

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

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|---------------------------------------|---|---------------------------|
| STATE OF NEW MEXICO, <i>ex rel.</i> , |) | |
| MARCO WHITE, MARK MITCHELL, |) | |
| and LESLIE LAKIND, |) | |
| |) | Case No. 22-cv-284-WJ-JFR |
| Plaintiffs, |) | |
| |) | |
| |) | |
| v. |) | |
| |) | |
| COUY GRIFFIN, |) | |
| |) | |
| Defendant. |) | |

GRIFFIN’S RESPONSE TO PLAINTIFFS’ NOTICE OF COMPLETION OF BRIEFING

On May 9, Plaintiffs filed a “Notice of Completion of Briefing,” ECF No. 24, in which they represented that “briefing is complete” on their Motion to Remand. ECF No. 10. Plaintiffs’ notice is both misleading and in breach of their written agreement with Griffin.

On May 3, counsel from CREW, the 501(c)(3) organization that recruited the Plaintiffs and directs this litigation, wrote to Griffin’s counsel as follows: “Plaintiffs plan to move for a three-page extension of the page limit for our reply in support of our motion to remand, to ensure we can fully address the issues under consideration. Will Defendant consent? Happy to discuss.” Exh. 1.

The same day, Griffin’s counsel replied: “Griffin does not oppose your request for an oversized brief, *provided that Plaintiffs do not object to Griffin using an equal number of pages in his reply in support of the motion to transfer* [ECF No. 2] *to address any remand-related issues.*” Exh. 2 (emphasis added). Griffin’s counsel indicated that if Plaintiffs agreed, they could enter his signature on their “Unopposed Motion for Leave to File Excess Pages.” ECF No. 21. Plaintiffs’ counsel then filed their “unopposed” motion for an oversized brief. *Id.*

However, directly after filing their oversized reply brief, ECF No. 23, Plaintiffs then filed the notice representing that briefing on their remand motion was “complete.” They also filed a “stipulation” purporting to enter new factual agreements pertaining to their remand motion which were not in the record when Griffin filed his opposition to remand. ECF No. 25.

Briefing on Plaintiffs’ remand motion is not complete. Griffin asks for specific performance of his written agreement with Plaintiffs that he may address their reply in support of the remand motion with three additional pages in his reply in support of his motion to transfer. Exh. 1, 2. Griffin would not have consented to Plaintiffs’ motion for an oversized brief had he known that they would later back out of the agreement. Following the local rules, Griffin will file his reply in support of the motion to transfer within 14 days of the filing of Plaintiffs’ opposition, i.e., by May 16. That reply will include his brief response to the remand-related issues Plaintiffs argued in their oversized reply brief with Griffin’s consent.

Dated: May 9, 2022

Respectfully submitted,

/s/ Nicholas D. Smith
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Certificate of Service

I hereby certify that on the 9th day of May, 2022, I filed the foregoing filing with the Clerk of Court using the CM/ECF system, and counsel of record were served by electronic means.

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