obtain certificates to pay workers with disabilities less than minimum wage under certain conditions when approval is given by the Director of the Labor Relations Division of the Department of Workforce Solutions. NMSA 1978, § 50-4-23. But Adelante has never sought such approval for any of the hundreds of workers with disabilities it pays or has paid less than the state or local minimum wage. While Adelante has obtained

certifications from the United States Department of Labor that exempt at least some of Adelante's workers from *federal* minimum wage requirements, 29 U.S.C. § 214(c), those certificates do not exempt Adelante from the requirements of *New Mexico* or *Albuquerque* minimum wage law. Adelante, nonetheless, continues to flout New Mexico and Albuquerque law by employing workers for as little as \$0.18 per hour and profiting off their labor.

PARTIES, JURISDICTION, AND VENUE

9. Plaintiff Tammy Duggan is domiciled in New Mexico and has been domiciled in New Mexico throughout her employment with Adelante.

10. Plaintiff Efren Romero is domiciled in New Mexico and was domiciled in New Mexico throughout his employment with Adelante.

11. Plaintiff Angie Valdez is domiciled in New Mexico and has been domiciled in New Mexico throughout her employment with Adelante.

12. Defendant Adelante Development Center, Inc., is a New Mexico Non-Profit Corporation with its principal place of business in Albuquerque. It is registered to do business in the City of Albuquerque and operates in at least Bernalillo and Valencia Counties.

13. This Court has jurisdiction over the subject matter of this action pursuant to the New Mexico Constitution, art. VI § 13, NMSA 1978, § 50-4-26(D), and Albuquerque, N.M., Rev. Ordinances, ch. 13, art. XII, § 13-12-5. This Court has personal jurisdiction over Plaintiffs and Defendant.

14. Venue is proper in this Court pursuant to NMSA 1978 § 38-3-1 because Defendant is a New Mexico Non-Profit Corporation that operates in at least Bernalillo and Valencia Counties.

FACTUAL ALLEGATIONS

A. Tammy Duggan's Work at Adelante

15. Duggan has worked at Adelante for 17 years. During her tenure at Adelante, Duggan has worked mostly as a document imaging clerk or document preparer and occasionally as a document scanner. For the last three years, Duggan has worked as a document imaging clerk.

16. In that position, Duggan prepares documents for scanning. She removes staples by hand, tapes sticky notes to paper, fixes tears in documents, and makes sure document pages are not stuck together.

17. This work is hard and tedious. Duggan has had staples painfully lodged underneath her fingernails at work and has had to remove oversized staples with pliers.

18. Duggan and other employees in Document Imaging are paid based on how many hours Adelante claims they work. Duggan and other employees in Document Imaging are not instructed to keep track of time spent on each task they perform and are not paid by task.

19. Duggan believes that when she started working at Adelante, she made \$3.20 per hour. Two years ago, she made \$5.46 per hour. Currently, Duggan makes \$8.84 per hour.

20. When a worker in Document Imaging asks about pay, Adelante staff tells the worker that their pay is the product of the worker's productivity and their performance on a time study that is conducted periodically for many of Adelante's workers. Adelante staff tells workers that they are not allowed to discuss their pay or compare pay stubs with other workers. During one team meeting, called a "tailgate meeting" by Adelante staff, a staff member announced to all workers present: "You're not supposed to talk about how much you get paid. Don't show your paychecks."

21. Adelante is far more concerned about Duggan completing her work tasks than helping her meet any rehabilitative goal. If Duggan meets with her case manager during work hours, Adelante makes sure that time spent meeting with the case manager is off the clock and uncompensated.

22. Adelante is paid by Duggan's DD Waiver when Duggan is at work. An Adelante staff member told Duggan, "If you're not here, Tammy, we don't get paid." Duggan has heard staff members tell other workers on the DDW the same thing—"if you're not here, we don't get paid."

23. In 2018, Duggan's DDW services were temporarily suspended because one of her service providers failed to submit paperwork on time. Her services were suspended as of October 31, 2018. On or about January 21, 2019, Adelante advised Duggan that she could not return to work until her DDW services resumed. Adelante required Duggan to take a leave of absence from her employment until her DDW services were reinstated, reinforcing that Adelante's purpose in employing Duggan is profiting off her labor and her DDW.'

24. On or about February 28, 2019, Duggan's DDW services were restored. As a result, Adelante permitted her to return to work.

B. Efren Romero's Work at Adelante

25. Romero worked for Adelante's Document Destruction Services department from May 2016 to December 2018.

26. Romero was employed by Adelante in Adelante's Document Destruction Services Center. In that role, he shredded documents, cleaned up the workspace, and sometimes picked up documents to shred.

27. Adelante paid Romero \$4.75 per hour for his work in fall of 2018. Romero's pay was \$2.75 below the New Mexico minimum wage of \$7.50/hour and \$4.20 below the then applicable Albuquerque minimum wage of \$8.95/hour.

28. On a daily basis, Romero's work consisted of shredding documents and cleaning up the document destruction work space. Occasionally, Romero was assigned to ride in a truck and pick up boxes of documents to destroy.

29. Adelante paid Romero about \$3.00 per hour for his work at the beginning of Romero's employment in 2016. After that, Romero received a couple small raises. At the end of his employment at Adelante, Romero was paid \$4.75 per hour for the work he performed.

30. Romero worked from 8 a.m. to 2 p.m. for Adelante. At 10 a.m., he received a 10-minute break. At 11 a.m., he received a 30-minute lunch break.

31. Romero and other employees in Document Destruction Services were paid based on how many hours Adelante claims they worked. Romero and other employees in Document Destruction Services were not instructed to keep track of time spent on each task they performed and were not paid by task.

32. Though Romero worked in a large Adelante warehouse filled with many people, his work was solitary and lonely, consisting almost entirely of independent and repetitive work.

33. Romero is outgoing and friendly and wishes he could work in a more social environment, but his job at Adelante did not facilitate his advancement to a job either internally or in the general workforce that would suit his interests and skills by allowing him to interact with others.

34. In December 2018, Romero requested a leave of absence from Adelante management because he was ill and needed to recover from a recent medical procedure. When Romero's mother contacted that same Adelante staff member to give her an update on Romero's health shortly thereafter, the staff member said that Romero was not granted a leave of absence and had instead been terminated from his position at Adelante.

35. After being terminated by Adelante for having to address his medical needs, Romero is now seeking a job that pays competitive wages in an integrated workplace.

C. Angie Valdez's work at Adelante.

36. Angie Valdez has worked at Adelante since approximately December of 2012, when she was hired to work in the Document Destruction Services department.

37. Around 2014, Valdez was injured when a barrel of papers to be destroyed fell on her. She suffered significant injuries to her back as a result and continues to receive Workers' Compensation benefits as a result of her injury.

38. Since that injury, Valdez has worked in Adelante's Document Imaging department as a Clerk.

39. During her employment with Adelante, Valdez's wages have varied between \$3.80/hour and \$6.11/hour, based on wage time studies to which she was subjected.

40. Valdez's most recent wage time study was performed on December 12, 2018. At that time, Adelante determined she would continue being paid \$4.00/hour for her labor.

41. At \$4.00 per hour, Valdez is paid \$3.50 below the New Mexico minimum wage of \$7.50/hour and more than \$5.00 per hour below the current Albuquerque minimum wage.

42. Adelante will continue to pay Valdez and those like her who are employed by Adelante illegally low wages absent a court order to comply with state and municipal minimum wage law.

43. Upon information and belief, Adelante receives at least \$9.50 per hour for each hour Valdez works from Valdez's supportive living program.

D. Adelante's Employment of Workers for Shockingly Low Wages

44. During their employment by Adelante, Plaintiffs and those similarly situated suffer from illegal pay practices implemented by Adelante, which has caused and still causes Plaintiffs and those similarly situated to be paid illegally low wages.

45. In 2015, according to Adelante's 2015 Form WH-226 that Adelante submitted to the federal government, Adelante employed around 117 workers in its Secure Document Center facility at any given time. Those workers were paid as little as \$1.82 per hour.

46. The same form also reveals that in 2015, Adelante employed around 118 workers in its Mailing and Fulfillment Center facility at any given time. Those workers were paid as little as \$0.18 per hour.

47. Adelante has received 14(c) certificates granted by the United States Department of Labor. Under Section 14(c) of the Fair Labor Standards Act, employers can obtain certificates that would permit those employers to employ workers for less than the federal minimum wage.

48. The New Mexico Director of Labor Relations Division has the authority to grant certificates that allow the payment of subminimum wages to individuals with disabilities who work in "centers planned and designed exclusively to provide therapeutic activities for handicapped persons whose physical or mental impairment is so severe as to make their productive capacity inconsequential." N.M. Stat. § 50-4-23.

49. However, Adelante has never even attempted to comply with this provision. As of late 2017, the New Mexico Department of Workforce Solutions had never received any inquiries from Adelante about obtaining certificates that would permit Adelante to employ workers for less than the state minimum wage.

E. Adelante's Profit

50. Adelante reported in its 2015 Form WH-226A that the prevailing wage for a document imaging clerk is \$9.88 per hour. Yet it pays some document imaging clerks as little as \$1.82 per hour—\$8.06 less than the prevailing wage.

51. Assuming Adelante employs 200 people, working for \$4.00 an hour, for 7 hours a day, it saves more than \$8,000 *per day* through its subminimum wage work program, which does not even include revenue from Adelante's customers or the DDW and other funds that Adelante recoups for its employees' work.

52. Altogether, this leads to large profits for Adelante. Based on its 2015 Form-990, Adelante generated around \$11 million in revenue in 2015 from its facilities support and business services programs and had around \$17 million in assets.

CLASS ACTION ALLEGATIONS

53. Plaintiffs bring this action as a class action on behalf of similarly situated employees.

54. Plaintiffs seek to represent the following class, which shall be defined as the "N.M. Minimum Wage Class."

ALL CURRENT OR FORMER EMPLOYEES OF ADELANTE WHO PERFORMED WORK IN NEW MEXICO AND WERE PAID LESS THAN THE NEW MEXICO MINIMUM WAGE IN EFFECT DURING THE TIME WHEN THE WORK WAS PERFORMED.

55. Plaintiffs also seek to represent the following class, which shall be defined as the “Albuquerque Minimum Wage Class.”

ALL CURRENT OR FORMER EMPLOYEES OF ADELANTE WHO PERFORMED WORK IN ALBUQUERQUE AND WHO WERE PAID LESS THAN THE ALBUQUERQUE MINIMUM WAGE IN EFFECT DURING THE TIME WHEN THE WORK WAS PERFORMED.

56. Plaintiffs also seek to represent the following class, which shall be defined as the “N.M. Minimum Wage Injunctive Class.”

ALL CURRENT EMPLOYEES OF ADELANTE WHO PERFORM WORK IN NEW MEXICO AND ARE PAID LESS THAN THE NEW MEXICO MINIMUM WAGE IN EFFECT DURING THE TIME WHEN THE WORK IS PERFORMED.

57. Plaintiffs also seek to represent the following class, which shall be defined as the “Albuquerque Minimum Wage Injunctive Class.”

ALL CURRENT EMPLOYEES OF ADELANTE WHO PERFORM WORK IN ALBUQUERQUE AND ARE PAID LESS THAN THE ALBUQUERQUE MINIMUM WAGE IN EFFECT DURING THE TIME WHEN THE WORK IS PERFORMED.

58. Each class meets the requirements of Rule 1-023(A) NMRA.

- i. Numerosity: Adelante has employed more than 100 people in Albuquerque whom, according to its filings with the federal government, it has paid less than the New Mexico or Albuquerque minimum wage.
- ii. There are legal and factual issues common to each of the classes.
- iii. Plaintiffs’ claims are typical of class members’ claims.
- iv. Plaintiffs will fairly and adequately protect the interests of the classes.

59. The New Mexico Minimum Wage Class and the Albuquerque Minimum Wage Class also meet the requirements of Rule 1–023(b)(3) NMRA.

- i. Common issues of fact or law predominate over individual issues.
- ii. The class action mechanism is superior to other methods of adjudicating the dispute.

60. The N.M. Minimum Wage Injunctive Class and the Albuquerque Minimum Wage Injunctive Class also meet the requirements of Rule 1-023(b)(2) NMRA because Adelante has 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.

COUNT ONE: VIOLATIONS OF THE NEW MEXICO MINIMUM WAGE ACT

(by Plaintiffs, the N.M. Minimum Wage Class, and the N.M. Minimum Wage Injunctive Class Against Adelante)

61. Plaintiffs incorporate by reference all previous and subsequent paragraphs of the Complaint.

62. As set forth above, Plaintiffs assert this count on their own behalf and on behalf of all those similarly situated pursuant to Rule 1-023 NMRA.

63. Plaintiffs and the Classes are employees under NMSA 1978, § 50-4-21.

64. Plaintiffs and the Classes were suffered or permitted to work by Adelante in New Mexico.

65. Adelante is an employer under NMSA 1978, § 50-4-21.

66. Adelante paid, and continues to pay, Plaintiffs and the Classes less than the New Mexico Minimum Wage in a continuing course of conduct per NMSA § 50-4-32.

COUNT TWO: VIOLATIONS OF THE ALBUQUERQUE MINIMUM WAGE ORDINANCE, Albuquerque, N.M., Rev. Ordinances, ch. 13, art. XII, § 13-12-1 to -6 (“MWO”)

(by Plaintiffs, the Albuquerque Minimum Wage Class, and the Albuquerque Minimum Wage Injunctive Class Against Adelante)

67. Plaintiffs incorporate by reference all previous and subsequent paragraphs of the Complaint.

68. As set forth above, Plaintiffs assert this count on their own behalf and on behalf of all those similarly situated pursuant to Rule 1-023 NMRA.

69. Plaintiffs and the Classes are employees under the MWO. Albuquerque, N.M., Rev. Ordinances, ch. 13, art. XII, § 13-12-2.

70. Adelante is an employer under the MWO. Albuquerque, N.M., Rev. Ordinances, ch. 13, art. XII, § 13-12-2.

71. Adelante has been registered to do business in the City of Albuquerque since at least May 2002. Its business license number is BRC-2002-277438.

72. Adelante employed Plaintiffs and the Albuquerque Minimum Wage Class within the municipal limits of Albuquerque and paid them less than the Albuquerque minimum wage.

73. Adelante employs Plaintiffs and the Albuquerque Minimum Wage Injunctive Class within the municipal limits of Albuquerque and pays them less than the Albuquerque minimum wage.

DEMAND FOR JURY TRIAL

74. Plaintiffs demand a trial by jury for all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request an Order and Judgment from this Court:

- A. certifying the Rule 23 Classes, naming the named Plaintiffs as class representatives of the respective classes they seek to represent, and naming Plaintiffs' counsel as class counsel;
- B. granting judgment in favor of Plaintiffs and against Defendant;
- C. awarding Plaintiffs and the Rule 1-023 NMRA classes their actual damages and any applicable statutory damages;
- D. awarding Plaintiffs and those similarly situated injunctive relief to terminate Defendant's illegal practices;
- E. awarding Plaintiffs and those similarly situated their costs;
- F. awarding Plaintiffs and those similarly situated their attorneys' fees;
- G. awarding Plaintiffs and members of the classes all appropriate equitable and injunctive relief, including an injunction against Defendant's continued illegal payment of less than the New Mexico and Albuquerque minimum wages;
- H. awarding Plaintiffs and the Rule 1-023(b)(2) NMRA classes injunctive relief prohibiting Defendant from future illegal practices as described herein and requiring Defendant to adopt policies and procedures to eradicate the effects of past illegal practices;
- I. awarding Plaintiffs and members of the classes compensatory damages, as allowed by law;