

FIRST JUDICIAL DISTRICT COURT  
COUNTY OF SANTA FE  
STATE OF NEW MEXICO

LOUISE MARTINEZ, individually and as next friend of her minor children AN. MARTINEZ, AA. MARTINEZ, AR. MARTINEZ and AD. MARTINEZ, *et al.*,

*Plaintiffs,*

vs.

No. D-101-CV-2014-00793

THE STATE OF NEW MEXICO, *et al.*,

*Defendants.*

Consolidated with

WILHELMINA YAZZIE, individually and as next Friend of her minor child, XAVIER NEZ, *et al.*,

*Plaintiffs,*

vs.

No. D-101-CV-2014-02224

THE STATE OF NEW MEXICO, *et al.*,

*Defendants.*

**MARTINEZ PLAINTIFFS’ OPPOSED MOTION TO STRIKE**  
**DEFENDANTS’ MOTION TO DISMISS**

Plaintiffs Louise Martinez, *et al.*, (*Martinez* Plaintiffs) respectfully move the Court to strike the motion to dismiss that Defendants State of New Mexico, *et al.* (Defendants) filed on March 13, 2020. Defendants filed their “Motion and Memorandum for Entry of Order of Satisfaction of Injunction and Dismissal of Action” while *Martinez* Plaintiffs’ motion for entry of schedule for discovery and enforcement proceedings is still pending before the Court and raises similar legal and factual issues regarding the Court’s final judgment. A favorable ruling on Defendants' later-filed motion would have the same practical effect as an unfavorable ruling

on *Martinez* Plaintiff's earlier-filed motion. Defendants' motion is therefore an untimely, supplemental response to *Martinez* Plaintiffs' motion for entry of schedule for discovery and enforcement proceedings.

### **BACKGROUND**

On February 14, 2019, the Court entered its Final Judgment and Order, which included the declaratory and injunctive relief from the July 20, 2018, Decision and Order "enjoining the Defendants to take immediate steps, by no later than April 15, 2019, to ensure that New Mexico schools have the resources necessary to give at-risk students the opportunity to obtain a uniform and sufficient education that prepares them for college and career." Final Judgment and Order at 3-4. Defendants did not appeal the Court's Final Judgment and Order.

On October 30, 2019, *Martinez* Plaintiffs filed a motion for entry of a schedule for discovery and enforcement proceedings in accordance with the New Mexico Rules of Civil Procedure and the Court's Final Judgment, in which the Court stated that any party could file a "a report about whether it believes Defendants are in compliance with this Court's Orders." Final J. & Order at 6, *Martinez v. State*, No. D-101-CV-2014-00793 (N.M. Dist. Ct. Feb. 14, 2019). *Martinez* Plaintiffs filed that motion because they have reason to believe that Defendants may not be in compliance with the Court's Orders, describing how Defendants' legislative and administrative actions since the Court's Orders did not appear to have remedied the inadequate public school system. *See* Mot. for Entry of Schedule for Discovery and Enforcement Proceedings at 3-5, 6-9.

Defendants filed their response in opposition to *Martinez* Plaintiffs' motion on November 15, 2019. In their response, Defendants opposed *Martinez* Plaintiffs' request for discovery and argued that relevant information was publicly available. *See* Defs.' Resp. to *Martinez* Plaintiffs'

Mot. for Entry of Schedule for Discovery and Enforcement Proceedings at 2-8. In addition, Defendants argued that they “[a]re [c]omplying” with the Court’s orders and described legislation and some actions taken by the New Mexico Public Education Department (“PED”). *Id.* at 8-10. *Martinez* Plaintiffs filed their reply in support of their motion for entry of schedule for discovery and enforcement proceedings and a notice of completion of briefing of their motion on December 9, 2019.

Prior to the hearing on *Martinez* Plaintiffs’ Motion, however, Defendants, on March 13, 2020, filed a brief requesting that the case be dismissed (“Dismissal Brief”). In their Dismissal Brief, Defendants sought to limit the scope of the Court’s injunction and offered additional evidence that purports to show that Defendants “have substantially complied with the directives set out in the Injunction.” Defendants’ Mot. for Entry of Order of Satisfaction of Injunction and Dismissal of Action (“Dismissal Brief”) at 4-5. This additional evidence included affidavits executed by PED officials that describe purported actions taken by the PED to change the public school system. *See* Exhibits to Defendants’ Dismissal Brief. The majority of the Dismissal Brief consists of Defendants’ description of the actions that they have taken that supposedly satisfy the Court’s judgment. Defendants’ Mot. for Dismissal of Action at 8-51.

### **LEGAL STANDARD**

The New Mexico Rules of Civil Procedure for the District Courts state that a response to an opposed motion “shall be filed within fifteen (15) days after service of the motion.” *See* NMRA, Rule 1-007.1(D). Rule 1-007.1 provides “only for motion, response, and reply” with regard to briefing on motions. *See Dollens v. Wells Fargo Bank, N.A.*, 2015-NMCA-096, ¶ 23, 356 P.3d 531, 540 (*citing* Rule 1-007.1 NMRA). The section of Rule 1-007.1 that provides the time in which a response is due applies to all motions, and the section’s purpose “is to facilitate

the court's efficient disposition of motions generally.” *See Lujan v. City of Albuquerque*, 2003-NMCA-104, ¶ 15, 75 P.3d 423, 428.

## ARGUMENT

Defendants’ Dismissal Brief was an untimely, supplemental response to *Martinez* Plaintiffs’ motion for entry of schedule for discovery and enforcement proceedings.<sup>1</sup> Because it was untimely and because Defendants did not have leave of the Court to file an additional response, Defendants’ Dismissal Brief is improper.

Defendants’ Dismissal Brief was a supplemental response that was untimely. Defendants filed their response on November 15, 2019, within the allowed period of 15 days. *See* NMRA, Rule 1-007.1(D). Defendants filed their motion for dismissal of action on March 13, 2020, ninety-five (95) days after *Martinez* Plaintiffs filed their reply in support of their motion for discovery and the notice of completion of briefing of that motion. Defendants did not seek leave of the Court to file this additional response. *See Madrid v. Brinker Rest. Corp.*, 2016-NMSC-003, ¶ 8, 363 P.3d 1197, 1199 (court granted party leave “to file a supplemental brief” in response).

In their Dismissal Brief, Defendants also did not raise legal reasons to dismiss Plaintiffs’ case that were not already discussed in their response to *Martinez* Plaintiffs’ motion for entry of schedule for discovery and enforcement proceedings. In their response to *Martinez* Plaintiffs’ discovery and enforcement motion, Defendants provided a list of items that purported to show that they were complying with the Court’s injunction, including describing the total amount of public schools appropriations, teacher salary increases, at-risk student funding changes, and a new program called K-5 Plus. *See* Defs.’ Resp. to *Martinez* Plaintiffs’ Mot. for Entry of

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<sup>1</sup> *Martinez* Plaintiffs file this motion as it pertains only to their procedural objection to Defendants’ motion for dismissal of action, not as a substantive response to that motion. *Martinez* Plaintiffs’ response in opposition is forthcoming.

Schedule for Discovery and Enforcement Proceedings at 8-9. The affidavits and other evidence that form the basis of the majority of Defendants' motion for dismissal of action simply expand on the list that Defendants provided in their response to *Martinez* Plaintiffs' discovery and enforcement motion. Defendants' Dismissal Brief at 8-51. Defendants did not raise additional legal reasons, such as jurisdictional concerns, for why the case should be dismissed. Rather, the supplemental evidence that Defendants offer in their motion to dismiss also only goes to the issue of whether Defendants have complied with the Court's injunction. Defendants should not receive another bite at the apple in terms of their response to *Martinez* Plaintiffs' motion—particularly not a 50-page bite—without leave of the Court.

Furthermore, Defendants' Dismissal Brief wastes the time of the parties and judicial resources because there were not significant changes in circumstances between the filing of Defendants' opposition to *Martinez* Plaintiffs' motion for entry of a schedule for discovery and the filing of Defendants' Dismissal Brief. Much of the evidence that Defendants offer in their Dismissal Brief regarding supposed satisfaction of the Court's injunction has to do with legislative and administrative actions taken in 2019 that Defendants' response to *Martinez* Plaintiffs' motion did not present. *See, e.g.*, Dismissal Brief at 9 (“What was not addressed in Defendants' Response is the FY2020 increases from FY2019 were building off significant increases made in FY2019 itself”). *Martinez* Plaintiffs should not have to spend time and resources responding to, and the Court should not have to adjudicate, Defendants' attempt to revise their initial, deficient response. *Cf. Unified Contractor, Inc. v. Albuquerque Hous. Auth.*, 2017-NMCA-060, ¶ 77, 400 P.3d 290, 305 (court may deny “a motion for reconsideration that was merely a restatement of the arguments” that the moving party had already advanced) (internal citation omitted); *see also Anderson Living Tr. v. WPX Energy Prod., LLC*, 312 F.R.D.

620, 648–49 (D.N.M. 2015) (On motions to reconsider, courts “consider the time and expense that the party opposing reconsideration spent in winning the earlier ruling, and should try to prevent that party from having to bear the same impositions again.”).

### CONCLUSION

Because Defendants’ Dismissal Brief filed on March 13, 2020, constitutes an untimely and supplemental response filed without leave of the Court, and because the Dismissal Brief wastes the time and the resources of the parties and the Court, *Martinez* Plaintiffs’ respectfully request that the Court strike Defendants’ Dismissal Brief from the record and refuse to consider any matter in Defendants’ motion in ruling on *Martinez* Plaintiffs’ earlier-filed motion.

DATED: April 26, 2020

Respectfully Submitted,

By: /s/ Ernest Herrera  
Ernest Herrera

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 26th day of April, 2020 a true and correct copy of the foregoing pleading was e-filed and served through the Court's e-filing system upon all counsel of record.

/s/ Ernest I. Herrera  
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