

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

ARLENE HARJO,

Plaintiff,

v.

CITY OF ALBUQUERQUE,

Defendant.

No. 1:16-cv-01113-JB-JHR

**DECLARATION OF ARLENE HARJO  
IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

I, ARLENE HARJO, declare under penalty of perjury that the following is true.

1. I am a resident of Albuquerque, where I work as a customer service representative for a major commercial airline. I have lived in New Mexico since I was two years old, and I have lived in Albuquerque since I was eight.

2. In March 2014, I purchased a brand new 2014 Nissan Versa from Melloy Nissan. To finance the purchase, I took out a loan of \$14,080 from Kirtland Federal Credit Union.

3. I decided to buy a new car because I wanted a reliable form of transportation to get to and from work. My prior car had broken down on several occasions, and I did not want to miss work because of car troubles.

4. I was the only buyer of the car, and I was the only signer for the loan from Kirtland Federal Credit Union. My name is the only name on the title for the car.

5. After buying the car, I was the primary driver. I drove the car to and from work every day, and I also drove it for errands and other odd trips around town.

6. A few times every week, my son Tino Harjo would ask to borrow the car for short trips. As I was the one with the keys, Tino had to ask my permission to use the car, and I would always ask him where he was going before agreeing to hand over the keys. Tino generally borrowed the car to go to the store, to the gym, or to pick up his son.

7. Over the course of several years, Tino borrowed my car well over one hundred times. I was never aware of any problem during that time.

8. I work from 3 o'clock to midnight at the call center, and I have my car with me during those times. I would let Tino borrow my car during the mornings or afternoons, when I was not using it, but never in the evenings. I also let Tino borrow my car on weekends, but again only during the mornings or afternoons.

9. On Saturday, April 23, 2016, around 2 o'clock in the afternoon, Tino asked to borrow my car to take a trip to the gym with a friend. I gave Tino permission to take the car, expecting that he would return within a few hours.

10. I know that Tino had issues with drunk driving in the past, but my understanding is that his most recent arrest occurred in 2009. My understanding is that Tino's two other DWIs occurred even earlier, in 2001 and 1998. When I agreed to let Tino take my car, in April 2016, seven years had passed since his last DWI arrest.

11. When Tino was arrested for DWI in 2009, he was driving a 1998 Dodge Durango that he paid for with his own money. The Dodge Durango was titled in my name, as well as in Tino's name, but Tino was the primary driver and did not need my permission to drive the car.

12. A lot changed in Tino's life, since that last DWI arrest. In 2011, he had graduated from ITT Technical University with a degree in Electrical Engineering. In 2012, he purchased a

home with a girlfriend. Then, in 2013, he became a father. While he and the mother separated not long after their son was conceived, he has remained committed to seeing his son.

13. Apart from the times that he was arrested, I had never known Tino to drink and drive. I knew that Tino sometimes went to a bar to go drinking, but that bar was just down the road from the house and Tino would go there and back on foot. On the other occasions that I was aware of Tino drinking, I saw him drinking at home. While I was aware that Tino had problems with substance abuse, I did not think he would drink and drive. I particularly did not think he would drink and drive during a Saturday afternoon trip to the gym.

14. Before letting Tino have the keys to my car, I spoke with him several times about the importance of not drinking and driving. Each time, Tino assured me he would not drink and drive. He told me that driving drunk was “not an option” because he understood that he could face severe legal consequence given his past arrest and convictions. Based on these conversations, I believed that Tino would not drink and drive.

15. While Tino told me he was driving to the gym, I later learned that he had lied. I became concerned when Tino did not return as expected, and I went to visit the friend who was supposed to be going with him to the gym. The friend told me Tino had not gone to the gym at all, and had instead taken the car to Clovis, NM, to visit with a girlfriend who had moved away from Albuquerque. I was up late worrying about Tino, and the next morning I got a call from Tino saying he had been arrested for drunk driving and had spent the night in jail. I was shocked and upset.

16. When I called the City to ask about my car, they told me that they were going to seek to forfeit the vehicle and that I would have to pay \$50 to request an administrative hearing to challenge the forfeiture. I paid the \$50.

17. When I showed up for my hearing, I was put in touch with a city attorney named Kyle Hibner. Kyle offered to return the car if I agreed to pay \$4,000 and boot the car for 18 months. I could not afford \$4,000, and I could not afford to go without the car for that long, so I refused the offer.

18. I then had a hearing before a hearing officer named Stanley Harada, who found that my car was subject to forfeiture. I represented myself *pro se* at the hearing, and I felt that I did not convey my points as effectively as I would have if I had a lawyer. I did not know what I could say to prove that I did nothing wrong, and I felt like I was being unfairly punished for something I did not do.

19. Because the hearing officer ruled for the City, the City filed a case in state court to forfeit my car. I still had no attorney, as I could not afford to pay one. I went to the courthouse to ask how to respond, and a court employee gave me paperwork that I could fill out as an answer. I filled out that paperwork, and I went in person to serve it on the city attorney.

20. After I filed my answer, the City sent me a thick packet of discovery requests seeking information that did not seem at all relevant to the case. For instance, the City asked for my annual salary, the name and telephone number of my employer, and the name and address of my landlord. Along with these discovery requests, the City sent a cover letter inviting me to sign a disclaimer giving up any interest in my car rather than provide the requested information, as well as a copy of a disclaimer that I could sign.

21. Around this time, the Institute for Justice agreed to represent me *pro bono* in my forfeiture case. In addition to contesting the forfeiture, I understand the Institute for Justice also challenged the legality of the City's entire forfeiture program. The Institute for Justice filed a motion to end the state forfeiture case on December 12, 2016.

22. On December 16, 2016, the City notified my attorneys at the Institute for Justice that the City had suddenly determined that my car was outside city limits at the time that it was seized and therefore was not subject to civil forfeiture.

23. On December 19, 2016, the City agreed to release my car without waiting for a court to formally dismiss the forfeiture complaint. However, I could not pick up the car that day, as I had to make an advance appointment with the impound lot.

24. On December 22, 2016, I recovered my car from the City's impound lot. I then took my car straight from the impound lot to a mechanic, where I had it assessed for damage from sitting unused. I was advised that the battery on the car was dead and had to be replaced, and I paid \$144.86 for that repair.

25. My car sat in the City's impound lot from April 23, 2016, to December 22, 2016, and I was unable to drive my car that whole eight month period.

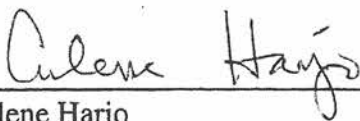
26. While the City held my car in its impound lot, I still had to make monthly loan payments of \$206.13 on the loan that I took out for the car. At a cost of \$206.13 per month, the cost to pay my loan for that eight month period was \$1,649.04.

27. My lender, Kirtland Federal Credit Union, also added its attorney fees in the forfeiture case to the amount that I owe on my loan. As a result of the City's attempt to forfeit my car, Kirtland added \$540.47 to the amount of my loan.

28. The substance of this declaration is my own, and the statements in it are based on my own personal knowledge except where otherwise indicated. I have had the assistance of counsel in preparing this declaration.

29. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of October, 2017.

  
Arlene Harjo

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

ARLENE HARJO,

Plaintiff,

v.

CITY OF ALBUQUERQUE,

Defendant.

No. 1:16-cv-01113-JB-JHR

**DECLARATION OF JOSEPH T. GARDEMAL III  
IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to 28 U.S.C. § 1746(2), I, Joseph T. Gardemal III, declare the following:

1. I am over the age of 18 and fully competent to make this declaration. I knowingly and voluntarily make this declaration based on my expert analysis of the accounting and budgeting procedures of the City of Albuquerque's civil forfeiture program. If called as a witness, I could and would testify competently under oath as to the facts set forth below.

**I. PROFESSIONAL QUALIFICATIONS**

2. My name is Joseph T. Gardemal III, and I am a Managing Director in the Washington, D.C. office of Alvarez & Marsal, an international consulting firm with headquarters in New York. In addition to other services, Alvarez & Marsal provides a range of analytical, investigative, and economic services to major law firms, corporate counsel and company management involved in complex financial disputes and investigations of possible fraud. Before assuming my present position in 2006, I served as a Managing Principal with The CapAnalysis Group, LLC, a financial and economic consulting firm affiliated with the law firm Howrey, LLP;

and with two other financial consulting and certified public accounting firms, Beers & Cutler (1998-2001) and Rebowe & Company (1996-1998), where a portion of my work also involved serving as an expert in commercial business disputes and fraud investigations. From 1990 through 1992, I served as the Chief Fiscal Officer for the New Orleans District Attorney's Office, where, in addition to leading the financial reporting, compliance, and accounting teams, my work included the investigation of economic crimes and accounting for asset forfeitures. From 1988 through 1990, I served as an auditor in a public accounting firm.

3. I am a Certified Public Accountant, a Certified Valuation Analyst, a Certified Fraud Examiner, a Certified Government Financial Manager, and hold a Certification in Distressed Business Valuation. I am also Accredited in Business Valuation by the American Institute of Certified Public Accountants. In 1988 I received a B.B.A. in Accounting from Loyola University. I have authored a number of articles related to governmental accounting, valuation, and damages, and have made numerous presentations on these and related topics.

4. I have served as an expert on damages, accounting, and valuation in several matters, including matters involving municipal and state government accounting. I also have significant experience serving as an auditor and forensic accountant for state and local government agencies. I have testified before regulatory agencies, arbitration panels, and the courts, both in the United States and abroad. In addition, I served as a court-appointed expert in the matter Froelich v. Senior Campus Living, LLC in the United States District Court for the District of Maryland.<sup>1</sup>

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<sup>1</sup> Froelich v. Senior Campus Living, LLC, (No. 02-2305) 355 F.3d 802 (4th Cir. 2004). In its opinion, the 4th Circuit affirmed the decision of the trial court and the \$176 million valuation conclusion of the Appraisal Panel.

5. I am compensated at the rate of \$450 per hour. Alvarez & Marsal personnel assisting me in connection with my work on this matter are billed at their standard hourly rates. No portion of the compensation related to my work is dependent on the opinions rendered or on the outcome of this matter.

## **II. SCOPE OF RETENTION**

6. I have been retained by Institute for Justice (“Counsel”) on behalf of Arlene Harjo (“Plaintiff”), a vehicle owner in Albuquerque, to assess whether the retention of vehicle forfeiture proceeds, including revenue from selling vehicles at auctions or settlements with vehicle owners, by the City of Albuquerque (“Defendant” or “City”) creates a financial interest to the Defendant in the outcome of forfeiture proceedings. Counsel requested that I review the financial information produced in this case, as well as related documents, pleadings, and other discovery, to develop an opinion as to the financial interest of the Defendant in the vehicle forfeiture proceedings.

7. My opinion in this declaration is limited to the financial interest of the Defendant in the outcome of the vehicle forfeiture proceedings related to Albuquerque Code of Ordinances, Chapter 7: Transportation, Vehicles and Traffic, Article 6: Motor Vehicle Seizure; Forfeiture (“the Ordinance”).

## **III. INFORMATION RELIED ON**

8. In conducting my analyses and formulating my opinions, I have relied upon a financial spreadsheet produced by Defendant and identified by the Defendant and its witnesses as the General Ledger for the Defendant’s vehicle forfeiture program. This document records both expenses and revenues associated with the vehicle forfeiture program, allowing for an analysis of the program’s finances. In addition, I have relied on deposition testimony describing the City’s

budgeting and accounting procedures, emails and other documents produced by the parties during discovery, and public documents obtained from Defendant's website.

#### **IV. SUMMARY OF OPINIONS**

9. Based on my analysis of vehicle forfeiture funds, I determined that the Defendant has a financial interest in the outcome of the vehicle forfeiture proceedings. The financial interest of the Defendant is amply indicated by the salaries and other expenses paid with forfeiture funds. Seven individuals assigned to the DWI Seizure Program, including the attorneys assigned to prosecute the DWI forfeiture cases, have a personal incentive to generate revenue via forfeiture proceedings as their compensation is paid with DWI Seizure Program funds.

10. The Defendant has an institutional incentive to continue generating revenues from DWI forfeiture proceedings so that it can pay for various expenses including fixed expenses related to DWI forfeitures, other expenses related to DWI enforcement, prevention and education, and expenses that support non-DWI related activity. Without these funds the City will be forced to either reduce its expenses or seek other sources of funds to pay for these expenses.

11. The institutional incentive of the Defendant to continue generating revenues from DWI forfeiture proceedings so that it can pay for various expenses is also evident in the City's budgeting and tracking process for DWI Seizure Program funds. The Defendant sets annual targets for DWI Seizure Program revenue and tracks such revenues on a monthly basis.

12. Further, the financial interest of the Defendant is also evident in the employee work plans of its personnel, who are evaluated based on their ability to generate revenues through forfeiture proceedings. Additionally, Defendant's Legal Department's budgeted performance measures, including annual targets of number of forfeiture actions and forfeiture revenues, indicate

that there is a direct financial incentive for Defendant to pursue such actions and maximize revenue generated in each forfeiture case.

## **V. BACKGROUND**

13. To provide background for my opinions, I discuss the relevant forfeiture laws and the organization of the City of Albuquerque's DWI Seizure Program.

### **A. Forfeiture Laws**

14. One basis for civil forfeitures in Albuquerque is the Ordinance. Enacted in 1992 and periodically amended, the Ordinance authorizes forfeiture of vehicles connected to a DWI offense.<sup>2</sup> The Ordinance specifically states that:

A motor vehicle, as defined by the State Motor Vehicle Code, ..., is hereby declared to be a nuisance and subject to immediate seizure and forfeiture pursuant to the provisions of this article if it is:

(A) Operated by a person in the commission of a DWI offense ...and has, on at least one prior occasion, been arrested, summonsed or convicted for (i) an offense of driving under the influence of an intoxicating liquor or drugs in any jurisdiction, or (ii) homicide by vehicle or great bodily harm by vehicle...while under the influence of intoxicating liquor or while under the influence of any drug, and/or

(B) Operated by a person whose license is suspended or revoked as a result of conviction for driving while intoxicated or suspended or revoked as a result of a driving while intoxicated arrest.<sup>3</sup>

15. The Albuquerque Police Department ("APD") is responsible for the administration of this Ordinance.<sup>4</sup> The Ordinance further states that:

Except as otherwise provided herein, any motor vehicle which has been declared a vehicle nuisance as defined by § 7-6-2 shall be subject to temporary seizure or permanent forfeiture.<sup>5</sup>

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<sup>2</sup> Albuquerque Code of Ordinances § 7-6-2 Vehicle Nuisance.

<sup>3</sup> Albuquerque Code of Ordinances § 7-6-2 Vehicle Nuisance.

<sup>4</sup> Albuquerque Code of Ordinances § 7-6-3 Administration.

<sup>5</sup> Albuquerque Code of Ordinances § 7-6-4 Vehicles Subject to Forfeiture.

16. I understand that property may be forfeited under other violations of the criminal laws, including any felony offense that was perpetrated by the use of a firearm,<sup>6</sup> and prostitution offenses,<sup>7</sup> that are not the subject matter of this litigation.

#### **B. DWI Seizure Program**

17. The DWI Seizure Program encompasses the City of Albuquerque's enforcement of the Ordinance: to seize the vehicles potentially subject to forfeiture under the Ordinance, to enter settlements with the vehicle owners, to pursue forfeiture of vehicles in administrative and judicial proceedings, and to auction vehicles after forfeiture.

18. The DWI Seizure Program has two components – one within the Legal Department and other within the APD.<sup>8</sup> Within APD, the DWI Seizure Program consists of a DWI Seizure Coordinator, two DWI Seizure Assistants, and a Management Analyst.<sup>9</sup> The APD component of the program manages seized vehicles, manages the auction process, and conducts investigations into vehicle drivers and owners.<sup>10</sup> The Legal Department component of the program consists of two Assistant City Attorneys, two paralegals, and a Legal Secretary.<sup>11</sup> The Legal Department

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<sup>6</sup> Albuquerque Code of Ordinances § 7-9-3 Vehicle Used in the Commission of an Offense; Forfeiture.

<sup>7</sup> Albuquerque Code of Ordinances § 7-14-2 Vehicle Used in the Commission of an Offense; Forfeiture.

<sup>8</sup> Defendant City of Albuquerque's Responses to Plaintiff Arlene Harjo's First Set of Interrogatories, dated January 17, 2017, pp. 12 – 14.

<sup>9</sup> Defendant City of Albuquerque's Responses to Plaintiff Arlene Harjo's First Set of Interrogatories, dated January 17, 2017, pp. 12 – 14 and Linda Cutler-Padilla, Executive Budget Analyst, deposition testimony dated May 16, 2017, p. 25.

<sup>10</sup> Defendant City of Albuquerque's Responses to Plaintiff Arlene Harjo's First Set of Interrogatories, dated January 17, 2017, pp. 12 – 14 and Donovan Rivera, Lieutenant with APD, deposition testimony dated May 17, 2017, pp. 61 - 62.

<sup>11</sup> Defendant City of Albuquerque's Responses to Plaintiff Arlene Harjo's First Set of Interrogatories, dated January 17, 2017, pp. 12 – 14 and Linda Cutler-Padilla, Executive Budget Analyst, deposition testimony dated May 16, 2017, p. 25.

component of the program handles DWI forfeiture-related litigation including administrative hearings, judicial hearings, and settlements.<sup>12</sup>

19. The DWI Seizure Program is separate and distinct from the APD's DWI Unit, which is responsible for enforcement of the DWI laws.<sup>13</sup> The DWI Unit is comprised of eight sworn APD DWI enforcement officers, supported by a supervisor and a service aide, with marked police vehicles. The officers generally work late at night, looking for DWI offenses, or get called by field officers to check if a person is intoxicated.<sup>14</sup>

20. The revenues generated by the DWI Seizure Program and expenses paid with DWI Seizure Program funds are accounted for under the City's Law Enforcement Protection Fund, also known as Fund 280.<sup>15</sup> Fund 280 also handles forfeitures of cash and other assets seized in the enforcement of drug laws, as well as revenues from court fees to defray the cost of crime lab tests to prosecute criminal cases.<sup>16</sup> However, DWI Seizure Program revenues and expenses paid with DWI Seizure Program funds are accounted for and tracked separately under a unique project identification code, which enables the City to separate out DWI Seizure Program revenues and expenses.<sup>17</sup>

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<sup>12</sup> Defendant City of Albuquerque's Responses to Plaintiff Arlene Harjo's First Set of Interrogatories, dated January 17, 2017, pp. 12 – 14.

<sup>13</sup> Donovan Rivera, Lieutenant with APD, deposition testimony dated May 17, 2017, pp. 55 - 56.

<sup>14</sup> Donovan Rivera, Lieutenant with APD, deposition testimony dated May 17, 2017, pp. 56 - 57.

<sup>15</sup> DWI General Ledger: July 2008 - December 2016 at 5831 – 7249.

<sup>16</sup> City of Albuquerque Approved Budget for fiscal year 2017: Defendant 003601.

<sup>17</sup> DWI General Ledger: July 2008 - December 2016 at 5831 – 7249.

## VI. DWI SEIZURE PROGRAM FUNDS

### A. Budgeting Process

21. Each year, the Mayor of the City of Albuquerque proposes a budget with all the anticipated expenditures known at that time, including staffing costs.<sup>18</sup> When the City Council approves the budget, the departments, including APD and the Legal Department, can use those monies.<sup>19</sup> Such approved funding is referred to as appropriations.<sup>20</sup> If any additional expenses are incurred, additional monies are appropriated through a new budget resolution.<sup>21</sup>

22. Every year the revenues and expenses of the DWI Seizure Program are estimated and appropriated, respectively, during the budgeting process.<sup>22</sup> The APD Fiscal Manager projects revenues for the DWI Seizure Program and the City appropriates expenses based on those projections.<sup>23</sup> The following table captures the appropriations level for DWI Seizure Program funds.<sup>24</sup>

**Table 1: DWI Seizure Program Budgeted Appropriations**

Budgeted Appropriations	2013	2014	2015	2016	2017
Revenue	\$1,700,000	\$1,700,000	\$1,900,000	\$1,750,000	\$950,000
Expenses	\$1,700,000	\$1,700,000	\$1,900,000	\$1,750,000	\$950,000

Defendant City of Albuquerque's First Supplemental Responses to Plaintiff Arlene Harjo's First Set of Interrogatories, page 3.

<sup>18</sup> <https://www.cabq.gov/dfa/budget>, accessed on May 25, 2017 and Linda Cutler-Padilla, Executive Budget Analyst, deposition testimony dated May 16, 2017, pp. 12 - 13.

<sup>19</sup> <https://www.cabq.gov/dfa/budget>, accessed on May 25, 2017 and Linda Cutler-Padilla, Executive Budget Analyst, deposition testimony dated May 16, 2017, pp. 12 - 13.

<sup>20</sup> Linda Cutler-Padilla, Executive Budget Analyst, deposition testimony dated May 16, 2017, pp. 12 & 17.

<sup>21</sup> Linda Cutler-Padilla, Executive Budget Analyst, deposition testimony dated May 16, 2017, pp. 17 - 18.

<sup>22</sup> Linda Cutler-Padilla, Executive Budget Analyst, deposition testimony dated May 16, 2017, pp. 12 - 18.

<sup>23</sup> Linda Cutler-Padilla, Executive Budget Analyst, deposition testimony dated May 16, 2017, pp. 13 - 14.

<sup>24</sup> Defendant City of Albuquerque's First Supplemental Responses to Plaintiff Arlene Harjo's First Set of Interrogatories, p 3.

23. The expense appropriation includes an estimate of salary and benefits of DWI Seizure Program personnel compensated with program funds, and such amount is transferred from Fund 280 to the General Fund, also known as Fund 110, where it is then used to pay salaries and benefits of those personnel.<sup>25</sup>

#### **B. Revenues & Expenses**

24. The revenues collected by the DWI Seizure Program include proceeds from auctions of seized vehicles, payments under settlements reached with vehicle owners, and reimbursement of towing fees.<sup>26</sup> The expenses paid with program funds include salaries of DWI Seizure Program personnel transferred to Fund 110, capital acquisitions such as vehicles and an educational building, lease for an impound lot, supplies, and contractual services.<sup>27</sup>

25. Under the Ordinance, the City of Albuquerque, specifically the DWI Seizure Program, collected revenues of \$11.8 million for the eight fiscal years<sup>28</sup> ending between 2009 and 2016.<sup>29</sup> During the same period, \$13.9 million in DWI Seizure Program funds was spent on various expenses of the City of Albuquerque. The table below summarizes the revenues collected by the DWI Seizure Program and expenses paid using those funds, for the eight fiscal years ending 2009 through 2016, and for the first half of fiscal year 2017 (July 2016 through December 2016).

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<sup>25</sup> Aubrey Thompson, Fiscal Manager of APD, deposition testimony dated May 4, 2017, pp. 59 – 60.

<sup>26</sup> Linda Cutler-Padilla, Executive Budget Analyst, deposition testimony dated May 16, 2017, p. 11.

<sup>27</sup> DWI General Ledger: July 2008 - December 2016 at 5831 – 7249.

<sup>28</sup> The City of Albuquerque operates on a fiscal year that runs from July 1 through June 30.

<sup>29</sup> DWI General Ledger: July 2008 - December 2016 at 5831 – 7249.

**Table 2: DWI Seizure Program Funds - Actual Revenues & Expenses**

<b>Fiscal Year</b>	<b>DWI Seizure Program</b>		<b>Expenses paid with DWI Seizure Program Funds</b>	
	<b>Revenues</b>	<b>% Change</b>	<b>Program Funds</b>	<b>% Change</b>
FY 09	\$1,636,806	NA	\$2,083,800	NA
FY 10	1,812,148	11%	1,144,921	-45%
FY 11	1,808,251	0%	1,117,783	-2%
FY 12	1,693,885	-6%	1,234,556	10%
FY 13	1,640,312	-3%	1,718,457	39%
FY 14	1,345,907	-18%	1,132,157	-34%
FY 15	1,124,080	-16%	1,167,161	3%
FY 16	760,466	-32%	4,300,185	268%
<b>Total</b>	<b>\$11,821,854</b>		<b>\$13,899,019</b>	
<b>Average 2009 - 2016</b>	<b>\$1,477,732</b>		<b>\$1,737,377</b>	
FY 17 (July - Dec)	217,776		151,409	

Sources: DWI General Ledger: July 2008 - December 2016 at 5831-7249

26. From July 2008 through December 2016, in addition to the DWI Seizure Program revenues discussed above, \$1.7 million of additional funds were accounted for under DWI Seizure Program's project identification code.<sup>30</sup> Linda Cutler-Padilla, Executive Budget Analyst, has testified that these monies are related to insurance reimbursements for damage to police cars.<sup>31</sup> Of the \$13.5 million in revenues accounted for under DWI Seizure Program's project identification code, \$11.8 million, or 87 percent, is revenue generated by the DWI Seizure Program through forfeitures, settlements, and fees.

27. In the past, the DWI Seizure Program revenues covered the expenses related to the DWI Seizure Program and generated surplus revenues that remained as fund balance in Fund 280.<sup>32</sup> In fiscal years 2015 and 2016, as the amount of revenue generated by the DWI Seizure

<sup>30</sup> DWI General Ledger: July 2008 - December 2016 at 5831 – 7249.

<sup>31</sup> Linda Cutler-Padilla, Executive Budget Analyst, deposition testimony dated May 16, 2017, p. 11 & 21.

<sup>32</sup> Linda Cutler-Padilla, Executive Budget Analyst, deposition testimony dated May 16, 2017, p. 15.

Program declined, the surplus fund balance remaining in Fund 280 was used to cover expenses beyond the amount covered by the annual DWI Seizure Program revenues.<sup>33</sup> The surplus fund balance was almost entirely expended in fiscal year 2016, with a one-time transfer of \$3.3 million dollars to pay for an education building and vehicles.<sup>34</sup> In fiscal year 2017, it is projected that the DWI Seizure Program revenues will not cover expenses historically paid with program funds.<sup>35</sup>

28. Excluding the onetime transfer of \$3.3 million dollars to purchase an educational building and vehicles, DWI Seizure Program revenue exceeded expenses paid with program funds by \$1.2 million over the period spanning fiscal years 2009 through 2016.<sup>36</sup>

### **C. Individuals Paid With DWI Seizure Program Funds**

29. DWI Seizure Program funds are used to pay compensation, including salary and benefits, of seven personnel assigned to the DWI Seizure Program.<sup>37</sup> This includes:

- Two Assistant City Attorneys, who are responsible for representing the City in seizure and forfeiture proceedings as well as advocating for the City in administrative hearings and district court proceedings;
- Two paralegals, who assist the Assistant City Attorneys in prosecuting forfeiture actions in district court including but not limited to assisting in drafting and filing pleadings, preparing discovery, and other duties as necessary;

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<sup>33</sup> Linda Cutler-Padilla, Executive Budget Analyst, deposition testimony dated May 16, 2017, pp. 15 & 17.

<sup>34</sup> Aubrey Thompson, Fiscal Manager of APD, deposition testimony dated May 4, 2017, p. 140.

<sup>35</sup> Linda Cutler-Padilla, Executive Budget Analyst, deposition testimony dated May 16, 2017, p. 15.

<sup>36</sup> DWI General Ledger: July 2008 - December 2016 at 5831 – 7249.

<sup>37</sup> Defendant City of Albuquerque's Responses to Plaintiff Arlene Harjo's First Set of Interrogatories, dated January 17, 2017, pp. 14 & 15. Salaries of APD's Management Analyst and the Legal Department's Legal Secretary are not paid with DWI Seizure Program funds.

- A DWI Seizure Assistant who runs background reports on vehicles that the City seizes to ensure that seizure was pursuant to the Ordinance. Additionally, the DWI Seizure Assistant also answers phones or directs the caller to the appropriate person;
- A DWI Seizure Assistant who answers phones and schedules property appointments, helps with the boot program, and performs boot inspections; and
- A DWI Seizure Coordinator who prepares documents for abandonments, seizure hearings, and forfeiture actions. Apart from ensuring that DWI Seizure Program bills are verified and paid, the DWI Seizure Coordinator also gathers and distributes reports to the City Attorney's Office, schedules officers for hearings, answer phones, and clean cars for auctions.<sup>38</sup>

#### **D. Payroll Expenses Paid With DWI Seizure Program Funds**

30. For fiscal years 2009 through 2016, of the \$13.9 million in expenses paid with DWI Seizure Program funds, \$3.7 million or 27 percent were used to pay compensation for DWI Seizure Program personnel as well as to occasionally pay overtime for DWI enforcement personnel. The following table provides a summary of all compensation paid in the last eight years from DWI Seizure Program funds, broken down by type.

**Table 3: Payroll Expenses Paid with Seizure Program Funds – By Type**

<b>Compensation Type</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>Total</b>
Transfers Out - Fund 110	\$279,000	\$389,000	\$407,000	\$389,000	\$433,000	\$467,000	\$482,000	\$512,000	\$3,358,000
Wages - Holiday Overtime	5,833	-	-	-	-	-	-	-	5,833
Wages - Overtime	331,231	126,465	236,850	157,438	(566,812)	1,197	-	-	286,370
Fringe Benefits	51,607	3,102	924	7	943	12	-	-	56,595
<b>Total Payroll Expenses</b>	<b>\$667,671</b>	<b>\$518,567</b>	<b>\$644,774</b>	<b>\$546,445</b>	<b>(\$132,869)</b>	<b>\$468,209</b>	<b>\$482,000</b>	<b>\$512,000</b>	<b>\$3,706,798</b>

Sources: DWI General Ledger: July 2008 - December 2016 at 5831 - 7249

<sup>38</sup> Defendant City of Albuquerque's Responses to Plaintiff Arlene Harjo's First Set of Interrogatories, dated January 17, 2017, pp. 12 - 14.

**E. Non-Payroll Expenses Paid With DWI Seizure Program Funds**

31. For fiscal years 2009 through 2016, of the \$13.9 million in expenses paid with DWI Seizure Program funds, \$10.2 million or 73 percent of DWI Seizure Program funds were used to pay non-payroll expenses including supplies, such as computer equipment and radar guns, contractual services including towing, process serving, and the lease for the impound lot, and capital expenses such as vehicle purchases. Below is a summary of non-payroll expenses paid with DWI Seizure Program funds.

**Table 4: Non-Payroll Expenses paid with Seizure Program Funds**

<b>Non-Payroll Expenses</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>Total</b>
Transfers Out - Fund 305	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$3,300,000	\$3,300,000
Supplies	228,729	134,888	161,426	212,651	41,699	25,444	19,524	18,894	843,257
Capital Expenses	643,876	-	-	-	590,633	80,470	96,839	-	1,411,818
Contractual Services	547,314	522,547	485,104	607,212	642,351	556,067	482,990	439,577	4,283,162
Repairs And Maintenance	27,652	59,969	20,191	21,712	2,010	1,038	1,202	7,593	141,369
Others	55,334	38,518	4,326	4,173	2,611	927	84,605	22,120	212,614
<b>Total Non-Payroll Expenses</b>	<b>\$1,502,906</b>	<b>\$755,921</b>	<b>\$671,047</b>	<b>\$845,749</b>	<b>\$1,279,305</b>	<b>\$663,947</b>	<b>\$685,160</b>	<b>\$3,788,185</b>	<b>\$10,192,219</b>

Sources: DWI General Ledger: July 2008 - December 2016 at 5831 - 7249

**VII. INDICATORS OF PERSONAL FINANCIAL INTEREST****A. Compensation of DWI Seizure Program Personnel**

32. As noted previously, individuals assigned to seven positions associated with the DWI Seizure Program are compensated with program funds.<sup>39</sup> Every year during the budgeting process, based on active positions and rate of pay at that point of time, the total annual compensation, including salary and benefits, of the individuals assigned to these seven positions

<sup>39</sup> Defendant City of Albuquerque's Responses to Plaintiff Arlene Harjo's First Set of Interrogatories, dated January 17, 2017, pp. 12 - 15.

is estimated and transferred from Fund 280 to Fund 110.<sup>40</sup> The City budgets to pay 100 percent of these individuals' annual salaries and benefits from DWI Seizure Program revenues.<sup>41</sup>

33. The actual expense incurred might be different from this estimate if, at any time during the year, a new individual took one of these seven positions at a higher or lower rate of pay, or if any of the existing individuals elected to change his benefit plan.<sup>42</sup> See relevant testimony below:

Q. Is it fair to say that's a transfer in order to pay salaries of people who work in the program?

A. Yeah, or to cover the cost of the people...I figure out what positions are currently active. We have what's called a salary master, which is where everybody is budgeted with their rate of pay at that point in time, what benefits they've elected, and then I'll figure out what the cost of that is, and that's the transfer. Actuals might come in different because if a different person came into that position mid-year, they might be at a higher rate this year. They might have elected a family plan for insurance instead of a couple or a single. So it doesn't get reimbursed dollar for dollar, it's just kind of a -- you know, it's -- at one point in time -- it's really like February is when I'm building the budget. And we leave it; we don't adjust it or true it up.<sup>43</sup>

34. For fiscal years 2013 through 2016, I compared DWI Seizure Program funds of \$1.9 million transferred to Fund 110<sup>44</sup> to the actual compensation of \$1.8 million paid to the DWI Seizure Program personnel who occupied the seven positions budgeted to be paid out of DWI

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<sup>40</sup> Linda Cutler-Padilla, Executive Budget Analyst, deposition testimony dated May 16, 2017, pp. 22 – 23.

<sup>41</sup> Aubrey Thompson, Fiscal Manager of APD, deposition testimony dated May 4, 2017, p. 60.

<sup>42</sup> Linda Cutler-Padilla, Executive Budget Analyst, deposition testimony dated May 16, 2017, pp. 22 – 23.

<sup>43</sup> Linda Cutler-Padilla, Executive Budget Analyst, deposition testimony dated May 16, 2017, pp. 22 – 23.

<sup>44</sup> DWI General Ledger: July 2008 - December 2016 at 5831 – 7249.

Seizure Program funds<sup>45</sup> and determined that transfers from Fund 280 exceeded actual compensation paid to those personnel by \$91,985 or by five percent.

**Table 5: Comparison of Actual Salaries Paid and Transfers to Fund 110**

Dept	Title	Name	2013	2014	2015	2016	Grand Total
Police	DWI Seizure Assistant	Kyle Evans	\$9,045	\$78,563	\$76,535	\$81,025	\$245,168
Police	DWI Seizure Assistant	Jose Hernandez	76,415	77,208	79,602	80,966	314,191
Police	DWI Seizure Coordinator	Lacresia Rivera	60,898	61,713	62,812	64,505	249,928
Legal	Assistant City Attorney	Seth Grant	-	-	-	-	-
Legal	Assistant City Attorney	Kyle Hibner	-	-	27,083	70,776	97,859
Legal	Paralegal	Isabel Martinez	59,349	65,667	67,975	69,241	262,232
Legal	Assistant City Attorney	Kevin Morrow	-	-	-	77,126	77,126
Legal	Paralegal	Carolyn Poslethwait	-	-	8,452	55,522	63,974
Legal	Assistant City Attorney	Steven Romero	-	-	20,622	3	20,625
Legal	Paralegal	Krista Baca	59,453	57,355	24,880	-	141,688
Legal	Assistant City Attorney	Jeffery Driggers	67,929	71,285	17,852	-	157,066
Legal	Assistant City Attorney	Nicholas Bullock	36,644	62,230	30,277	-	129,151
Legal	Paralegal	Sarah Lough	4,009	-	-	-	4,009
Legal	Assistant City Attorney	Hessel Yntema	-	-	18,822	-	18,822
Legal	Assistant City Attorney	Eric Locher	20,176	-	-	-	20,176
<b>Salaries of Individuals Funded by DWI Seizure Program</b>			<b>\$393,918</b>	<b>\$474,021</b>	<b>\$434,912</b>	<b>\$499,164</b>	<b>\$1,802,015</b>
<b>Transfers from Fund 280 to Fund 110</b>			<b>\$433,000</b>	<b>\$467,000</b>	<b>\$482,000</b>	<b>\$512,000</b>	<b>\$1,894,000</b>
<b>% Funded by DWI Seizure Program</b>			<b>110%</b>	<b>99%</b>	<b>111%</b>	<b>103%</b>	<b>105%</b>

35. The individuals filling these seven positions represent the DWI Seizure Program in seizure and forfeiture proceedings, perform background reports on vehicles that the City of Albuquerque seizes, assist in preparing discovery, drafting and filing pleadings, and prepare documents for abandonments, seizure hearings, and forfeiture actions.<sup>46</sup>

36. Ms. Cutler-Padilla testified that these seven positions could be impacted by a significant drop in DWI Seizure Program revenues. See relevant testimony below:

Q. So you said that wages was a fixed cost. Was there ever any discussion of changing the number of positions that are associated with the program?

<sup>45</sup> Defendant City of Albuquerque's Responses to Plaintiff Arlene Harjo's First Set of Interrogatories, dated January 17, 2017, pp. 14 - 15.

<sup>46</sup> Defendant City of Albuquerque's Responses to Plaintiff Arlene Harjo's First Set of Interrogatories, dated January 17, 2017, pp. 12 - 14.

A. Not most recently, but yes, it could be a discussion and it probably will be a discussion. You know, there could be a discussion that, especially if revenues are going down, do we need all these positions? You know, if revenues are going down, I would think that the work of the program may be going down. So if you need two DWI Coordinators, you know, so the other person would -- you know, hopefully, there would be another job they could transfer into because the city doesn't like to lay people off...

Q. When was the last time the city had layoffs?

A. ...it was back in 2001 or 2002...we've had furlough days 2009, I believe, 2010. You know, we really try to do hiring slowdown more than anything, you know, because if those positions aren't filled, we don't like to affect those people that are working...

Q. What is the current fiscal position of the city?... would you say it's currently a flush time or a lean time...

A. No, it's a hard time. Our gross receipts tax is down, you know. A lot of programs -- I mean, the federal government obviously is in a bad situation, so we're not getting the federal money that we used to receive. The state, our state is not in a good fiscal position, so they've cut us on capital money, so projects that may have even started, we have to fight with the state.<sup>47</sup>

37. Mr. Donovan Rivera, Lieutenant with APD, also stated that “financially, it [the decline in DWI Seizure Program revenue] is hurting the program”<sup>48</sup> The tough financial situation of the City of Albuquerque is evidenced in a memo sent on January 6, 2015, by the Chief Administrative Officer. It states that:

As we submit the City of Albuquerque Budget Call for Fiscal Year 2016, we are monitoring revenues closely given some recent weakness in our gross receipts tax distributions and other economic indicators. As in past years, department needs will likely exceed the projected available resources which means the budget process for FY/16 will still require a lot of hard work and coordination among key staff as difficult choices will have to be made.<sup>49</sup>

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<sup>47</sup> Linda Cutler-Padilla, Executive Budget Analyst, deposition testimony dated May 16, 2017, pp. 77 – 78.

<sup>48</sup> Donovan Rivera, Lieutenant with APD, deposition testimony dated May 17, 2017, p. 17.

<sup>49</sup> Memo dated January 6, 2015 sent by Chief Administrative Officer regarding budget for fiscal year 2016 at 011399.

38. Given the City of Albuquerque's financial situation, it is evident that the seven individuals assigned to the DWI Seizure Program are dependent on DWI Seizure Program revenue for compensation and as such have a personal financial interest in the DWI Seizure Program proceedings.

**B. Performance Measures of DWI Seizure Program Personnel**

39. An examination of the employee work plans of personnel assigned to the DWI Seizure Program also demonstrates that success in generating funds from DWI forfeiture proceedings is a component in personnel evaluations. The 2010 through 2015 employee work plans for Lacresia Rivera, DWI Seizure Coordinator, demonstrate the importance of this financial incentive. Her objectives included:

- Maintain or increase the number of DWI Seized vehicles
- Decrease the number of vehicles stored in the Seizure Facility
- Increase the amount of revenue generated from Seized vehicles...
- Continue to maintain the DWI Seizure Program to ensure its overall effectiveness.<sup>50</sup>

40. Similar objectives are included in the 2014 and 2015 employee work plans of Kyle Evans, DWI Seizure Assistant,<sup>51</sup> and the 2010 through 2015 employee work plans of Jose Hernandez, DWI Seizure Assistant.<sup>52</sup> These output measures are "a measure of the [DWI Seizure] unit's success or failure at meeting its objectives."<sup>53</sup>

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<sup>50</sup> 2010 through 2015 Employee Work Plans of Lacresia Rivera, DWI Seizure Coordinator, at 11102, 11117, 11122, 11127, 11132, 11137 and 11142 [Emphasis Added].

<sup>51</sup> 2014 and 2015 Employee Work Plans of Kyle Evans, DWI Seizure Assistant, at 11047 & 11057.

<sup>52</sup> 2010 through 2015 Employee Work Plans of Jose Hernandez, DWI Seizure Assistant, at 11062, 11072, 11077, 11082, 11087, 11092 & 11097

<sup>53</sup> Donovan Rivera, Lieutenant with APD, deposition testimony dated May 17, 2017, p. 29.

41. These performance measures indicate that the personnel assigned to the DWI Seizure Program were evaluated based on their ability to increase the number of DWI seized vehicles and the revenues generated from seized vehicles. This creates a personal interest on part of these individuals in the DWI forfeiture proceedings.

## **VIII. INDICATORS OF INSTITUTIONAL FINANCIAL INTEREST**

### **A. Evidenced in Expenses Paid With DWI Seizure Program Funds**

#### **1. Ordinance Governing the Use and Distribution of DWI Seizure Program Funds**

42. The Ordinance governs the use and distribution of DWI forfeited vehicles and the proceeds of sales. It specifically states that:

When property is forfeited pursuant to this article, the Police Department shall sell the motor vehicle, and the proceeds shall be used to carry out the purpose and intent of this article. The vehicle may be used by the Police Department for official law enforcement purposes prior to sale. Any proceeds that exceed the costs of administering this article shall be used for DWI enforcement, prevention and education. Any vehicle not recovered by the owner within 30 days after being notified by the city that such vehicle has been released by the city shall be deemed abandoned and disposed of in accordance with the notice provisions of § 29-1-14, NMSA 1978. Any proceeds from the sale of abandoned vehicles seized pursuant to this article shall be used to carry out the purpose and intent of this article.<sup>54</sup>

43. The Ordinance itself indicates a strong incentive on the part of the DWI Seizure Program to generate revenues to cover its administrative expenses, which includes salaries.

#### **2. Expenses Related to DWI Seizure Program**

44. Under the Ordinance, the expenses of the DWI Seizure Program are paid using DWI Seizure Program revenues, including revenues from auctions of forfeited vehicles and

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<sup>54</sup> Albuquerque Code of Ordinances § 7-6-5 Seizure; Forfeiture Proceeding [Emphasis Added].

amounts paid by vehicle owners pursuant to settlement agreements. The use of program revenues to pay program expenses gives rise to a financial incentive.

45. DWI Seizure Program funds are used to compensate seven APD and Legal Department personnel assigned to the DWI Seizure Program.<sup>55</sup> All these individuals provide services related to the DWI Seizure Program. Every year during the budgeting process, based on active positions and rate of pay at that point of time, the total annual salary and benefits of these seven individuals is assessed and transferred from Fund 280 to Fund 110.

46. It is evident from the budgeting process described above and testimony by Ms. Cutler-Padilla<sup>56</sup> that the compensation to these seven individuals is a fixed cost that must be paid, irrespective of the amount of revenues collected from DWI forfeiture proceedings. This fixed cost encompasses \$3.4 million or 24 percent of the \$13.9 million in expenses paid with DWI Seizure Program funds during fiscal years 2009 through 2016.

47. From fiscal year 2009 through 2016, DWI Seizure Program funds were used to pay \$1,841,074 to Ayala Properties for lease of an impound lot that is used to store vehicles seized under the Ordinance.<sup>57</sup> Like compensation for DWI Seizure Program personnel, the lease for an impound lot is a fixed cost<sup>58</sup> that needs to be paid irrespective of the amount of revenues generated by the DWI Seizure Program.

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<sup>55</sup> DWI General Ledger: July 2008 - December 2016 at 5831-7249.

<sup>56</sup> Linda Cutler-Padilla, Executive Budget Analyst, deposition testimony dated May 16, 2017, pp. 75 – 76.

<sup>57</sup> DWI General Ledger: July 2008 - December 2016 at 5831-7249 and Aubrey Thompson, Fiscal Manager of APD, deposition testimony dated May 4, 2017, p. 113.

<sup>58</sup> Linda Cutler-Padilla, Executive Budget Analyst, deposition testimony dated May 16, 2017, pp. 22 – 23 and 75 - 76.

48. In addition to these fixed costs, program revenues must also cover variable costs that increase or decrease depending on the number of seizures. For instance, program revenues are used to pay the cost to tow seized vehicles, as well as to pay for process servers and office supplies.<sup>59</sup> While these costs may vary depending on the number of vehicles seized, they are nonetheless costs that must be paid. Only revenue left over and above these variable costs can be used to pay the program's fixed costs. This interplay of fixed and variable costs gives rise to additional financial pressure to generate program revenues, as evidenced by the following testimony from Linda Cutler-Padilla, Executive Budget Analyst:

Q. You mentioned that the lease is a fixed cost. Are there any other fixed costs associated with the program?

A. Obviously wages, you know. I would say towing to some degree. Obviously, it fluctuates. If they have less towing, the towing costs go down. If they have more towing, it goes up.

You know, but that's something I guess they would have a little difficulty managing just because they don't know the number of cars that they're going to have to tow. You know, that's a hard thing . . . [T]hat's just stuff when we're working with departments, we kind of highlight that for them think about: 'What can you control and what are you guys going to do to control it?'<sup>60</sup>

49. The City has an institutional incentive to generate revenues from DWI forfeiture proceedings to recover these fixed and variable costs.<sup>61</sup>

50. Some expenses related to the DWI Seizure Program would not be incurred if the program did not exist, but some other expenses would be incurred regardless of whether the program continued. For instance, the City's impound lot is also used to store vehicles that are not

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<sup>59</sup> DWI General Ledger: July 2008 - December 2016 at 5831-7249 and Aubrey Thompson, Fiscal Manager of APD, deposition testimony dated May 4, 2017, p. 37.

<sup>60</sup> Linda Cutler-Padilla, Executive Budget Analyst, deposition testimony dated May 16, 2017, pp. 76 - 77.

<sup>61</sup> During a year, compensation to DWI Seizure Program personnel and lease of the impound lot is treated as a fixed cost. However, a drastic decrease in revenues could cause these fixed costs to become variable in nature.

subject to seizure under the Ordinance, but which are towed there when the driver is too drunk to drive.<sup>62</sup> DWI Seizure Program funds are thereby used to supplant the General Funds that are typically used to pay for these expenses. Such supplanting provides an institutional incentive to the Defendant in generating revenues from DWI forfeiture proceedings.

### **3. Expenses Not Related to DWI Seizure Program**

51. In addition to covering expenses related to DWI Seizure Program, DWI Seizure Program revenues are also used to cover expenses that are not related to the DWI Seizure Program. The Defendant has an institutional incentive to generate revenue to cover these expenses.

52. In fiscal year 2016, \$3.3 million in fund balance from Fund 280 was transferred to the City's Capital Acquisition Fund for the construction of an educational building and the purchase of vehicles.<sup>63</sup> The educational building is used to provide general training to APD cadets.<sup>64</sup> The new vehicles purchased are used by APD, which was reportedly in "dire need" of vehicles.<sup>65</sup> Of the \$3.3 million transferred, \$1.5 million was spent on an education building and \$1.8 million was spent on buying new vehicles for APD.<sup>66</sup> Aubrey Thompson, Fiscal Manager of APD, testified that the balance in Fund 280 includes revenues from DWI forfeiture proceedings and that the majority of the \$1.8 million funding for purchasing vehicles came from these DWI Seizure Program funds. See relevant testimony below:

Q. Is that [\$3.3 million] a transfer for DWI Seizure Program revenue?

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<sup>62</sup> Aubrey Thompson, Fiscal Manager of APD, deposition testimony dated May 4, 2017, p. 42.

<sup>63</sup> City of Albuquerque Approved Budget for fiscal year 2017: Defendant 003601.

<sup>64</sup> Aubrey Thompson, Fiscal Manager of APD, deposition testimony dated May 4, 2017, pp. 129 - 131.

<sup>65</sup> Linda Cutler-Padilla, Executive Budget Analyst, deposition testimony dated May 16, 2017, pp. 57 – 58 & 60.

<sup>66</sup> City of Albuquerque's Council Bill No. R-15-246 attached to an email from Maria Garcia-Cunningham to Aubrey D Thompson dated November 17, 2015.

- A. Yes, partially, not 100 percent of it. Part of it was transferred -- part of it was funded by the insurance...that was being coded to Fund 280 and part of it was DWI seizure revenues...
- Q. Do you know about how much of that is DWI Seizure Program revenue?
- A. It seems like maybe 1.8 million of the 3.3. I'm not positive....<sup>67</sup>
- Q. And when you say that you think the majority of that building was paid for by the insurance money, is that something that you -- would be reflected in this worksheet that you have mentioned?
- A. Yes....
- Q. ...but is the majority of the funding for vehicles coming from the insurance payments?
- A. No, the majority of the funding for the vehicles was coming through the DWI Seizure Program.<sup>68</sup>

53. Mr. Thompson testified that, having transferred the surplus balance generated by the DWI Seizure Program from Fund 280, the risk exists that Fund 280 might have insufficient funds to pay for related expenses in the next year. Despite this risk, the City of Albuquerque decided that the balance remaining in Fund 280, including DWI Seizure Program funds, would be used to pay for capital expenses that are not directly related to DWI Seizure Program as the City of Albuquerque's General Fund budget was "very, very, very tight" and other sources of funds were needed.<sup>69</sup> See relevant testimony below:

- Q. Just to be clear, this would mean that the amount available -- for instance, if revenue was to drop, then the amount available to dip into to pay for expenses in following years would no longer be available? The fund balance, that money for that purpose, would no longer be available?
- A. Yes...
- Q. Do you know who first proposed spending the entire balance in the fund?
- A. I don't remember who is the first person. I mean, it was discussed at budget and was discussed at APD.
- Q. And was there any discussion of why that decision was being made?

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<sup>67</sup> Aubrey Thompson, Fiscal Manager of APD, deposition testimony dated May 4, 2017, pp. 129 - 130.

<sup>68</sup> Aubrey Thompson, Fiscal Manager of APD, deposition testimony dated May 4, 2017, pp. 143 - 144.

<sup>69</sup> Aubrey Thompson, Fiscal Manager of APD, deposition testimony dated May 4, 2017, p. 148.

A. Yes, our General Fund budget has been very, very, very tight the last year or two, so they were looking for other sources.

Q. Who is "they"?

A. Budget and APD.

Q. Is it fair to say that the remaining fund balance in the DWI Seizure Program account was used to make up a shortfall in the general Police Department budget?...

A. Define shortfall. Yes, we needed additional equipment that we did not have budgeted to purchase. It fell within the criteria of the city ordinance, so it was used for those purposes, basically, to purchase vehicles, primarily.<sup>70</sup>

54. It is evident that DWI Seizure Program revenues were used by the City of Albuquerque to pay for capital expenses, such as procuring vehicles to be used by APD and a building to be used for training APD cadets, that are not directly related to DWI Seizure Program. Moreover, DWI Seizure Program revenues were used as a means of alleviating potential shortfalls in the City of Albuquerque's General Fund budget. The use of program revenues to supplant other sources of funding provides an additional institutional incentive to the Defendant in the outcome of the forfeiture proceedings.

55. From July 2008 through December 2016, \$989,719 of DWI Seizure Program revenues were used to purchase vehicles from various vendors including Melloy Dodge, Philpott Motors Ltd., and Reliable Chevrolet. Some of these vehicles are used for DWI enforcement.<sup>71</sup> Other vehicles are assigned to area command which attends calls for any type of service including "barking dogs, domestic violence, shop lifting."<sup>72</sup>

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<sup>70</sup> Aubrey Thompson, Fiscal Manager of APD, deposition testimony dated May 4, 2017, pp. 148 - 149.

<sup>71</sup> Aubrey Thompson, Fiscal Manager of APD, deposition testimony dated May 4, 2017, pp. 38 - 39.

<sup>72</sup> Donovan Rivera, Lieutenant with APD, deposition testimony dated May 17, 2017, p. 58 - 59.

**Table 6: Purchase of Vehicles Using DWI Seizure Program Funds**

<b>Vendor</b>	<b>2009</b>	<b>2013</b>	<b>2014</b>	<b>Total</b>
Melloy Dodge	\$ -	\$539,444	\$80,470	\$619,914
Philpott Motors Ltd	294,700	-	-	294,700
Reliable Chevrolet	30,827	43,278	-	74,105
<b>Total</b>	<b>\$325,527</b>	<b>\$582,722</b>	<b>\$80,470</b>	<b>\$988,719</b>

Sources: DWI General Ledger: July 2008 - December 2016 at 5831-7249

56. Similarly, from July 2008 through December 2016, \$379,894 was paid to Kustom Signals, Inc. for radar guns<sup>73</sup> and \$236,322 was paid to Albuquerque Publishing Company from for advertising related to DWI education.<sup>74</sup> These expenses, while related to DWI enforcement and education, are not directly related to the administration of the Ordinance.

57. If DWI Seizure Program revenues were not available, expenses not related to DWI enforcement such as vehicles for area command, and expenses related to DWI enforcement, prevention and education such as vehicles, radar guns, and advertising related to DWI education, would either:

- a. Continue to be incurred and have to be paid from other funding sources, such as General Fund allocations from the City of Albuquerque; in which case generation of program revenues enables the Defendant to supplant its General Funds with DWI Seizure Program funds and enables the Defendant to use General Fund dollars for other purposes; or

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<sup>73</sup> Aubrey Thompson, Fiscal Manager of APD, deposition testimony dated May 4, 2017, p. 105.

<sup>74</sup> Aubrey Thompson, Fiscal Manager of APD, deposition testimony dated May 4, 2017, p. 108.

- b. Not be incurred; in which case generation of DWI Seizure Program revenues enabled the Defendant to incur these expenses and obtain the goods and services needed.

**B. Evidenced in Budgeting and Tracking of DWI Seizure Program Revenues and Expenses**

**1. Appropriations Process for Expenses Paid With DWI Seizure Program Funds**

58. As noted previously, every year, during the budgeting process, the revenues and expenses of the DWI Seizure Program are estimated and appropriated, respectively. The DWI Seizure Program revenue and expense appropriation level was set at \$1.7 million for fiscal years 2013 and 2014, \$1.9 million for fiscal year 2015 and \$1.75 million for fiscal year 2016.<sup>75</sup> This budgeting process creates an institution-wide financial incentive to generate revenues through vehicle forfeitures and related settlements that can be used to pay for expenses.

59. Mr. Thompson testified that the City of Albuquerque budgets the expenses paid with DWI Seizure Program funds based on DWI Seizure Program revenues and that higher revenues means that more expenditures can be incurred.<sup>76</sup> See the relevant testimony below:

Q. Are there ever expenses that are proposed and disapproved because there's not enough revenue in the DWI Seizure Program to pay for them?

A. Yes.

Q. And how is that determination made?

A. We try to prioritize which expenses would be most important.

Q. And if more revenue comes in, can you pay for more things?

A. If more revenue comes in, then yes, our expenditures can increase.

Q. And what happens if less revenue comes in?

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<sup>75</sup> Defendant City of Albuquerque's First Supplemental Responses to Plaintiff Arlene Harjo's First Set of Interrogatories, pp. 3 - 4.

<sup>76</sup> Aubrey Thompson, Fiscal Manager of APD, deposition testimony dated May 4, 2017, pp. 135 – 136.

A. If less revenue comes in, then we don't – we have less availability to expend funds.

Q. And then how do you prioritize which things to spend money on?

A. Generally, we look at the direct expenses first, and then we see if there are anything over and above the direct costs of maintaining the program.

Q. When you refer to the direct expenses, do you mean things we talked about earlier like supplies, tow fees and –

A. Lease.

Q. And the lease?

A. Yes.

Q. Now, in that prioritization process, where does salary fall?

A. Since it is done as a transfer, it's going to be prioritized.<sup>77</sup>

60. Ms. Cutler-Padilla also testified that decreases in revenues impact the budgeting process. See relevant testimony below:

Q. How does the drop in revenue affect the budgeting process?

A. Well, obviously, if the revenue is dropped, their expenditures should be dropping as well...going into FY18...we are concerned about the expenditures and ...having a discussion with them about what we're going to do with the program. I think APD's expectation is that the General Fund will absorb any overage...their General Fund budget will absorb any expenditures that exceed the revenue that they're getting in for 280.<sup>78</sup>

61. The above testimony indicates that expenses to be paid with DWI Seizure Program funds are budgeted based on expected program revenues, creating an institutional incentive to generate at least the budgeted revenues from DWI forfeiture proceedings.

## **2. Expected Performance Measures Related to the DWI Seizure Program.**

62. The annual budget of the City of Albuquerque includes performance measures for all of its departments including the APD and Legal Department. While the APD's performance

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<sup>77</sup> Aubrey Thompson, Fiscal Manager of APD, deposition testimony dated May 4, 2017, pp. 135 – 136.

<sup>78</sup> Linda Cutler-Padilla, Executive Budget Analyst, deposition testimony dated May 16, 2017, p. 14.

measures include an expected number of DWI arrests, the Legal Department's performance measures include an expected number of DWI seizure reports reviewed, number of vehicle forfeiture actions, number of vehicles booted, number of vehicles released on agreement, number of vehicle seizure hearings, number of vehicles auctioned, and amount of revenue generated from auctions.<sup>79</sup> These performance measures are "goals that the DWI Seizure Unit is aiming for in the year ahead."<sup>80</sup>

63. The following table provides the budgeted performance measures related to initiating and processing DWI vehicle forfeiture actions:

**Table 7: Budgeted Performance Measures for Legal Department**

<b>Performance Measures</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
# DWI Seizure Reports Reviewed	1,500	1,500	1,500	1,500	1,500	1,500	900
# of Vehicle Forfeiture Actions	500	500	300	200	200	200	120
# Vehicles Booted	600	600	600	600	600	450	300
# Vehicles Released on Agreement	500	500	300	350	350	350	250
# Vehicle Seizure Hearings	1,200	1,200	1,200	1,200	1,200	200	900
# Vehicles Auctioned	600	600	600	625	625	550	400
\$ from Auctions (000's)	800	800	700	615	615	500	450

Source: City of Albuquerque Approved Budget for fiscal years 2012 through 2018: Defendant 001639 (FY 2012); Defendant 002094 (FY 2013); Defendant 002526 (FY 2014); Defendant 002923 (FY 2015); Defendant 003341 (FY 2016); Defendant 003729 (FY 2017); page 107 (FY 2018).

64. The expected performance measures for the Legal Department included in the annual budget of the City of Albuquerque are evidence that an institutional incentive exists for the Defendant to generate income through DWI forfeiture proceedings.

<sup>79</sup> City of Albuquerque Approved Budget for fiscal years 2012 through 2018: Defendant 001639 & Defendant 001675 (FY 2012); Defendant 002094 & Defendant 002131 (FY 2013); Defendant 002526 & Defendant 002556 (FY 2014); Defendant 002923 & Defendant 002952 (FY 2015); Defendant 003341 & Defendant 003365 (FY 2016); Defendant 003729 & Defendant 003753 (FY 2017); pp. 107 & 129 (FY 2018).

<sup>80</sup> Donovan Rivera, Lieutenant with APD, deposition testimony dated May 17, 2017, p. 30.

### **3. Tracking of Performance Measures Related to DWI Seizure Program**

65. On a monthly basis, the DWI Seizure Program tracks the number of vehicles seized, vehicles returned, vehicles auctioned, vehicles ready to be auctioned, and vehicles in lot. It also tracks the amount received from auctions and from tows, storage, and boot fees (including “boot fees” paid as part of settlement agreements).<sup>81</sup> Mr. Thompson testified that these monthly tracking reports are used in compiling the annual budget. See the relevant testimony below:

Q. What use of this document would you make in putting together the annual budget?

A. They were looking for a total number of vehicles checked. You would compile the monthly numbers to your yearly number. I don't work closely enough with the operations side of DWI to remember what their performance criteria that's published in the budget is but that's the sort of thing it would be used for....<sup>82</sup>

66. The monthly tracking of vehicles seized and amount received from auctions, tows, storage, and boot fees is further evidence that an institutional incentive exists for the Defendant in the outcome of DWI forfeiture proceedings.

## **IX. CONCLUSION**

67. Defendant's financial incentive to generate revenue through DWI forfeiture proceedings, including revenue from selling vehicles at auctions or from settlements with vehicle owners, is amply indicated by the salaries and other expenses paid with DWI Seizure Program funds. It is further indicated in the budgeting and tracking process adopted for DWI Seizure Program funds. Defendant plans to pay expenses with program revenues, tracks program revenues

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<sup>81</sup> DWI Seizure Unit monthly tracking reports for 2010 through 2016: Defendant 007654 - Defendant 007736; Donovan Rivera, Lieutenant with APD, deposition testimony dated May 17, 2017, pp. 41 - 42.

<sup>82</sup> Aubrey Thompson, Fiscal Manager of APD, deposition testimony dated May 4, 2017, pp. 78 – 79.

to ensure that revenues are available to pay for expenses, and then does in fact pay significant expenses using program revenues.

68. Seven individuals assigned to the DWI Seizure Program have a personal incentive in the DWI forfeiture proceedings, including forfeitures and settlements, as their compensation is paid with DWI Seizure Program funds. The personal incentive of these DWI Seizure Program personnel is evident in the following ways:

- a. \$3,358,000 of DWI Seizure Program funds were used to pay salary and benefits to these DWI Seizure Program personnel from fiscal years 2009 through 2016;
- b. These DWI Seizure Program personnel will be impacted by a significant drop in DWI Seizure Program revenues, especially when the City of Albuquerque faces budgetary challenges;
- c. In their employee work plans, these individuals are evaluated based on their ability to increase the number of DWI seized vehicles and revenue generated from seized vehicles.

69. The Defendant has an institutional incentive to continue generating revenues from DWI forfeiture proceedings, including forfeitures and settlements, so that it can pay for various expenses. Without these DWI Seizure Program funds the City would be forced to either cut down on its expenses or seek other sources of funds to pay for these expenses. The institutional incentive of these DWI Seizure Program personnel is evident in the following ways:

- a. By stating that the DWI Seizure Program proceeds shall be used to carry out the purpose and intent of the Ordinance, the Ordinance itself creates a strong incentive

on the part of the DWI Seizure Program personnel to generate revenues to cover its administrative expenses;

- b. Fixed expenses of the DWI Seizure Program, such as compensation to DWI Seizure Program personnel and the lease for an impound lot, must be paid irrespective of the amount of revenues generated from DWI forfeiture proceedings, meaning that there is financial pressure to generate income to pay these fixed expenses;
- c. Capital expenses related to APD's law enforcement, such as vehicles used by APD and a building used for training APD cadets, were paid with DWI Seizure Program funds, thereby alleviating potential shortfalls in the City of Albuquerque's General Fund budget;
- d. From July 2008 through December 2016, \$988,719 of DWI Seizure Program revenues were used to purchase vehicles to be used for DWI enforcement and non-DWI law enforcement purposes, supplanting General Funds with DWI Seizure Program funds; and
- e. From July 2008 through December 2016, DWI Seizure Program funds were used to pay for other DWI enforcement purposes, such as \$379,894 paid to Kustom Signals, Inc. for radar guns, and DWI education purposes, such as \$236,322 paid to Albuquerque Publishing Company, supplanting General Funds with DWI Seizure Program funds.

70. The institutional incentive of the Defendant to continue generating revenues from DWI forfeiture proceedings, including forfeitures and settlements, so that it can pay for various

expenses is also evident in the City's budgeting and tracking process for DWI Seizure Program funds listed below:

- a. Expenses paid with DWI Seizure Program funds are budgeted based on expected program revenues, creating an institutional incentive to generate at least the budgeted revenues from DWI forfeiture proceedings;
  - b. The Defendant sets performance measures, such as amount of revenues generated from auctions, for the Legal Department in the annual budget of the City of Albuquerque; and
  - c. The Defendant tracks progress towards those performance measures on a monthly basis.
71. I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 9, 2017



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JOSEPH T. GARDEMAL III  
CPA/ABV, CVA, CFE, CFGM, CDBV  
Alvarez & Marsal Disputes and Investigations, LLC  
1001 G Street Northwest, Suite 1100 West  
Washington, D.C. 20001

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

ARLENE HARJO,

Plaintiff,

v.

CITY OF ALBUQUERQUE,

Defendant.

No. 1:16-cv-01113-JB-JHR

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to 28 U.S.C. § 1746(2), I, Robert E. Johnson, declare the following:

1. My name is Robert E. Johnson. I am a citizen of the United States and a resident of Alexandria, Virginia. I am over eighteen years of age and fully competent to make this declaration, which I make based on my personal knowledge.

2. I am an attorney with the Institute for Justice, which represents Plaintiff Arlene Harjo in the above-captioned action.

3. Attached as Exhibit 1 to this Declaration is a true and correct copy of the relevant provisions of the Revised Ordinances of Albuquerque, which was provided by the Albuquerque City Clerk in response to a request from the Institute for Justice on May 12, 2016.

4. Attached as Exhibit 2 is a true and correct copy of excerpts from Defendant's Responses to Plaintiff's First Set of Interrogatories, dated January 9, 2017.

5. Attached as Exhibit 3 is a true and correct copy of excerpts from Defendant's Supplemental Responses to Plaintiff's First Set of Interrogatories, dated January 12, 2017.

6. Attached as Exhibit 4 is a true and correct copy of excerpts from Defendant's Responses to Plaintiff's Third Set of Interrogatories, dated August 10, 2017.

7. Attached as Exhibit 5 is a true and correct copy of excerpts from the transcript of the Rule 30(b)(6) deposition of the City of Albuquerque, through its designee, Shane Rodgers, which was taken on August 2, 2017.

8. Attached as Exhibit 6 is a true and correct copy of excerpts from the transcript of the deposition of Aubrey Thompson, which was taken on May 4, 2017.

9. Attached as Exhibit 7 is a true and correct copy of excerpts from the transcript of the deposition of Linda Cutler-Padilla, which was taken on May 16, 2017.

10. Attached as Exhibit 8 is a true and correct copy of excerpts from the transcript of the deposition of Donovan Rivera, which was taken on May 17, 2017.

11. Attached as Exhibit 9 is a true and correct copy of excerpts from the transcript of the deposition of Lacresia Rivera, which was taken on May 16, 2017.

12. Attached as Exhibit 10 is a true and correct copy of excerpts from the transcript of the deposition of Jose ("Pepe") Hernandez, which was taken on August 2, 2017.

13. Attached as Exhibit 11 is a true and correct copy of excerpts from the City of Albuquerque's 2016 Approved Budget, which was provided by Defendant in discovery.

14. Attached as Exhibit 12 is a true and correct copy of excerpts from the City of Albuquerque's 2015 Approved Budget, which was provided by Defendant in discovery.

15. Attached as Exhibit 13 is a true and correct copy of excerpts from the City of Albuquerque's 2014 Approved Budget, which was provided by Defendant in discovery.

16. Attached as Exhibit 14 is a true and correct copy of excerpts from the City of Albuquerque's 2013 Approved Budget, which was provided by Defendant in discovery.

17. Attached as Exhibit 15 are true and correct copies of spreadsheets used by the DWI Seizure Unit to track vehicle intake, forfeitures, settlements, and proceeds for March, April, and May of 2016. These documents were provided by Defendant in discovery.

18. Attached as Exhibit 16 is a true and correct copy of a City of Albuquerque policy document setting out the DWI Seizure Unit's "Concept of Operations." This document was provided by Defendant in discovery.

19. Attached as Exhibit 17 is a true and correct copy of a City of Albuquerque organization chart showing the Legal Department personnel assigned to work on vehicle forfeiture cases. This document was provided by Defendant in discovery.

20. Attached as Exhibit 18 is a true and correct copy of the annual evaluation of Lacresia Rivera, dated August 30, 2016, which was provided by Defendant in discovery.

21. Attached as Exhibit 19 is a true and correct copy of the annual evaluation of Jose ("Pepe") Hernandez, dated August 30, 2016, which was provided by Defendant in discovery.

22. Attached as Exhibit 20 is a true and correct copy of a memorandum concerning the compensation of a city attorney assigned to vehicle forfeiture cases, dated August 24, 2016. This document was provided by Defendant in discovery and is also subject to this Court's confidentiality order. *See* Doc. 40.

23. Attached as Exhibit 21 is a true and correct copy of a memorandum, dated January 6, 2015, concerning the City of Albuquerque budgeting process for fiscal year 2016. This document was provided by Defendant in discovery.

24. Attached as Exhibit 22 is a true and correct copy of an email from Aubrey Thompson to Lacresia Rivera, dated November 22, 2016. This document was provided by Defendant in discovery.

25. Attached as Exhibit 23 is a true and correct copy of an email from Kyle Hibner to Becky Burnham, dated July 14, 2016. This document was provided by Defendant in discovery.

26. Attached as Exhibit 24 is a true and correct copy of an email from Aubrey Thompson to Eric Locher, Kyle Hibner, and Donovan Rivera, dated December 17, 2015. This document was provided by Defendant in discovery.

27. Attached as Exhibit 25 is a true and correct copy of an email from Eric Locher to Kyle Hibner, dated August 31, 2015. This document was provided by Defendant in discovery.

28. Attached as Exhibit 26 is a true and correct copy of an email exchange between Donovan Rivera and Shane Rogers, dated August 23, 2013. This document was provided by Defendant in discovery.

29. Attached as Exhibit 27 is a true and correct copy of an email from Greg Wheeler to Stanley Harada and other recipients, dated October 30, 2012. This document was provided by Defendant in discovery.

30. Attached as Exhibit 28 is a true and correct copy of an email from Shane Rogers to Lacresia Rivera, dated February 14, 2012. This document was provided by Defendant in discovery.

31. Attached as Exhibit 29 is a true and correct copy of excerpts from the transcript of the hearing held before Stanley Harada on May 25, 2016, concerning the attempted forfeiture of Plaintiff's vehicle. This document was provided by Defendant in discovery.

32. Attached as Exhibit 30 is a true and correct copy of the Forfeiture Complaint filed by the City of Albuquerque in the case of *City of Albuquerque v. One (1) 2014 Nissan 4DR Silver*, No. D-202-CV-2016-03614. This document was obtained by the Institute for Justice from the electronic file-access system for New Mexico's Second Judicial District Court.

33. Attached as Exhibit 31 is a true and correct copy of discovery requests sent by the City of Albuquerque to Plaintiff Arlene Harjo in the case of *City of Albuquerque v. One (1) 2014 Nissan 4DR Silver*, No. D-202-CV-2016-03614. This document was received by Plaintiff and produced to Defendant in the course of discovery in this litigation.

34. Attached as Exhibit 32 is a true and correct copy of the Stipulated Dismissal filed by the City of Albuquerque in the case of *City of Albuquerque v. One (1) 2014 Nissan 4DR Silver*, No. D-202-CV-2016-03614. This document was obtained by the Institute for Justice from the electronic file-access system for New Mexico's Second Judicial District Court.

35. Attached as Exhibit 33 is a true and correct video recording of the Santa Fe Vehicle Forfeiture Conference in September 2014, which was downloaded by the Institute for Justice from the website of the Santa Fe city government and produced by Plaintiff in the course of discovery. The City has stipulated to the authenticity of this recording, as well as to the admissibility of certain statements contained therein. *See* D.E. 61 ¶ 4.

36. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of October, 2017.

/s/ Robert E. Johnson  
Robert E. Johnson

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 1**

*Office of the City Clerk*  
*Natalie Y. Howard, City Clerk*  
*(505) 924-3650*



May 12, 2016

I, Natalie Y. Howard, City Clerk for the City of Albuquerque, New Mexico, a Municipal Corporation, hereby certify that the attached;  
**CHAPTER 7: TRANSPORTATION, VEHICLES AND TRAFFIC, ARTICLE 6: MOTOR VEHICLE SEIZURE; FORFEITURE; ARTICLE 9: MOTOR VEHICLE SEIZURE; FORFEITURE; VIOLENT CRIMES; ARTICLE 14: PROSTITUTION VEHICLE FORFEITURE:** is a true and correct copy of the original document which has been maintained by the Office of the City Clerk and of which I am the custodian.

PO Box 1293

Albuquerque

*Natalie Y. Howard, City Clerk*

New Mexico 87103

[www.cabq.gov](http://www.cabq.gov)

Albuquerque Code of Ordinances

## **ARTICLE 6: MOTOR VEHICLE SEIZURE; FORFEITURE**

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Section

- 7-6-1 Findings
- 7-6-2 Vehicle nuisance
- 7-6-3 Administration
- 7-6-4 Vehicles subject to forfeiture
- 7-6-5 Seizure; forfeiture proceeding
- 7-6-6 Temporary seizure/immobilization
- 7-6-7 Property interest not subject to forfeiture

### **§ 7-6-1 FINDINGS.**

The Council finds that the problems caused by those in the community who drive while under the influence of liquor or drugs are substantial. Among the problems caused by this type of unlawful activity are the potential for serious bodily injury and loss of life and property to innocent citizens who are present upon public roads in the city. The Council further finds that more than a majority of the fatal and injury producing motor vehicle collisions are caused by DWI first offenders with no prior DWI arrests. The Council finds that to permit or allow those who are arrested for an offense of driving under the influence of intoxicating liquor or drugs immediate access to motor vehicles increases the likelihood that such persons will repeat the offense and kill or injure innocent citizens and/or cause considerable property damage. The Council finds that motor vehicles which are used by drivers who are arrested for an offense of driving under the influence of intoxicating liquor or drugs and/or driving on a DWI revoked driver's license constitute a nuisance to the general public and are dangerous to the health and safety of the general public. It is the purpose of this article to protect the health and safety of the citizens of this city by abating and preventing such motor vehicle nuisances.

('74 Code, § 9-10-1) (Ord. 49-1992; Am. Ord. 30-1996; Am. Ord. 26-2000; Am. Ord. 6-2003; Am. Ord. 33-2005)

### **§ 7-6-2 VEHICLE NUISANCE.**

A motor vehicle, as defined by the State Motor Vehicle Code, NMSA 1978 § 66-1-4.11, is hereby declared to be a nuisance and subject to immediate seizure and forfeiture pursuant to the provisions of this article if it is:

(A) Operated by a person in the commission of a DWI offense NMSA 1978 § 66-8-102 and has, on at least one prior occasion, been arrested, summonsed or convicted for (i) an offense of driving

under the influence of an intoxicating liquor or drugs in any jurisdiction, or (ii) homicide by vehicle or great bodily harm by vehicle NMSA 1978 § 66-8-101 while under the influence of intoxicating liquor or while under the influence of any drug, and/or

(B) Operated by a person whose license is suspended or revoked as a result of conviction for driving while intoxicated or suspended or revoked as a result of a driving while intoxicated arrest.

('74 Code, § 9-10-2) (Ord. 49-1992; Am. Ord. 30-1996; Am. Ord. 71-1999; Am. Ord. 26-2000; Am. Ord. 42-2002; Am. Ord. 6-2003; Am. Ord. 33-2005; Am. Ord. 2014-020)

### **§ 7-6-3 ADMINISTRATION.**

The Police Department shall be responsible for administration of this article. Reasonable rules and regulations may be prescribed by the Mayor or his designee to carry out the intent and purpose of this article pursuant to the standards created by this article.

('74 Code, § 9-10-3) (Ord. 49-1992; Am. Ord. 6-2003; Am. Ord. 33-2005)

### **§ 7-6-4 VEHICLES SUBJECT TO FORFEITURE.**

Except as otherwise provided herein, any motor vehicle which has been declared a vehicle nuisance as defined by § 7-6-2 shall be subject to temporary seizure or permanent forfeiture.

('74 Code, § 9-10-4) (Ord. 49-1992; Am. Ord. 6-2003; Am. Ord. 33-2005)

### **§ 7-6-5 SEIZURE; FORFEITURE PROCEEDING.**

(A) Motor vehicles subject to forfeiture under this article may be seized by any law enforcement officer with jurisdiction in the city upon an order issued by the district court.

(B) Seizure without such an order may be made if seizure is incident to an arrest of the driver of the vehicle for driving while intoxicated and/or driving while his or her license is suspended or revoked as a result of a driving while intoxicated arrest.

(C) A vehicle seized under this article shall not be subject to replevin, but is deemed to be in the custody of the Police Department seizing it subject only to the orders and decrees of the district court. The police officer may take custody of the vehicle and remove it to an appropriate and official location within the district court's jurisdiction for disposition in accordance with this article.

(D) Immediately after a vehicle is towed for seizure or forfeiture under § 7-6-2, the arresting officer will serve a copy of the Notice of Forfeiture to the individual whom the vehicle was seized from at the time of arrest. A copy of the Notice of Forfeiture will be mailed postage pre-paid to the lawfully registered owner as verified by the New Mexico Motor Vehicle Division by the municipal employee who is retaining the vehicle in order to notify the owner of the pending forfeiture. The notice shall contain information to be designated by the City Attorney's Office, Legal Department, which shall include the following:

- (1) The license plate number, make, type and color of the vehicle;
- (2) The location the vehicle was seized from;
- (3) A statement that the vehicle has been taken into custody and stored;

(4) The reason for seizure;

(5) A name and phone number or title of municipal employee from whom the owner can obtain further information;

(6) A statement that storage charges will be assessed in addition to a towing charge;

(7) A statement that the owner has the right to contest the validity of the impoundment by requesting a hearing in writing within ten days of the date of mailing of the Notice of Forfeiture;

(8) Copy of § 7-6-1, et seq., ROA 1994.

The owner may request a hearing be scheduled by the city hearing officer. The hearing, if requested within the period set forth above, shall be conducted by the City Hearing Officer, as defined by the Independent Office of Hearings Ordinance (§§ 2-7-8-1 et seq. ROA 1994). The hearing shall be held and the hearing officer shall prepare a written decision within 20 working days (excluding weekends and holidays) of receipt of the request unless the hearing is continued with the agreement of the parties. The hearing shall be informal and not bound by the technical rules of evidence. The City Hearing Officer shall determine whether the law enforcement officer had probable cause to seize the vehicle pursuant to § 7-6-2 and the defenses authorized under § 7-6-7. The city hearing officer shall mail written notice of his decision to the owner within two working days of the hearing. If the city hearing officer finds that the law enforcement officer did not have probable cause to seize the vehicle in question or that the vehicle should otherwise be released, he shall issue and date a Certificate of Release, a copy of which shall be given to the owner of the vehicle. Upon receipt of the owner's copy of such certificate, the city shall release the vehicle to its owner or the owner's agent, and storage fees shall be waived or imposed at the discretion of the hearing officer in consideration of the totality of the circumstances; however, the tow fee shall be imposed if the hearing officer finds probable cause to seize the vehicle pursuant to § 7-6-2. If the owner fails to present such certificate to the municipal employee having custody of the vehicle within 24 hours of its receipt, excluding days when the DWI Forfeiture Office is not open for business, the owner shall assume liability for all subsequent storage charges. The certificate shall advise the owner of such requirement. If the City Hearing Officer determines that the vehicle was properly seized, proceedings for an order for forfeiture shall be instituted promptly. In the event of seizure pursuant to division (B) of this section, proceedings for an order for forfeiture shall be instituted. Any person or entity who, pursuant to the records of the Motor Vehicle Division of the State Taxation and Revenue Department, has an ownership or security interest in the subject matter vehicle shall be served with notice of the forfeiture proceedings.

(E) When property is forfeited pursuant to this article, the Police Department shall sell the motor vehicle, and the proceeds shall be used to carry out the purpose and intent of this article. The vehicle may be used by the Police Department for official law enforcement purposes prior to sale. Any proceeds that exceed the costs of administering this article shall be used for DWI enforcement, prevention and education. Any vehicle not recovered by the owner within 30 days after being notified by the city that such vehicle has been released by the city shall be deemed abandoned and disposed of in accordance with the notice provisions of § 29-1-14, NMSA 1978. Any proceeds from the sale of abandoned vehicles seized pursuant to this article shall be used to carry out the purpose and intent of this article.

(F) A hearing fee of \$50 shall accompany each request for hearing with the city hearing officer made pursuant to this section.

('74 Code, § 9-10-5) (Ord. 49-1992; Am. Ord. 30-1996; Am. Ord. 45-1997; Am. Ord. 71-1999; Am. Ord. 26-2000; Am. Ord. 37-2002; Am. Ord. 38-2002; Am. Ord. 6-2003; Am. Ord. 50-2004;

#### **§ 7-6-6 TEMPORARY SEIZURE/IMMOBILIZATION.**

Notwithstanding any other provision of this article, in the interest of public safety and health, the Police Department may, subsequent to the seizure of a vehicle pursuant to § 7-6-2, offer the owner a voluntary agreement of temporary immobilization of the seized vehicle for a period of 30 days or greater. The Police Department shall set forth procedures and guidelines for the length, fees and other conditions of the temporary vehicle immobilization agreements that may be offered to owners, based on the current charges that are the basis of the seizure, the offender's history or prior DWI and revoked license offenses, and prior vehicle seizures involving the same offender or owner pursuant to this article. The Police Department shall not be required to offer any agreement of temporary immobilization to an owner as an alternative to seeking forfeiture of the seized vehicle and shall set forth guidelines where an offer for temporary immobilization of the seized vehicle is contrary to public safety. Temporary immobilization may be accomplished by an immobilization device (boot) at the owner's designated location within the City of Albuquerque, or by impoundment at a secure facility, in accordance with procedures established by the Police Department. The owner shall pay the Police Department a fee for this voluntary, temporary seizure/ immobilization and sign an Immobilization Agreement with the City of Albuquerque. The boot shall be removed and the vehicle released by the Police Department, only after the owner has produced proof that an ignition interlock device has been installed by a certified vendor of such devices (if required by the voluntary agreement of temporary immobilization) and complied with all other terms set forth in the temporary immobilization agreement.

(Ord. 6-2003; Am. Ord. 33-2005; Am. Ord. 2014-020)

#### **§ 7-6-7 PROPERTY INTEREST NOT SUBJECT TO FORFEITURE.**

Notwithstanding § 7-6-4 any forfeiture shall be subject to the interest of:

(A) Any owner or co-owner of the vehicle if the owner or co-owner demonstrates by a preponderance of evidence that the owner or co-owner could not have reasonably anticipated that the vehicle could be used in a manner constituting the nuisance(s) described by this article. Upon establishment of a prima facie showing of the "innocent owner defense" prescribed in this subsection, the burden is upon the city to prove, by a preponderance of evidence, that the owner could have reasonably anticipated that the vehicle could be used in the manner constituting the nuisance(s); or,

(B) Any secured party, to the extent of the security interest, if the secured party proves that the security interest was acquired in good faith with no knowledge or reason to believe that the vehicle would be used by the driver whose license has been suspended or revoked. If the security interest is greater than the value of the vehicle, title shall be transferred to the secured party upon motion to the district court. Any secured party acquiring an interest after the vehicle is in the custody of the police department shall have the burden of intervening in the forfeiture proceeding to protect such interest. Any interest in the vehicle must be properly filed with the New Mexico Motor Vehicle Department in accordance with Sections 66-3-201 and 66-3-202 NMSA 1978 before the date of incident leading to the seizure.

(C) Any governmental lien and priority of lien as provided by law.

(D) No owner or co-owner may make use of the defense contained in division (A) of this section

if the records of the New Mexico Motor Vehicle Division show that such owner or co-owner acquired ownership of the vehicle after the date of the seizure at issue by law enforcement. The date of application for vehicle registration on the vehicle's MVD registration application form shall be the earliest recorded document governing the date at which the owner or co-owner acquired ownership of the vehicle.

(E) If the District Court finds that the law enforcement officer had probable cause to seize the vehicle, the tow charge paid by the City to seize the vehicle shall be ordered assessed against any owner with payment of said charge to be made upon the City prior to the vehicle's release. Reasonable storage fees may be assessed by the District Court in addition to the tow charge.

('74 Code, § 9-10-6) (Ord. 49-1992; Am. Ord. 30-1996; Am. Ord. 71-1999; Am. Ord. 6-2003; Am. Ord. 33-2005; Am. Ord. 2014-020)

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 2**

**IN THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF NEW MEXICO**

ARLENE HARJO,

Plaintiff,

v.

No. 1:16-cv-01113-JB-WPL

CITY OF ALBUQUERQUE,

Defendant.

**DEFENDANT CITY OF ALBUQUERQUE'S RESPONSES TO PLAINTIFF ARLENE  
HARJO'S FIRST SET OF INTERROGATORIES**

Defendant, City of Albuquerque, by and through its attorneys, answers the following interrogatories pursuant to Federal Rule of Civil Procedure 33.

**INTERROGATORIES**

1. Identify each person who was consulted or who provided information in order to respond to Plaintiff's written discovery requests. For each person, indicate the specific interrogatories, requests for production, and/or requests for admission for which that person was consulted or provided information.

**RESPONSE:**

Lacresia Rivera  
DWI Seizure Coordinator  
Albuquerque Police Department/DWI Seizure Unit  
c/o Albuquerque City Attorney's Office  
P.O. Box 2248  
Albuquerque, NM, 87103  
(505)768-4500  
khibner@cabq.gov

4. Identify every person employed by the City whose salary or other compensation is derived in any way from monies raised through administration of the vehicle forfeiture ordinance, including, but not limited to: (i) proceeds from vehicle auctions; (ii) payments made by vehicle owners pursuant to settlement agreements; (iii) fees paid to obtain forfeiture hearings; and (iv) fees paid to recover possession of seized vehicles. For each person, provide:

- a. Name;
- b. Job title;
- c. Employing agency or department;
- d. A description of the person's job duties;
- e. Total salary or other monetary compensation for each of the past five years; and
- f. The amount of the person's salary or other monetary compensation for each of the past five years paid using monies raised through administration of the vehicle forfeiture ordinance.

RESPONSE:

Employing Department: City Attorney's Office  
Kyle Hibner  
Assistant City Attorney  
Albuquerque City Attorney's Office  
P.O. Box 2248  
Albuquerque, NM, 87103  
(505)768-4500  
khibner@cabq.gov

Mr. Hibner is responsible for representing the DWI Seizure Unit in seizure and forfeiture proceedings. This includes advocating for the DWI Seizure Unit in administrative hearings, as well as district court proceedings.

Seth Grant  
Assistant City Attorney  
c/o Albuquerque City Attorney's Office  
P.O. Box 2248

Albuquerque, NM, 87103  
(505)768-4500  
khibner@cabq.gov

Mr. Grant is responsible for representing the DWI Seizure Unit in seizure and forfeiture proceedings. This includes advocating for the DWI Seizure Unit in administrative hearings, as well as district court proceedings.

Isabel Martinez  
Paralegal  
c/o Albuquerque City Attorney's Office  
P.O. Box 2248  
Albuquerque, NM, 87103  
(505)768-4500  
khibner@cabq.gov

Ms. Martinez assists Mr. Grant and Mr. Hibner in prosecuting forfeiture actions in district court, including but not limited to assisting in drafting and filing pleadings, preparing discovery, and other duties as necessary.

Carolyn Postlethwait  
Paralegal  
c/o Albuquerque City Attorney's Office  
P.O. Box 2248  
Albuquerque, NM, 87103  
(505)768-4500  
khibner@cabq.gov

Ms. Postlethwait assists Mr. Grant and Mr. Hibner in prosecuting forfeiture actions in district court, including but not limited to assisting in drafting and filing pleadings, preparing discovery, and other duties as necessary.

Employing Department: Albuquerque Police Department/DWI Seizure Unit  
Jose Hernandez  
DWI Seizure Assistant  
c/o Albuquerque City Attorney's Office  
P.O. Box 2248  
Albuquerque, NM, 87103  
(505)768-4500  
khibner@cabq.gov

Mr. Hernandez runs background reports on vehicles that the City seizes to ensure that seizure was pursuant to the ordinance. Mr. Hernandez will also answer phones to answer questions, or to direct the caller to the appropriate person.

Lacresia Rivera  
DWI Seizure Coordinator

c/o Albuquerque City Attorney's Office  
P.O. Box 2248  
Albuquerque, NM, 87103  
(505)768-4500  
khibner@cabq.gov

Ms. Rivera prepares documents for, including but not limited to abandonments, seizure hearings, and forfeiture actions. Ms. Rivera will gather and distribute to the City Attorney's Office reports. Ms. Rivera will schedule officers for hearings, answer phones, as well as clean cars for auctions. Ms. Rivera ensures that bills are proper, and that they get paid.

Kyle Evans  
DWI Seizure Assistant  
c/o Albuquerque City Attorney's Office  
P.O. Box 2248  
Albuquerque, NM, 87103  
(505)768-4500  
khibner@cabq.gov

Mr. Evan's answers phones and answers or directs inquiries as appropriate. Mr. Evans also schedules property appointments, helps with the boot program, and performs boot inspections.

Objection, fees paid to request administrative hearings are deposited into the general fund.

For the past 5 years, there have been approximately four thousand (4,000) city employee positions that are paid through the general fund. Because of the high volume of employees paid by the general fund, the burden and expense in producing individual salary information outweighs its likely benefit. Additionally, the general fund going back to fiscal year 2012 has been as low as \$467,504,000 and as high as \$526,398,000. The City has already tendered budgetary documents related to the city general budget and expenditures. *See* Bates Nos. 165-4302.

History of Positions working with the DWI Seizure Program							
DEPT.	TITLES	NAME	FY 2013	2014	2015	2016	2017 *
Police	**Management Analyst	Castillo, Helena C	54,465	52,842	55,562	61,184	35,063
	DWI Seizure Asst	Evans, Kyle D	9,045	78,563	76,535	81,025	42,108
	DWI Seizure Asst	Hernandez, Jose L	76,415	77,208	79,602	80,966	39,546
	DWI Seizure Coordinator	Rivera, Lacreasia O	60,898	61,713	62,812	64,505	32,381

<b>Legal</b>	Asst. City Attorney	Grant,Seth V					19,539
	Asst. City Attorney	Hibner,Kyle J			27,083	70,776	37,132
	Paralegal	Martinez,Isabel A.	59,349	65,667	67,975	69,241	33,785
	Asst. City Attorney	Morrow,Kevin A				77,126	17,902
	Paralegal	Postlethwait,Carolyn Sue			8,452	55,522	27,495
	Asst. City Attorney	Romero,Steven A			20,622	3	
	**Legal Secretary	Velarde,Crystal R			9,794	43,784	21,613
	Paralegal	Baca,Krista R.	59,453	57,355	24,880		
	Asst. City Attorney	Driggers,Jeffrey B	67,929	71,285	17,852		
	**Legal Secretary	Triplett,Shannon M	4,990	43,237	10,834		
	Asst. City Attorney	Bullock,Nicholas H	36,644	62,230	30,277		
	Paralegal	Lough,Sarah E	4,009				
	Asst. City Attorney	Yntema IV,Hessel Edward			18,822		
	Asst. City Attorney	Locher,Eric J	20,176				
<b>TOTAL EXPENSE</b>			<b>453,371</b>	<b>570,099</b>	<b>511,102</b>	<b>604,131</b>	<b>306,564</b>
<b>Revenue for Positions in DWI Seizure Program =</b>			<b>433,000</b>	<b>467,000</b>	<b>482,000</b>	<b>512,000</b>	<b>499,000</b>
<b>Difference</b>			<b>(20,371)</b>	<b>(103,099)</b>	<b>(29,102)</b>	<b>(92,131)</b>	<b>192,436</b>
<p>* FY/17 reflects actuals through December 2016.</p> <p>**Management Analyst and Legal Secretary are not funded by the DWI Project - however these positions are assigned to the DWI Seizure program.</p> <p>NOTE: Number of employees in any given year reflect more than the number budgeted due to staffing changes throughout the year.</p>							

Note: Eric Locher was initially assigned to the DWI Seizure Unit. However, in 2012 Eric Locher transferred to another division within the City Attorney's Office. In November of 2014, Eric Locher was assigned as a Managing Assistant City Attorney to supervise the City Attorney's Office portion of the DWI Seizure Unit. This position is not funded through the vehicle forfeiture ordinance.

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 3**

**IN THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF NEW MEXICO**

ARLENE HARJO,

Plaintiff,

v.

No. 1:16-cv-01113-JB-WPL

CITY OF ALBUQUERQUE,

Defendant.

**DEFENDANT CITY OF ALBUQUERQUE'S FIRST SUPPLEMENTAL RESPONSES TO  
PLAINTIFF ARLENE HARJO'S FIRST SET OF INTERROGATORIES**

Defendant, City of Albuquerque, by and through its attorneys, answers the following interrogatories pursuant to Federal Rule of Civil Procedure 33.

**PLAINTIFF'S INTERROGATORY NO. 5**

5. Identify every agency or other administrative subset of the City that receives monies raised through administration of the vehicle forfeiture ordinance, including, but not limited to: (i) proceeds from vehicle auctions; (ii) payments made by vehicle owners pursuant to settlement agreements; (iii) fees paid to obtain forfeiture hearings; and (iv) fees paid to recover possession of seized vehicles. For each entity, provide:

- a. Name;
- b. A description of the agency's responsibility for administering the vehicle forfeiture ordinance;
- c. Total budget for each of the last five years;
- d. The amount of the entity's budget for each of the past five years paid

using monies raised through administration of the vehicle forfeiture ordinance.

ORIGINAL RESPONSE:

Two agencies receive monies raised through administration of the vehicle forfeiture ordinance; the Administrative Hearing Office, and the DWI Seizure Unit.

DWI Seizure Unit

The DWI Seizure Unit receives monies from (i), (ii), and (iv) listed above. The DWI Seizure Unit is responsible for accepting seized vehicles. The DWI Seizure Unit ensures that the seizure is pursuant to the City's vehicle forfeiture ordinance. The DWI Seizure Unit is also responsible for booting vehicles in which the owner has entered into an agreement with the City. The DWI Seizure Unit will also schedule officers for hearings. The DWI Seizure Unit is also responsible for safeguarding vehicles that are kept in the seizure lot.

Administrative Hearing Office

The Administrative Hearing Office receives monies from (iii) listed above. The Administrative Hearing Office is responsible for scheduling and conducting administrative hearings when owners of seized vehicles request a hearing. The Administrative Hearing Officer serves as a gatekeeper, and will order a vehicle to be released if appropriate, or if forfeiture proceedings should be initiated in district court.

Note: APD Fiscal Officer Aubrey Thompson is out of the office until January 17, 2017. Accordingly, this Interrogatory will be supplemented after that date with additional data.

Relevant Documents

- Budget Documents, Δ 165- Δ 4302.

SUPPLEMENTAL RESPONSE:

<b><u>LAW ENFORCEMENT PROTECTION FUND : DWI SEIZURE PROGRAM</u></b>						
<b>BUDGET</b>		<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>
BUDGETED REVENUE		1,700,000	1,700,000	1,900,000	1,750,000	950,000
BUDGETED EXPENDITURES		1,700,000	1,700,000	1,900,000	1,750,000	950,000
<b>REVENUE LESS EXPENDITURES</b>		<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>AUDITED ACTUALS</b>		<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17 *</b>
ACTUAL REVENUE		1,640,312	1,345,907	1,124,080	760,466	239,876
ACTUAL EXPENDITURES		1,718,458	1,132,157	1,167,161	1,024,851	146,741
<b>REVENUE LESS EXPENDITURES</b>		<b>(78,146)</b>	<b>213,750</b>	<b>(43,081)</b>	<b>(264,385)</b>	<b>93,135</b>
* FY/17 reflects actuals through December 2016.						
<b><u>GENERAL FUND : ADMINISTRATIVE HEARING OFFICE</u></b>						
<b>BUDGET</b>		<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>
BUDGETED REVENUE		80,000	55,000	55,000	55,000	55,000
BUDGETED EXPENDITURES		617,000	440,000	455,000	452,000	404,000
<b>REVENUE LESS EXPENDITURES</b>		<b>(537,000)</b>	<b>(385,000)</b>	<b>(400,000)</b>	<b>(397,000)</b>	<b>(349,000)</b>
<b>AUDITED ACTUALS</b>		<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17 *</b>
**ACTUAL REVENUE		64,140	53,347	45,145	33,987	13,018
ACTUAL EXPENDITURES		491,210	386,883	419,597	399,693	156,865
<b>REVENUE LESS EXPENDITURES</b>		<b>(427,070)</b>	<b>(333,536)</b>	<b>(374,452)</b>	<b>(365,706)</b>	<b>(143,847)</b>
* FY/17 reflects actuals through December 2016.						
**Revenue includes all hearings conducted by the Administrative Hearing Office including but not limited to DWI, personnel, handicap parking violations, animal control hearings, etc.						

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 4**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

ARLENE HARJO,

Plaintiff,

v.

CITY OF ALBUQUERQUE,

Defendant.

No. 1:16-cv-01113-JB-WPL

**DEFENDANT CITY OF ALBUQUERQUE'S  
RESPONSE TO ARLENE HARJO'S THIRD SET OF INTERROGATORIES**

COMES NOW Defendant City of Albuquerque ("the City"), by and through its attorney, Walz and Associates, P.C. (Jerry A. Walz and James J. Grubel) and for its response to Arlene Harjo's Third Set of Interrogatories states as follows:

**General Objections**

The City generally objects to the number of interrogatories as they contain separate subparts that are not logically and factually related to the primary question and should therefore be set forth as separate interrogatories. As a result, the number assigned to each interrogatory by Plaintiff is incorrect. Without waiving and subject to the foregoing objection, the City responds to Plaintiffs Third Set of Interrogatories as follows:

13. State the City's policy and practice regarding the settlement of vehicle forfeiture actions, including (1) when settlement offers can be made (e.g. before an administrative hearing, after an administrative hearing, before a complaint is filed, after a complaint is filed), (2) when settlement offers are typically made, (3) who has authority to make settlement offers, (4) who

typically makes settlement offers; (5) who must approve settlement offers, and (6) how settlement terms are determined.

**ANSWER:** (1) Settlement offers can be made at any stage of vehicle forfeiture actions. This includes before an administrative hearing, after an administrative hearing, and after a complaint is filed. (2) Settlement offers are usually made just prior to the administrative hearing. However, it is not rare for a settlement offer to be made after an administrative hearing or after a complaint is filed. (3) The DWI Seizure Unit has authority to make settlement offers. Assistant City Attorneys working on vehicle forfeiture actions also have authority to make settlement offers delegated to them by the DWI Seizure Unit (the client). (4) Assistant City Attorneys working on vehicle forfeiture actions typically make settlement offers (through authority granted to them by the DWI Seizure Unit). (5) Settlement offers that differ from the matrix have to be approved by the DWI Seizure Unit. This is the Lieutenant in charge of the unit or his designee. (6) Settlement terms are determined by the settlement matrix or by the DWI Seizure Unit.

14. Provide a history of all positions Stanley Harada has held within the government of the City of Albuquerque, including, for each, (1) job title, (2) assigned department or agency within the City government (e.g. City Attorney's Office, Office of Administrative Hearings, etc.), (3) start and end dates, and (4) job duties.

**ANSWER:**

Job Title	Department	Start Date	End Date	Duties
Assistant City Attorney	City Attorney's Office	April 1999	February 2007	DWI Seizures and other tasks as assigned
City Hearing Officer	Administrative Hearing Office	February 2007	April 2012	Red light Camera Hearings and other duties as assigned
Acting Chief Hearing Officer	Administrative Hearing Office	April 2012	March 2013	All hearings with jurisdiction under Office of Administrative

				hearings ordinance
Chief Hearing Officer	Administrative Hearing Office	March 2013	present	All hearings with jurisdiction under Office of Administrative hearings ordinance

15. Provide a breakdown of Stanley Harada's case load during the period beginning January 1, 2015 and ending January 1, 2017, including (1) the total number of cases assigned to Mr. Harada; (2) the number of DWI vehicle forfeiture cases assigned to Mr. Harada; and (3) the number and general subject-matter of cases (if any) not pertaining to the DWI vehicle forfeiture program and assigned to Mr. Harada.

**ANSWER:**

Stanley Harada Case Load	
Abandoned/Inoperable Vehicle Appeals	8
Alarm Appeals	1
Animal Appeals	104
Handicap/Disabled Parking Hearings	251
Old Town Vendor Suspension Appeals	1
Section 8 Housing Appeals	12
Solid Waste Appeals	1
Towed Vehicle Appeals	1
Vehicle Seizure Hearings	1288
Weed & Litter Appeals	1
Total	1668

16. Identify any equipment (e.g. computers, tablets, printers, copiers, paper, binders) or services (e.g. legal notices, process serving) paid for using vehicle forfeiture revenues and used by personnel in the City Attorney's Office

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 5**

Arlene Harjo v. City of Albuquerque  
Shane Rodgers

August 2, 2017  
1:16-cv-01113-JB-WPL

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

ARLENE HARJO,

Plaintiff,

No. 1:16-cv-01113-JB-WPL

CITY OF ALBUQUERQUE,

Defendant.

DEPOSITION OF SHANE RODGERS

August 2, 2017

10:21 a.m.

Trattel Court Reporting & Videography

608 12th Street, NW

Albuquerque, New Mexico

PURSUANT TO THE NEW MEXICO RULES OF CIVIL PROCEDURE,  
this Deposition was:

TAKEN BY: ROBERT EVERETT JOHNSON  
ATTORNEY FOR THE PLAINTIFF

REPORTED BY: Rose C. Harms, NM CCR #54  
TRATTEL COURT REPORTING & VIDEOGRAPHY  
609 12th Street, NW  
Albuquerque, New Mexico 87102

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Shane Rodgers

August 2, 2017  
1:16-cv-01113-JB-WPL

Page 2		Page 4	
1	APPEARANCES	1	EXHIBITS
2		2	Marked/Identified
3	For the Plaintiff:		Page
4	ROBERT EVERETT JOHNSON	3	
5	Institute for Justice	4	Exhibit 13 - E-Mail String Beginning with 75
6	2901 N. Glebe Road, Suite 900	5	7/14/16 from Burnham to Page and Others,
7	Arlington, Virginia 22203	6	Ending with 7/14/16 from Hibner to Burnham;
8	(703)682-9320	7	Attached Financial Budget Document
9	rjohnson@ij.org	8	Bates: Defendant 007779
10	JUSTIN PEARSON	9	
11	Institute for Justice	10	Exhibit 14 - 8/23/13 E-Mail from Rivera to 77
12	2 S. Biscayne Boulevard, Suite 3180	11	Rodgers
13	Miami, Florida 33131	12	Bates: Defendant's 011419
14	(305)721-1600	13	
15	jpearson@ij.org	14	Exhibit 15 - E-Mail String Beginning with 87
16		15	10/25/12 from Sedillo-White to Thompson, Ending
17	For the Defendant:	16	with 10/30/12 from Sandoval to Wheeler and
18	JAMES J. GRUBEL	17	Harada
19	Walz & Associates	18	Bates: Defendant's Privileged Files 001066,
20	133 Eubank Boulevard, NE, Suite 2	19	001067
21	Albuquerque, New Mexico 87123-2750	20	Exhibit 16 - 2/28/13 Interoffice Memorandum 89
22	(505)275-1800	21	from Schultz to Perry; Attached Position
23	jgrubel@walzandassociates.com	22	Control Form
24		23	Bates: Defendant's 010870, 010871
25		24	
		25	
1	INDEX	1	SHANE RODGERS
2	Page	2	
3		3	having been first duly sworn under oath, was
4	SHANE RODGERS	4	questioned and testified as follows:
5	Examination by Mr. Johnson 5	5	EXAMINATION
6		6	BY MR. JOHNSON:
7	SIGNATURE/CORRECTION PAGE 97	7	<b>Q. Can you state your name for the record.</b>
8		8	A. Shane Rodgers.
9	REPORTER'S CERTIFICATE 98	9	<b>Q. And have you been deposed previously?</b>
10		10	A. Yes, I have.
11		11	<b>Q. About how many times have you been deposed?</b>
12		12	A. Maybe three or four.
13		13	<b>Q. Okay. So you're familiar with sort of how it</b>
14		14	<b>works?</b>
15		15	A. Yes.
16		16	<b>Q. Okay, great. You understand you're here for</b>
17		17	<b>what's called a 30(b)(6) deposition?</b>
18		18	A. Yes.
19		19	<b>Q. Do you know what that means?</b>
20		20	A. Yes.
21		21	<b>Q. Okay. What's your understanding of what that</b>
22		22	<b>means?</b>
23		23	A. Basically, I'm a representative of the department
24		24	on an issue.
25		25	<b>Q. So is it your understanding that you're basically</b>
			<b>another -- or not basically; that you are speaking for</b>

2 (Pages 2 to 5)

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505-830-0600

Arlene Harjo v. City of Albuquerque  
Shane Rodgers

August 2, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 6</p> <p>1 the City of Albuquerque?</p> <p>2 A. Yes.</p> <p>3 Q. Okay.</p> <p>4 (Exhibit 1 marked.)</p> <p>5 Q. Have you seen this before?</p> <p>6 A. Yes, I have.</p> <p>7 Q. Okay. What is this?</p> <p>8 A. This is a notice of -- I guess it's a civil</p> <p>9 action.</p> <p>10 Q. Do you see this in connection with this</p> <p>11 deposition?</p> <p>12 A. Yes.</p> <p>13 Q. Is this the notice to show up for this</p> <p>14 deposition?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So you understand that you're here to</p> <p>17 testify pursuant to this notice?</p> <p>18 A. Yes.</p> <p>19 Q. Okay, great. What is your current position at</p> <p>20 the City of Albuquerque?</p> <p>21 A. Currently, I am the acting major over Criminal</p> <p>22 Investigations.</p> <p>23 Q. And how long have you been in that position?</p> <p>24 A. About three months.</p> <p>25 Q. Okay. And what was your position before that?</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. Okay. Did you have any responsibilities</p> <p>2 regarding the DWI program in that position?</p> <p>3 A. No, I did not.</p> <p>4 Q. Okay. So do I take it your involvement with the</p> <p>5 DWI program was from 2008 to 2009?</p> <p>6 A. Well, as an officer, I was also a member of the</p> <p>7 DWI Unit for -- that was just before the traffic --</p> <p>8 becoming a traffic officer, so I've kind of been on that</p> <p>9 side of the house for quite a bit.</p> <p>10 Q. Okay. So how long were you an officer with the</p> <p>11 unit?</p> <p>12 A. With the DWI Unit, two years. A little over</p> <p>13 three. I'm sorry. It ended about 2005, so it was</p> <p>14 probably 2002 through 2005, I was a DWI officer.</p> <p>15 Q. So from 2008 to 2009, your responsibility was to</p> <p>16 supervise the DWI Unit?</p> <p>17 A. No.</p> <p>18 Q. No?</p> <p>19 A. I was never a sergeant of the DWI Unit.</p> <p>20 Q. Oh, okay.</p> <p>21 A. I was an officer in the DWI Unit, and I was a</p> <p>22 sergeant of the DWI Seizure Unit. Those two units are</p> <p>23 completely different.</p> <p>24 Q. I see. So you've never actually had</p> <p>25 responsibility for supervising the forfeiture program?</p>
<p style="text-align: right;">Page 7</p> <p>1 A. I was the area commander for the Foothills Area</p> <p>2 Command.</p> <p>3 Q. How long were you in that position?</p> <p>4 A. Approximately two years.</p> <p>5 Q. And how about before that?</p> <p>6 A. Before that, I was the lieutenant of Operations</p> <p>7 Review for about a year and a half.</p> <p>8 Q. Okay. And then before that?</p> <p>9 A. I was the lieutenant of the Valley Area Command</p> <p>10 for about six months.</p> <p>11 Q. And that takes us back to about when?</p> <p>12 A. Gosh, I'm going to say roughly 2008 or '09,</p> <p>13 somewhere in that -- that area.</p> <p>14 Q. And how about before that?</p> <p>15 A. Before that, I was the sergeant of the DWI</p> <p>16 Seizure Unit.</p> <p>17 Q. Okay. And how long were you in that position?</p> <p>18 A. A little over a year.</p> <p>19 Q. Okay. So was that from about 2008 to 2009?</p> <p>20 A. Roughly.</p> <p>21 Q. Okay. What was your position before that?</p> <p>22 A. Before that, I was the sergeant of the Traffic</p> <p>23 Unit.</p> <p>24 Q. Okay. And how long were you in that position?</p> <p>25 A. That position, I was -- almost exactly a year.</p>	<p style="text-align: right;">Page 9</p> <p>1 A. Yes. I'm -- I'm confused. The DWI Unit are the</p> <p>2 officers that are actually out making DWI arrests. I</p> <p>3 was an officer in there. I was the sergeant of the DWI</p> <p>4 Seizure Unit.</p> <p>5 Q. Okay. I see.</p> <p>6 A. So I think I -- I don't know if I got your</p> <p>7 question correct.</p> <p>8 Q. That's fair. I think it's confusing because</p> <p>9 there are those two different units.</p> <p>10 A. Yes.</p> <p>11 Q. From 2002 to 2005, you were an officer with the</p> <p>12 DWI Unit where you would be making actual stops on the</p> <p>13 highway?</p> <p>14 A. That's correct.</p> <p>15 Q. And then from 2008 to 2009, you were -- you</p> <p>16 supervised the DWI Seizure Unit?</p> <p>17 A. That's correct.</p> <p>18 Q. And the DWI Seizure Unit is responsible for the</p> <p>19 forfeitures of the DWI cars that are seized from DWI</p> <p>20 suspects?</p> <p>21 A. In a roundabout way, yes.</p> <p>22 Q. What do you mean, "in a roundabout way"?</p> <p>23 A. Basically, for the most part, we're not actually</p> <p>24 in charge of the forfeiture process. We're housing the</p> <p>25 cars. We provide background. The hearing officers</p>

3 (Pages 6 to 9)

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August 2, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 10</p> <p>1 handle the actual forfeiture, that process.</p> <p>2 <b>Q. Okay. And so your familiarity with the DWI</b></p> <p>3 <b>seizure program comes from that period in 2008 to 2009?</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. Okay. Have you had any other opportunity to work</b></p> <p>6 <b>with the program other than in 2008 and 2009?</b></p> <p>7 A. No, I have not, not since I left that unit.</p> <p>8 <b>Q. Okay. Are you familiar with the case, why you're</b></p> <p>9 <b>here today?</b></p> <p>10 A. Briefly, yes.</p> <p>11 <b>Q. Okay. What's your understanding of it?</b></p> <p>12 A. My understanding of it is that a State Police</p> <p>13 officer conducted a traffic stop, did a seizure. It</p> <p>14 turned out the seizure was outside of the city limits.</p> <p>15 <b>Q. Okay. Anything else?</b></p> <p>16 A. That's the underlying factor of the case.</p> <p>17 <b>Q. Other than the City's attorneys, have you</b></p> <p>18 <b>discussed the case with anybody?</b></p> <p>19 A. No.</p> <p>20 <b>Q. Okay. Did you do anything to prepare for your</b></p> <p>21 <b>deposition today?</b></p> <p>22 A. Yes. I spoke to the attorneys, and I read</p> <p>23 Lacsia Rivera's deposition.</p> <p>24 <b>Q. Did you do anything else?</b></p> <p>25 A. No, not that I can think of.</p>	<p style="text-align: right;">Page 12</p> <p>1 outlining the process, what the vehicle was being seized</p> <p>2 for. A copy of that goes to the person who's arrested</p> <p>3 at that point, and then another copy will eventually get</p> <p>4 to the DWI Seizure Unit.</p> <p>5 <b>Q. Other than the notice of seizure form, is there</b></p> <p>6 <b>any other paperwork that's filled out?</b></p> <p>7 A. The incident report, as well as if the -- any</p> <p>8 citations, any DWI citations, pre-Booker Criminal</p> <p>9 Complaint.</p> <p>10 <b>Q. Okay. So after all that has happened and the car</b></p> <p>11 <b>goes to intake, what happens at intake?</b></p> <p>12 A. At intake, the person will check the vehicle for</p> <p>13 damage. They will input the information into the</p> <p>14 database. They will generate notices that will go -- if</p> <p>15 there's a lien on the vehicle, a notice will go to the</p> <p>16 lienholder, notice will go to the registered owner</p> <p>17 explaining that the vehicle was seized and the process</p> <p>18 for requesting a hearing.</p> <p>19 <b>Q. And who's responsible for that intake?</b></p> <p>20 A. Now it's the DWI Seizure Unit. I'm not sure who</p> <p>21 they have assigned specifically to do it now, but it</p> <p>22 falls under that unit.</p> <p>23 <b>Q. Okay. And then what happens after intake?</b></p> <p>24 A. After intake, the process can go several ways.</p> <p>25 The unit itself will do a history of the driver, a</p>
<p style="text-align: right;">Page 11</p> <p>1 <b>Q. Okay. Did you talk to anybody other than the</b></p> <p>2 <b>attorneys for the City to prepare for the deposition?</b></p> <p>3 A. To prepare for the deposition, no.</p> <p>4 <b>Q. Let's just start by walking through the process.</b></p> <p>5 <b>You know what happens when a car is seized. Why don't</b></p> <p>6 <b>we just start with the seizure itself. How does that</b></p> <p>7 <b>work?</b></p> <p>8 A. Basically, the seizure itself happens at the</p> <p>9 officer level. They conduct a traffic stop or arrive on</p> <p>10 the scene of a crash. Anyway, they come into contact</p> <p>11 with the driver of the vehicle.</p> <p>12 They will do a driver's license check when</p> <p>13 they're running the person for warrants, and they'll see</p> <p>14 the history and/or they'll make an arrest for DWI. It</p> <p>15 varies.</p> <p>16 Depending upon what information is generated,</p> <p>17 whether they're either revoked pursuant to a DWI charge</p> <p>18 or if they're arresting for a DWI charge and they have a</p> <p>19 prior conviction, then the seizure process would start.</p> <p>20 They'd fill out the DWI seizure paperwork. They</p> <p>21 would serve the person with a copy of that paperwork.</p> <p>22 Then the vehicle would be towed to a location where</p> <p>23 intake would happen by the DWI Seizure Unit.</p> <p>24 <b>Q. Okay. And what paperwork is filled out?</b></p> <p>25 A. It's a DWI seizure form, notice of seizure,</p>	<p style="text-align: right;">Page 13</p> <p>1 history of the vehicle, make a packet about that</p> <p>2 specific vehicle and the incident and send that</p> <p>3 information to the city attorneys.</p> <p>4 <b>Q. And what kind of information goes into that</b></p> <p>5 <b>packet?</b></p> <p>6 A. Basically, just what I was saying. The vehicle</p> <p>7 information, the driver's history, a copy of the police</p> <p>8 report, any other incidents that are on record for that</p> <p>9 individual or that vehicle.</p> <p>10 <b>Q. So is that information generated through a search</b></p> <p>11 <b>of electronic databases?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. Now, what information goes to the Legal</b></p> <p>14 <b>Department at that point?</b></p> <p>15 A. That whole packet.</p> <p>16 <b>Q. Okay. So the packet would include the</b></p> <p>17 <b>information on the background that's generated from the</b></p> <p>18 <b>database search, and would it also include a copy of the</b></p> <p>19 <b>incident report?</b></p> <p>20 A. Yes, it would. Part of the protocol is that the</p> <p>21 DWI Seizure gets a copy of that report, and it's</p> <p>22 included with that.</p> <p>23 <b>Q. Okay. Would there be anything other than the</b></p> <p>24 <b>incident report and the background information in that</b></p> <p>25 <b>packet?</b></p>

4 (Pages 10 to 13)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Shane Rodgers

August 2, 2017  
1:16-cv-01113-JB-WPL

Page 14

1 A. That would be the gist of it. I mean, you know,  
2 any other miscellaneous like tow-ins or things of that  
3 nature would go in there, but that's the real crux of  
4 what goes in it.

5 **Q. So apart from the background investigation that's**  
6 **done by the DWI Unit or Seizure Unit and then whatever**  
7 **investigation is done on the scene by the arresting**  
8 **officer, is there any other investigation that occurs in**  
9 **DWI seizure cases?**

10 A. That's the majority of the investigation, the  
11 history of that. They do make sure, in most cases, that  
12 it was a valid seizure. There have been cases where  
13 they weren't valid seizures, and then at that point,  
14 they would release the vehicle.

15 You know, there's been cases where our databases  
16 have been down, but the person told the officer they  
17 have DWI convictions, so they've made the seizure, and  
18 then in those cases, we've released the vehicle.

19 **Q. Okay. So by "valid seizure," you mean there's**  
20 **some sort of --**

21 A. It's the City ordinance.

22 **Q. So there is an effort to make sure that the**  
23 **seizure is one that actually can be -- where the seizure**  
24 **is appropriate, the forfeiture is appropriate under the**  
25 **ordinance?**

Page 15

1 A. Correct.

2 **Q. Okay. Does anybody from the City at any point**  
3 **call the owner of the vehicle to investigate?**

4 A. As far as calling, I do not believe so, no. It's  
5 mostly generated by the information from the  
6 registration of the vehicle.

7 **Q. Okay. And how does the process differ if it's a**  
8 **case where the vehicle is owned by somebody that's**  
9 **different from the driver?**

10 A. It really doesn't differ in terms of, the driver  
11 gets notice, and the registered owner also gets a mailed  
12 copy of the notice. So it's always the same. Even if  
13 the person arrested is the driver, they will also get  
14 the mailed notices.

15 **Q. Is there any investigation conducted into the**  
16 **owner if the owner wasn't the driver?**

17 A. Yes. There is some background in terms of our  
18 databases of whether or not -- again, it's based on the  
19 vehicle; has this vehicle been seized under this owner  
20 as well.

21 **Q. Okay. So other than a database search, is there**  
22 **an investigation into the owner?**

23 A. No.

24 **Q. Okay. Nobody talks to the owner?**

25 A. The owner -- it's incumbent upon the owner to

Page 16

1 make contact with the City in terms of requesting the  
2 hearing.

3 **Q. Right. I mean, does anybody interview the owner**  
4 **to see if they -- to find out any information about what**  
5 **the owner might have known about, you know, the conduct**  
6 **that underlies the seizure?**

7 A. No. That would come out at the hearing or  
8 through other methods.

9 **Q. But before the hearing, there's no investigation?**

10 A. No.

11 **Q. Does the process differ if the seizure is**  
12 **conducted by the State Police rather than the**  
13 **Albuquerque City Police Department?**

14 A. On our side, no.

15 **Q. Okay. Is there any procedure in place to**  
16 **determine whether the seizure occurred within the city**  
17 **limits of Albuquerque?**

18 A. No. When we review the police report, we look at  
19 information provided. When another agency does it, it's  
20 incumbent upon them to ensure that it's within the city  
21 limits because there are so many different outlying  
22 pockets, especially in terms of city, county. Also,  
23 when you're looking at freeway seizures, most of our  
24 knowledge, professional knowledge, doesn't include the  
25 mile markers, where that ends and things of that nature,

Page 17

1 so it's more incumbent upon those other agencies.

2 **Q. When you said that, "We do look at the location,"**  
3 **what did you mean by that?**

4 A. Like we'll look at the address. If there's  
5 something that really looks outrageous, you know, if  
6 they mention "Just west of Bernalillo," the city of  
7 Bernalillo, we know, okay, that's not going to -- you  
8 know, it's kind of cursory in terms of that.

9 **Q. So it's a cursory look; it's not an in-depth**  
10 **look?**

11 A. Not when it comes to other agencies.

12 **Q. Okay. So if there's a mile marker on a highway,**  
13 **nobody looks to see where that mile marker is located?**

14 A. The presumption is that that agency -- that's  
15 their realm of expertise. They would know that.

16 **Q. Okay. Just to be clear, when you say the**  
17 **presumption is that they know that, you mean that nobody**  
18 **is double-checking it?**

19 A. No.

20 **Q. Okay. Nobody from the City of Albuquerque is**  
21 **double-checking it?**

22 A. No, not that I know of.

23 **Q. When you say "not that you know of," is it**  
24 **possible that you wouldn't know?**

25 A. It's possible in terms of, there are so many

5 (Pages 14 to 17)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Shane Rodgers

August 2, 2017  
1:16-cv-01113-JB-WPL

Page 18

1 layers of where this goes, that a city attorney may have  
2 checked. I don't know.

3 **Q. But there's no procedure for double-checking?**

4 A. No, not that I know of, there's not.

5 MR. JOHNSON: Since this is the deposition  
6 for the City under 30(b)(6), I take it if there is such  
7 a procedure, that the City will notify us?

8 MR. GRUBEL: Exactly.

9 A. Yes.

10 **Q. (By Mr. Johnson) So I'll take it that, unless I**  
11 **hear otherwise, there is no procedure for the City to**  
12 **check the location?**

13 A. Correct.

14 **Q. Okay. Let's start with another exhibit here.**  
15 **(Exhibit 2 marked.)**

16 **Q. I'm going to mark this as Exhibit 2. Are you**  
17 **familiar with this document?**

18 A. The document, in general, yes.

19 **Q. Okay. And what is this document?**

20 A. This is a Request for Vehicle Seizure Hearing.

21 **Q. Okay. And when would somebody fill one of these**  
22 **out?**

23 A. This would be filled out when they're requesting  
24 a hearing for a seized vehicle. This would be filled  
25 out by the owner/driver to request a hearing.

Page 19

1 **Q. Okay. And who would get a copy of this?**

2 A. This goes to the hearing office.

3 **Q. Okay. Does it go to anybody else?**

4 A. Eventually it's in the file, but that's usually  
5 where this goes. It's hand-delivered to the hearing  
6 office.

7 **Q. Okay. And does anybody do anything with this**  
8 **form once it's been delivered?**

9 A. Then they set it up for the actual hearing.

10 **Q. Okay. Does anybody investigate the statements on**  
11 **the form in any way?**

12 A. Most of that will come out in the -- at the  
13 hearing.

14 **Q. Okay. Got it. So nobody from the City would**  
15 **investigate to see, for instance, if an individual**  
16 **asserts that they are an innocent owner on this form?**  
17 **Nobody would do any follow-up investigation to verify**  
18 **that other than the hearing?**

19 A. Other than the hearing, no.

20 **Q. Okay. When the City obtains a request for a**  
21 **hearing form, what happens then?**

22 A. There are several steps. At that point, there  
23 can be negotiation between the owner and the city  
24 attorney as far as coming to an agreement outside of the  
25 hearing. If no agreement can be made, then the hearing

Page 20

1 is set up. It goes before the hearing officer. The  
2 stopping officer is subpoenaed or requested, and the  
3 hearing itself is held.

4 **Q. So you mentioned that there could be discussions**  
5 **between the owner or the City attorney. Does that**  
6 **typically happen before the hearing?**

7 A. Yes.

8 **Q. Okay. And where do those discussions occur?**

9 A. It varies. It can happen in person, if they  
10 want. It can happen between their attorney. It can  
11 happen over the phone. There's various different ways.

12 **Q. Okay. So it could happen a number of different**  
13 **ways, but it does happen before the hearing?**

14 A. Yes.

15 **Q. Okay. And who's responsible for conducting those**  
16 **investigations with the owner?**

17 A. The city attorney.

18 **Q. Okay. And does the city attorney have the**  
19 **responsibility to determine what kind of settlement**  
20 **terms are acceptable?**

21 A. Within reason, yes.

22 **Q. Okay. Can you say a little bit more about how**  
23 **that works in terms of setting the settlement amount**  
24 **that's going to be offered?**

25 A. A lot depends upon the actual history of the

Page 21

1 driver, what offense it is, kind of the history of the  
2 vehicle, you know, those type of things. Those are all  
3 taken into consideration when they look at what the  
4 offer is.

5 **Q. Okay. More concretely, how would they go about**  
6 **making that kind of a decision?**

7 A. There's guidelines as far as, if it's a first  
8 offense, there's a standard boot offer that would be  
9 offered, all the way up through -- I would guess three  
10 or four returns before there's no boot offer made.

11 **Q. Okay. This is all according to a City policy**  
12 **document?**

13 A. It's according to rules established by the city  
14 attorney.

15 **Q. Okay. Within those rules, does the individual**  
16 **attorney have discretion to differ one way or the other**  
17 **based on the individual facts of the case?**

18 A. Yes.

19 **Q. Okay. So is it fair to say the individual**  
20 **attorney would be exercising discretion about what kind**  
21 **of settlement offer to make?**

22 A. Yes.

23 **Q. Does the city attorney have to get approval from**  
24 **anybody to settle the case?**

25 A. In general, no. I think there's always, you

6 (Pages 18 to 21)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Shane Rodgers

August 2, 2017  
1:16-cv-01113-JB-WPL

Page 22

1 know, those unique cases that fall outside of the norm  
2 where there's consultation between the Seizure Unit and  
3 the city attorney, but for your run-of-the-mill cases, I  
4 would say, at least from the police side, no.

5 **Q. Okay. How about from within the city attorney's**  
6 **office?**

7 A. I would say probably no, as long as, you know,  
8 they're following the general guidelines. Any case  
9 that's outside of the norm, again, as in any situation  
10 that's outside of the norm, there's always some  
11 consultation.

12 **Q. When you say "outside the norm," if they were**  
13 **going to vary from the guidelines significantly, they**  
14 **would have to -- they would consult with somebody about**  
15 **that. What if it was a more minor variance?**

16 A. Define "minor."

17 **Q. Okay. Are there situations where a city attorney**  
18 **could depart from the guidelines and not consult with**  
19 **anybody?**

20 A. Well, I would look at like, you know, say the  
21 vehicle. It's a first-time offense, but it's involved  
22 in a vehicular homicide, okay? That's definitely  
23 outside of the norm. The standard first-offense boot  
24 offer might not be appropriate in that case. There's  
25 aggravating circumstances in that.

Page 23

1 If the city attorney feels that in this case or  
2 in any case maybe there's valid justification for an  
3 innocent owner or something like that, there's some  
4 other -- they can do that.

5 **Q. Okay. So if the city attorney feels that there's**  
6 **a valid innocent owner defense, they can depart from the**  
7 **guidelines without having to consult with anybody?**

8 A. Yes. And within, you know, any organization, if  
9 there are issues that come out of it or disagreement or  
10 anything, there's discussion, but, I mean, it's  
11 discussion. There's no procedure for ramifications or  
12 anything like that. It's a symbiotic relationship,  
13 really.

14 **Q. So I'm not sure I understand what you mean by**  
15 **that. Can you explain a little bit more?**

16 A. The ultimate goal of the program is to reduce  
17 DWIs and DWI fatalities and injuries. That's the  
18 underlying theme of it. And so it's not necessarily  
19 just to go out and hammer everybody. So within that  
20 framework, there's room.

21 Like I said, the underlying goal is to reduce  
22 DWIs and reduce DWI fatalities, plain and simple. So  
23 within that framework -- so both sides are working for  
24 the same goal.

25 **Q. By "both sides" you mean APD and the city**

Page 24

1 **attorney?**

2 A. Yes.

3 **Q. So when you say "there's room," what you mean by**  
4 **that is that there is room for leniency, in effect, in**  
5 **cases where the city attorney doesn't feel like it would**  
6 **advance the underlying goal of reducing DWIs?**

7 A. Yes.

8 **Q. That question of whether to exercise leniency or**  
9 **not is a decision that can be made by the city**  
10 **attorneys?**

11 A. Yes.

12 **Q. And that ordinarily would be made by the city**  
13 **attorneys?**

14 A. Again, it's situational dependent. It depends --  
15 each case can have a unique set of circumstances. It  
16 can also depend upon the time frame. You know, it could  
17 be time dependent. So there are a lot of factors that  
18 would play on there, but I would say yes.

19 **Q. I want to talk more about the situation where**  
20 **there's an innocent owner or someone who claims to be an**  
21 **innocent owner.**

22 A. Okay.

23 **Q. How would a city attorney go about deciding**  
24 **whether that's a case in which it's appropriate to**  
25 **exercise leniency in that situation?**

Page 25

1 A. I think there are several circumstances. Again,  
2 the history of the vehicle, the history of that vehicle  
3 and owner being involved in DWI events. There have been  
4 cases where you have the same owner claiming innocent  
5 owner with the same driver numerous times. So, again,  
6 that's part of the history of the vehicle and the  
7 interaction with that owner.

8 **Q. Would the attorney also talk to the owner just to**  
9 **get a sense of them as a person?**

10 A. They would talk to the owner if the owner was  
11 open to the negotiation. I mean, it depends if an  
12 attorney is involved. There are a lot of -- you know, I  
13 can't give a definite answer to that. If the owner  
14 wanted to talk to the attorney, they would, but, again,  
15 that's a lot dependent upon that vehicle owner.

16 **Q. How about in a case where there's no attorney**  
17 **involved, so it's just a pro se individual?**

18 A. If that person wants to talk to the attorney,  
19 yes. After they've requested a hearing, the attorney  
20 would speak to them.

21 **Q. And would the attorney take that conversation**  
22 **into account when deciding whether to be lenient in the**  
23 **settlement offer?**

24 A. I'm sure they could. I'm sure they could.  
25 Again, you know, that's really a broad generalization.

7 (Pages 22 to 25)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Shane Rodgers

August 2, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 26</p> <p>1 There are a lot of other things that would come into 2 something like that, but, yeah, I'm sure that could be 3 taken into account. 4 <b>Q. Okay. That decision to take the conversation</b> 5 <b>into account or not would really be in the discretion of</b> 6 <b>the attorney?</b> 7 A. The attorney, based on all the facts that are 8 around it. You know, it's the totality of the 9 situation. 10 <b>Q. The attorney would make a decision, based on the</b> 11 <b>totality of the circumstances, whether to take that into</b> 12 <b>account or not?</b> 13 A. Yes. 14 <b>Q. I'm going to mark this as Exhibit 3.</b> 15 <b>(Exhibit 3 marked.)</b> 16 <b>Q. Are you familiar with this type of document?</b> 17 A. Yes. 18 <b>Q. And what is this?</b> 19 A. This is a Vehicle Immobilization &amp; Release 20 Agreement. This is entered into for, usually, boot 21 agreements, for lack of a better term. 22 <b>Q. So is this a settlement agreement that would be</b> 23 <b>negotiated by the city attorneys in a forfeiture case?</b> 24 A. Yes. 25 <b>Q. Now, is this sort of a standard form agreement?</b></p>	<p style="text-align: right;">Page 28</p> <p>1 A. Yes. Again, that's to further the purpose of 2 reducing DWI and DWI fatalities. 3 <b>Q. Does the City have a policy of actually enforcing</b> 4 <b>those provisions?</b> 5 A. Yes. 6 <b>Q. So if an individual had signed one of these</b> 7 <b>agreements and there was a seizure where the same driver</b> 8 <b>was driving the owner's car, the City would take the</b> 9 <b>position that there's no validated innocent owner</b> 10 <b>defense?</b> 11 A. Yes. 12 <b>Q. Okay. Does the hearing --</b> 13 A. Well, let me add to that. There have been 14 circumstances where the subject actually stole the 15 vehicle, and an innocent defense was allowed -- innocent 16 owner defense was allowed. 17 <b>Q. Okay.</b> 18 A. So there were cases, you know, unique -- again, 19 the totality of the circumstances. 20 <b>Q. When you say it was "allowed," you mean was</b> 21 <b>allowed by the city attorney's office?</b> 22 A. Yes, and it went through. They accepted it 23 because there was actually a burglary of the house, and 24 so the burglary charges were filed against the 25 individual, and so it furthered the innocent owner.</p>
<p style="text-align: right;">Page 27</p> <p>1 A. Yes. 2 <b>Q. Okay. So I see on the second page, there are</b> 3 <b>some terms that are bolded. Paragraph A, "240 days,"</b> 4 <b>and Paragraph B, it says "\$2,100." Are those terms</b> 5 <b>standard terms, or do they differ depending on the</b> 6 <b>agreement?</b> 7 A. They differ depending upon the agreement. 8 <b>Q. Okay. So is it fair to say that, in putting this</b> 9 <b>together, the attorney would take the form document and</b> 10 <b>then enter in those terms of the agreement?</b> 11 A. Yes. 12 <b>Q. Are there any other terms that would be variable,</b> 13 <b>or are those the only terms of the agreement that would</b> 14 <b>change?</b> 15 A. That's pretty much the only ones of these 16 agreements that would change. 17 <b>Q. Okay. Now, on the third page under Paragraph 5,</b> 18 <b>it says that the "Owner further agrees to waive any</b> 19 <b>future innocent owner defense if Offender or another</b> 20 <b>person is again arrested for DWI or driving on a revoked</b> 21 <b>driver's license in any vehicle Owner owns." Is that a</b> 22 <b>standard term in these agreements?</b> 23 A. Yes. 24 <b>Q. So that would be contained in all of these</b> 25 <b>agreements?</b></p>	<p style="text-align: right;">Page 29</p> <p>1 <b>Q. So even when somebody has signed one of these</b> 2 <b>agreements, the city attorney would have discretion,</b> 3 <b>based on the totality of the circumstances, to find that</b> 4 <b>that person is an innocent owner?</b> 5 A. Yes, they can. 6 <b>Q. What happens with one of these agreements after</b> 7 <b>it's been negotiated? Let's start with this. Who</b> 8 <b>actually puts this document together physically?</b> 9 A. I believe the city attorney actually does that. 10 Then they set up an appointment with the DWI Seizure 11 Unit where they come in and they go out -- the fees are 12 paid, whatever stipulated fees are paid. And then the 13 vehicle is taken to the agreed-upon location, and the 14 immobilization device or the boot is put on. 15 <b>Q. I do want to look at the last page of this</b> 16 <b>agreement, page 4 of the exhibit, where it says</b> 17 <b>"Approved." Would this ordinarily be signed -- well,</b> 18 <b>who would ordinarily fill this part of it out?</b> 19 A. If it went before the hearing officer, the 20 hearing officer would fill that out. If the agreement 21 was made before that, then that wouldn't be filled out. 22 <b>Q. Oh, okay. I see. So if the agreement is entered</b> 23 <b>into before it goes to the hearing officer, the hearing</b> 24 <b>officer doesn't have to review the agreement?</b> 25 A. No.</p>

8 (Pages 26 to 29)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Shane Rodgers

August 2, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 30</p> <p>1 <b>Q. Okay. If a settlement occurs after the hearing,</b> 2 <b>what would the hearing officer do when reviewing the</b> 3 <b>agreement?</b> 4 A. When you say "after," is it from the hearing or 5 -- I'm confused. 6 <b>Q. I was unclear. It's my fault. You said that</b> 7 <b>sometimes the hearing officer does not sign this if the</b> 8 <b>settlement occurs prior to the hearing, but it's correct</b> 9 <b>that the hearing officer would sign this if the</b> 10 <b>settlement occurs after the hearing?</b> 11 A. If the hearing officer dictated the terms of what 12 would happen, yeah, then they would approve it. 13 <b>Q. Okay.</b> 14 A. If, say, the hearing officer said, "You need more 15 discussion," and then they come to an agreement, then 16 the hearing officer probably wouldn't sign it then 17 either. It's more so if they're making a direct finding 18 of what needed to be done. 19 <b>Q. Okay. So the hearing officer would sign this if</b> 20 <b>the hearing officer was directly involved in the</b> 21 <b>settlement negotiation?</b> 22 A. Not necessarily the negotiation if they dictated 23 the terms of what would happen. 24 <b>Q. Can you just explain to me more what you mean by</b> 25 <b>"dictating the terms"?</b></p>	<p style="text-align: right;">Page 32</p> <p>1 A. I would say the hearing officer. 2 <b>Q. We'll mark this as Exhibit 4.</b> 3 <b>(Exhibit 4 marked.)</b> 4 <b>Q. Are you familiar with this type of document?</b> 5 A. Yes. 6 <b>Q. So what is this?</b> 7 A. This is basically a vehicle disclaimer. 8 Basically, they're relinquishing any interest that they 9 have in the vehicle. 10 <b>Q. Okay. And when would this type of document be</b> 11 <b>used?</b> 12 A. If the owner does not wish to pursue retrieving 13 their vehicle, they would basically sign the disclaimer 14 relinquishing their ownership of the vehicle. 15 <b>Q. Okay. And who would be responsible for obtaining</b> 16 <b>and drafting this kind of document?</b> 17 A. This is pretty much -- it can vary. It can 18 happen through the seizure lot. They can do this, as 19 well as the city attorney can do it. 20 <b>Q. Okay. Does this happen often?</b> 21 A. I would say it happens quite a bit, yes. 22 <b>Q. What's your understanding of why somebody would</b> 23 <b>sign one of these?</b> 24 A. I guess the way to put it, the majority of the 25 vehicles that are seized under this, that do not have</p>
<p style="text-align: right;">Page 31</p> <p>1 A. In the same -- I guess it's similar to a judge 2 handing down a sentence. If the hearing officer says -- 3 you know, the City wanted one thing, the driver wanted 4 one thing, and the hearing officer says, "This is -- 5 based on what was presented, this is what's going to 6 happen." 7 <b>Q. Okay. I see. So unless the hearing officer has</b> 8 <b>made a decision, the hearing officer wouldn't sign this?</b> 9 A. Correct. 10 <b>Q. Okay. And so just to be clear, in a case where</b> 11 <b>there's a settlement that occurs without the hearing</b> 12 <b>officer having signed off on it, that would mean the</b> 13 <b>hearing officer had no responsibility to review the</b> 14 <b>settlement to make sure that it's fair?</b> 15 A. To my knowledge, no. 16 <b>Q. I guess I should be a little clearer. Generally</b> 17 <b>speaking, does the hearing officer review settlements to</b> 18 <b>make sure that they're fair?</b> 19 A. I don't believe so, no. 20 <b>Q. Again, just speaking as the representative of the</b> 21 <b>City, does the City have any procedure where the hearing</b> 22 <b>officer would review settlement agreements to make sure</b> 23 <b>that they're fair?</b> 24 A. That, I don't know. I don't know. 25 <b>Q. Do you know who within the City would know?</b></p>	<p style="text-align: right;">Page 33</p> <p>1 liens where the vehicle would go back to a lienholder, 2 really, there's not much -- there's no -- it's more 3 financially beneficial for the subject to walk away from 4 this vehicle or attempt to purchase it at auction than 5 it is to go through the agreement. 6 <b>Q. And is it your understanding that people make</b> 7 <b>that kind of a financial determination fairly often?</b> 8 A. I mean, it's hard to say what "fairly often" is. 9 Each individual has their own determination of what's 10 financially feasible, what they're willing to do. 11 There are other reasons too. In terms of when 12 you're looking at being without a vehicle for a certain 13 amount of time, that has its own limitations for 14 individuals as well. So there are a lot of reasons. 15 Each individual makes their own determination of what's 16 going to be beneficial to them, given their 17 circumstance. 18 <b>Q. Do I understand you to be saying that one reason</b> 19 <b>someone might sign a disclaimer is that they -- that the</b> 20 <b>process of getting the vehicle back would take so long</b> 21 <b>that they don't think it's worth going through the</b> 22 <b>process?</b> 23 A. Not necessarily the process. A boot agreement, 24 when a vehicle is sitting in front of your house not 25 being able to be used, I mean, that's an inconvenience,</p>

9 (Pages 30 to 33)

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Arlene Harjo v. City of Albuquerque  
Shane Rodgers

August 2, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 34</p> <p>1 to say the least, which is by design.</p> <p>2 But, also, when you're looking at how much you</p> <p>3 want to invest in a vehicle, some of these vehicles may</p> <p>4 not be worth that investment. You know, there are a lot</p> <p>5 of different things. Each person has to weigh that in</p> <p>6 their own case.</p> <p>7 <b>Q. Sure, sure. That makes sense. Are you familiar</b></p> <p>8 <b>with the document that's sometimes referred to as the</b></p> <p>9 <b>matrix?</b></p> <p>10 A. I've heard of them, yes.</p> <p>11 <b>Q. Have you ever seen a copy?</b></p> <p>12 A. I have never had a copy myself, no.</p> <p>13 <b>Q. What have you heard about the matrix?</b></p> <p>14 A. I've heard that it was a guideline based on</p> <p>15 certain situations on settlement offers.</p> <p>16 <b>Q. So it's a guideline for what offers to make under</b></p> <p>17 <b>particular circumstances?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. And would that apply to a settlement that occurs</b></p> <p>20 <b>before a hearing?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. Would it also apply to a settlement offer that is</b></p> <p>23 <b>made after a hearing?</b></p> <p>24 A. Again, I'm not sure what you mean by "after a</p> <p>25 hearing."</p>	<p style="text-align: right;">Page 36</p> <p>1 to, would that consist of the matrix?</p> <p>2 A. Yes.</p> <p>3 <b>Q. So city attorneys have discretion to depart from</b></p> <p>4 <b>the matrix if they wish to or if they feel it's</b></p> <p>5 <b>appropriate?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. Do you know what factors are taken into</b></p> <p>8 <b>consideration by the matrix?</b></p> <p>9 A. I think it's the number of DWI convictions,</p> <p>10 previous seizures. Again, you know, are there</p> <p>11 fatalities or injuries involved in this incident, things</p> <p>12 of that nature.</p> <p>13 <b>Q. Does the matrix take into account whether the</b></p> <p>14 <b>owner of the vehicle was also the driver?</b></p> <p>15 A. That, I don't know.</p> <p>16 <b>Q. Okay. So moving on from the settlement process,</b></p> <p>17 <b>let's talk a bit about the administrative hearing</b></p> <p>18 <b>process. What is involved in requesting a hearing?</b></p> <p>19 A. Filling out the form that you showed me, paying</p> <p>20 the \$50 fee, or filling out the indigent paperwork.</p> <p>21 That's the process.</p> <p>22 <b>Q. Okay. I'm going to mark this as Exhibit 5.</b></p> <p>23 <b>(Exhibit 5 marked.)</b></p> <p>24 <b>Q. Are you familiar with this type of document?</b></p> <p>25 A. Yes. That's a City receipt.</p>
<p style="text-align: right;">Page 35</p> <p>1 <b>Q. Well, if there's a case where there's been a</b></p> <p>2 <b>hearing, and then there's -- well, let's back up a step.</b></p> <p>3 <b>We obviously discussed how sometimes there are</b></p> <p>4 <b>settlement negotiations that occur before the</b></p> <p>5 <b>administrative hearing.</b></p> <p>6 A. Correct.</p> <p>7 <b>Q. Do the city attorneys ever engage in settlement</b></p> <p>8 <b>discussions after the administrative hearing has</b></p> <p>9 <b>occurred?</b></p> <p>10 A. I would say that probably, in most respects, is</p> <p>11 very rare because the hearing officer would have made a</p> <p>12 determination one way or another.</p> <p>13 <b>Q. Okay.</b></p> <p>14 A. So I guess that's where my confusion was for</p> <p>15 "after the hearing."</p> <p>16 <b>Q. I see.</b></p> <p>17 A. Usually that's where -- once the hearing officer</p> <p>18 has made their ruling, that's where that goes.</p> <p>19 <b>Q. I see. So if a hearing officer finds for the</b></p> <p>20 <b>City, the City at that point will just proceed and won't</b></p> <p>21 <b>actually engage in further settlement negotiations?</b></p> <p>22 A. For the most part, yes.</p> <p>23 <b>Q. Okay. I see. So when we were talking earlier</b></p> <p>24 <b>about the discretion that city attorneys have to depart</b></p> <p>25 <b>from guidelines, the guidelines that we were referring</b></p>	<p style="text-align: right;">Page 37</p> <p>1 <b>Q. Okay. And would this type of receipt be</b></p> <p>2 <b>generated when somebody pays the \$50 to request a</b></p> <p>3 <b>hearing?</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. Do you see under where it says "For," F-o-r? I</b></p> <p>6 <b>know it's kind of faint.</b></p> <p>7 A. Let's see. Let me find it. I do not see the</p> <p>8 F-o-r.</p> <p>9 <b>Q. So on the left-hand margin, there's --</b></p> <p>10 A. Oh, okay. I thought you were talking</p> <p>11 handwritten. Yes, I see "For."</p> <p>12 <b>Q. And what does it say?</b></p> <p>13 A. "Vehicle seizure."</p> <p>14 <b>Q. Okay. So does that mean this is a receipt for</b></p> <p>15 <b>the payment to request a hearing?</b></p> <p>16 A. Yes.</p> <p>17 <b>Q. Okay.</b></p> <p>18 A. I'm assuming that's what it is.</p> <p>19 <b>Q. Would there be any other kind of receipt that</b></p> <p>20 <b>would say it's for a vehicle seizure?</b></p> <p>21 A. No. I think they just left off the "hearing."</p> <p>22 <b>Q. Right. Okay. So this would be a receipt showing</b></p> <p>23 <b>that somebody paid \$50 for a vehicle seizure hearing?</b></p> <p>24 A. Yes. And it has the hearing date to the right.</p> <p>25 <b>Q. Okay. So this would indicate that -- it says at</b></p>

10 (Pages 34 to 37)

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Arlene Harjo v. City of Albuquerque  
Shane Rodgers

August 2, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 38</p> <p>1 the top, "Arlene Harjo." This would indicate that 2 Arlene Harjo paid \$50 to request a vehicle seizure 3 hearing? 4 A. Yes. 5 Q. When a hearing is actually scheduled, where does 6 that happen? 7 A. I believe now it happens on First Street at the 8 -- I think it's called the Sun Plaza. 9 Q. And does it happen in a particular room in the 10 Sun Plaza? 11 A. Yes. They have a hearing room. I'm not sure 12 which one it is. 13 Q. So that's changed since you were involved in the 14 program? 15 A. It's changed numerous times. 16 Q. Okay. So you wouldn't be able to describe what 17 the room looks like? 18 A. No, I wouldn't. Sorry. 19 Q. That's okay. But you are familiar with how the 20 hearings operate? Apart from the physical location, you 21 know how the hearings operate? 22 A. Yes. 23 Q. So can you tell us, how does a hearing work? 24 A. Basically, there's the hearing officer, and you 25 have the city attorney and the police officer and then</p>	<p style="text-align: right;">Page 40</p> <p>1 showing, by a preponderance of the evidence, that they 2 could not have reasonably anticipated. So they must 3 show that. 4 Q. Okay. And how would somebody go about making 5 that kind of a showing? What kind of evidence would 6 they present? 7 A. There are several different things. The 8 knowledge of the person's history, that's a key one. 9 Again, if there were prior instances with that person 10 and this same person, those sorts of things. 11 Q. Does it matter how long ago prior incidents 12 occurred? 13 A. I think that does play a little bit, but, again, 14 it boils down to basically doing whatever you can to 15 stop the action. But I would say that would play some 16 in there. 17 Q. Okay. And when you say it would play a role, is 18 that essentially an assessment under the totality of the 19 circumstances? 20 A. Yes. 21 Q. And that assessment is being made at the hearing 22 by the hearing officer? 23 A. In those cases, yes. 24 Q. So does the City have any policy to direct the 25 hearing officer as to how that determination should be</p>
<p style="text-align: right;">Page 39</p> <p>1 either the owner or the owner's attorney. Basically, 2 the officer lays out the facts of the stop, the facts of 3 the seizure. The attorney asks questions, and the 4 hearing officer will make a determination. 5 Q. Okay. And if somebody claims that they're an 6 innocent owner, how does that work at the hearing? 7 A. Depending upon how they're claiming it, if the 8 City has any evidence to the contrary, that would be 9 presented to the hearing officer, and the hearing 10 officer would make that determination. 11 Q. And who's responsible for showing? Is it the 12 City's burden to show that someone is not innocent, or 13 is it the owner's burden to show that they are innocent? 14 A. I believe that's outlined in the ordinance. 15 Q. Okay. 16 A. I can't remember off the top of my head, but I'm 17 pretty sure it's outlined in the ordinance. 18 Q. Okay. Why don't we take a look at the ordinance. 19 I'll mark the ordinance as Exhibit 6. 20 (Exhibit 6 marked.) 21 Q. I believe the relevant language is on the final 22 page under Section 7-6-7. 23 A. Yes. 24 Q. Okay. 25 A. It basically falls upon the owner/co-owner</p>	<p style="text-align: right;">Page 41</p> <p>1 made? 2 A. No, other than the ordinance. 3 Q. Okay. So other than the ordinance, the hearing 4 officer has discretion to decide whether somebody is 5 innocent? 6 A. Yes. 7 Q. I guess I should go back. When a city attorney 8 is negotiating a settlement and the city attorney is 9 making that determination of whether to exercise 10 leniency, would the city attorney take into account the 11 amount of time that's gone by since previous incidents? 12 A. I would say yes. 13 Q. Okay. And would that, again, just be part of the 14 totality of the circumstances? 15 A. Yes. 16 Q. Okay. And how many hearing officers does the 17 City have who work on these types of cases? 18 A. To be honest, I don't know now. 19 Q. Okay. 20 A. I know they used to only have one. 21 Q. And who was that? 22 A. I can't remember his name. 23 Q. Was it Stanley Harada? 24 A. No, it was not. 25 Q. And you don't know how many they have today?</p>

11 (Pages 38 to 41)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Shane Rodgers

August 2, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 42</p> <p>1 A. I do not.</p> <p>2 <b>Q. Do you know what other types of cases those</b></p> <p>3 <b>hearing officers would work on?</b></p> <p>4 A. I do not.</p> <p>5 <b>Q. So you don't know like what portion of their</b></p> <p>6 <b>caseload would involve these types of cases?</b></p> <p>7 A. No, I do not.</p> <p>8 <b>Q. Do you know who would have that kind of</b></p> <p>9 <b>information?</b></p> <p>10 A. Anybody in the city attorney's office would know.</p> <p>11 I mean, under that person's job description, it would be</p> <p>12 in there as well.</p> <p>13 <b>Q. Okay. So someone in the city attorney's office,</b></p> <p>14 <b>or would somebody from the administrative hearing office</b></p> <p>15 <b>be able to provide that?</b></p> <p>16 A. Yeah, they should be able to provide that as</p> <p>17 well.</p> <p>18 <b>Q. So I would have to talk to someone from either</b></p> <p>19 <b>the administrative hearing office or the city attorney's</b></p> <p>20 <b>office?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. I'll mark this as Exhibit 7.</b></p> <p>23 <b>(Exhibit 7 marked.)</b></p> <p>24 <b>Q. Are you familiar with this type of document?</b></p> <p>25 A. Yes. This is a transcript of a vehicle seizure</p>	<p style="text-align: right;">Page 44</p> <p>1 <b>map so that the hearing officer can make that kind of a</b></p> <p>2 <b>determination?</b></p> <p>3 A. No, not that I know of.</p> <p>4 <b>Q. Is the hearing officer responsible for</b></p> <p>5 <b>determining if the seizure did occur within the city of</b></p> <p>6 <b>Albuquerque?</b></p> <p>7 A. I don't know if that's like a specific -- again,</p> <p>8 that would go to the job description. I think the</p> <p>9 ordinance mandates that the seizure happen in the city</p> <p>10 of Albuquerque, because it's a city ordinance.</p> <p>11 <b>Q. Right. And it's the hearing officer's job to</b></p> <p>12 <b>ensure that the seizure is consistent with the</b></p> <p>13 <b>ordinance?</b></p> <p>14 A. Yes, but that would be established by the</p> <p>15 testimony.</p> <p>16 <b>Q. Right. So does the hearing officer have to make</b></p> <p>17 <b>a finding that the seizure occurred within the city</b></p> <p>18 <b>limits?</b></p> <p>19 A. Yes.</p> <p>20 <b>Q. Okay. And would the hearing officer do anything</b></p> <p>21 <b>to verify when -- for instance, when a milepost like</b></p> <p>22 <b>this is given, would the hearing officer do anything to</b></p> <p>23 <b>verify that that milepost does actually fall within the</b></p> <p>24 <b>city limits?</b></p> <p>25 A. I don't believe so, no.</p>
<p style="text-align: right;">Page 43</p> <p>1 hearing.</p> <p>2 <b>Q. Okay. Can you read at the bottom of page 3, the</b></p> <p>3 <b>final paragraph starting where it says, "At</b></p> <p>4 <b>approximately 10:31 p.m."?</b></p> <p>5 A. "At approximately 10:31 p.m., New Mexico State</p> <p>6 Police dispatch received a (inaudible) call with</p> <p>7 reference to a blue Nissan Versa traveling westbound on</p> <p>8 I-40 near milepost 203."</p> <p>9 <b>Q. And then let's also look at page 6. There's an</b></p> <p>10 <b>exchange between lines 12 and 14. Can you read that</b></p> <p>11 <b>exchange as well?</b></p> <p>12 A. "And can you tell us if this took place in the</p> <p>13 city of Albuquerque?"</p> <p>14 "Yes, it did. It was at milepost 170."</p> <p>15 <b>Q. Okay. Now, would it be possible, using that</b></p> <p>16 <b>milepost number, to verify that the seizure actually did</b></p> <p>17 <b>occur within the city of Albuquerque?</b></p> <p>18 A. Yes, I believe so.</p> <p>19 <b>Q. Okay. So if someone was looking at a map, would</b></p> <p>20 <b>it be possible to see if Milepost 170 fell within the</b></p> <p>21 <b>city limits?</b></p> <p>22 A. It would have to be a very specific one, but,</p> <p>23 yes, I would believe so. I don't know if those specific</p> <p>24 ones exist, but, yeah, I would assume it does.</p> <p>25 <b>Q. Does the City provide the hearing officer with a</b></p>	<p style="text-align: right;">Page 45</p> <p>1 <b>Q. I'll go ahead and mark this as Exhibit 8.</b></p> <p>2 <b>(Exhibit 8 marked.)</b></p> <p>3 <b>Q. Now, are you familiar with this type of document?</b></p> <p>4 A. I have never seen this one, but just from looking</p> <p>5 at it, it's from the Office of Administrative Hearings.</p> <p>6 <b>Q. Okay. Do you know what this type of document --</b></p> <p>7 <b>A. This would be the findings of the hearing</b></p> <p>8 <b>officer.</b></p> <p>9 <b>Q. Okay. So is this a document that's issued at the</b></p> <p>10 <b>end of a hearing by the hearing officer?</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. Okay. And does it reflect the hearing officer's</b></p> <p>13 <b>decision in the hearing?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. Okay. And who would actually fill out this</b></p> <p>16 <b>document?</b></p> <p>17 A. Based on this, it was signed by the</p> <p>18 administrative hearing officer.</p> <p>19 <b>Q. Okay. And so the administrative hearing officer</b></p> <p>20 <b>would be responsible for making the findings that are</b></p> <p>21 <b>contained in this document?</b></p> <p>22 A. Yes.</p> <p>23 <b>Q. Okay. Is there any line in this document where</b></p> <p>24 <b>the hearing officer would have to make a specific</b></p> <p>25 <b>finding that the vehicle was seized within the city</b></p>

12 (Pages 42 to 45)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Shane Rodgers

August 2, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 46</p> <p>1 <b>limits?</b></p> <p>2 A. It looks like the hearing officer has</p> <p>3 jurisdiction over the subject matter and parties herein.</p> <p>4 <b>Q. Okay. So that would indicate that the hearing</b></p> <p>5 <b>officer has found that the vehicle was actually seized</b></p> <p>6 <b>within city limits?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. Okay. After a hearing officer has issued a</b></p> <p>9 <b>decision, what happens next?</b></p> <p>10 A. Based on the findings, whatever was ordered</p> <p>11 through that, whether it's a boot agreement, a seizure,</p> <p>12 whether there's an appeal to District Court, any of</p> <p>13 those possible routes.</p> <p>14 <b>Q. Okay. So a hearing officer can order a boot</b></p> <p>15 <b>agreement?</b></p> <p>16 A. Yes.</p> <p>17 <b>Q. And a hearing officer could order a seizure?</b></p> <p>18 A. A release. It could, yes, any of those.</p> <p>19 <b>Q. Okay. When would a hearing officer order a boot</b></p> <p>20 <b>agreement?</b></p> <p>21 A. It could be one of those where they say, "You</p> <p>22 guys need to work this out. Go out, and, you know, I</p> <p>23 think an agreement can be made," kind of the same way</p> <p>24 judges say, "I think there's a way to do this."</p> <p>25 <b>Q. Okay. I see. Other than that, a hearing officer</b></p>	<p style="text-align: right;">Page 48</p> <p>1 <b>officer, whether to order those fees to be paid?</b></p> <p>2 A. I think in the majority of cases, it's more an</p> <p>3 order of them being waived, because if the finding is</p> <p>4 that the seizure was not valid, then they can waive the</p> <p>5 towing and storage. If there are other circumstances,</p> <p>6 then -- because there's still the fee for storage and</p> <p>7 towing, and that's covered in the ordinance, as well,</p> <p>8 but there have been times where they have dictated that</p> <p>9 those will be waived.</p> <p>10 <b>Q. I see. So the default would be that the fees</b></p> <p>11 <b>would be imposed even when the car is released?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. Okay. And then it would be a more unusual case</b></p> <p>14 <b>where the fees would be waived and not imposed?</b></p> <p>15 A. Correct.</p> <p>16 <b>Q. Okay. And how are those fees calculated?</b></p> <p>17 A. In general, they're based -- they're actually</p> <p>18 below the PRC rates that have been established for all</p> <p>19 towing companies. So rather than -- a lot of times, the</p> <p>20 towing -- the actual towing fee varies from car to car,</p> <p>21 and they don't always match up in the file, so they've</p> <p>22 done a standard towing, which is usually below what the</p> <p>23 actual fee was for the tow.</p> <p>24 <b>Q. Right. Okay. So the towing is a standard fee</b></p> <p>25 <b>for each car?</b></p>
<p style="text-align: right;">Page 47</p> <p>1 <b>wouldn't actually order a boot agreement?</b></p> <p>2 A. No.</p> <p>3 <b>Q. So a hearing officer could direct the parties to</b></p> <p>4 <b>engage in further settlement?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. If the hearing officer orders the vehicle</b></p> <p>7 <b>released, what happens then?</b></p> <p>8 A. Then, depending upon the order, whether or not</p> <p>9 tow and storage, they make an appointment, and either</p> <p>10 the fees are assessed or not, and the vehicle is</p> <p>11 returned.</p> <p>12 <b>Q. Okay. So are there cases where the hearing</b></p> <p>13 <b>officer orders a vehicle released but also orders</b></p> <p>14 <b>payment of fees?</b></p> <p>15 A. Just the towing and storage. That would be the</p> <p>16 only fees that would be assessed.</p> <p>17 <b>Q. There could be a case where a hearing officer</b></p> <p>18 <b>orders the vehicle released but does order the payment</b></p> <p>19 <b>of towing and storage fees?</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. And I don't mean to -- if you could just wait</b></p> <p>22 <b>until I finish the question, it will be easier for the</b></p> <p>23 <b>court reporter.</b></p> <p>24 A. I'm sorry. Okay.</p> <p>25 <b>Q. Is that a decision that's made by the hearing</b></p>	<p style="text-align: right;">Page 49</p> <p>1 A. Yes.</p> <p>2 <b>Q. And then the storage fees, how are those</b></p> <p>3 <b>calculated?</b></p> <p>4 A. Those are per day, and, again, that's below PRC</p> <p>5 standards for what is mandated for towing companies.</p> <p>6 <b>Q. Okay. And when you refer to PRC standards, what</b></p> <p>7 <b>do you mean?</b></p> <p>8 A. What does it stand for. I can't think of it off</p> <p>9 the top of my head. They dictate what fees towing</p> <p>10 companies can recover in terms of the cost per mile and</p> <p>11 things of that nature and what they can charge for</p> <p>12 storage.</p> <p>13 <b>Q. Okay.</b></p> <p>14 MR. GRUBEL: Normally I wouldn't interject,</p> <p>15 but just for clarification, I think it's the Public</p> <p>16 Regulations Commission.</p> <p>17 THE WITNESS: Yeah.</p> <p>18 <b>Q. (By Mr. Johnson) Okay. Is that correct?</b></p> <p>19 A. Yes, that's correct.</p> <p>20 <b>Q. Okay. Now, the PRC standards, are those</b></p> <p>21 <b>standards that apply to towing companies?</b></p> <p>22 A. Yes.</p> <p>23 <b>Q. Okay.</b></p> <p>24 A. Those specific ones I'm speaking of.</p> <p>25 <b>Q. So if a vehicle is towed by a towing company,</b></p>

13 (Pages 46 to 49)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Shane Rodgers

August 2, 2017  
1:16-cv-01113-JB-WPL

Page 50	Page 52
<p>1 those standards would apply to how much the towing 2 company can charge the City of Albuquerque for having 3 towed the vehicle? 4 A. Correct. 5 Q. Okay. And then what you're saying is that the 6 City of Albuquerque's towing fee that they charge the 7 individual is actually different from the PRC standards? 8 A. Yes. 9 Q. Okay. The storage fees, again, you're referring 10 to the PRC standards for how much a towing company can 11 charge an individual? 12 A. Correct. 13 Q. Okay. Now, when a vehicle is towed for a 14 violation of the ordinance, is it stored by a towing 15 company? 16 A. No. 17 Q. Okay. Who stores the vehicle? 18 A. The DWI Seizure Unit. 19 Q. The DWI Seizure Unit isn't a towing company? 20 A. No, they are not. 21 Q. So they wouldn't be bound by the PRC standards? 22 A. No. 23 Q. So they can charge less than the PRC standards? 24 A. They do charge less. 25 Q. Okay. And, presumably, if they wanted to, they</p>	<p>1 the person can do the disclaimer, or at times, they just 2 walk away and abandon it. There's all kinds of 3 different things that can happen at that point. 4 Q. That decision by the city attorney whether to 5 offer a settlement, a boot agreement, that's a decision 6 that they have discretion to make? 7 A. Yes. 8 Q. And, again, they would make that based on the 9 totality of the circumstances? 10 A. Yes. 11 Q. And if the case isn't settled and there is no 12 disclaimer, what happens at that point? 13 A. It would proceed for the actual seizure of the 14 vehicle for auction. It would proceed to District Court 15 if they want to continue going for the vehicle. 16 Q. Okay. Now, who files the case in District Court? 17 A. I believe the city attorney. I'm not for 18 certain, but I believe the city attorney would file 19 that. 20 Q. But you're not certain? 21 A. No, I'm not. 22 Q. Okay. Do you know who would have that 23 information? 24 A. I'm sure the hearing officer would. 25 Q. Okay. Would the city attorney's office have that</p>
Page 51	Page 53
<p>1 could charge nothing? 2 A. Or they could charge more. 3 Q. So that's a decision that the City has made? 4 A. Yes. 5 Q. Okay. So it's not something that's determined by 6 the PRC standards? 7 A. No, it's not. 8 Q. Okay. What is the storage fee that's charged? 9 A. I believe it's \$10 a day. 10 Q. Is there any ceiling on how high that amount can 11 go? 12 A. No. 13 Q. Okay. So if a vehicle was held, for instance, 14 for an entire year, that could be a storage charge of 15 over \$3,000? 16 A. Yes. 17 Q. Okay. Now, if the hearing officer makes a 18 finding that a person is not an innocent owner and the 19 forfeiture is appropriate, what happens then? 20 A. Again, there's several avenues that can happen. 21 A lot is dependent upon the totality of the 22 circumstances of that individual case. At times, the 23 city attorney can -- if they've negotiated before in 24 certain cases, again, if it's not egregious or things of 25 that nature, they can offer a boot again, or they can --</p>	<p>1 information? 2 A. I'm sure they would too. 3 Q. I want to mark another exhibit, and then maybe 4 after that, we can take a break for lunch. I'm going to 5 mark this as Exhibit 9. 6 (Exhibit 9 marked.) 7 Q. Are you familiar with this type of document? 8 A. I am not, but I can see what it is. 9 Q. And what is it? 10 A. It's a Forfeiture Complaint that would be filed 11 in District Court to -- for a forfeiture of a vehicle. 12 Q. And at the very bottom of the document, who signs 13 the document? 14 A. Assistant City Attorney Kyle Hibner. 15 Q. Are you familiar with who Kyle Hibner is? 16 A. Yes. I've met him once. 17 Q. Who is Kyle Hibner? 18 A. He's an assistant city attorney for the City of 19 Albuquerque. 20 Q. Does he work on DWI cases? 21 A. DWI seizure cases, yes. 22 Q. Is he one of the attorneys who does the 23 administrative hearings? 24 A. Yes, I believe so. 25 Q. Is he one of the attorneys who would be</p>

14 (Pages 50 to 53)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Shane Rodgers

August 2, 2017  
1:16-cv-01113-JB-WPL

Page 54

1 responsible for negotiating settlements as well?  
2 A. Yes.  
3 **Q. Can you read Paragraph 4 of this?**  
4 A. "On April 23rd, 2016, Tino Harjo was stopped by  
5 officers for traffic violations at I-40/Mile Marker 170,  
6 in Albuquerque, New Mexico."  
7 **Q. Okay. When it says, "I-40/Mile Marker 170," is**  
8 **that a reference to the location of the seizure?**  
9 A. Yes.  
10 **Q. Okay. And would it be possible, looking at a**  
11 **map, to determine if that was within the city of**  
12 **Albuquerque?**  
13 A. It could be possible, yes.  
14 **Q. And it would be possible, based on that**  
15 **information that's there in Paragraph 4, to make that**  
16 **determination?**  
17 A. I'm sorry?  
18 **Q. Well, just knowing that information, that it was**  
19 **on I-40 at Mile Marker 170, is that all the information**  
20 **you would need to figure out if it was in the city of**  
21 **Albuquerque? Would you need any other information?**  
22 A. Only -- no. Only where Mile Marker 170 would  
23 fall.  
24 **Q. So that information there just by itself, that**  
25 **would be enough to know if it was within the city of**

Page 55

1 Albuquerque, assuming you had a map?  
2 A. Yes.  
3 MR. JOHNSON: Why don't we take a little  
4 break.  
5 (Recess taken from 11:46 to 11:58.)  
6 **Q. (By Mr. Johnson) So after one of these**  
7 **Complaints has been filed, about how long does the**  
8 **process take until there's a final decision?**  
9 A. That, I don't know. A lot varies on the District  
10 Court schedule. I don't think there's really a set  
11 time. I couldn't definitively answer that.  
12 **Q. Okay. Do you know sort of at the outside, like**  
13 **what's the longest it might take?**  
14 A. I know there are cases that have gone on for  
15 years, but I couldn't give you a roundabout.  
16 **Q. Now, does the City serve discovery requests on**  
17 **property owners in these types of cases?**  
18 A. I don't know.  
19 **Q. Do you know who would be able to answer that kind**  
20 **of a question?**  
21 A. Court clerk, whoever they're filing the motions  
22 with. Any of the motions that are filed, you would  
23 easily be able to get it through there.  
24 **Q. Would the city attorney's office be able to**  
25 **answer that type of question?**

Page 56

1 A. Yes, I would think so.  
2 MR. GRUBEL: The City will stipulate that  
3 they filed discovery requests in this case.  
4 **Q. (By Mr. Johnson) Why don't we, then, look at**  
5 **another exhibit.**  
6 **(Exhibit 10 marked.)**  
7 **Q. So I'm guessing that you're not familiar with**  
8 **this, but can you tell, just from looking at it, what**  
9 **this document is?**  
10 A. Just from looking at it, it is a request for  
11 interrogatories.  
12 **Q. Does that mean it's a discovery request?**  
13 A. Yes.  
14 **Q. Okay. And was this served on the property owner**  
15 **in this particular case, the case we're here for today?**  
16 A. Let me see. It doesn't show certificate of --  
17 **Q. Well, that's fair. I should rephrase that. It**  
18 **refers, in the second line of the letter, to the**  
19 **Claimant, Arlene Harjo?**  
20 A. Yes.  
21 **Q. Would that be the identity of the property owner**  
22 **in this particular case?**  
23 A. Yes.  
24 **Q. Okay. Do you know if this is a standard type of**  
25 **discovery that is served in this type of case?**

Page 57

1 A. I do not know.  
2 MR. JOHNSON: Is the City willing to  
3 stipulate that it is?  
4 MR. GRUBEL: Within a period of time. The  
5 City will stipulate this was the general form used at  
6 the time that this particular request was made.  
7 **Q. (By Mr. Johnson) I'd just like to look at some**  
8 **of these particular interrogatories. Let's start with**  
9 **page 10, Interrogatory Number 4. It asks the property**  
10 **owner to state, for each residence that they've lived**  
11 **in, whether they owned, rented, leased, or simply**  
12 **occupied the reference, and also to provide the name and**  
13 **address of the mortgage company or the landlord or**  
14 **lessee if they were a renter.**  
15 **Can you tell me, what is the City's interest in**  
16 **asking for this type of information?**  
17 A. I have no idea.  
18 **Q. Why would this information be relevant in a DWI**  
19 **seizure case? Would it be relevant?**  
20 MR. GRUBEL: Objection; form and foundation.  
21 A. I honestly don't know.  
22 **Q. (By Mr. Johnson) Let's look at page 13,**  
23 **Interrogatory 7. This asks the property owner to**  
24 **provide, for each job that they've held in the last five**  
25 **years, the name, address, and telephone number of their**

15 (Pages 54 to 57)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Shane Rodgers

August 2, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 58</p> <p>1 employer, as well as several other things, including</p> <p>2 their wages or salary.</p> <p>3 Can you tell me, would this information be</p> <p>4 relevant to a DWI seizure case?</p> <p>5 MR. GRUBEL: Form and foundation. Answer if</p> <p>6 you can.</p> <p>7 A. Some of these questions in this one could be,</p> <p>8 yes. I don't understand all of them, but some of them</p> <p>9 definitely could.</p> <p>10 <b>Q. (By Mr. Johnson) Would the wages or salary of</b></p> <p>11 <b>the property owner be relevant?</b></p> <p>12 A. No, not that I know of.</p> <p>13 <b>Q. Would the name of their employer be relevant?</b></p> <p>14 A. Not that I know of. I don't think so.</p> <p>15 <b>Q. Okay. Let's look at page 18. This Interrogatory</b></p> <p>16 <b>Number 12 asks the property owner to identify any and</b></p> <p>17 <b>all maintenance services and/or repairs that have been</b></p> <p>18 <b>made to the subject vehicle in the two years prior to</b></p> <p>19 <b>the date of the seizure, including the dates for each</b></p> <p>20 <b>service or repair.</b></p> <p>21 <b>Would that information be relevant in a DWI</b></p> <p>22 <b>seizure case?</b></p> <p>23 A. Yes.</p> <p>24 MR. GRUBEL: Form and foundation.</p> <p>25 <b>Q. (By Mr. Johnson) Why would it be relevant?</b></p>	<p style="text-align: right;">Page 60</p> <p>1 A. The DWI Seizure Unit would have that.</p> <p>2 <b>Q. Okay. Would that include both the police</b></p> <p>3 <b>component of the unit and also the Legal Department's</b></p> <p>4 <b>component of the unit?</b></p> <p>5 A. I would think it would be more on the police side</p> <p>6 in terms of -- because they would be the one doing the</p> <p>7 actual release and collecting of the fees. So I think</p> <p>8 it would fall more on that side.</p> <p>9 <b>Q. But they should have that information and be able</b></p> <p>10 <b>to provide it?</b></p> <p>11 A. They should.</p> <p>12 <b>Q. After a vehicle has been forfeited, what happens</b></p> <p>13 <b>to the vehicle?</b></p> <p>14 A. Forfeited by order of a District Court judge? I</p> <p>15 guess that's -- it's final. It gets titled to the City</p> <p>16 of Albuquerque. It is set up to be sent to auction or</p> <p>17 used in the program for DWI, and those are the two</p> <p>18 options it is. Very few, actually, are brought into the</p> <p>19 fleet for the DWI seizure program.</p> <p>20 <b>Q. Okay. So the two options would be that it's</b></p> <p>21 <b>either sold at auction or it's used -- how would it be</b></p> <p>22 <b>used?</b></p> <p>23 A. Eventually, all of them go to auction, but for</p> <p>24 administering the program, they are also used -- some of</p> <p>25 the vehicles are also used for that.</p>
<p style="text-align: right;">Page 59</p> <p>1 A. It can go to show who is the primary user of a</p> <p>2 certain vehicle. For instance, many students don't have</p> <p>3 a vehicle in their name, yet they're the primary driver</p> <p>4 of a vehicle. So that may go to show who is the primary</p> <p>5 person using a vehicle.</p> <p>6 <b>Q. It also asks to know any improvements, including</b></p> <p>7 <b>window tinting, detailing, replacing or new tires, or</b></p> <p>8 <b>replacement or new audio and video equipment. Would</b></p> <p>9 <b>that information be relevant?</b></p> <p>10 A. Yes. Again, by who's doing that, who's placing</p> <p>11 it there, it shows, again, the primary user of the</p> <p>12 vehicle.</p> <p>13 <b>Q. I don't have any further questions about these.</b></p> <p>14 <b>Now, we talked earlier about fees that can be charged</b></p> <p>15 <b>when a vehicle is returned. If a person takes a case to</b></p> <p>16 <b>District Court and wins at District Court, can storage</b></p> <p>17 <b>and towing fees be assessed at that time?</b></p> <p>18 A. I believe it would, again, boil down to the order</p> <p>19 from the District Court judge. Whatever the judge</p> <p>20 ordered is what would be followed.</p> <p>21 <b>Q. Okay. Are you aware of any instances where fees</b></p> <p>22 <b>have been charged at the conclusion of a District Court</b></p> <p>23 <b>case?</b></p> <p>24 A. I can't recall one way or another.</p> <p>25 <b>Q. Do you know who would have that information?</b></p>	<p style="text-align: right;">Page 61</p> <p>1 <b>Q. Okay. I see. So a vehicle could either be sold</b></p> <p>2 <b>at auction immediately, or it could be used to</b></p> <p>3 <b>administer the ordinance for a time and then eventually</b></p> <p>4 <b>sold at auction?</b></p> <p>5 A. Correct. They all ultimately go to auction.</p> <p>6 <b>Q. And then you mentioned, you said very few</b></p> <p>7 <b>vehicles are used for other purposes, but are there some</b></p> <p>8 <b>vehicles that are used for other purposes?</b></p> <p>9 A. No, no. I mean for the administration of the</p> <p>10 program. That was the other purpose, the administration</p> <p>11 of the program.</p> <p>12 <b>Q. Okay. I see. So most vehicles are sold at</b></p> <p>13 <b>auction immediately, some vehicles are used for the</b></p> <p>14 <b>administration of the program?</b></p> <p>15 A. Correct.</p> <p>16 <b>Q. How would the decision be made whether a vehicle</b></p> <p>17 <b>should be sold immediately or should be used for the</b></p> <p>18 <b>program?</b></p> <p>19 A. Ultimately, based on whether or not it can pass</p> <p>20 the strict requirements of being brought into the fleet.</p> <p>21 So it's basically a mechanical evaluation.</p> <p>22 <b>Q. Okay. So the vehicle would have to be up to a</b></p> <p>23 <b>certain mechanical standard to be brought --</b></p> <p>24 A. Yes.</p> <p>25 <b>Q. Okay. Again, I don't want to cut you off, but if</b></p>

16 (Pages 58 to 61)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Shane Rodgers

August 2, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 62</p> <p>1 you could let me finish, it will just be a clearer 2 record. 3 A. Okay. 4 Q. So a vehicle would have to meet a certain 5 standard to be brought into the fleet? 6 A. Yes. 7 Q. Who makes that determination? 8 A. The yards. Basically, what happens is, if 9 there's a vehicle that it appears it may meet the 10 standards, it's sent over to the City yards for an 11 inspection. If it does not meet the inspection 12 standards, then it goes to auction. If it does meet it, 13 it's certified and then brought into the fleet. 14 Q. When you say the "city yard," there are mechanics 15 who work there? 16 A. Yes. 17 Q. Okay. That's separate from the seizure lot? 18 A. Yes. 19 Q. Okay. So the car would be taken from the seizure 20 lot to a separate yard where it would be assessed by the 21 mechanics? 22 A. Yes. 23 Q. And then if they reject it for the fleet, does it 24 go directly from there to the auction house? 25 A. Depending upon the time frame. If the auction is</p>	<p style="text-align: right;">Page 64</p> <p>1 property, driving paperwork around. All of the 2 administrative portions that fall within that. 3 Q. Okay. Can employees of the program use those 4 vehicles as take-home vehicles? 5 A. I believe not. I think the policy now is they 6 cannot use them as take-home. 7 Q. Has that always been the policy? 8 A. No. There was a portion of time where they were 9 allowed to. 10 Q. When did that policy change? 11 A. Probably five, six years ago. I'm just guessing. 12 Q. Do you know who would have more definite 13 information about that? 14 A. That would probably be City Fiscal because I 15 believe they might be allowed to take them if they pay 16 the -- there's a tax. 17 Q. I'm going to mark this as Exhibit 11. 18 (Exhibit 11 marked.) 19 Q. Are you familiar with this document? 20 A. Now. 21 Q. You are now? 22 A. Yes. 23 Q. When did you become familiar with it? 24 A. I saw it years ago, but I remember it coming out. 25 I do not know if this was made into procedure yet, but</p>
<p style="text-align: right;">Page 63</p> <p>1 soon, it will go directly there. If not, it will go 2 back to the DWI Seizure Unit, then transported to the 3 auction from there. 4 Q. Who actually operates the auctions? Is it a 5 private company? 6 A. Yes, it's a private company. 7 Q. Does the private company get a commission for the 8 sales at auction? 9 A. Yes, I believe they do. 10 Q. Okay. And then minus the commission, does the 11 remainder then come back to the City? 12 A. Yes. 13 Q. Are individuals whose vehicles were seized 14 allowed to bid at auction? 15 A. Yes. 16 Q. Does that happen? 17 A. Yes. 18 Q. About how often does it happen? 19 A. That, I wouldn't know. I've only known of 20 specific cases that it has happened, but overall, I 21 don't know. 22 Q. Now, if a vehicle is not auctioned and instead is 23 used for administering the ordinance, what does that 24 involve? 25 A. That involves doing the actual checking of boots,</p>	<p style="text-align: right;">Page 65</p> <p>1 it was a special memorandum that came out. I was no 2 longer in the unit at this point. 3 Q. But you were aware of the fact that this came 4 out? 5 A. Yes. 6 Q. And do you know why this came out? 7 A. I believe it was because of the tax issue. 8 Q. What do you mean by "the tax issue"? 9 A. For civilians to have take-home cars, per City 10 policy, they have to pay -- I believe it's a tax. I 11 don't know what the proper terminology is. But they 12 have to pay a certain fee to have an actual take-home 13 car because they're not covered by contract for take- 14 home vehicles. 15 Q. Is this still current policy for the use of take- 16 home vehicles? 17 A. Yes. 18 Q. Okay. So do I understand what you're saying that 19 the cars can be used as take-home vehicle by sworn 20 officers but not by civilian employees? 21 A. Correct. 22 Q. Okay. Now, if a car is used as a take-home 23 vehicle by a sworn officer, what could they use the car 24 for? 25 A. Per policy, it is to and from work, and they can</p>

17 (Pages 62 to 65)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Shane Rodgers

August 2, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 66</p> <p>1 use it to go to the gym, as well, due to physical 2 standards, but that's what it's -- unless they were on 3 call. 4 <b>Q. Okay. Do people always follow those policies?</b> 5 A. I'm sure not. There's been discipline for 6 vehicle abuse -- 7 <b>Q. Right.</b> 8 A. -- or violation of the take-home policies. 9 <b>Q. Now, under the policy, if somebody was going from</b> 10 <b>work to home and they wanted to run an errand on the way</b> 11 <b>home, could they do that?</b> 12 A. Under the policy, the only errand that is covered 13 is picking up children at school or daycare. 14 <b>Q. Okay. Other than that, they would have to go</b> 15 <b>home and get a different car to run the errand?</b> 16 A. Yes. 17 <b>Q. Now, are seized vehicles ever used for purposes</b> 18 <b>other than the administration of the ordinance; for</b> 19 <b>instance, as bait cars?</b> 20 A. Yes, some of them have been used for bait cars. 21 <b>Q. What does that entail?</b> 22 A. That just basically entails parking them on the 23 side in a neighborhood somewhere with items that have 24 GPS locaters on them. They're left unlocked, and 25 usually the battery is taken off so the actual car can't</p>	<p style="text-align: right;">Page 68</p> <p>1 <b>purpose?</b> 2 A. The one that I can think of that came to mind was 3 a clone car of a classic racer. It wasn't actually a 4 collectors' car, but it looked like it. So that's what 5 it was. Probably spent more time towing it than 6 actually driving it to the demo. 7 <b>Q. But some people might consider it sort of an</b> 8 <b>interesting, more desirable vehicle than the average</b> 9 <b>seizure?</b> 10 A. On viewing it, it caught your attention. Whether 11 or not it was actually -- that's what it was used for, 12 to catch the attention. They'd look at it, say, "Yeah, 13 this was a DWI-seized car." That's what it was. 14 <b>Q. Right. When you said that it would be towed, it</b> 15 <b>wasn't always towed to locations, correct?</b> 16 A. It wasn't a very mechanically sound vehicle, so 17 it would break down quite a bit on the way to be shown, 18 but it was more the visual appeal of it than anything. 19 <b>Q. Okay. But if it wasn't broken down, it would be</b> 20 <b>driven from place to place?</b> 21 A. Yes. 22 <b>Q. Okay. I'm going to mark another exhibit. I'll</b> 23 <b>mark this as Exhibit 12.</b> 24 (Exhibit 12 marked.) 25 <b>Q. Are you familiar with this document?</b></p>
<p style="text-align: right;">Page 67</p> <p>1 be taken, and they wait for people to come and take 2 items out of them. 3 <b>Q. Okay. Would that be vehicles that have been</b> 4 <b>permanently forfeited?</b> 5 A. Yes. 6 <b>Q. Would that ever happen with a vehicle that's been</b> 7 <b>seized but not yet forfeited?</b> 8 A. No. 9 <b>Q. Apart from being used to administer the ordinance</b> 10 <b>and being used as bait cars, does the City ever make any</b> 11 <b>other uses of seized vehicle or forfeited vehicles?</b> 12 A. No. Actually, can I reanswer that? 13 <b>Q. Yes.</b> 14 A. I can add one. It is used for -- there are a 15 couple of vehicles that were used for deterrents, that 16 we would bring as a demonstration of, "This is a seized 17 vehicle from the ordinance." So it was used for that as 18 well. 19 <b>Q. Okay. And would anything be done to those</b> 20 <b>vehicles, like a special paint job or anything like</b> 21 <b>that?</b> 22 A. No. It would be pretty much as is, just 23 maintained as is, but showing, "This is what could 24 happen for a seizure." 25 <b>Q. What types of vehicles would be used for that</b></p>	<p style="text-align: right;">Page 69</p> <p>1 A. It is the approved budget for Fiscal Year '16. 2 <b>Q. Okay. I would like to turn to the fourth page of</b> 3 <b>the exhibit, which is numbered as page 181 of the budget</b> 4 <b>document. Midway through the page where it says</b> 5 <b>"Performance Measures," directly under that, there's a</b> 6 <b>series of tables. Are you familiar with these tables?</b> 7 A. This is the first I'm seeing of them, but I 8 understand what the tables are. 9 <b>Q. What are they?</b> 10 A. Here it's -- there's different cases, but there's 11 also information regarding the DWI Seizure Unit. 12 <b>Q. Okay. Now, are you familiar with how these</b> 13 <b>numbers are gathered?</b> 14 A. As far as the "DWI Seizure Reports reviewed," 15 that is gathered from the city attorney's office. Same 16 with "Vehicle Forfeiture actions," "vehicles booted." 17 All of these come from a combination of the city 18 attorneys and the DWI Seizure Unit. 19 <b>Q. Okay. By the "DWI Seizure Unit," do you mean the</b> 20 <b>Police Department employees who are assigned to that</b> 21 <b>unit?</b> 22 A. Yes. 23 <b>Q. Okay. So the first two numbers that you referred</b> 24 <b>to, the first is the "DWI Seizure Reports reviewed" and</b> 25 <b>the "Number of Vehicle Forfeiture actions." Those are</b></p>

18 (Pages 66 to 69)

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Arlene Harjo v. City of Albuquerque  
Shane Rodgers

August 2, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 70</p> <p>1 both tabulated solely by the city attorney's office?</p> <p>2 A. Yes.</p> <p>3 Q. And then from there down to where it says "Money</p> <p>4 from auctions," those are all a collaborative effort</p> <p>5 between the city attorney's office and the DWI Seizure</p> <p>6 Unit?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. This is going to be a little tedious, so I</p> <p>9 apologize in advance, but I want to go through these and</p> <p>10 just get on the record what each of these refers to. So</p> <p>11 why don't we just start with the first "DWI Seizure</p> <p>12 Reports reviewed."</p> <p>13 A. Okay.</p> <p>14 Q. What does that refer to?</p> <p>15 A. That's the number of reports that the city</p> <p>16 attorneys reviewed of vehicles seized.</p> <p>17 Q. Okay. And what do you mean by a "report"?</p> <p>18 A. That is the total number that has made it to the</p> <p>19 city attorneys where, you know, if -- we spoke earlier</p> <p>20 of the ones where the vehicle was obviously seized out</p> <p>21 of ordinance, and it's returned immediately. These are</p> <p>22 the ones that the backgrounds have been done and sent to</p> <p>23 the city attorney's office.</p> <p>24 Q. I see. And then the next one says "Number of</p> <p>25 Vehicle Forfeiture actions." What does that refer to?</p>	<p style="text-align: right;">Page 72</p> <p>1 we talked about in particular, the innocent owner. It's</p> <p>2 you know, basically saying, "You're put on notice now</p> <p>3 that you shouldn't let your vehicle be used by people</p> <p>4 drinking and driving."</p> <p>5 Q. Okay. So I want to understand the difference</p> <p>6 between where it says "Number of vehicles booted"</p> <p>7 versus "Number of vehicles released on agreement." Is</p> <p>8 it fair to say that "Number of vehicles booted" refers</p> <p>9 to vehicles that are released pursuant to an agreement</p> <p>10 that includes both -- that includes a payment of money</p> <p>11 and a boot?</p> <p>12 A. Yes.</p> <p>13 Q. And that the "Number of vehicles released on</p> <p>14 agreement" would be vehicles that are released without</p> <p>15 any requirement of a boot?</p> <p>16 A. I believe so, yes.</p> <p>17 Q. Okay. Now, if a vehicle is released without a</p> <p>18 requirement of a boot under one of these release</p> <p>19 agreements, is there any payment of money associated</p> <p>20 with that?</p> <p>21 A. There could be, yes, with the towing and storage</p> <p>22 fee.</p> <p>23 Q. Would there be any money in addition to towing</p> <p>24 and storage?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 71</p> <p>1 A. That refers to the number of actions taken to</p> <p>2 District Court.</p> <p>3 Q. Okay. Now, when it refers to the "Number of</p> <p>4 vehicles booted," what does that refer to?</p> <p>5 A. Those are the vehicle immobilization agreement.</p> <p>6 Q. Okay. So that would be similar to Exhibit --</p> <p>7 agreements similar to the one that was marked as</p> <p>8 Exhibit 3?</p> <p>9 A. Yes.</p> <p>10 Q. Under that, it says "Number of vehicles released</p> <p>11 on agreement." What does that refer to?</p> <p>12 A. Those are probably the release agreements, like</p> <p>13 the innocent owner that we went over. Well, I don't</p> <p>14 know if we went over it, but it's an agreement where</p> <p>15 they agree not to let this vehicle be used by anybody</p> <p>16 drinking and that sort of deal.</p> <p>17 Q. Yeah. I don't think we did discuss one of those</p> <p>18 agreements. Could you -- or unless -- is that different</p> <p>19 from the agreement that we talked about as Exhibit 3?</p> <p>20 We can look again at Exhibit 3. That might be helpful.</p> <p>21 A. No. It's similar.</p> <p>22 Q. Okay.</p> <p>23 A. It's basically the same thing, but it may not</p> <p>24 have a boot agreement on it. It's still a release</p> <p>25 agreement, and they still agree to follow what I think</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. Okay. The next row refers to "Number of vehicle</p> <p>2 seizure hearings." What does that refer to?</p> <p>3 A. The number of cases that were actually brought</p> <p>4 before the hearing officer.</p> <p>5 Q. Okay. And then the line below that refers to the</p> <p>6 "Number of vehicles auctioned." What does that refer</p> <p>7 to?</p> <p>8 A. The vehicles that made it through and were taken</p> <p>9 and auctioned off at the auction company.</p> <p>10 Q. Okay. And the final line, "Money from auctions"?</p> <p>11 A. That's the amount made at the auctions.</p> <p>12 Q. Okay. Now, you said that these are gathered by a</p> <p>13 combination of the city attorneys and the Police</p> <p>14 Department. How exactly does that work? How do they</p> <p>15 work together on this?</p> <p>16 A. The "Money from auctions" comes from the DWI</p> <p>17 Seizure Unit. They're the ones that take the vehicles,</p> <p>18 make sure the vehicles get to auction and that process.</p> <p>19 Same with the "Number of vehicles auctioned." The</p> <p>20 "Number of seizure hearings," that comes from the city</p> <p>21 attorneys. That's not on the police side. The</p> <p>22 "vehicles booted" and "released on agreement," that's</p> <p>23 tracked by the Police Department. The "DWI Seizure</p> <p>24 Reports reviewed," that's tracked by the city attorneys,</p> <p>25 and the same as "forfeiture actions" because that's</p>

19 (Pages 70 to 73)

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Arlene Harjo v. City of Albuquerque  
Shane Rodgers

August 2, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 78</p> <p>1 <b>Q. What is this document?</b></p> <p>2 A. These were some of the -- what we would call</p> <p>3 things that we accomplished in the unit, that I sent to</p> <p>4 Donovan Rivera.</p> <p>5 <b>Q. And what was your role in the unit at this point</b></p> <p>6 <b>in time?</b></p> <p>7 A. When I sent this, I had been promoted to</p> <p>8 lieutenant.</p> <p>9 <b>Q. Okay. Were you referring back to a point of time</b></p> <p>10 <b>when you were still involved in the program?</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. This is a list of things that you accomplished or</b></p> <p>13 <b>that the program accomplished at the time that you were</b></p> <p>14 <b>involved in it?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. Okay. Now, under the e-mail from you, where you</b></p> <p>17 <b>have Item 6 and it says "Maintained program revenue</b></p> <p>18 <b>despite drop of intake," is that referring to the DWI</b></p> <p>19 <b>seizure program?</b></p> <p>20 A. It's referring to -- well, yeah.</p> <p>21 <b>Q. Okay. So "program" there is referring to the DWI</b></p> <p>22 <b>seizure program?</b></p> <p>23 A. Yes, it is.</p> <p>24 <b>Q. And "intake," does that refer to the number of</b></p> <p>25 <b>seized vehicles?</b></p>	<p style="text-align: right;">Page 80</p> <p>1 A. I believe we kept the storage fees the same.</p> <p>2 Those were still \$5 under what was regulated by the PRC.</p> <p>3 <b>Q. By increasing the amount of tow fees that were</b></p> <p>4 <b>charged, you were able to increase or at least maintain</b></p> <p>5 <b>the amount of money that was available for other</b></p> <p>6 <b>purposes, like funding equipment and other efforts?</b></p> <p>7 A. We were actually able to more, for lack of a</p> <p>8 better term, stop the bleeding from those sources. So</p> <p>9 we were actually losing money in terms of it was costing</p> <p>10 the City money in those areas, and we actually just</p> <p>11 enabled them to cost them less is really what we did.</p> <p>12 <b>Q. So if you hadn't increased the tow fees, any</b></p> <p>13 <b>difference between the amount you were recovering in tow</b></p> <p>14 <b>fees and the actual charge of cost of towing, that would</b></p> <p>15 <b>have been paid for using other seizure revenues; is that</b></p> <p>16 <b>correct?</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. So by increasing the tow fees, you freed up the</b></p> <p>19 <b>seizure revenues to be used for other purposes?</b></p> <p>20 A. Per the ordinance, yes.</p> <p>21 <b>Q. Okay. Other than changing the auction</b></p> <p>22 <b>percentages and changing the tow fees, did you take any</b></p> <p>23 <b>other steps to maintain program revenue?</b></p> <p>24 A. No. Those are really the big things where any</p> <p>25 revenue was generated.</p>
<p style="text-align: right;">Page 79</p> <p>1 A. Yes.</p> <p>2 <b>Q. Okay. Did you take any particular steps to</b></p> <p>3 <b>maintain the program revenue despite the drop of intake?</b></p> <p>4 A. What we did was we reduced some of our costs in</p> <p>5 terms of the auction and other areas so that we could</p> <p>6 actually keep the revenue for the program, for the</p> <p>7 education program. So even though our intake was</p> <p>8 dropping, we were still able to continue a lot of the</p> <p>9 educational programs that we were starting to do.</p> <p>10 <b>Q. Okay. What other types of costs were you able to</b></p> <p>11 <b>cut?</b></p> <p>12 A. Well, we were able to increase our auction value</p> <p>13 intake. We were able to recoup more of our -- we looked</p> <p>14 at our -- at the time, our tow and storage. We updated</p> <p>15 that because there had been several increases by the PRC</p> <p>16 for their costs that we were paying them. So we were</p> <p>17 able to update that a little bit to recoup some of our</p> <p>18 losses there. So it was just adjustments like that.</p> <p>19 <b>Q. I see. So one of the things that you did to</b></p> <p>20 <b>maintain the program revenue was to increase the amount</b></p> <p>21 <b>of towing fees that were charged to owners of the</b></p> <p>22 <b>vehicles?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. Okay. And did you increase the storage fees as</b></p> <p>25 <b>well?</b></p>	<p style="text-align: right;">Page 81</p> <p>1 <b>Q. Did you have any discussions with anyone at the</b></p> <p>2 <b>City about, as you suggest, the need to stop the</b></p> <p>3 <b>bleeding from those areas? How did that come to your</b></p> <p>4 <b>attention?</b></p> <p>5 A. As we would start looking at the numbers, the</p> <p>6 number of intakes, those were numbers we would look at</p> <p>7 on a regular basis, and it was just obvious. I mean,</p> <p>8 the numbers were dropping, and the program itself, we</p> <p>9 were just at that time really venturing out. We had</p> <p>10 just made partnerships with several local high schools,</p> <p>11 bringing DWI education into their driver's education</p> <p>12 program. We had partnered with AAA at that point, going</p> <p>13 into their -- they had a safe-driving program for their</p> <p>14 teens. We were just branching out into those</p> <p>15 educational areas. And so, you know, as we were</p> <p>16 expanding that, that's really what we were looking at.</p> <p>17 <b>Q. So when you're talking about expanding these</b></p> <p>18 <b>different things, that's relevant because you're saying</b></p> <p>19 <b>those are new costs to the program?</b></p> <p>20 A. Yeah.</p> <p>21 <b>Q. Okay. So as there were new costs, that put</b></p> <p>22 <b>pressure because there had to be revenue to meet those</b></p> <p>23 <b>costs?</b></p> <p>24 A. Well, in order to -- there really wasn't</p> <p>25 pressure. It was just trying to maintain those programs</p>

21 (Pages 78 to 81)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Shane Rodgers

August 2, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 82</p> <p>1 and actually grow those programs. Obviously, our DWI 2 problem, especially prior to this, was huge, as it still 3 remains. So it was just being able to branch out and 4 get these out there to try and keep reducing these 5 numbers.</p> <p>6 <b>Q. Sure. Would it have been possible to fund those</b> 7 <b>programs in other ways, like out of the general City</b> 8 <b>budget?</b> 9 A. No. 10 <b>Q. Why not?</b> 11 A. Because under the police budget, we're constantly 12 facing a shortfall or overspending. Our overtime budget 13 is constantly more than what's allocated, and so, 14 really, fiscally, a lot -- some of these extraneous 15 programs really can't be funded. 16 <b>Q. So absent finding revenue within the DWI seizure</b> 17 <b>program, those sort of initiatives weren't going to be</b> 18 <b>funded?</b> 19 A. Well, right. I mean, that's what the DWI seizure 20 program was about, is getting this out there and using 21 it for that, and at this time, we were really focused on 22 getting that out there.</p> <p>23 <b>Q. Sure. I'm interested in, under Item 2, it says,</b> 24 <b>"Increased fleet of vehicles to be used for UC ops by</b> 25 <b>impact teams." Does that refer to undercover</b></p>	<p style="text-align: right;">Page 84</p> <p>1 <b>effort to purchase a parking lot?</b> 2 A. They're still at the same place. 3 <b>Q. Are you familiar with the settlement with the</b> 4 <b>Department of Justice to -- the Department of Justice</b> 5 <b>brought a civil rights action against the City of</b> 6 <b>Albuquerque on the excessive-force issues?</b> 7 A. Yes. 8 <b>Q. Is there a building that was constructed pursuant</b> 9 <b>to that settlement for training?</b> 10 A. Not that I know of. 11 <b>Q. Okay. If you're not familiar with it, I don't</b> 12 <b>have any questions about it.</b> 13 A. Sorry. 14 <b>Q. I thought you might be. When you were involved</b> 15 <b>in the program, did you ever communicate with the fiscal</b> 16 <b>manager for the Police Department about trends in intake</b> 17 <b>and revenue?</b> 18 A. More kind of in passing, yes. 19 <b>Q. Okay. What would those conversations consist of?</b> 20 A. Well, I would provide him with some of the 21 numbers, especially when we were looking at property, to 22 see if it -- it would all have to go through Fiscal and 23 what their process was to get property. In all 24 honestly, the DWI Seizure Unit had been looking for 25 property for years prior to me going, and they're still</p>
<p style="text-align: right;">Page 83</p> <p>1 <b>operations?</b> 2 A. Yeah. Those are with Number 1 for the bait cars. 3 Our impact teams do not have -- they have your typical 4 police Impalas with the city government plate. So these 5 were used -- they could check those out, sit on the bait 6 vehicle, make sure it wasn't stolen, and then they were 7 used for that. They weren't -- again, these were not 8 assigned vehicles to detectives. They were just used 9 for those operations. 10 <b>Q. Those also would be forfeited -- vehicles that</b> 11 <b>were forfeited under the DWI program?</b> 12 A. They were forfeited under the DWI program and 13 actually in the City fleet at that time. 14 <b>Q. Okay. I'm also curious about Item 5, where it</b> 15 <b>says, "Continued process of locating suitable land to</b> 16 <b>purchase for program."</b> 17 A. Yes. 18 <b>Q. What does that refer to?</b> 19 A. Basically, where the DWI seizure lot is located 20 now, they are renting, and it is, for lack of a better 21 word, a lucrative contract for the ownership of that. 22 For sustainability of a program, fiscally it would be 23 better to own the property rather than to continue in 24 that contract. 25 <b>Q. Do you know what ended up happening with the</b></p>	<p style="text-align: right;">Page 85</p> <p>1 doing it now. So it was more in those terms. Really, 2 the actual numbers of intake and stuff was more for 3 reporting than anything. 4 <b>Q. Okay. But you did closely monitor the tracking</b> 5 <b>of numbers?</b> 6 A. Yes. 7 <b>Q. Was that monitored on a monthly basis?</b> 8 A. Yes. 9 <b>Q. You said earlier that it was in monitoring those</b> 10 <b>monthly numbers that you noticed that there had been a</b> 11 <b>drop in intake and that there was a need to take steps</b> 12 <b>to maintain program revenue?</b> 13 A. Well, really, the major focus when we start 14 looking at the drop in numbers of intake, I'm also 15 comparing it to the number of fatalities that were 16 linked to DWI and kind of looking to see where we're at. 17 A lot of this was also around the time of the 18 Department of Justice coming in, and so we were really 19 looking at trends of why was there this drop. You know, 20 that was a huge focus because, what do we attribute it 21 to? Is the program being effective? Therefore, if it 22 is being effective, we definitely have to maintain it. 23 Or are there other factors playing into it? So it was 24 all of that. The revenue is important in terms of 25 keeping those programs, but it's not the overall</p>

22 (Pages 82 to 85)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Shane Rodgers

August 2, 2017  
1:16-cv-01113-JB-WPL

Page 86	Page 88
<p>1 objective of the program.</p> <p>2 <b>Q. But the revenue is important?</b></p> <p>3 A. To keep the program going, yes.</p> <p>4 <b>Q. What other types of factors might account for the</b></p> <p>5 <b>drops in DWI arrests and fatalities?</b></p> <p>6 A. Well, the fatalities weren't dropping,</p> <p>7 unfortunately. That was one of the things that we were</p> <p>8 having issues with.</p> <p>9 When you look at -- there's been several studies</p> <p>10 as far as when the Department of Justice comes in. The</p> <p>11 "de-policing effect," we were looking at those kind of</p> <p>12 things. We were just looking at whether or not some of</p> <p>13 the ad campaigns were working by the Department of</p> <p>14 Transportation, the ENDWI and a lot of their grant</p> <p>15 cycles that were working through, to see if those were</p> <p>16 effective. We were also looking at whether or not</p> <p>17 people were using a lot of the Topsy Tow or any of those</p> <p>18 other alternatives when they go out drinking.</p> <p>19 It was a combination of all of those. We were</p> <p>20 trying to see what was working. Was it our education,</p> <p>21 our going into these different places? Was that having</p> <p>22 an effect? So we were trying to take into account all</p> <p>23 of those different issues.</p>	<p>1 <b>Q. Okay. And this e-mail mentions, it says that</b></p> <p>2 <b>Stan had concerns about the MOU "that are best discussed</b></p> <p>3 <b>between Stan and Rob at their regular Friday meeting."</b></p> <p>4 <b>Do you know who Rob would be in that e-mail?</b></p> <p>5 A. I don't.</p> <p>6 <b>Q. Okay. Are you familiar with an individual named</b></p> <p>7 <b>Rob Perry?</b></p> <p>8 A. Oh, yes. Okay. At the time, he was the head</p> <p>9 city attorney.</p> <p>10 <b>Q. Is it possible that that's referring to Rob</b></p> <p>11 <b>Perry?</b></p> <p>12 A. It's possible.</p> <p>13 <b>Q. Okay. Are you familiar with the city's Red Light</b></p> <p>14 <b>Camera program?</b></p> <p>15 A. A little bit, yes.</p> <p>16 <b>Q. Are you familiar with the end of that program, or</b></p> <p>17 <b>is that program still in existence?</b></p> <p>18 A. No. It is gone.</p> <p>19 <b>Q. Do you know how that came about?</b></p> <p>20 A. I believe it came about due to actions by the</p> <p>21 City Council.</p> <p>22 <b>Q. Are you familiar with sort of the wrapping up of</b></p> <p>23 <b>that program?</b></p> <p>24 A. I don't remember much of it.</p> <p>25 <b>Q. Were you aware of what happened to the</b></p>
Page 87	Page 89
<p>24 <b>Q. Did you consider the impact of ride-sharing</b></p> <p>25 <b>services like Uber and Lift?</b></p> <p>1 A. Yeah. Sorry, I thought I covered one of those.</p> <p>2 That's under like the Topsy Tow. That was all in there.</p> <p>3 We started documenting, when we did checkpoints, how</p> <p>4 many were ride shares that were going through our</p> <p>5 checkpoints to try and kind of measure what was being</p> <p>6 effective.</p> <p>7 <b>Q. Did the City draw any conclusions from that</b></p> <p>8 <b>analysis?</b></p> <p>9 A. I was already gone by then, so I don't know. I</p> <p>10 think, in general, it's probably a combination of all of</p> <p>11 the above. I think each has its little own impact, both</p> <p>12 good and negatively, on where our numbers are.</p>	<p>1 <b>administrative hearing officers who were working on that</b></p> <p>2 <b>program?</b></p> <p>3 A. No, I'm not.</p> <p>4 <b>Q. Let's look at another exhibit. This is</b></p> <p>5 <b>Exhibit 16.</b></p> <p>6 <b>(Exhibit 16 marked.)</b></p> <p>7 <b>Q. Are you familiar with this document?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. What is this document?</b></p> <p>10 A. Basically, this is to create a DWI seizure</p> <p>11 assistant position.</p> <p>12 <b>Q. Okay. And was this a position that was going to</b></p> <p>13 <b>be filled by Kyle Evans?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. In the final paragraph it says, "This position</b></p> <p>16 <b>shall be funded through transfer from Fund 280." Does</b></p> <p>17 <b>that mean that the position would be funded from DWI</b></p> <p>18 <b>seizure revenues?</b></p> <p>19 A. I have no idea.</p> <p>20 <b>Q. Okay. Were you involved in the program at the</b></p> <p>21 <b>time that this was drafted?</b></p> <p>22 A. Yes.</p> <p>23 <b>Q. Okay. Were you involved in the creation of this</b></p> <p>24 <b>position?</b></p> <p>25 A. No.</p>
<p>13 <b>Q. You're basing that on your own personal opinion?</b></p> <p>14 A. Yes.</p> <p>15 MR. JOHNSON: Let's take a quick break and</p> <p>16 come back in like five minutes or so.</p> <p>17 (Recess from 1:09 to 1:13.)</p> <p>18 <b>Q. (By Mr. Johnson) I'm going to mark another</b></p> <p>19 <b>exhibit. This is Exhibit 15.</b></p> <p>20 <b>(Exhibit 15 marked.)</b></p> <p>21 <b>Q. I want to direct you, in particular -- there's an</b></p> <p>22 <b>e-mail from Greg Wheeler to Stan Harada. My first</b></p> <p>23 <b>question: Who is Greg Wheeler, do you know?</b></p> <p>24 A. He was the supervisor at the city attorney's</p> <p>25 office, I believe.</p>	

23 (Pages 86 to 89)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Shane Rodgers

August 2, 2017  
1:16-cv-01113-JB-WPL

Page 90	Page 92
<p>1 <b>Q. Okay. Who would have been involved in the</b> 2 <b>creation of the position?</b> 3 A. This came from the chief of police at that time. 4 <b>Q. Were you informed that the position was being</b> 5 <b>created?</b> 6 A. Yes, and that -- I was basically informed that I 7 was getting Kyle Evans, and that was my involvement in 8 it. 9 <b>Q. I don't think I have anything further about that</b> 10 <b>exhibit.</b> 11 <b>Are you familiar with the procedures within the</b> 12 <b>City for doing performance evaluations for employees?</b> 13 A. Yes, I am. 14 <b>Q. And how about within the city attorney's office?</b> 15 A. No. 16 <b>Q. Okay. Do you know who might be able to speak to</b> 17 <b>that?</b> 18 A. Probably -- the reason why I say "no" is all of 19 the City EWP's are being redone as we speak, so they're 20 all being revamped. 21 <b>Q. Okay. So apart from them being revamped, would</b> 22 <b>the city attorneys receive the same kind of performance</b> 23 <b>evaluations that other employees do?</b> 24 A. That, I don't know. 25 <b>Q. Do you know who would know?</b></p>	<p>1 A. Yes. 2 <b>Q. What did he say about that?</b> 3 A. It goes to DWI enforcement, education, and -- I 4 can't remember. There was one other one. 5 <b>Q. Did he refer to efforts by mayors in the past to</b> 6 <b>redirect those proceeds?</b> 7 A. Yes. 8 <b>Q. What did he say about that?</b> 9 A. He said, because it's in the ordinance, they 10 can't do that. 11 <b>Q. Let me play another clip. I'm going to now queue</b> 12 <b>this up at 2:32:15. Why don't we do 2:32:38.</b> 13 <b>(Video played.)</b> 14 <b>Q. Do you recognize the voice speaking in that</b> 15 <b>portion of the video? Excuse me. To be clear, we</b> 16 <b>stopped at about 2:33:13.</b> 17 A. I believe it was Stan Harada again. 18 <b>Q. And did Stan Harada talk there about revenue from</b> 19 <b>the program?</b> 20 A. Yes. 21 <b>Q. And what did he say about it there?</b> 22 A. That it was making net net. 23 <b>Q. Did he refer to whether the City likes to have</b> 24 <b>people talk about the amount of revenue from the</b> 25 <b>program?</b></p>
Page 91	Page 93
<p>1 A. Probably Human Resources because that's where we 2 send our EWP's to. 3 <b>Q. Would the city attorney's office be able to</b> 4 <b>answer that as well?</b> 5 A. I'm sure they could. 6 MR. JOHNSON: Let's take another break and 7 chat, and we'll come back. 8 (Recess taken from 1:20 to 1:24.) 9 <b>Q. (By Mr. Johnson) I'm going to queue up a video.</b> 10 <b>This is a video from the Santa Fe Vehicle Forfeiture</b> 11 <b>Conference from September of 2014. It's a video that is</b> 12 <b>available -- it was served on the City as a supplemental</b> 13 <b>disclosure, and it's able available on the internet on</b> 14 <b>YouTube. The exact YouTube address was read into the</b> 15 <b>record in the previous deposition. I won't read it</b> 16 <b>again.</b> 17 <b>With that preface, I'm going to queue this up at</b> 18 <b>about the mark of 1:19:41.</b> 19 <b>(Video played.)</b> 20 <b>Q. So we played that through about 1:21:11. Do you</b> 21 <b>recognize the voice of the person who was speaking in</b> 22 <b>that video?</b> 23 A. I believe it's Stan Harada. 24 <b>Q. And did Stan Harada refer to the disposition of</b> 25 <b>proceeds from the forfeiture program?</b></p>	<p>1 A. He said, in his opinion, he thinks they don't 2 want to because it's a bullet point against the program. 3 MR. JOHNSON: Okay. Let's take another 4 five-minute break. 5 (Recess taken from 1:30 to 1:32.) 6 MR. JOHNSON: I don't have any further 7 questions. 8 MR. GRUBEL: I have no questions. We'll 9 read and sign. 10 (The deposition was concluded at 1:33 p.m.) 11 * * * * * 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

24 (Pages 90 to 93)

Trattel Court Reporting & Videography  
505-830-0600

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 6**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

ARLENE HARJO,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	No. 1:16-cv-01113-JB-WPL
	)	
	)	
CITY OF ALBUQUERQUE,	)	
	)	
Defendant.	)	

DEPOSITION OF AUBREY THOMPSON

Albuquerque, New Mexico

May 4, 2017

9:00 a.m.

REPORTED BY:  
ANNE D. WIESE, RPR, NM CCR #301  
Job No. 49965

2	4
<p>1 APPEARANCES</p> <p>2 FOR THE PLAINTIFF:</p> <p>3 INSTITUTE FOR JUSTICE</p> <p>4 901 North Glebe Road</p> <p>5 Suite 900</p> <p>6 Arlington, VA 22203</p> <p>7 BY: ROBERT JOHNSON, ESQ.</p> <p>8 rjohnson@ij.org</p> <p>9 ROBERT FROMMER, ESQ.</p> <p>10 rfrommer@ij.org</p> <p>11</p> <p>12 FOR THE DEFENDANT:</p> <p>13 City of Albuquerque</p> <p>14 City Attorney's Office</p> <p>15 P.O. Box 2248</p> <p>16 Albuquerque, New Mexico 87103-2248</p> <p>17 BY: KYLE HIBNER, ESQ.</p> <p>18 khibner@cabq.gov</p> <p>19</p> <p>20 Walz &amp; Associates, P.C.</p> <p>21 133 Eubank Boulevard NE</p> <p>22 Albuquerque, NM 87123-2709</p> <p>23 BY: ALFRED CRECY, ESQ.</p> <p>24 alcreecy@walzandassociates.com</p> <p>25</p> <p>ALSO PRESENT:</p> <p>AMITA KANCHERLA (APPEARING TELEPHONICALLY)</p>	<p>1 EXHIBITS (CONTINUED)</p> <p>2 MARK/ID</p> <p>3 NO. DESCRIPTION</p> <p>4 Exhibit N DWI General Ledger 83</p> <p>5 Exhibit O Conversion Cleanup Historical Document 90</p> <p>6 Exhibit P e-mail from Linda Cutler to Aubrey Thompson dated 1/6/17 97</p> <p>7 Exhibit Q Fiscal Year 2018 Proposed Budget 119</p> <p>8 Exhibit R Fiscal Year 2017 Approved Budget 127</p> <p>9 Exhibit S e-mail from Linda Cutler to Aubrey Thompson dated 3/23/15 140</p> <p>10 Exhibit T e-mail from Linda Mark Sandoval to Aubrey Thompson dated 8/25/15 149</p> <p>11 Exhibit U e-mail from Jesse Muniz to Fiscal Managers, Finanacial User Group dated 7/29/13 151</p> <p>12 Exhibit V Tables 152</p> <p>13 Exhibit W Statement of Revenues, Expenditures and Changes in Fund Balance 154</p> <p>14 Exhibit X e-mail from Aubrey Thompson to Diana Cobb dated 6/1/11 155</p> <p>15 Exhibit Y e-mail from Aubrey Thompson to Linda Cutler dated 6/12/14 155</p> <p>16 Exhibit Z e-mail from Mark Sandoval to Gregory Wheeler and Stan Harada dated 10/30/12 157</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
3	5
<p>1 INDEX</p> <p>2 PAGE</p> <p>3 EXAMINATION OF AUBREY THOMPSON</p> <p>4 By Mr. Johnson..... 5</p> <p>5</p> <p>6 SIGNATURE/CORRECTION PAGE..... 163</p> <p>7 CERTIFICATE OF COMPLETION OF DEPOSITION..... 164</p> <p>8</p> <p>9 EXHIBITS</p> <p>10 MARK/ID</p> <p>11 NO. DESCRIPTION</p> <p>12 Exhibit A e-mail chain beginning with e-mail from Eric Locher to Donovan Rivera and Aubrey Thompson, cc Kyle Hibner, dated 9/16/16 31</p> <p>13</p> <p>14 Exhibit AA e-mail from Aubrey Thompson to Ray Schultz dated 2/6/09 160</p> <p>15 Exhibit B P-Card Reminder e-mail Communication 48</p> <p>16 Exhibit C Expenditure Worksheet 50</p> <p>17 Exhibit D Defendant's Responses to Plaintiff's First Set of Interrogatories 52</p> <p>18</p> <p>19 Exhibit E Defendant's City of Albuquerque's Responses to Plaintiff's First Set of Interrogatories 53</p> <p>20</p> <p>21 Exhibit F Transfer Document 61</p> <p>22 Exhibit G City of Albuquerque Org Chart 63</p> <p>23 Exhibit H Payroll Document 65</p> <p>24 Exhibit I e-mail from Linda Cutler to Aubrey Thompson dated 1/15/14 66</p> <p>25 Exhibit J e-mail from Linda Cutler to Aubrey Thompson dated 3/3/14 73</p> <p>Exhibit K Internal Recordkeeping Report 77</p> <p>Exhibit L Operational Document 80</p> <p>Exhibit M e-mail from Gerald Romero to Ramona Martinez dated 8/6/14 83</p>	<p>1 AUBREY THOMPSON,</p> <p>2 having been first duly sworn, testified as follows:</p> <p>3 EXAMINATION</p> <p>4 BY MR. JOHNSON</p> <p>5 <b>Q. Great. And would you identify yourself for the record, please.</b></p> <p>6 A. Yes, I am Aubrey Thompson. I'm the Fiscal Manager for the Albuquerque Police Department.</p> <p>7 <b>Q. And would you tell us what is your educational background.</b></p> <p>8 A. And I have a CPA. I'm a Certified Public Accountant. I've got an undergraduate degree from Texas Tech University and an MBA from New Mexico State.</p> <p>9 <b>Q. When did you become a CPA?</b></p> <p>10 A. 1982, I believe.</p> <p>11 <b>Q. And how did you become a CPA?</b></p> <p>12 A. Once I finished my university studies, I took the CPA exam and passed. And back then, you still had to have a year's experience, so I went to work for a public accounting firm. And after I'd worked for them for a year, then received my certificate in New Mexico.</p> <p>13 <b>Q. And when did you graduate from New Mexico State?</b></p> <p>14 A. 1980, I think.</p> <p>15 <b>Q. Okay. And when did you graduate from Texas</b></p>

<p style="text-align: right;">6</p> <p>1 <b>Tech?</b></p> <p>2 A. 1977.</p> <p>3 <b>Q. And you said your current position is Fiscal</b></p> <p>4 <b>Manager for the Albuquerque Police Department?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. How long have you been in that position?</b></p> <p>7 A. Since 2004.</p> <p>8 <b>Q. And what was your position before that?</b></p> <p>9 A. I was the Chief Financial Officer for a</p> <p>10 corporation here in New Mexico that sold computers. I</p> <p>11 was in industry.</p> <p>12 <b>Q. What was the corporation?</b></p> <p>13 A. It was Analytical Computer Services. It</p> <p>14 morphed names several names really quickly.</p> <p>15 <b>Q. That's fine.</b></p> <p>16 A. Before that, it was International Computer</p> <p>17 Corporation, and before that, it was a partnership.</p> <p>18 <b>Q. And how long were you in that position?</b></p> <p>19 A. 14 years.</p> <p>20 <b>Q. And what did you do before that?</b></p> <p>21 A. I was in public accounting.</p> <p>22 <b>Q. Can you tell us what does that mean.</b></p> <p>23 A. I did small business consulting for clients. I</p> <p>24 did tax work. I did auditing. I was the Senior Auditor</p> <p>25 for the City of Las Cruces, External Auditor for two or</p>	<p style="text-align: right;">8</p> <p>1 issue, a divorce. The second one I believe probably was</p> <p>2 dealing with the Taser contract purchase, and the third</p> <p>3 one dealt with an IPRA request that the city was being</p> <p>4 sued on.</p> <p>5 <b>Q. And just for the record, IPRA, you're saying</b></p> <p>6 <b>the public records request?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. IPR, is that the acronym?</b></p> <p>9 A. IPRA.</p> <p>10 <b>Q. IPRA?</b></p> <p>11 A. Acronym.</p> <p>12 <b>Q. And just briefly, what was the Taser purchase</b></p> <p>13 <b>issue that you mentioned?</b></p> <p>14 A. Acquiring the Taser contract for on-body</p> <p>15 cameras.</p> <p>16 <b>Q. Was that a recent deposition?</b></p> <p>17 A. It was probably three years ago.</p> <p>18 <b>Q. Sorry, how many years?</b></p> <p>19 A. It was probably two or three years ago.</p> <p>20 <b>Q. Okay. It sounds like you have done this</b></p> <p>21 <b>before, but I'll say a few words about how it works.</b></p> <p>22 <b>You know, the first -- obviously, our</b></p> <p>23 <b>purpose here is to create a written record, so, you</b></p> <p>24 <b>know, it's important, if I ask you a yes-or-no question,</b></p> <p>25 <b>for instance, you not just nod your head or shake your</b></p>
<p style="text-align: right;">7</p> <p>1 three years.</p> <p>2 <b>Q. And when you say you were the Senior Auditor</b></p> <p>3 <b>for Las Cruces, what did that involve?</b></p> <p>4 A. We did the external audit for City of Las</p> <p>5 Cruces, what now is a CAFR. Back then, it had a</p> <p>6 different name, but --</p> <p>7 <b>Q. Did that include their police department as</b></p> <p>8 <b>well as other departments?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. Did you serve as an auditor for any other</b></p> <p>11 <b>municipalities?</b></p> <p>12 A. Did some schools, did some counties. I don't</p> <p>13 remember another city.</p> <p>14 <b>Q. Okay. And how long did you work as a public</b></p> <p>15 <b>accountant?</b></p> <p>16 A. About eleven years.</p> <p>17 <b>Q. Was that your first job after you obtained your</b></p> <p>18 <b>CPA?</b></p> <p>19 A. Yes.</p> <p>20 <b>Q. Okay. Now, have you ever been deposed before?</b></p> <p>21 A. This -- not very often. I believe this is my</p> <p>22 fourth in the last 25 years.</p> <p>23 <b>Q. What were the other depositions for?</b></p> <p>24 A. The first one dealt with -- I was doing -- I</p> <p>25 was a CFO in industry, and it dealt with a domestic</p>	<p style="text-align: right;">9</p> <p>1 <b>head back and forth. The people who are reading the</b></p> <p>2 <b>transcript won't be able to see that. So, you know,</b></p> <p>3 <b>just be sure that you're speaking your answers, not</b></p> <p>4 <b>gesturing them.</b></p> <p>5 <b>You know, it's hard for the court reporter</b></p> <p>6 <b>if we talk over each other. It becomes hard to sort of</b></p> <p>7 <b>capture what people are saying. So if you could</b></p> <p>8 <b>just -- if I ask a question, wait until I get to the end</b></p> <p>9 <b>of the question to answer, and I'll do the same with</b></p> <p>10 <b>you. If you're answering a question, I'll be sure to</b></p> <p>11 <b>wait until you get to the end of your answer before I</b></p> <p>12 <b>jump in and ask you another question.</b></p> <p>13 <b>It's possible that there will be periodic</b></p> <p>14 <b>objections. You know, unless you're specifically</b></p> <p>15 <b>instructed not to answer, you can go ahead, and you</b></p> <p>16 <b>should go ahead and answer the question regardless of</b></p> <p>17 <b>the objection.</b></p> <p>18 <b>And if you -- if there's a question that</b></p> <p>19 <b>you don't understand, just feel free to let me know.</b></p> <p>20 <b>Don't be shy about it, and I can clarify so you know</b></p> <p>21 <b>what you're answering.</b></p> <p>22 <b>Have you done anything to prepare for</b></p> <p>23 <b>today's deposition?</b></p> <p>24 A. I looked back over records, some of the records</p> <p>25 back to 2009. That was a really long period to be</p>

<p style="text-align: right;">18</p> <p>1 <b>Q. And are we talking about the PeopleSoft system</b>  2 <b>or --</b>  3 A. Yes.  4 <b>Q. -- other -- is this true of other systems in</b>  5 <b>addition to PeopleSoft?</b>  6 A. The primary accounting system is through  7 PeopleSoft. We use a few other systems for various  8 other purposes, but the centralized accounting system is  9 the PeopleSoft system.  10 <b>Q. And in the PeopleSoft system, there's a</b>  11 <b>particular string that corresponds with the DWI Seizure</b>  12 <b>Program?</b>  13 A. Yes.  14 <b>Q. Now, we've been referring to the DWI Seizure</b>  15 <b>Program. Could you just tell me what is your</b>  16 <b>understanding of what that program is.</b>  17 A. It was set up by city ordinance, which is what  18 makes it a special revenue fund, so it's accounted for  19 in Fund 280. The ordinance specifies the conditions  20 that a vehicle is considered a nuisance vehicle and can  21 be seized by the city. It covers the purposes that the  22 funding -- strike that -- a fund can be used for, so  23 it's restricted to a particular use.  24 <b>Q. And what is your understanding of how it's</b>  25 <b>restricted?</b></p>	<p style="text-align: right;">20</p> <p>1 A. It is monies collected by the court dealing  2 with I believe drug cases, I think.  3 <b>Q. And how is the use of that money restricted?</b>  4 A. It's restricted to drug enforcement and  5 equipment.  6 <b>Q. And the Law Enforcement Protection Fund, what</b>  7 <b>is the source of the revenue in that fund?</b>  8 A. It comes through the State Insurance Division.  9 <b>Q. And how is the use of that money restricted?</b>  10 A. It is restricted to law enforcement purposes,  11 excluding payroll, excluding some specific operating  12 expenditures. It's got a few other exclusions. It's  13 primarily for training and equipment.  14 <b>Q. And then the federal asset program, are you</b>  15 <b>referring there to equitable sharing?</b>  16 A. Yes.  17 <b>Q. Now, who is your supervisor?</b>  18 A. Bill Slauson.  19 <b>Q. Can you spell his last name, please.</b>  20 A. S-L-A-U-S-O-N.  21 <b>Q. What is his position with the city?</b>  22 A. He's the deputy director for the police  23 department.  24 <b>Q. And do you have any direct reports?</b>  25 A. To me?</p>
<p style="text-align: right;">19</p> <p>1 A. It's restricted -- I haven't read it in a  2 while, but I believe it's restricted to DWI enforcement  3 and education purposes.  4 <b>Q. And you refer to this as a special revenue</b>  5 <b>fund. What do you mean by that?</b>  6 A. That is the accounting terminology for a  7 program that has a particular -- a specific revenue  8 funding source and a specific restricted use. It's kind  9 of like a grant, not exactly.  10 <b>Q. How is it different from a grant?</b>  11 A. A grant usually comes from another party. The  12 special revenue funds can be set up by ordinance of the  13 city.  14 <b>Q. Does the city have other special revenue funds?</b>  15 A. Yes.  16 <b>Q. What other types of things are run as special</b>  17 <b>revenue funds?</b>  18 A. Through the police department, we have a crime  19 lab fund. It's a special revenue fund. We have the  20 LEPF fund. Law Enforcement Protection Fund I believe is  21 the -- what it stands for. We used to have the Federal  22 Asset Forfeiture Seizure Program. That's being wound  23 down. Those are four that I have dealt with.  24 <b>Q. Let's start with the crime lab fund. What is</b>  25 <b>the revenue source for the crime lab fund?</b></p>	<p style="text-align: right;">21</p> <p>1 <b>Q. Yes.</b>  2 A. Yes, I supervise 13 individuals.  3 <b>Q. How many of those individuals have</b>  4 <b>responsibilities that are connected to the DWI Seizure</b>  5 <b>Program?</b>  6 A. Well, four of them are payroll, so the program  7 has payroll expenditures. I've got a person who works  8 on purchasing, so she would work with most of the  9 purchasing items. I have a gentleman who works with  10 payables and I have lady who works with travel. So all  11 of those would likely have worked on some small piece of  12 the program.  13 <b>Q. And that's seven individuals. The other six do</b>  14 <b>not have any connection to the program?</b>  15 A. I guess you could say the property people  16 probably do, so that's another three. Actually, I  17 probably only have two people who have never done  18 anything for the program.  19 <b>Q. That brings us to twelve. Who's the last</b>  20 <b>person?</b>  21 A. Okay. I have 13 people under me. I have three  22 in property. I've got four in payroll. I've got the  23 two people who are not -- in a completely separate  24 program. I have the gentleman for accounts payable, I  25 have the lady that works with purchasing, I have the</p>

<p style="text-align: right;">22</p> <p>1 lady that works with travel, and then my assistant.</p> <p>2 <b>Q. Now, what sources of -- or -- yeah, what forms</b>  3 <b>of revenue are generated by the DWI Seizure Program?</b></p> <p>4 A. There are settlements and there are vehicle  5 seizures, a few minor other things like interest, very  6 small. But primarily, the auctions and the seizures and  7 the settlements.</p> <p>8 <b>Q. By "settlements," you mean agreements with</b>  9 <b>property owners where they agree to pay some amount of</b>  10 <b>money in order to get back the vehicle?</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. So in addition to the settlements, the auctions</b>  13 <b>and interest, are there any other sources of revenue</b>  14 <b>associated with the program?</b></p> <p>15 A. No.</p> <p>16 <b>Q. What about tow fees?</b></p> <p>17 A. There's no revenue source from that. We pay  18 the tow fees at the cash outflow.</p> <p>19 <b>Q. What do you mean by that exactly?</b></p> <p>20 A. It's an expense. When you say "other  21 revenues," also, those are the -- that's the information  22 that's going through Fund 280. We also have quite a bit  23 of expenditures that are picked up through the General  24 Fund to maintain the program.</p> <p>25 <b>Q. Sure. We can come back to that. Right now,</b></p>	<p style="text-align: right;">24</p> <p>1 the towing company.</p> <p>2 <b>Q. What do you mean when you say "if the vehicle</b>  3 <b>is not being seized"? You mean if it's not being seized</b>  4 <b>permanently?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. What about the towing charges?</b></p> <p>7 A. That probably is more a question for the  8 program person.</p> <p>9 <b>Q. Okay.</b></p> <p>10 A. I'm not 100 percent sure.</p> <p>11 <b>Q. When you say "the program person," who do you</b>  12 <b>mean?</b></p> <p>13 A. I would assume the lieutenant or the commander  14 in charge of the program, the operations.</p> <p>15 <b>Q. Do you know who that is?</b></p> <p>16 A. The commander is Miller. The lieutenant -- I  17 would have to check.</p> <p>18 <b>Q. Now, when people ask -- when people have their</b>  19 <b>car returned, they also have to pay storage fees in</b>  20 <b>addition to towing fees. Do you know how those fees are</b>  21 <b>disposed of?</b></p> <p>22 A. I consider those settlement fees. Anything  23 that's paid to the -- any fee that comes to us, from an  24 accounting perspective, I consider a settlement fee.  25 You would need to check with the operations people.</p>
<p style="text-align: right;">23</p> <p>1 <b>I'm focused on the revenues, not the expenditures. Are</b>  2 <b>there any sources of revenue that are not picked up by</b>  3 <b>Fund 280?</b></p> <p>4 A. No.</p> <p>5 <b>Q. When somebody pays a tow fee in order to get</b>  6 <b>back their car, does that money go into Fund 280?</b></p> <p>7 A. No.</p> <p>8 <b>Q. Where does it go?</b></p> <p>9 A. The towing company.</p> <p>10 <b>Q. Do they write a check directly to the towing</b>  11 <b>company?</b></p> <p>12 A. We do not receive revenues from the towing  13 company. I'm not sure if that is part of the settlement  14 cost or not. I don't know.</p> <p>15 <b>Q. I guess what I'm asking is mechanically, how</b>  16 <b>does this work? If someone is paying money for a towing</b>  17 <b>fee to get their car back, where does that money go?</b>  18 <b>Does it go to the city or does it go directly to the</b>  19 <b>towing company?</b></p> <p>20 A. I believe it goes directly to the towing  21 company. My understanding is that the city accepts a  22 towing charge on vehicles that are being seized, but I  23 believe the vehicle owner deals directly with the towing  24 company for any other charges. So if the vehicle is not  25 being seized, I believe the owner deals directly with</p>	<p style="text-align: right;">25</p> <p>1 <b>Q. So when you referred to settlement money, that</b>  2 <b>would include storage fees?</b></p> <p>3 A. My perspective, yes.</p> <p>4 <b>Q. Okay. Now, the -- you mentioned interest.</b>  5 <b>What do you mean by that?</b></p> <p>6 A. On any fund that has a fund balance in the  7 city, the city allocates any interest that they make  8 back to the different programs throughout the city, an  9 accounting process.</p> <p>10 <b>Q. I take it from that that there's a positive</b>  11 <b>fund balance associated with the DWI Program?</b></p> <p>12 A. Generally, yes.</p> <p>13 <b>Q. When you say "generally," has there ever been a</b>  14 <b>time, to your knowledge, that there was not a positive</b>  15 <b>balance?</b></p> <p>16 A. No. It's been low. I mean, we take  17 it -- we'll be taking it down close to zero, but it  18 shouldn't go below.</p> <p>19 <b>Q. When will you be taking it down close to zero?</b></p> <p>20 A. At the end of the fiscal year.</p> <p>21 <b>Q. Is that a -- was there a deliberate decision</b>  22 <b>made to take this balance down close to zero?</b></p> <p>23 A. No. At the moment, we are going to be spending  24 more on expenditures than we do -- than we have in fund  25 balance this year, so I'll have to make some of those</p>

<p>34</p> <p>1 city insurance?</p> <p>2 A. Yeah, it's a transfer from within the city.</p> <p>3 It's a transfer from the Risk Management Fund in the</p> <p>4 city to Fund 280 within the city.</p> <p>5 <b>Q. And is that transfer -- that kind of transfer</b></p> <p>6 <b>made on a regular basis?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. For how long has it been made on a regular</b></p> <p>9 <b>basis?</b></p> <p>10 A. About 2013, I think. Prior to that, those</p> <p>11 funds were sent to a different fund.</p> <p>12 <b>Q. Where were those sent before that?</b></p> <p>13 A. Well, before that, I believe it was 760. It</p> <p>14 dealt with vehicle and computer replacements.</p> <p>15 <b>Q. And what would be the source of the -- I</b></p> <p>16 <b>understand that they're coming from the Risk Management</b></p> <p>17 <b>Fund, but before that, where are they coming from?</b></p> <p>18 MR. CREECY: Object to the form.</p> <p>19 <b>Q. (By Mr. Johnson) How are those funds getting</b></p> <p>20 <b>into the Risk Management Fund?</b></p> <p>21 MR. CREECY: Object to the form.</p> <p>22 <b>Q. (By Mr. Johnson) You can answer.</b></p> <p>23 MR. CREECY: Go ahead and answer if you</p> <p>24 know.</p> <p>25 A. I think it comes from the General Fund, but I'm</p>	<p>36</p> <p>1 into 280 anymore, we deposit it into Fund 305, to CIP</p> <p>2 funds.</p> <p>3 <b>Q. Why did you make that decision?</b></p> <p>4 A. We talked about it and thought it might be a</p> <p>5 better debt because we were going to be buying vehicles</p> <p>6 with it.</p> <p>7 <b>Q. Who made the decision to buy vehicles with it?</b></p> <p>8 MR. CREECY: I'm going to object to the</p> <p>9 form.</p> <p>10 But answer if you know.</p> <p>11 A. It's kind of a group decision.</p> <p>12 <b>Q. (By Mr. Johnson) Who was involved in the</b></p> <p>13 <b>decision?</b></p> <p>14 MR. CREECY: Object to the form.</p> <p>15 Answer if you know.</p> <p>16 <b>Q. (By Mr. Johnson) You referred to a group</b></p> <p>17 <b>decision. What group are you referring to?</b></p> <p>18 A. I mean, I would have discussed it with my boss.</p> <p>19 We would have discussed it -- we were looking -- we</p> <p>20 would have discussed it with our budget analyst. We</p> <p>21 would have discussed it with Ops Review, probably.</p> <p>22 We were looking for a funding source to</p> <p>23 purchase vehicles, and when they started -- when Risk</p> <p>24 Management changed the way that they were doing their</p> <p>25 accounting audit -- it comes from the insurance off of</p>
<p>35</p> <p>1 not sure.</p> <p>2 <b>Q. (By Mr. Johnson) What is the Risk Management</b></p> <p>3 <b>Fund?</b></p> <p>4 A. It's another City of Albuquerque department,</p> <p>5 like you have the Fire Department, you have the</p> <p>6 Department of Finance and Administration, you have the</p> <p>7 Police Department. Risk Management is a different</p> <p>8 department within the city.</p> <p>9 <b>Q. Okay. Who made the decision to transfer funds</b></p> <p>10 <b>from Risk Management to Fund 280, if you know?</b></p> <p>11 A. I don't know.</p> <p>12 <b>Q. Who told you -- who did you make the transfer</b></p> <p>13 <b>from?</b></p> <p>14 A. I was told that we have these funds that we</p> <p>15 need to put somewhere, and they asked for a data string</p> <p>16 to deposit it there.</p> <p>17 <b>Q. Who asked you this?</b></p> <p>18 A. Risk Management.</p> <p>19 <b>Q. Who at Risk Management?</b></p> <p>20 A. I don't remember.</p> <p>21 <b>Q. So Risk Management asked you for -- did they</b></p> <p>22 <b>tell you that they wanted to put it into Fund 280 or did</b></p> <p>23 <b>they tell you they just wanted to put it --</b></p> <p>24 A. Somewhere. And we've changed that now. After</p> <p>25 this e-mail, we discussed it, and we don't deposit it</p>	<p>37</p> <p>1 wrecked vehicles, so it made sense that we use that</p> <p>2 money to purchase vehicles with again.</p> <p>3 <b>Q. When you say "wrecked vehicles," do you mean</b></p> <p>4 <b>wrecked vehicles that are owned by the Police</b></p> <p>5 <b>Department?</b></p> <p>6 A. Yes.</p> <p>7 (Discussion off the record.)</p> <p>8 <b>Q. (By Mr. Johnson) Now, what kind of expenses</b></p> <p>9 <b>are paid for using the DWI Program?</b></p> <p>10 A. DWI enforcement and education.</p> <p>11 <b>Q. Can you be more specific.</b></p> <p>12 A. The direct expenses are generally rental,</p> <p>13 towing fees, process server fees. There's a transfer of</p> <p>14 funds that covers I believe three individuals from the</p> <p>15 civilians, from the Police Department, and four</p> <p>16 individuals from Legal, any other direct expenditures</p> <p>17 that might exist, but those are the primary ones.</p> <p>18 <b>Q. What other type of direct expenses might there</b></p> <p>19 <b>be?</b></p> <p>20 A. Supplies, office supplies, could be travel.</p> <p>21 <b>Q. Anything else?</b></p> <p>22 A. Those are the direct expenses. Occasionally,</p> <p>23 we will purchase vehicles or other equipment.</p> <p>24 <b>Q. What type of other equipment?</b></p> <p>25 A. Probably -- I have to go back and look</p>

<p style="text-align: right;">38</p> <p>1 specifically.</p> <p>2 <b>Q. And would you refer to those as direct</b></p> <p>3 <b>expenditures, vehicles?</b></p> <p>4 A. I would probably not classify them as direct</p> <p>5 expenditures, but they're used for DWI enforcement,</p> <p>6 so -- but the program would exist if we hadn't bought</p> <p>7 them, too.</p> <p>8 <b>Q. If you -- if it would not be classified as</b></p> <p>9 <b>direct expenditures, how would you classify that?</b></p> <p>10 A. DWI Enforcement.</p> <p>11 <b>Q. Now, the vehicles that you purchased, are they</b></p> <p>12 <b>used for DWI Enforcement?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. Are they used solely for DWI Enforcement?</b></p> <p>15 A. Some of them would be. Some of them would not</p> <p>16 be.</p> <p>17 <b>Q. What proportion would you say would not be?</b></p> <p>18 A. I don't know. I'd have to go back and look.</p> <p>19 <b>Q. Would you say greater than half?</b></p> <p>20 A. I'm not sure. I'd have to go back and look.</p> <p>21 <b>Q. How would you go back and look?</b></p> <p>22 A. Look at the number of vehicles that we have</p> <p>23 purchased and get an idea of how many -- I'd have to go</p> <p>24 back to Operations Review to find out which ones were</p> <p>25 assigned directly to the DWI Unit.</p>	<p style="text-align: right;">40</p> <p>1 A. Yes, but I knew that they were all being</p> <p>2 assigned to DWI Enforcement.</p> <p>3 <b>Q. And who made the decision of whether to assign</b></p> <p>4 <b>them to the DWI Unit or not to the DWI Unit?</b></p> <p>5 A. Operations Review generally deals with the</p> <p>6 vehicles. They probably made the decision.</p> <p>7 <b>Q. I'm not asking you to speculate.</b></p> <p>8 A. I don't know, then.</p> <p>9 <b>Q. You say you knew that some were going to be</b></p> <p>10 <b>assigned and some were not going to be assigned to the</b></p> <p>11 <b>unit?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. How did you know that?</b></p> <p>14 A. From speaking to people in Operations Review,</p> <p>15 from speaking to my boss.</p> <p>16 <b>Q. Okay. So in addition to rental, towing,</b></p> <p>17 <b>process server fees, the transfer to Fund 280, the</b></p> <p>18 <b>direct expenditures that you mentioned, like supplies</b></p> <p>19 <b>and travel and the purchase of vehicles, are there any</b></p> <p>20 <b>other expenses that would not be captured within that</b></p> <p>21 <b>list that are associated with the DWI Program?</b></p> <p>22 A. It's -- you're allowed to do DWI education out</p> <p>23 of that program. I believe they used to do some</p> <p>24 programs at schools. That was probably funded through</p> <p>25 that. There have been some advertising -- anti-DWI</p>
<p style="text-align: right;">39</p> <p>1 <b>Q. But you know for a fact that some were not</b></p> <p>2 <b>assigned to the DWI unit?</b></p> <p>3 A. Yes. The area command -- we assigned some of</p> <p>4 them out to the area commands because they also get with</p> <p>5 DWI Enforcement.</p> <p>6 <b>Q. What are the area commands?</b></p> <p>7 A. It's field services. Those are the people who</p> <p>8 are answering calls for service, for DWI, that sort of</p> <p>9 thing.</p> <p>10 <b>Q. Now, at the time that you approved the</b></p> <p>11 <b>expenditures -- or let me back up a second.</b></p> <p>12 <b>Did you approve the expenditures to</b></p> <p>13 <b>purchase the vehicles?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. At the time that you approved the expenditures,</b></p> <p>16 <b>did you know whether the vehicles would be used solely</b></p> <p>17 <b>for DWI purposes?</b></p> <p>18 A. I knew they would be used for DWI purposes.</p> <p>19 "Solely" is a bit extreme.</p> <p>20 <b>Q. Did you know whether they would be assigned to</b></p> <p>21 <b>the DWI Unit?</b></p> <p>22 A. I knew that some of them were assigned to the</p> <p>23 DWI Unit, yes.</p> <p>24 <b>Q. Did you know that some of them would not be</b></p> <p>25 <b>assigned to the DWI Unit?</b></p>	<p style="text-align: right;">41</p> <p>1 advertising campaigns that I believe were paid through</p> <p>2 there.</p> <p>3 <b>Q. Now, you mentioned process server fees. Are</b></p> <p>4 <b>those process server fees that are associated with the</b></p> <p>5 <b>administration of the DWI Program? Let me rephrase</b></p> <p>6 <b>that.</b></p> <p>7 A. A little bit of my area. That's more the legal</p> <p>8 side. But we have to give notice to anyone who's in the</p> <p>9 process.</p> <p>10 <b>Q. Who approved the process server -- who approves</b></p> <p>11 <b>the expenditure of money for process servers out of the</b></p> <p>12 <b>Fund 280 DWI accounting string?</b></p> <p>13 A. I believe the Legal Division.</p> <p>14 <b>Q. And how does that work?</b></p> <p>15 MR. CREECY: Object to the form.</p> <p>16 If you know.</p> <p>17 <b>Q. (By Mr. Johnson) Well, let me rephrase it.</b></p> <p>18 <b>Who approves -- or how does that approval process work,</b></p> <p>19 <b>or to the extent that you know? If you don't know,</b></p> <p>20 <b>that's fine.</b></p> <p>21 A. I mean, Legal arranges for them to do the work</p> <p>22 then Legal lets us know if the services were received.</p> <p>23 And if the services were received, then we pay them.</p> <p>24 <b>Q. Do you have any way of knowing what the</b></p> <p>25 <b>process -- what case or what issue the process server is</b></p>

<p style="text-align: right;">50</p> <p>1 (Discussion off the record.)</p> <p>2 (Deposition Exhibit C was marked for</p> <p>3 identification.)</p> <p>4 MR. JOHNSON: So we'll refer to this</p> <p>5 attachment as I guess Exhibit C.</p> <p>6 <b>Q. (By Mr. Johnson) Now, Mr. Thompson, can you</b></p> <p>7 <b>tell us what we're looking at here?</b></p> <p>8 A. You're looking at some sort of worksheet</p> <p>9 dealing with expenditures, it looks like.</p> <p>10 <b>Q. This was attached to the e-mail about the May</b></p> <p>11 <b>P-Card transaction.</b></p> <p>12 A. Then I would assume it is dealing with the</p> <p>13 P-Card transactions from that month.</p> <p>14 <b>Q. Is there such a spreadsheet? Is it circulated</b></p> <p>15 <b>for each month of P-Card transactions?</b></p> <p>16 A. I believe so.</p> <p>17 <b>Q. What is the -- what is contained within those</b></p> <p>18 <b>spreadsheets?</b></p> <p>19 A. Well, you've got the unit, which is City of</p> <p>20 Albuquerque. You've got the journal ID number. You've</p> <p>21 got the date. You've got the account. You've got the</p> <p>22 department number. You've got the fund number. On</p> <p>23 over, if it's not 110, you've got the columns to tell</p> <p>24 you which division or which program it is assigned to,</p> <p>25 the dollar amount.</p>	<p style="text-align: right;">52</p> <p>1 different definitions. Let me see what else is on this</p> <p>2 worksheet. I believe that would be the total of that</p> <p>3 P-Card charge.</p> <p>4 <b>Q. Okay. What does the "Ledger" column reflect?</b></p> <p>5 A. That's an accounting definition, basically.</p> <p>6 It's not a budget number, it is an actual number.</p> <p>7 <b>Q. Okay. What does the "Source Code" column</b></p> <p>8 <b>reflect?</b></p> <p>9 A. That would reflect where the original</p> <p>10 transaction came from. EXL is actually posted by DFAS</p> <p>11 Accounting across the street, so the EXL will tell you</p> <p>12 that it's a -- it came from a summarized file that had</p> <p>13 more than one department in it.</p> <p>14 <b>Q. And what does the line "DEFER" column reflect?</b></p> <p>15 A. That's a description. For instance, SOUTHWES</p> <p>16 is likely Southwest Airlines.</p> <p>17 <b>Q. Okay. So that -- is it accurate to say that</b></p> <p>18 <b>would be a description of what that particular line was</b></p> <p>19 <b>expended on?</b></p> <p>20 A. It's a description of the vendor.</p> <p>21 <b>Q. Okay. It's a description of the vendor with</b></p> <p>22 <b>whom that amount was expended?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. Okay. Let's look at --</b></p> <p>25 <b>(Deposition Exhibit D was marked for</b></p>
<p style="text-align: right;">51</p> <p>1 <b>Q. If I was to restrict that -- I go to the "Fund"</b></p> <p>2 <b>column, and I can restrict this to Fund 280, the data</b></p> <p>3 <b>that we're now looking at, would this be data that is</b></p> <p>4 <b>associated only with Fund 280?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. Is all of this data associated with the DWI</b></p> <p>7 <b>program?</b></p> <p>8 A. No.</p> <p>9 <b>Q. Is there a way to tell which data is associated</b></p> <p>10 <b>with the DWI Program?</b></p> <p>11 A. If you look at the "PC Project" column where it</p> <p>12 says 51_516 something or another, the DWI Program is</p> <p>13 51_5165000. Depending upon the year, it could also have</p> <p>14 different numbers for the last three, but as long as it</p> <p>15 starts with 5165.</p> <p>16 <b>Q. Got it. So if we were to look through these</b></p> <p>17 <b>for other months, similar spreadsheets for other months,</b></p> <p>18 <b>would those -- would that account -- or excuse me -- the</b></p> <p>19 <b>PC project number for the DWI project be the same for</b></p> <p>20 <b>other months?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. Okay. And now I'm scrolling over to the far</b></p> <p>23 <b>side of the spreadsheet. Can you tell me, what does the</b></p> <p>24 <b>"Sum Amount" column reflect?</b></p> <p>25 A. Go back to the left. That can have two</p>	<p style="text-align: right;">53</p> <p>1 <b>identification.)</b></p> <p>2 MR. JOHNSON: I'm going to mark as Exhibit</p> <p>3 D a copy of Plaintiff -- excuse me -- of Defendant's</p> <p>4 Responses to Plaintiff's First Set of Interrogatories.</p> <p>5 Actually, I'll save that for later.</p> <p>6 I'm going to mark as an exhibit</p> <p>7 supplemental -- I'm going to mark Exhibit E, Defendant's</p> <p>8 City of Albuquerque Supplemental Response to Plaintiff's</p> <p>9 First Set of Interrogatories.</p> <p>10 (Deposition Exhibit E was marked for</p> <p>11 identification.)</p> <p>12 <b>Q. (By Mr. Johnson) Now, looking at Page 3, tell</b></p> <p>13 <b>me, what are we looking at here on Page 3, specifically</b></p> <p>14 <b>the top of Page 3, where it says, "Law Enforcement</b></p> <p>15 <b>Protection Fund DWI Seizure Program"?</b></p> <p>16 A. That would be the data coded to the 51_5165</p> <p>17 program.</p> <p>18 <b>Q. As --</b></p> <p>19 A. The first line item is what was budgeted by the</p> <p>20 city council for revenues. The second item is what was</p> <p>21 budgeted for expenditures by the city council. The</p> <p>22 actual revenue is the revenue directly related to the</p> <p>23 program. That's the seizure monies and the</p> <p>24 settlement -- it doesn't include the peripheral type</p> <p>25 revenues -- and then the actual expenditures that are</p>

<p style="text-align: right;">54</p> <p>1 coded through Fund 280.</p> <p>2 <b>Q. Okay. Did you generate this spreadsheet?</b></p> <p>3 A. I reviewed it. Budget actually generated it.</p> <p>4 <b>Q. Okay. Under the column -- the "Fiscal Year</b></p> <p>5 <b>'16" column and then the line marked "Revenue Less</b></p> <p>6 <b>Expenditures," what does that column show?</b></p> <p>7 A. Negative 264,385.</p> <p>8 <b>Q. Okay. And what does that mean?</b></p> <p>9 A. That would mean that we had more expenditures</p> <p>10 than what we had revenue, so they used fund balance for</p> <p>11 some of the expenditures.</p> <p>12 <b>Q. What does that mean when you say they "used</b></p> <p>13 <b>fund balance"?</b></p> <p>14 A. 280, unlike the General Fund, does not reset on</p> <p>15 July 1. General Fund monies, you have new</p> <p>16 appropriations for each year, you have new revenues for</p> <p>17 each year and you have new expenditures for each year.</p> <p>18 A special revenue fund like this is programmed to date,</p> <p>19 so the amount of money that is appropriated is an</p> <p>20 additional amount. So your expenditures need to be</p> <p>21 within your appropriated amount. It also needs to be</p> <p>22 within a deposited fund balance for the program.</p> <p>23 But it could be, for instance, if you had</p> <p>24 1.7 million dollars appropriated in 2015 and you spent a</p> <p>25 million, then the next year, you have 1.7 million</p>	<p style="text-align: right;">56</p> <p>1 A. I would evaluate the expenditure and determine</p> <p>2 which funding string in the General Fund it would have</p> <p>3 most likely been coded to had I coded it there first.</p> <p>4 <b>Q. Which expenditures in 2017 will you recode to</b></p> <p>5 <b>the General Fund -- or which expenditures do you plan to</b></p> <p>6 <b>recode?</b></p> <p>7 A. I'm not sure at the moment. Part of it will</p> <p>8 depend upon the volume.</p> <p>9 <b>Q. Are there any expenditures that you could not</b></p> <p>10 <b>recode to the General Fund?</b></p> <p>11 A. No.</p> <p>12 <b>Q. Would there be any general expenditures that</b></p> <p>13 <b>you could not recode without seeking approval, to the</b></p> <p>14 <b>General Fund?</b></p> <p>15 A. This would be done through a journal entry, and</p> <p>16 any journal entries are approved by DFAS Accounting.</p> <p>17 <b>Q. Are there any expenditures that you have to get</b></p> <p>18 <b>approval from somebody other than the folks at DFAS in</b></p> <p>19 <b>order to reassign funds from 280 to those general funds?</b></p> <p>20 A. No.</p> <p>21 MR. JOHNSON: Yeah. So why don't we go off</p> <p>22 the record for a second. We seem to be having some sort</p> <p>23 of problem with the live stream.</p> <p>24 (Discussion off the record.)</p> <p>25 MR. JOHNSON: We're back on the record,</p>
<p style="text-align: right;">55</p> <p>1 appropriated, and you could spend 1.5 and still be</p> <p>2 within the appropriated expenditures.</p> <p>3 <b>Q. But over the course of several years, the</b></p> <p>4 <b>program does have to maintain a positive fund balance?</b></p> <p>5 A. It should maintain a positive fund balance.</p> <p>6 <b>Q. What happens if the fund balance becomes</b></p> <p>7 <b>negative?</b></p> <p>8 A. In fiscal year '17, I'm going to prohibit that</p> <p>9 by moving expenditures from 280 into the General Fund.</p> <p>10 If 280 is not generating enough money to run the</p> <p>11 project, then the General Fund has to pick up the rest</p> <p>12 of the cost.</p> <p>13 <b>Q. When you move expenditures into the General</b></p> <p>14 <b>Fund, do they have to be associated, then, with an</b></p> <p>15 <b>accounting string similar to the accounting string</b></p> <p>16 <b>that's used for the DWI Program?</b></p> <p>17 A. It's a different accounting string.</p> <p>18 <b>Q. Are there are multiple accounting strings</b></p> <p>19 <b>associated with the General Fund?</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. And would you have to associate those</b></p> <p>22 <b>expenditures with one of those accounting strings?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. And how would you determine which accounting</b></p> <p>25 <b>string to associate them with?</b></p>	<p style="text-align: right;">57</p> <p>1 then.</p> <p>2 THE WITNESS: I'm not required to, but by</p> <p>3 policy, I will certainly give my boss a heads up and I</p> <p>4 will give Budget a heads up.</p> <p>5 <b>Q. (By Mr. Johnson) Why would you give your boss</b></p> <p>6 <b>a heads up?</b></p> <p>7 A. He's responsible for everything I'm responsible</p> <p>8 for, so he should be in the loop.</p> <p>9 <b>Q. And why would you give Budget a heads up?</b></p> <p>10 A. We worked very closely with Budget for any</p> <p>11 budget issue, and this would be a budget issue.</p> <p>12 <b>Q. If you were to reassign the expenditure for the</b></p> <p>13 <b>transfer of salary, what would be involved in that?</b></p> <p>14 A. You would take a reversal of the original</p> <p>15 transfer.</p> <p>16 <b>Q. How would that work?</b></p> <p>17 A. You would debit the transfer account in 110 and</p> <p>18 credit the transfer account in 280.</p> <p>19 <b>Q. Would you have to get approval from anyone to</b></p> <p>20 <b>do that?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. Who would you get approval from?</b></p> <p>23 A. One, Budget. DFAS. When I say Budget, I mean</p> <p>24 DFAS Budget.</p> <p>25 <b>Q. Anybody else?</b></p>

<p>58</p> <p>1 A. Not that I would have to, no.</p> <p>2 <b>Q. Who would you get approval from?</b></p> <p>3 A. I would let my boss know what was going on.</p> <p>4 <b>Q. The lease payments that you mentioned earlier,</b>  5 <b>if you had to reassign those lease payments to the</b>  6 <b>General Fund, how would you go about doing that?</b></p> <p>7 A. You would debit 110 and credit 280 in  8 contractual expenditures.</p> <p>9 <b>Q. And would you have to find an accounting -- an</b>  10 <b>account number within the General Fund to assign those</b>  11 <b>lease payments to?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. And how would you find that account number?</b></p> <p>14 A. I would choose which division I was going to  15 move it to. Most likely I would move it to either Metro  16 Traffic or the Facilities Division.</p> <p>17 <b>Q. And if you moved it, say, to Metro Traffic,</b>  18 <b>would that reduce the amount of money available for</b>  19 <b>Metro Traffic for other expenditures?</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. Now, I just want to go back very quickly to</b>  22 <b>Exhibit E, the column that says "Actual Revenue." Am I</b>  23 <b>correct -- I stated that would include settlement</b>  24 <b>amounts in the DWI Program, auction fees, interest and</b>  25 <b>nothing else?</b></p>	<p>60</p> <p>1 their budget process. So they round -- they pull down  2 an actual number and then usually round it to the  3 nearest thousand.</p> <p>4 <b>Q. And when you say what they're going to be</b>  5 <b>making in the following year, do you mean their entire</b>  6 <b>compensation for the following year?</b></p> <p>7 A. That would be salary plus benefits.</p> <p>8 <b>Q. And you mean, just to be clear, it's their</b>  9 <b>entire salary plus benefits for the following year?</b></p> <p>10 A. It would not include if any of them had  11 overtime, but their base salary and benefits, yes.</p> <p>12 <b>Q. Okay. So the amount of the transfer would be</b>  13 <b>set in order to cover the amount of their base salary</b>  14 <b>for the entire year, the amount of their benefits for</b>  15 <b>the entire year, but not any overtime that they might</b>  16 <b>incur?</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. Who in DFAS specifically makes that</b>  19 <b>determination?</b></p> <p>20 A. Our Budget Analysis generally does that.</p> <p>21 <b>Q. And who is that?</b></p> <p>22 A. At the moment, it would be Linda Cutler.</p> <p>23 <b>Q. That's C-U-T-L-E-R?</b></p> <p>24 A. Yes.</p> <p>25 <b>Q. Okay. Why don't we look at -- let me mark this</b></p>
<p>59</p> <p>1 A. No, interest had already been stripped out of  2 that. Those are -- the data that was responded to here  3 was the direct DWI Program receipts, so it's the  4 settlement and the auction.</p> <p>5 <b>Q. And then actual expenditures, that -- am I</b>  6 <b>correct if I say that would include anything in the</b>  7 <b>General Ledger that is coded with the DWI Program</b>  8 <b>accounting string number?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. Okay. Does it include anything else?</b></p> <p>11 A. No.</p> <p>12 <b>Q. Okay. Why don't we move on to the transfer --</b>  13 <b>the annual transfer from Fund 280 to Fund 110, which</b>  14 <b>you've mentioned a number of times. What is the purpose</b>  15 <b>of that transfer?</b></p> <p>16 A. The purpose of that transfer is to reimburse  17 the General Fund for personnel expenditures coded to the  18 General Fund for people working directly with the DWI  19 Program.</p> <p>20 <b>Q. And how was the amount of that transfer</b>  21 <b>determined?</b></p> <p>22 A. DFAS Budget makes that determination.</p> <p>23 <b>Q. Do you know how they make that determination?</b></p> <p>24 A. They make estimates of what each person is  25 going to be making the following year. It's through</p>	<p>61</p> <p>1 <b>as Exhibit F.</b>  2 <b>(Deposition Exhibit F was marked for</b>  3 <b>identification.)</b></p> <p>4 <b>Q. (By Mr. Johnson) Are you familiar with this</b>  5 <b>document?</b></p> <p>6 A. Yes, I believe I have seen it before.</p> <p>7 <b>Q. What is this document?</b></p> <p>8 A. I think it's a reply to your question for  9 detailed information dealing with the transfer.</p> <p>10 <b>Q. And what does this document show us?</b></p> <p>11 A. It shows that in 2017, there were three  12 individuals out of APD that were paid through this  13 transfer, two paralegals and two Assistant City  14 Attorneys.</p> <p>15 <b>Q. Okay.</b></p> <p>16 A. So the transfer being made is \$220,000 to cover  17 the APD civilian employees and \$279,000 to cover the  18 legal for a total of \$499,000.</p> <p>19 <b>Q. Now, there's a column labeled "POS NO." Do you</b>  20 <b>see that column?</b></p> <p>21 A. Uh-huh (yes).</p> <p>22 <b>Q. What is that column?</b></p> <p>23 A. Position number.</p> <p>24 <b>Q. And what does that tell us?</b></p> <p>25 A. That tells us that, for instance, Position No.</p>

<p style="text-align: right;">78</p> <p>1 budget report that goes out.</p> <p>2 <b>Q. Have you seen this type of document on any</b></p> <p>3 <b>other occasion?</b></p> <p>4 A. I've seen it. They could have been passed out</p> <p>5 at a meeting or something, but I don't know.</p> <p>6 <b>Q. What kind of meetings would they be passed out</b></p> <p>7 <b>at?</b></p> <p>8 A. Actually, nothing comes to mind. I've probably</p> <p>9 just seen it dealing with the budget compilations.</p> <p>10 <b>Q. When you say "the budget compilations," what do</b></p> <p>11 <b>you mean?</b></p> <p>12 A. There's an annual budget that goes out that has</p> <p>13 the operating statistics in it. It's online. I'm sure</p> <p>14 you've seen it.</p> <p>15 <b>Q. I have.</b></p> <p>16 <b>And you have seen this type of document in</b></p> <p>17 <b>the course of putting together that annual budget?</b></p> <p>18 A. I believe so, yeah.</p> <p>19 <b>Q. What use of this document would you make in</b></p> <p>20 <b>putting together the annual budget?</b></p> <p>21 A. They were looking for a total number of</p> <p>22 vehicles checked. You would compile the monthly numbers</p> <p>23 to your yearly number. I don't work closely enough with</p> <p>24 the operations side of DWI to remember what their</p> <p>25 performance criteria that's published in the budget is,</p>	<p style="text-align: right;">80</p> <p>1 <b>from a document like this?</b></p> <p>2 A. Well, it looks like there are vehicles checked</p> <p>3 in. It looks like there are vehicles in the lot. It</p> <p>4 looks like there are returned vehicles. It looks like</p> <p>5 there are boot removal returns. It looks like booted</p> <p>6 vehicles. It looks like vehicle auctioned. It looks</p> <p>7 like vehicles ready for auction. It looks like tow</p> <p>8 vehicles approved. It looks like total amount from</p> <p>9 auction. It looks like the auction fees, et cetera.</p> <p>10 <b>Q. So if it was necessary in the budget process to</b></p> <p>11 <b>total the number of vehicles that were checked into the</b></p> <p>12 <b>budget log over the year, one way to generate that</b></p> <p>13 <b>number would be to use this document?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. Okay. Let's do --</b></p> <p>16 <b>(Discussion off the record.)</b></p> <p>17 MR. JOHNSON: I'm going to mark this as</p> <p>18 Exhibit L.</p> <p>19 (Deposition Exhibit L was marked for</p> <p>20 identification.)</p> <p>21 <b>Q. (By Mr. Johnson) Are you familiar with this</b></p> <p>22 <b>document?</b></p> <p>23 A. No, I'm not, but it appears to be a</p> <p>24 compilation.</p> <p>25 <b>Q. Have you ever seen a document like this one</b></p>
<p style="text-align: right;">79</p> <p>1 but that's the sort of thing it would be used for.</p> <p>2 <b>Q. Okay. So you would use these documents to</b></p> <p>3 <b>compile the numbers about -- the performance numbers</b></p> <p>4 <b>that are included in the annual budget for the DWI</b></p> <p>5 <b>Seizure Program?</b></p> <p>6 MR. CREECY: Object to the form. It kind</p> <p>7 of mischaracterized what his testimony is, and I don't</p> <p>8 think he's ever testified that he uses these documents.</p> <p>9 So when you said "You would use these documents," he's</p> <p>10 not using these documents. I think he testified to</p> <p>11 (inaudible).</p> <p>12 <b>Q. (By Mr. Johnson) Have you ever used these</b></p> <p>13 <b>documents?</b></p> <p>14 A. No, I don't use them on a regular basis. I've</p> <p>15 seen them, but it's nothing that I can remember using.</p> <p>16 <b>Q. Do you not use them on a regular basis or do</b></p> <p>17 <b>you never use them?</b></p> <p>18 A. I don't remember using them.</p> <p>19 <b>Q. But it's possible you have used them?</b></p> <p>20 A. It's possible.</p> <p>21 <b>Q. If you were to use them or were to have used</b></p> <p>22 <b>them, what would you have used them for?</b></p> <p>23 A. I would have been adding the numbers up to get</p> <p>24 an annual number from the monthly reports.</p> <p>25 <b>Q. And what kind of numbers could you conclude</b></p>	<p style="text-align: right;">81</p> <p>1 <b>before?</b></p> <p>2 A. I don't, but this looks more like operational</p> <p>3 information than fiscal information.</p> <p>4 <b>Q. Okay. So if I wanted to ask someone about this</b></p> <p>5 <b>document, somebody from the DWI Seizure Unit would be</b></p> <p>6 <b>able to answer my question?</b></p> <p>7 A. Possibly.</p> <p>8 <b>Q. Okay. I just want to go back very quickly to</b></p> <p>9 <b>Exhibit K and I just want to make sure that it's clear,</b></p> <p>10 <b>you have in fact seen documents of this sort as part of</b></p> <p>11 <b>the annual budgeting process?</b></p> <p>12 A. I have seen documents -- I've seen this</p> <p>13 document. I've seen this format. I don't -- it's not</p> <p>14 something that I use. I would guess it's used for the</p> <p>15 budget process, but I have not -- I don't remember using</p> <p>16 this data at all, even though I have seen the format.</p> <p>17 <b>Q. Are you aware of anybody else using this data?</b></p> <p>18 A. I would guess that people within the DWI</p> <p>19 Seizure Unit use the data.</p> <p>20 <b>Q. Yeah. And I don't want you to guess, I want to</b></p> <p>21 <b>know if you personally are aware of anybody else using</b></p> <p>22 <b>this data?</b></p> <p>23 A. No.</p> <p>24 <b>Q. But you have seen this data or you have</b></p> <p>25 <b>seen -- you have seen documents of this sort?</b></p>

<p style="text-align: right;">126</p> <p>1 spend \$600,000 and then you fund a million dollars in  2 fiscal year '17, then you can spend up to \$1,400,000 and  3 still be within your budget allocation.  4 <b>Q. And of those prior years' appropriations for  5 fiscal year for the DWI Seizure Program, how much of  6 those appropriations remains to be spent?</b>  7 A. I don't know. I would have to look at the CAFR  8 to double-check.  9 <b>Q. What is the CAFR?</b>  10 A. The Comprehensive Annual Financial Report.  11 <b>Q. Where in that report would you find that  12 information?</b>  13 A. In the budget actual data.  14 <b>Q. How would you find it in that data?</b>  15 A. You would look at Fund 280 budget-to-actual  16 data in the CAFR. It's online.  17 <b>Q. Is that broken out separately for the DWI  18 Seizure Program in the comprehensive annual financial  19 report?</b>  20 A. I'm trying to visualize it in my head. I think  21 it's called seizure monies, and this is the only seizure  22 fund. This is the only seizure monies that are  23 remaining since we no longer are in the federal program.  24 <b>Q. Now, recognizing that you would have to check  25 that to determine the exact amount that remains</b></p>	<p style="text-align: right;">128</p> <p>1 <b>Q. As far as -- you're not aware of any change in  2 the format of the presentation of this information?</b>  3 A. No. It should have been in fiscal year '18.  4 <b>Q. If you're looking at Exhibit Q, the proposed  5 budget for fiscal year '18, it's on Page 129. Is this  6 the same table that's on Page 55 in the 2017 budget?</b>  7 A. Yes.  8 <b>Q. Do you see the introductory material on this  9 page or at the beginning of the page, Page 2018?</b>  10 A. Yes, it's down at the bottom of 127.  11 <b>Q. Do you see the graph?</b>  12 A. No, the graph is not there. When you asked for  13 the same format, I was assuming numbers.  14 <b>Q. Do you know why this has been reformatted in  15 this way?</b>  16 A. No.  17 <b>Q. Do you know who would know that?</b>  18 A. DFAS Budget put it together.  19 <b>Q. By that, do you mean Linda?</b>  20 A. I don't know if she would have put this  21 together or not, but somebody from her division.  22 <b>Q. Okay. This refers to a transfer at 3.3 -- I'm  23 looking at Page 55 of the 2017 annual budget. It refers  24 to a transfer of 3.3 million dollars to the Capital  25 Acquisition Fund for an educational building and vehicle</b></p>
<p style="text-align: right;">127</p> <p>1 <b>appropriated, do you know if that amount is greater than  2 \$100,000?</b>  3 A. I don't remember.  4 <b>Q. Did you look at that information when you were  5 determining what that line item in the 2018 proposed  6 budget should be?</b>  7 A. I would have likely done that, yes.  8 (Deposition Exhibit R was marked for  9 identification.)  10 <b>Q. (By Mr. Johnson) Okay. I'm going to mark an  11 Exhibit R. Are you familiar with this document?</b>  12 A. Yes.  13 <b>Q. What is this?</b>  14 A. This is the approved budget for fiscal year  15 '17.  16 <b>Q. And what is the difference between an approved  17 budget and a proposed budget?</b>  18 A. It's been passed by the city council.  19 <b>Q. I'd like to turn to Page 55. At the top of  20 this page, there's information about the Law Enforcement  21 Protection Project Fund. Was similar information  22 provided in the 2018 proposed budget?</b>  23 A. Yes.  24 <b>Q. Was it provided in this format?</b>  25 A. Yeah, I think so.</p>	<p style="text-align: right;">129</p> <p>1 <b>purchase. Do you know what that's referring to?</b>  2 A. Yes.  3 <b>Q. What is it referring to?</b>  4 A. It's referring to a transfer of funds from Fund  5 280 to the CIP Fund for vehicles and to work on the  6 education building. There's a separate appropriation.  7 I think you've got the copy of that.  8 <b>Q. Is that a transfer for DWI Seizure Program  9 revenue?</b>  10 A. Yes, partially, not 100 percent of it. Part of  11 it was transferred -- part of it was funded by the  12 insurance that we were talking about earlier that was  13 being coded to Fund 280 and part of it was DWI seizure  14 revenues.  15 <b>Q. Is it possible to separate how much comes from  16 each of those funding sources?</b>  17 A. Yes.  18 <b>Q. How would you do that?</b>  19 A. I've got a work paper that I could check.  20 <b>Q. Okay. If you could please share that with us.</b>  21 MR. JOHNSON: Counsel, will you make sure  22 we get that?  23 MR. CREECY: Yes.  24 <b>Q. (By Mr. Johnson) Do you know about how much of  25 that is DWI Seizure Program revenue?</b></p>

<p style="text-align: right;">130</p> <p>1 A. It seems like maybe 1.8 million of the 3.3.  2 I'm not positive.  3 <b>Q. Okay. And the educational building that's</b>  4 <b>referenced here, what is that?</b>  5 A. That is a building that was acquired by the  6 city for APD use for training.  7 <b>Q. And what kind of training would happen in that</b>  8 <b>building?</b>  9 A. They do scenario training, some other things.  10 I'm not terribly familiar with it.  11 <b>Q. And is that training associated with the DWI</b>  12 <b>Seizure Program?</b>  13 A. It would be associated with DWI Enforcement.  14 <b>Q. Is it solely associated with DWI Enforcement?</b>  15 A. Not solely, but it is associated with DWI  16 Enforcement.  17 <b>Q. In what way is it associated with DWI</b>  18 <b>Enforcement?</b>  19 A. Training. I believe they do training partially  20 there.  21 <b>Q. And how would that be related to DWI</b>  22 <b>Enforcement?</b>  23 MR. HIBNER: Objection to the form.  24 Go ahead and answer.  25 A. The -- I mean, cadets are trained in</p>	<p style="text-align: right;">132</p> <p>1 <b>Q. Who in operations review would know the answer</b>  2 <b>to that?</b>  3 A. I could get you a name. It could be David  4 Murray, but I'm not sure.  5 <b>Q. If you look at -- turn to -- if you look at the</b>  6 <b>table here on Page 55, the column "Fiscal Year '16 -</b>  7 <b>Estimated Actual Expenses," and the number for total</b>  8 <b>miscellaneous project revenue is \$3,710 -- well, no,</b>  9 <b>scratch that question.</b>  10 <b>Look at Page 183. Do you have any</b>  11 <b>involvement in producing the numbers on this page?</b>  12 A. No, I don't have anything to do with the Legal  13 Division -- Department.  14 <b>Q. Turning back to Page 55, do you have any</b>  15 <b>involvement in the cost of -- table of numbers for Law</b>  16 <b>Enforcement Protection Fund that's on Page 55?</b>  17 A. I would have been involved in that, yes.  18 <b>Q. Can you explain to me what these different</b>  19 <b>columns on the chart refer to. "Fiscal Year '15 Actual</b>  20 <b>Expenses," what does that refer to?</b>  21 A. Those are fiscal year '15 actual numbers. The  22 top portion of it would have been the revenues. Your  23 fund balance at the beginning of the year would have  24 been \$3,137,000 -- or no, the beginning balance was  25 \$5,399,000. There would have been additional revenues</p>
<p style="text-align: right;">131</p> <p>1 everything, including DWI Enforcement. They're the  2 people that are going to be out in early commands taking  3 calls for service and doing, you know, (inaudible) type  4 enforcement. So every cadet that we have is trained in  5 DWI Enforcement.  6 <b>Q. So apart from cadets receiving their general</b>  7 <b>training, which we include some training about DWI</b>  8 <b>Enforcement, is this building used in any way that is</b>  9 <b>related to the DWI Seizure Program?</b>  10 MR. HIBNER: Again, object to the form.  11 A. I'm not sure.  12 <b>Q. (By Mr. Johnson) What was the cost of the</b>  13 <b>building?</b>  14 A. I don't know. I don't work with the CIP funds  15 directly, but that's from 305.  16 <b>Q. Now, this vehicle purchase that's referenced</b>  17 <b>here, what will those vehicles be used for?</b>  18 A. The vehicles will be used like any other police  19 vehicle.  20 <b>Q. Are those vehicles going to be assigned to the</b>  21 <b>DWI Unit?</b>  22 A. I don't know who they're being assigned to.  23 <b>Q. Do you know who would know that?</b>  24 A. Operations Review probably are the people who  25 assign vehicles.</p>	<p style="text-align: right;">133</p> <p>1 during the year of \$3,137,000.  2 <b>Q. And then the next column says, "Fiscal Year '16</b>  3 <b>Original Budget." What does that refer to?</b>  4 A. Okay. That would have been the fiscal year '16  5 original budget. There can be budget amendments  6 throughout the year either adding appropriations to it  7 or taking appropriations away from it. So you have an  8 original budget and you also have a revised ending  9 budget.  10 <b>Q. Okay. And then the revised -- the next one,</b>  11 <b>"Fiscal Year '16 Revised Budget," that would be</b>  12 <b>reflecting any revisions to the budget that were made</b>  13 <b>over the course of the year?</b>  14 A. Yes.  15 <b>Q. Okay. And then it says, "Fiscal Year '16</b>  16 <b>Actual Expenses." Those are actual amounts that were</b>  17 <b>expended over the course of the year; is that correct?</b>  18 A. They're estimated.  19 <b>Q. Estimated?</b>  20 A. Yeah, it would have been done before fiscal  21 year '16 was completed. So the fiscal year '15 are  22 actual expenses; fiscal year '16 are going to be  23 estimate partway through the year.  24 <b>Q. Okay. What would be necessary to make</b>  25 <b>adjustments to the budget for Fund 280?</b></p>

<p style="text-align: right;">134</p> <p>1 A. In this particular instance, the difference was</p> <p>2 the 3.3 million dollars that we discussed earlier.</p> <p>3 <b>Q. Okay.</b></p> <p>4 A. That was done as a separate appropriation</p> <p>5 through the city council.</p> <p>6 <b>Q. Looking at the paragraph at the top, the third</b></p> <p>7 <b>paragraph, the various components within the Law</b></p> <p>8 <b>Enforcement Protection Fund include the Law Enforcement</b></p> <p>9 <b>Protection Program, the \$550,000; the DWI ordinance</b></p> <p>10 <b>enforcement at \$950,000. That \$950,000 number, is that</b></p> <p>11 <b>referring to revenue or expenses?</b></p> <p>12 A. They budget the same revenue dollars as they do</p> <p>13 expenditure dollars (inaudible) in Fund 280. So the 950</p> <p>14 would have been the amount budgeted to revenues; it also</p> <p>15 would have been the total amount, including the two</p> <p>16 transfers, budgeted for expenditures.</p> <p>17 <b>Q. Okay. And at what time would that \$950,000</b></p> <p>18 <b>have been budgeted?</b></p> <p>19 A. January of 2016 I believe is when the process</p> <p>20 started on that.</p> <p>21 <b>Q. And you said that includes both revenues and</b></p> <p>22 <b>expenditures. What happens if revenues are not as high</b></p> <p>23 <b>as they're expected?</b></p> <p>24 A. Then we have more appropriation than what we</p> <p>25 have actuals. So when we look at the expenditures,</p>	<p style="text-align: right;">136</p> <p>1 most important.</p> <p>2 <b>Q. And if more revenue comes in, can you pay for</b></p> <p>3 <b>more things?</b></p> <p>4 A. If more revenue comes in, then yes, our</p> <p>5 expenditures can increase.</p> <p>6 <b>Q. And what happens if less revenue comes in?</b></p> <p>7 A. If less revenue comes in, then we don't -- we</p> <p>8 have less availability to expend funds.</p> <p>9 <b>Q. And then how do you prioritize which things to</b></p> <p>10 <b>spend money on?</b></p> <p>11 A. Generally, we look at the direct expenses</p> <p>12 first, and then we see if there are anything over and</p> <p>13 above the direct costs of maintaining the program.</p> <p>14 <b>Q. When you refer to the direct expenses, do you</b></p> <p>15 <b>mean things we talked about earlier like supplies, tow</b></p> <p>16 <b>fees and --</b></p> <p>17 A. Lease.</p> <p>18 <b>Q. And the lease?</b></p> <p>19 A. Yes.</p> <p>20 <b>Q. Now, in that prioritization process, where does</b></p> <p>21 <b>salary fall?</b></p> <p>22 A. Since it is done as a transfer, it's going to</p> <p>23 be prioritized.</p> <p>24 <b>Q. You mean it would be given priority above other</b></p> <p>25 <b>expenses?</b></p>
<p style="text-align: right;">135</p> <p>1 we're looking at the criteria of maintaining a positive</p> <p>2 fund balance and being within the appropriated numbers.</p> <p>3 So if you appropriate more than you use, then it's just</p> <p>4 there.</p> <p>5 <b>Q. So when the Legislature proposes \$950,000,</b></p> <p>6 <b>that's not actually an amount that the program will</b></p> <p>7 <b>necessarily spend?</b></p> <p>8 A. It may be, it may not be.</p> <p>9 <b>Q. How does the program determine how much money</b></p> <p>10 <b>in the planned budget to spend in the next coming year</b></p> <p>11 <b>if that's not an actual estimate of the expenses?</b></p> <p>12 A. Well, it is a rough estimate of expenses, but</p> <p>13 it can fluctuate based on the available fund balance and</p> <p>14 what's been appropriated in the past.</p> <p>15 <b>Q. Are you available -- are you involved in the</b></p> <p>16 <b>process of determining how much revenue is available to</b></p> <p>17 <b>be expended?</b></p> <p>18 A. I'm involved in working with the DFAS budget</p> <p>19 team and making projections, yes.</p> <p>20 <b>Q. Are there ever expenses that are proposed and</b></p> <p>21 <b>disapproved because there's not enough revenue in the</b></p> <p>22 <b>DWI Seizure Program to pay for them?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. And how is that determination made?</b></p> <p>25 A. We try to prioritize which expenses would be</p>	<p style="text-align: right;">137</p> <p>1 A. Probably. We've not had this problem before.</p> <p>2 This will be the first year that I'm looking at making</p> <p>3 that kind of decision.</p> <p>4 <b>Q. Now, we looked earlier at the appropriation.</b></p> <p>5 <b>One of the items -- line items on the appropriation is</b></p> <p>6 <b>for salaries, for a transfer to the General Fund. If</b></p> <p>7 <b>you did not make that transfer to the General Fund,</b></p> <p>8 <b>would you have to go back to the city council to change</b></p> <p>9 <b>that appropriation?</b></p> <p>10 A. I'm not sure. That is one of the issues that</p> <p>11 would need to be discussed.</p> <p>12 <b>Q. So it would certainly be an issue that would</b></p> <p>13 <b>have to be determined?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. Would that issue come up if you were to instead</b></p> <p>16 <b>not make other expenditures?</b></p> <p>17 A. Repeat that.</p> <p>18 <b>Q. If instead of repurposing salary money, you</b></p> <p>19 <b>were to instead repurpose or not purchase vehicles that</b></p> <p>20 <b>you were going to purchase through the DWI Seizure</b></p> <p>21 <b>Program, would you need to go to the city council -- or</b></p> <p>22 <b>consider going to city council at that point?</b></p> <p>23 A. No.</p> <p>24 <b>Q. So you would only need to consider going to the</b></p> <p>25 <b>city council if you weren't going to use the money to</b></p>

<p style="text-align: right;">138</p> <p>1 pay salaries?</p> <p>2 A. I'm not sure that that is the case. I'll have</p> <p>3 to go to Budget and discuss that issue with them.</p> <p>4 There's a possibility that I might.</p> <p>5 <b>Q. You would only need to consider the question of</b></p> <p>6 <b>whether you would have to go to city council if you were</b></p> <p>7 <b>not paying the salaries out of the DWI seizure revenue?</b></p> <p>8 A. Yes. The only -- we would not need to -- that</p> <p>9 is not an issue if we paid these salaries out of the DWI</p> <p>10 transfer.</p> <p>11 <b>Q. Okay. Now, what kind of expenses would you</b></p> <p>12 <b>look at as the first priority of things you might cut if</b></p> <p>13 <b>you had a decline in revenue?</b></p> <p>14 A. Probably we'll get with Budget for that</p> <p>15 discussion.</p> <p>16 <b>Q. Would you talk to Linda about that?</b></p> <p>17 A. That would be one of the people I would discuss</p> <p>18 it with, yes.</p> <p>19 <b>Q. Who else would you discuss it with?</b></p> <p>20 A. Probably Jerry.</p> <p>21 <b>Q. Who is Jerry?</b></p> <p>22 A. He's the budget director.</p> <p>23 <b>Q. Is that Linda's supervisor?</b></p> <p>24 A. Yes.</p> <p>25 <b>Q. Mr. Romero?</b></p>	<p style="text-align: right;">140</p> <p>1 A. We were operating through fund balance.</p> <p>2 <b>Q. So for the last few years, the program has been</b></p> <p>3 <b>spending -- has been spending down the positive fund</b></p> <p>4 <b>balance that was accumulated in previous years?</b></p> <p>5 A. Yes.</p> <p>6 MR. JOHNSON: I'm going to look at that</p> <p>7 e-mail. What did he say?</p> <p>8 (Discussion off the record.)</p> <p>9 (Deposition Exhibit S was marked for</p> <p>10 identification.)</p> <p>11 <b>Q. (By Mr. Johnson) I'm going mark this as</b></p> <p>12 <b>Exhibit S. Are you familiar with this document?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. What is it?</b></p> <p>15 A. We were discussing the appropriation that we</p> <p>16 talked about earlier at 3.3 million dollars.</p> <p>17 <b>Q. And it is the e-mail from you to Linda Cutler</b></p> <p>18 <b>at the DFAS. Would you read the e-mail.</b></p> <p>19 A. "Please have 3.3 million appropriated for</p> <p>20 vehicles in the DWI lot. That should allow us to expend</p> <p>21 the entire balance available from DWI Ordinance</p> <p>22 Enforcement Program in Fund 280."</p> <p>23 <b>Q. Can you explain what you're talking about in</b></p> <p>24 <b>this e-mail.</b></p> <p>25 A. Basically, that was the fund balance that we</p>
<p style="text-align: right;">139</p> <p>1 A. Yes.</p> <p>2 <b>Q. What would you propose in that situation?</b></p> <p>3 A. It depends on the dollar amount we're talking</p> <p>4 about. If we're talking large numbers, you could make</p> <p>5 the lease payments, move the lease payments. If you</p> <p>6 were talking smaller numbers, you could move something</p> <p>7 else.</p> <p>8 <b>Q. So what you're saying is if there was a large</b></p> <p>9 <b>deficit to make up, you might move the lease payments?</b></p> <p>10 A. It's a possibility.</p> <p>11 <b>Q. Where would you move the lease payments to?</b></p> <p>12 A. The General Fund.</p> <p>13 <b>Q. And you would have to -- would you have to find</b></p> <p>14 <b>an account and revenue string to attach that to?</b></p> <p>15 A. Well, there's not a revenue stream in the</p> <p>16 General Ledger -- I'm sorry, in the General Fund, and I</p> <p>17 would need to find an account to code it to.</p> <p>18 <b>Q. And as a result, there would be less available</b></p> <p>19 <b>to spend on other items?</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. You mentioned that the revenue has been</b></p> <p>22 <b>declining. Have you had to make these kinds of</b></p> <p>23 <b>decisions over the past few years?</b></p> <p>24 A. No.</p> <p>25 <b>Q. Why not?</b></p>	<p style="text-align: right;">141</p> <p>1 had available to move out to use for CIP purposes and</p> <p>2 vehicles.</p> <p>3 <b>Q. What do you mean by "CIP purposes"?</b></p> <p>4 A. The transfer went from 280 into Fund 305. 305</p> <p>5 was the Capital Improvements Fund. That's where the</p> <p>6 transfer was made in order to purchase the vehicles that</p> <p>7 were purchased in the --</p> <p>8 <b>Q. So is it accurate to say that the purpose of</b></p> <p>9 <b>that transfer was to expend the entire balance of the</b></p> <p>10 <b>DWI Seizure Program?</b></p> <p>11 A. The purpose of the transfer was to help finance</p> <p>12 equipment that we needed.</p> <p>13 MR. HIBNER: I'm sorry -- again, this</p> <p>14 doesn't have a Bates number on it. Can you tell me</p> <p>15 where you got this e-mail. And some of the other</p> <p>16 e-mails you've referenced are the same.</p> <p>17 MR. JOHNSON: This e-mail was provided to</p> <p>18 us by the city in original format, so it's not</p> <p>19 Bates-numbered because it's a Microsoft Outlook file</p> <p>20 that can't be Bates-numbered.</p> <p>21 MR. FROMMER: It's an electronic format</p> <p>22 file.</p> <p>23 MR. HIBNER: It was provided in discovery,</p> <p>24 though?</p> <p>25 MR. JOHNSON: Yes.</p>

<p style="text-align: right;">142</p> <p>1 MR. HIBNER: I'm just curious because</p> <p>2 usually we get a Bates number.</p> <p>3 MR. FROMMER: I understand.</p> <p>4 (Discussion off the record.)</p> <p>5 <b>Q. (By Mr. Johnson) Can you read the first</b></p> <p>6 <b>sentence that says -- or look at the first sentence that</b></p> <p>7 <b>says, "Please have 3.3 million dollars appropriated for</b></p> <p>8 <b>vehicles in the DWI lot." Is that accurate, with the</b></p> <p>9 <b>money to be appropriated for that and not for the</b></p> <p>10 <b>educational building?</b></p> <p>11 A. At one time, we had -- this was back in March</p> <p>12 of '15. At one time, we were looking at trying to use</p> <p>13 the parking lot in the educational building as the</p> <p>14 impound lot, and the more we studied it, the less it</p> <p>15 seemed to be doable.</p> <p>16 <b>Q. And that change did not influence your decision</b></p> <p>17 <b>to assign these revenues from the DWI Program to this</b></p> <p>18 <b>purpose?</b></p> <p>19 A. No.</p> <p>20 <b>Q. Was there any discussion of whether the money</b></p> <p>21 <b>should be transferred in light of the fact that it would</b></p> <p>22 <b>no longer be used for a DWI seizure lot?</b></p> <p>23 A. I think there were probably discussions on the</p> <p>24 transfer. This was a 3.3 million-dollar appropriation</p> <p>25 that went through the city council, so, you know, it</p>	<p style="text-align: right;">144</p> <p>1 <b>think the majority of that building was paid for by the</b></p> <p>2 <b>insurance money, is that something that you -- would be</b></p> <p>3 <b>reflected in this worksheet that you have mentioned?</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. Okay. And is the same true in your belief of</b></p> <p>6 <b>the vehicles?</b></p> <p>7 A. Yes, absolutely the vehicles I believe comply</p> <p>8 with the city ordinance.</p> <p>9 <b>Q. No, but is the majority of the funding for</b></p> <p>10 <b>vehicles coming from the insurance payments?</b></p> <p>11 A. No, the majority of the funding for the</p> <p>12 vehicles was coming through the DWI Seizure Program.</p> <p>13 <b>Q. Okay. So it's your -- this is an allocation</b></p> <p>14 <b>that you've made of the 3.3 million dollars, some of it</b></p> <p>15 <b>coming from -- going to vehicles and some of it going to</b></p> <p>16 <b>the building?</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. And is that allocation reflected in anything</b></p> <p>19 <b>other than this worksheet?</b></p> <p>20 A. You can track it through the accounts. It's</p> <p>21 only summarized on this worksheet as I'm aware of.</p> <p>22 <b>Q. Okay. So how would you find the account</b></p> <p>23 <b>number -- we're looking again at the DWI General Ledger.</b></p> <p>24 <b>How would you find the account number associated with</b></p> <p>25 <b>the insurance?</b></p>
<p style="text-align: right;">143</p> <p>1 would have been discussed.</p> <p>2 <b>Q. Would you have been privy to those discussions?</b></p> <p>3 A. Probably some of them.</p> <p>4 <b>Q. Do you remember those discussions?</b></p> <p>5 A. We just discussed whether that would comply</p> <p>6 with the city ordinance. And actually, most of the</p> <p>7 monies that we used for the educational building came</p> <p>8 from the insurance transfers.</p> <p>9 <b>Q. This says that, again, "This transfer would</b></p> <p>10 <b>allow us to expend the entire balance available to the</b></p> <p>11 <b>DWI Ordinance Enforcement Program"?</b></p> <p>12 A. Yes, and some of that balance that was</p> <p>13 available came from the insurance revenue stream which</p> <p>14 we spoke about earlier.</p> <p>15 <b>Q. Now, just to be clear, that insurance revenue</b></p> <p>16 <b>stream in the General -- is that reflected in the DWI</b></p> <p>17 <b>General Ledger?</b></p> <p>18 A. Yes, in a separate account.</p> <p>19 <b>Q. What account would that be reflected in?</b></p> <p>20 A. I'd have to look. It would be --</p> <p>21 (Discussion off the record.)</p> <p>22 A. But yeah, the discussions were that it would be</p> <p>23 appropriated based on the funding sources that we had</p> <p>24 going into that, dependent upon 280.</p> <p>25 <b>Q. (By Mr. Johnson) And when you say that you</b></p>	<p style="text-align: right;">145</p> <p>1 A. Do a data sort and go to the account starting</p> <p>2 with 4.</p> <p>3 <b>Q. Do you want me to scroll up or down?</b></p> <p>4 A. I need to see the account description next to</p> <p>5 it.</p> <p>6 <b>Q. So -- all right.</b></p> <p>7 A. Okay. The 453001, police-forfeited funds,</p> <p>8 those would be direct expenditures dealing with the DWI</p> <p>9 Seizure Program. It is the auctions and it is the</p> <p>10 settlement. Any of the other accounts that you see</p> <p>11 there are going to be peripheral-type things not</p> <p>12 directly related to that program, although it's kind of</p> <p>13 lumped in on site.</p> <p>14 <b>Q. Okay.</b></p> <p>15 A. And the larger account number, excluding the</p> <p>16 police forfeiture funds, will be the insurance.</p> <p>17 <b>Q. So which of these would be the insurance?</b></p> <p>18 A. Probably the -- I think the other miscellaneous</p> <p>19 revenue I believe is what was (inaudible). I mean, you</p> <p>20 have got the one account that is the direct DWI Seizure</p> <p>21 Program that are receipts, and anything else that's</p> <p>22 there is the secondary peripheral.</p> <p>23 <b>Q. Were you concerned that these insurance</b></p> <p>24 <b>payments were related in any way to the DWI Seizure</b></p> <p>25 <b>Program?</b></p>

<p style="text-align: right;">146</p> <p>1 A. Parts of them could be. It dealt with salvaged 2 vehicles through insurance.</p> <p>3 <b>Q. How would that be related to the DWI Program?</b></p> <p>4 A. Vehicles are very much related to the DWI 5 Enforcement, and it's the expenditures that we were 6 looking at on these.</p> <p>7 <b>Q. I don't understand what you're saying.</b></p> <p>8 A. Okay. We had two different flows: We've got 9 the direct DWI seizure revenues and then we have the 10 direct expenditures against them. Then we have the 11 peripheral revenues that are also flowing into the same 12 Fund 280, and we have the peripheral-type expenditures 13 there.</p> <p>14 <b>Q. Okay. So --</b></p> <p>15 A. We do believe that all of the expenditures that 16 we made through the direct DWI Seizure Program complied 17 with the city ordinance.</p> <p>18 <b>Q. And when you say "salvaged vehicles," are you</b> 19 <b>referring to police vehicles?</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. And they would have been salvaged because they</b> 22 <b>were in an accident?</b></p> <p>23 A. Many of them.</p> <p>24 <b>Q. Why else would they be salvaged?</b></p> <p>25 A. They have what they call beyond economic</p>	<p style="text-align: right;">148</p> <p>1 A. Yes.</p> <p>2 <b>Q. Was there a discussion of that fact?</b></p> <p>3 A. Budget, APD, we were all aware of that fact, 4 yes.</p> <p>5 <b>Q. And was anybody concerned about that fact?</b></p> <p>6 A. Well, there's always concern, but then you're 7 back to budgeting and using monies on a year-to-year 8 basis as opposed to having a -- you know, almost a 9 fund -- an excess fund.</p> <p>10 <b>Q. Do you know who first proposed spending the</b> 11 <b>entire balance in the fund?</b></p> <p>12 A. I don't remember who is the first person. I 13 mean, it was discussed at budget and was discussed at 14 APD.</p> <p>15 <b>Q. And was there any discussion of why that</b> 16 <b>decision was being made?</b></p> <p>17 A. Yes, our General Fund budget has been very, 18 very, very tight the last year or two, so they were 19 looking for other sources.</p> <p>20 <b>Q. Who is "they"?</b></p> <p>21 A. Budget and APD.</p> <p>22 <b>Q. So is it fair to say that the remaining balance</b> 23 <b>in the DWI Seizure Program account was used to make up a</b> 24 <b>budget shortfall for the general Albuquerque Police</b> 25 <b>Department budget?</b></p>
<p style="text-align: right;">147</p> <p>1 repair. If Fleet Management, which is outside of APD, 2 makes an estimate of what it's going to cost to repair a 3 car versus what the fair market value of the car is, 4 unless you get to some point, they don't continue to 5 make repairs on them.</p> <p>6 <b>Q. Okay. And these vehicles, would they be</b> 7 <b>associated with the DWI Unit?</b></p> <p>8 A. Some of them would be. All of them would be 9 associated with DWI Enforcement.</p> <p>10 <b>Q. Now, I just want to go back again to Exhibit S.</b> 11 <b>Again, I just want to ask you about the statement that</b> 12 <b>it would expend the entire balance available. Is there</b> 13 <b>any other discussion about how this would expend the</b> 14 <b>entire balance?</b></p> <p>15 A. Well, we had if a fund balance coming in, we 16 had estimated revenues, we had estimated expenditures. 17 So we had an estimate of the fund balance, and the 3.3 18 million is pretty close to what we had in the fund 19 balance at the time.</p> <p>20 <b>Q. Just to be clear, this would mean that the</b> 21 <b>amount available -- for instance, if revenue was to</b> 22 <b>drop, then the amount available to dip into to pay for</b> 23 <b>expenses in following years would no longer be</b> 24 <b>available? The fund balance, that money for that</b> 25 <b>purpose, would no longer be available?</b></p>	<p style="text-align: right;">149</p> <p>1 MR. HIBNER: Object to form 2 Go ahead and answer.</p> <p>3 A. Repeat the question.</p> <p>4 <b>Q. (By Mr. Johnson) Is it fair to say that the</b> 5 <b>remaining fund balance in the DWI Seizure Program</b> 6 <b>account was used to make up a shortfall in the general</b> 7 <b>Police Department budget?</b></p> <p>8 MR. HIBNER: Continue the objection.</p> <p>9 A. Define shortfall. Yes, we needed additional 10 equipment that we did not have budgeted to purchase. It 11 fell within the criteria of the city ordinance, so it 12 was used for those purposes, basically, to purchase 13 vehicles, primarily.</p> <p>14 <b>Q. (By Mr. Johnson) Now, you mentioned that</b> 15 <b>there's a budget -- there's tightness in the general</b> 16 <b>budget. How does that affect if you had to, for</b> 17 <b>instance, move the DWI lease payments from the DWI</b> 18 <b>account to the General Fund?</b></p> <p>19 A. It's going to be another expenditure that we 20 are required to cover with our available resources.</p> <p>21 MR. JOHNSON: Okay. Why don't we do 22 another e-mail. Let's look at -- I'm going to mark this 23 as Exhibit T.</p> <p>24 (Deposition Exhibit T was marked for 25 identification.)</p>

<p style="text-align: right;">154</p> <p>1 <b>Q. Okay. What's reflected in this document?</b></p> <p>2 A. This is the budget-to-actual report that shows</p> <p>3 up in the CAFR report.</p> <p>4 <b>Q. Okay. And these are adjustments that are being</b></p> <p>5 <b>made to the budget-to-actual report?</b></p> <p>6 A. Yes. This first one that you're looking at is</p> <p>7 probably a draft. What the fund manager did would have</p> <p>8 been set up her chain of command to be reviewed by</p> <p>9 somebody else, and there were probably adjustments made.</p> <p>10 <b>Q. Why would these kind of adjustments be made?</b></p> <p>11 A. Because in the draft that the fund accountant</p> <p>12 did, she apparently included the LEPF funds in with the</p> <p>13 lease forfeited funds.</p> <p>14 Look down at that second page. What they</p> <p>15 were moving over is a project ID that starts with</p> <p>16 51_5161000, so it wasn't part of the DWI Seizure</p> <p>17 Program. It looks like the draft had put it into the</p> <p>18 seizure program, and probably her supervisor noticed and</p> <p>19 it was being moved to the Insurance Debt Collection</p> <p>20 Program, where 5161000 was.</p> <p>21 MR. JOHNSON: Just for the clarity of the</p> <p>22 record, I'll mark this set of documents as Exhibit W.</p> <p>23 (Deposition Exhibit W was marked for</p> <p>24 identification.)</p> <p>25 MR. JOHNSON: I'll mark this as Exhibit X.</p>	<p style="text-align: right;">156</p> <p>1 <b>Q. But you don't recall this discussion?</b></p> <p>2 A. No, but it says that they were going pay for</p> <p>3 this from salary savings, but if it was paid for from</p> <p>4 salary savings, it would have been 110, not 280.</p> <p>5 <b>Q. Do you know if these vehicles were in fact</b></p> <p>6 <b>ultimately paid for using salary savings?</b></p> <p>7 A. I don't know. I would have to look.</p> <p>8 MR. JOHNSON: Why don't we take a quick</p> <p>9 five-minute break, and then if I have anything further,</p> <p>10 I'll ask it, and if not, I'll be done.</p> <p>11 (Recess taken - eight minutes.)</p> <p>12 MR. JOHNSON: Okay. I think we're ready.</p> <p>13 <b>Q. (By Mr. Johnson) All right. You mentioned</b></p> <p>14 <b>earlier that there are officer salaries with the DWI</b></p> <p>15 <b>Seizure Program that are not funded through their</b></p> <p>16 <b>program. What types of officers did you have in mind</b></p> <p>17 <b>when you were referring to that?</b></p> <p>18 A. Any of the officers who were directly assigned</p> <p>19 to the DWI Seizure Program, those officers are budgeted</p> <p>20 in the General Fund, not the DWI Seizure Program. We</p> <p>21 wanted to expand those. Specifically, we wanted to</p> <p>22 expand that there are other officers doing DWI</p> <p>23 Enforcement work.</p> <p>24 <b>Q. How many officers are assigned to the DWI</b></p> <p>25 <b>Seizure Program?</b></p>
<p style="text-align: right;">155</p> <p>1 (Deposition Exhibit X was marked for</p> <p>2 identification.)</p> <p>3 <b>Q. (By Mr. Johnson) What is the nature of this</b></p> <p>4 <b>e-mail?</b></p> <p>5 A. It looks like Anthony Montano was asking for</p> <p>6 the balance that he had in his LEPF account.</p> <p>7 <b>Q. Can you explain what that means.</b></p> <p>8 A. Okay. There are multiple programs in the Fund</p> <p>9 280, one of them being the LEPF funds, and that's how we</p> <p>10 generally fund travel and training. Back during this</p> <p>11 time period, we were advocating to the different</p> <p>12 commanders so they had an idea of how much in the way of</p> <p>13 training funds they had.</p> <p>14 <b>Q. So does this pertain to the DWI Seizure</b></p> <p>15 <b>Program?</b></p> <p>16 A. No.</p> <p>17 MR. JOHNSON: I am going to mark this as</p> <p>18 Exhibit Y.</p> <p>19 (Deposition Exhibit Y was marked for</p> <p>20 identification.)</p> <p>21 <b>Q. (By Mr. Johnson) Are you familiar with this</b></p> <p>22 <b>document?</b></p> <p>23 A. It's from 2014. I don't remember this</p> <p>24 particular e-mail, but we were discussing this, a</p> <p>25 purchase.</p>	<p style="text-align: right;">157</p> <p>1 A. I don't know. I'd have to look. I'm not sure.</p> <p>2 <b>Q. How would you get that information?</b></p> <p>3 A. We would check with Payroll.</p> <p>4 MR. JOHNSON: Why don't we look at this</p> <p>5 e-mail here. I'm going to mark it, I believe, as</p> <p>6 Exhibit Z. That's a good final exhibit.</p> <p>7 (Deposition Exhibit Z was marked for</p> <p>8 identification.)</p> <p>9 (Discussion off the record.)</p> <p>10 <b>Q. (By Mr. Johnson) Are you familiar with this</b></p> <p>11 <b>document?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. What is it?</b></p> <p>14 A. There were discussions that the county wanted</p> <p>15 to negotiate an MOU dealing with the program. They</p> <p>16 wanted us to pay them basically monies for the seized</p> <p>17 vehicles that they brought in.</p> <p>18 <b>Q. Was any kind of agreement like that ever</b></p> <p>19 <b>executed?</b></p> <p>20 A. No.</p> <p>21 <b>Q. If you read the e-mail from Wheeler -- Gregory</b></p> <p>22 <b>Wheeler to Stan Harada, talking -- three individuals, it</b></p> <p>23 <b>says, "I talked to Stan about this and he thinks the 25</b></p> <p>24 <b>percent function is probably safe." Do you know what</b></p> <p>25 <b>he's referring to there?</b></p>

158

1 A. Well, the county was asking us to do some sort  
2 of accounting for them based on if they seized a  
3 vehicle, what did it go through the auction for, and  
4 then they wanted us to put some sort of valuation of  
5 what it cost us to fund the program. And those were the  
6 discussions. There was never an agreement.

7 **Q. So what was the 25 percent function referring**  
8 **to?**

9 A. I believe that was referring to they were  
10 thinking maybe a 75 percent cost of what it would have  
11 cost the city to do the work on the legal, on the  
12 impound lot, on all of those sorts of things.

13 **Q. So would it just be fair to say it's an**  
14 **assumption that the costs associated with the programs,**  
15 **with the Legal, the impound lot, would amount to about**  
16 **25 percent of the value that would be brought in by**  
17 **auctioning the car?**

18 A. No, about 75 percent. The 25 percent I believe  
19 was what the county was asking that we base any payments  
20 to them. This was from 2012, so I'm not real clear on  
21 it, but I remember the discussions, and it never went  
22 anywhere.

23 **Q. Okay. But to be clear, the 25 percent**  
24 **assumption is that the costs of the program amount to**  
25 **about 75 percent of the value from the auctioning off**

159

1 **the car?**

2 A. That was the discussion back in 2012.

3 **Q. Okay. Why would Greg Wheeler have been talking**  
4 **to Stan Harada about that?**

5 A. I believe both of those people worked in Legal.

6 **Q. Do you know Stan Harada?**

7 A. Me?

8 **Q. Yes.**

9 A. I've met him, yeah.

10 **Q. When have you met him?**

11 A. Through one or two special programs that we  
12 worked together briefly. I don't even remember what it  
13 was.

14 **Q. Would you ever talk to Dan about the DWI**  
15 **Seizure Program?**

16 A. I don't think so unless he was in one of these  
17 meetings that we met with the county.

18 **Q. Do you know if he was in any of the meetings?**

19 A. I don't remember.

20 **Q. Do you know currently what Stan's role is in**  
21 **connection with the DWI Program?**

22 A. I do not.

23 **Q. Okay. Do you remember back in 2012 what Stan's**  
24 **involvement was in the negotiations for the agreement?**

25 A. I do not, I just remember the county came to us

160

1 with a proposal. We sat down with them for several  
2 meetings. We did some objections. We did some  
3 worksheets. Then the county, as I recall, decided they  
4 were going to start their own program, and this never  
5 happened, and then I don't think they ever started their  
6 own program.

7 MR. JOHNSON: Okay. I don't think I have  
8 any more questions about that. Let's do -- I think  
9 we're done. I think we're done. What do you think?

10 MR. FROMMER: I don't know.

11 MR. JOHNSON: All right. Let's do one  
12 quick -- let's just -- double A.

13 (Discussion off the record.)

14 MR. JOHNSON: Sorry, fellas.

15 (Deposition Exhibit AA was marked for  
16 identification.)

17 **Q. (By Mr. Johnson) Do you recognize this**  
18 **document?**

19 MR. JOHNSON: I marked an e-mail as Exhibit  
20 AA and I provided it to the witness and asked if he  
21 recognizes this document.

22 A. Again, it's from 2009. I don't remember this  
23 specific e-mail. But the apparent -- at that time, Mark  
24 Sandoval was the Budget Director. He was in the  
25 position Mr. Romero is now. And apparently, Legal had

161

1 asked to fund another position out of DWI, and I didn't  
2 know whether Lisa's position on that was yes or no. So  
3 at that time, Chief Schultz was my boss.

4 **Q. (By Mr. Johnson) And it says that, "Legal says**  
5 **that we have agreed to fund another position for them."**  
6 **Why would it be necessary for you to agree for a**  
7 **position to be funded?**

8 A. Depending on who this was coming from, we  
9 wouldn't have funds, I'm sure. Mr. Sandoval was just  
10 asking if we agreed or not. If we agreed, there was no  
11 problem; if we disagreed, then there needed be some sort  
12 of resolution to what the outcome was going to be.

13 **Q. How would that be resolved if there was**  
14 **disagreement with who would make -- who would resolve**  
15 **that?**

16 A. Likely the CIO, but --

17 **Q. Okay. Has there ever been such a disagreement?**

18 A. Between us and Legal? Not that I remember.

19 MR. JOHNSON: Well, I think we're done, so  
20 thank you. And it's been a pleasure.

21 MR. CREECY: And no questions.

22 COURT REPORTER: Read and sign?

23 MR. CREECY: I don't know. This is the  
24 first deposition in this case, right?

25 MR. JOHNSON: Yes.

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 7**

Arlene Harjo v. The City of Albuquerque  
Linda Cutler-Padilla

May 16, 2017  
1:16-cv-01113-JB-WPL

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

ARLENE HARJO,                     )  
   )  
Plaintiff,                         )  
   )  
VS.                                 ) No. 1:16-cv-01113-JB-WPL  
   )  
   )  
THE CITY OF ALBUQUERQUE,     )  
   )  
Defendant.                        )

DEPOSITION OF LINDA CUTLER-PADILLA

May 16, 2017

9:02 a.m.

Trattel Court Reporting and Videography  
609 12th Street NW  
Albuquerque, New Mexico 87102

PURSUANT TO THE NEW MEXICO RULES OF CIVIL  
PROCEDURE, this deposition was:

TAKEN BY: ROBERT JOHNSON, ESQ.  
ATTORNEY FOR PLAINTIFF

REPORTED BY: ANNE D. WIESE, RPR, NM CCR #301  
TRATTEL COURT REPORTING  
609 12TH STREET NW  
ALBUQUERQUE, NEW MEXICO 87102

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. The City of Albuquerque  
Linda Cutler-Padilla

May 16, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES 2 FOR THE PLAINTIFF: 3 MR. ROBERT JOHNSON, ESQ. 4 MR. ROBERT FROMMER, ESQ. 5 INSTITUTE FOR JUSTICE 6 901 North Glebe Road 7 Suite 900 8 Arlington, VA 22203 9 rjohnson@ij.org 10 rfrommer@ij.org 11 12 FOR THE DEFENDANT: 13 MR. KYLE HIBNER, ESQ. 14 City of Albuquerque 15 City Attorney's Office 16 P.O. Box 2248 17 Albuquerque, New Mexico 87103-2248 18 khibner@cabq.gov 19 20 MR. JAMES GRUBEL, ESQ. 21 Walz &amp; Associates, P.C. 22 133 Eubank Boulevard NE 23 Albuquerque, NM 87123-2709 24 jgrubel@walzandassociates.com 25 26 ALSO PRESENT: 27 AMITA KANCHERLA (APPEARING TELEPHONICALLY)</p>	<p style="text-align: right;">Page 4</p> <p>1 LINDA CUTLER-PADILLA, 2 having been first duly sworn, testified as follows: 3 EXAMINATION 4 BY MR. JOHNSON: 5 Q. Okay. So would you mind stating your name for 6 the record. 7 A. My full name is Linda Cutler-Padilla. 8 Q. Can you spell that for the court reporter. 9 A. L-I-N-D-A, C-U-T-L-E-R, P-A-D-I-L-L-A. 10 Q. And have you ever been deposed before? 11 A. No, I have not. 12 Q. Okay. 13 A. I mean, I understood -- I mean, I'm just 14 throwing this out: I didn't realize that possibly it 15 was a deposition for the body-worn camera. We did RFP, 16 and I guess I got called in by our internal -- no, our 17 Investigator General Department, and I didn't realize 18 that was a -- someone told me that was a deposition in 19 my office the other day. I was like, "Oh, I didn't know 20 that." So -- 21 Q. So just for the record, I'm Robert Johnson from 22 the Institute for Justice. We've got Robert Frommer 23 from the Institute for Justice. 24 MR. GRUBEL: I'm James Grubel on behalf of 25 the City of Albuquerque.</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX 2 PAGE 3 EXAMINATION OF AUBREY THOMPSON 4 By Mr. Johnson..... 4 5 6 EXHIBITS 7 8 NO. DESCRIPTION 9 A Spreadsheet..... 40 10 B E-mail communication..... 66 11 C Transaction table..... 82 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 MR. HIBNER: I'm Kyle Hibner on behalf of 2 the City of Albuquerque. 3 Q. (By Mr. Johnson) Okay. It sounds like you 4 haven't done a deposition quite like this before. 5 There's just a few quick things just before we jump in. 6 The court reporter will be taking down 7 what you say. It's hard for her if we talk over each 8 other, so, you know, I'll let you finish your answers 9 before I jump in with another question, and similarly, 10 if I'm answering -- if I'm saying a question, you can 11 wait until I finish to jump in with an answer. 12 The other thing is it's -- just it's hard 13 for her to take down, you know, nods or head shakes. So 14 if you're -- if the answer is yes, you can say yes. If 15 the answer is no, you can say no, and that way, we'll 16 get a clear record. 17 Your attorney is here, and he'll, you know, 18 make objections as he feels appropriate. Unless he 19 tells you not to answer, you should then feel free to go 20 ahead and answer, notwithstanding any objection, all 21 right? 22 A. Okay. 23 Q. Does that all make sense? 24 A. Yes, it does. 25 Q. Is there any reason why you wouldn't be able to</p>

2 (Pages 2 to 5)

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Arlene Harjo v. The City of Albuquerque  
Linda Cutler-Padilla

May 16, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 6</p> <p>1 offer your testimony here today?</p> <p>2 A. No.</p> <p>3 <b>Q. Okay. What is your current position at the</b></p> <p>4 <b>City of Albuquerque?</b></p> <p>5 A. I'm Executive Budget Analyst.</p> <p>6 <b>Q. How long have you been in that position?</b></p> <p>7 A. Since September of 2013.</p> <p>8 <b>Q. Is that the first position that you held at the</b></p> <p>9 <b>City of Albuquerque?</b></p> <p>10 A. No, I've held four different titles I believe</p> <p>11 at the city.</p> <p>12 <b>Q. Okay. What was your title before Executive</b></p> <p>13 <b>Budget Analyst?</b></p> <p>14 A. Do you want me to start from when I started</p> <p>15 with the city and work forward?</p> <p>16 <b>Q. Why don't we work the other way.</b></p> <p>17 A. Backward? Okay.</p> <p>18 <b>Q. Yeah.</b></p> <p>19 A. So I was an Accountant II at Senior Affairs,</p> <p>20 and then I was a Fiscal Officer at Family and Community,</p> <p>21 then I was an Accountant II at Family and Community, and</p> <p>22 then a Fiscal Analyst at Corrections and Detention.</p> <p>23 <b>Q. And when did you start at the City of</b></p> <p>24 <b>Albuquerque?</b></p> <p>25 A. August of 2001.</p>	<p style="text-align: right;">Page 8</p> <p>1 verified the numbers against our audit report, the CAFR.</p> <p>2 <b>Q. Which numbers were those?</b></p> <p>3 A. They were the expenditure and revenue numbers</p> <p>4 he had submitted.</p> <p>5 <b>Q. Just so we're clear, you mentioned earlier the</b></p> <p>6 <b>transfer and you said Fund 220. Did you mean 280?</b></p> <p>7 A. 280, I'm sorry. Fund 280, 110, different</p> <p>8 funds.</p> <p>9 <b>Q. Apart from the documents that you prepared</b></p> <p>10 <b>about the transfer and then the numbers from Aubrey, did</b></p> <p>11 <b>you look at any other documents as you were preparing</b></p> <p>12 <b>the depo?</b></p> <p>13 A. No.</p> <p>14 <b>Q. Apart from the city's attorneys, did you talk</b></p> <p>15 <b>to anybody about the deposition?</b></p> <p>16 A. Not specifically about the deposition.</p> <p>17 Obviously, I've been talking, like with Aubrey, you</p> <p>18 know, we've been talking about the fund trading and,</p> <p>19 more specifically, the DWI Seizure Program, and then</p> <p>20 obviously, my direct supervisor, Gerald.</p> <p>21 And then I did work with another Budget</p> <p>22 Analyst. She's like a Lead Budget Analyst, and she did</p> <p>23 help me verify the numbers that I have are correct.</p> <p>24 <b>Q. Who is that Lead Budget Analyst?</b></p> <p>25 A. Patsy Pino.</p>
<p style="text-align: right;">Page 7</p> <p>1 <b>Q. And what is your educational background?</b></p> <p>2 A. I have a bachelor's. I focused on actually</p> <p>3 marketing and human resources.</p> <p>4 <b>Q. And where did you earn your bachelor's?</b></p> <p>5 A. From the University of New Mexico, the Anderson</p> <p>6 School of Management.</p> <p>7 <b>Q. Is that your only post-high school degree?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. Okay. Do you have any certifications?</b></p> <p>10 A. No.</p> <p>11 <b>Q. Okay. Who is your supervisor in your current</b></p> <p>12 <b>position?</b></p> <p>13 A. Gerald Romero.</p> <p>14 <b>Q. Okay. And do you supervise anybody?</b></p> <p>15 A. No.</p> <p>16 <b>Q. Okay. And did you do anything to prepare for</b></p> <p>17 <b>today's deposition?</b></p> <p>18 A. I've obviously met with our city attorneys,</p> <p>19 then I really just looked over the document that I had</p> <p>20 prepared prior to this.</p> <p>21 <b>Q. Which document was that?</b></p> <p>22 A. It was the -- we do the transfer from the Fund</p> <p>23 220 for positions, so I pulled in all the labor</p> <p>24 distribution for that and verified it. And then I also</p> <p>25 did verify some work that Aubrey Thompson had done. I</p>	<p style="text-align: right;">Page 9</p> <p>1 <b>Q. And what sort of things did you talk about with</b></p> <p>2 <b>Aubrey?</b></p> <p>3 A. More specifically, because I don't -- I didn't</p> <p>4 have a lot of history on this DWI seizure, so more</p> <p>5 asking him exactly what the program did. I mean, I had</p> <p>6 a vague understanding; that was more it.</p> <p>7 There was some things with employees --</p> <p>8 house employees, because I got more -- it was more in</p> <p>9 the Legal Department, so I had to talk with Patsy since</p> <p>10 she's the Budget Analyst over the Legal Department. But</p> <p>11 positions -- like I couldn't find some people, and so</p> <p>12 trying to find out who held that position prior to the</p> <p>13 current person, it was more of that verification.</p> <p>14 <b>Q. And were you able to find all the information</b></p> <p>15 <b>that you were looking for?</b></p> <p>16 A. Yes.</p> <p>17 <b>Q. Okay. And what were the -- what sorts of</b></p> <p>18 <b>things did you talk about with Gerald?</b></p> <p>19 A. More just letting him know what was going on so</p> <p>20 he was aware, you know, especially when at first -- when</p> <p>21 Aubrey actually first had sent -- I don't know what you</p> <p>22 call it, but the questions, I guess, for better sake of</p> <p>23 the word. When Aubrey forwarded that to me, I ended up</p> <p>24 forwarding it to my boss just to let him know that there</p> <p>25 would be -- I would have to be working on this and then</p>

3 (Pages 6 to 9)

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Arlene Harjo v. The City of Albuquerque  
Linda Cutler-Padilla

May 16, 2017  
1:16-cv-01113-JB-WPL

Page 10	Page 12
<p>1 getting assistance.</p> <p>2 <b>Q. Okay. Great.</b></p> <p>3 <b>And you mentioned the city's DWI Seizure</b></p> <p>4 <b>Program. Just so we're clear that we're talking about</b></p> <p>5 <b>the same thing, what is your understanding what that</b></p> <p>6 <b>program is?</b></p> <p>7 A. What I understand is that the city has an</p> <p>8 ordinance that if there's repeat offenders, I guess,</p> <p>9 that have had prior DWIs, if they get pulled over and</p> <p>10 they ever have a previous or their license has been</p> <p>11 revoked, that the city is able to seize the car and hold</p> <p>12 it until that person goes through the court system.</p> <p>13 <b>Q. Is that -- sorry, go ahead.</b></p> <p>14 A. And now I was just going to say, from what I</p> <p>15 understand, then, obviously, if they are not convicted</p> <p>16 again, we give the car back. If they are, then we end</p> <p>17 up auctioning that car off.</p> <p>18 <b>Q. And from your understanding, is that program</b></p> <p>19 <b>part of the Legal Department or is that part of the APD?</b></p> <p>20 A. I believe it's a combination of both. I mean,</p> <p>21 obviously, the Legal Department has to handle the legal</p> <p>22 aspect of the case and then the people at APD are the</p> <p>23 ones that currently manage the secure -- you know,</p> <p>24 keeping the car secure and just knowing that -- I guess</p> <p>25 the case number and knowing what cars belong to whom.</p>	<p>1 A. We're tasked each year with developing the</p> <p>2 city's operating budget, which is primarily, you know,</p> <p>3 any operating funds, which would be the General Fund. I</p> <p>4 also oversee the Solid Waste Department, which is,</p> <p>5 again, our price fund, so I'm -- we're just tasked with</p> <p>6 building that budget, working with the departments and,</p> <p>7 you know, working with our economist on the revenue that</p> <p>8 he projects.</p> <p>9 And then, you know, we present it to our</p> <p>10 administration, put the budget together, present it to</p> <p>11 the council, and then once it gets approved, I mean,</p> <p>12 that's what's appropriate and that's what gives the</p> <p>13 department the authority to spend. So then after that,</p> <p>14 I'm just tasked with managing, you know, what they</p> <p>15 spend, making sure they're not going over the</p> <p>16 appropriation.</p> <p>17 And, you know, we work pretty close -- more</p> <p>18 so with the fiscal managers, you know, and/or the</p> <p>19 directors at times, especially, you know, if there's a</p> <p>20 need that they have. Like, they'll present it to us,</p> <p>21 and if it's within their appropriation -- you know, if</p> <p>22 not, you know, we try to just work with them, or we have</p> <p>23 to tell them no sometimes.</p> <p>24 But we work closely with the</p> <p>25 administration, with the CAO -- I can't think of the</p>
Page 11	Page 13
<p>1 <b>Q. What sort of revenue sources are associated</b></p> <p>2 <b>with the DWI Seizure Program?</b></p> <p>3 A. Well, the main revenue is from, you know, they</p> <p>4 get -- you know, I guess they get the proceeds from</p> <p>5 either the auctions of when they sell the car -- you</p> <p>6 know, when they -- a car is -- becomes the city's, and</p> <p>7 we sell it, and then any kind of settlement, towing, if</p> <p>8 the person has to pay back towing fees.</p> <p>9 And then I know other revenue that they put</p> <p>10 into 280 kind of outside of the DWI Program, if</p> <p>11 officers, you know, their own personal -- or not their</p> <p>12 personal car but the police car, if they wreck it, our</p> <p>13 insurance -- you know, they get reimbursed on that. And</p> <p>14 they'll put that money back into the program.</p> <p>15 And not necessarily that program, they just</p> <p>16 kind of keep it in our Special Revenue Fund. That's</p> <p>17 what 280 is: It's a special revenue.</p> <p>18 <b>Q. Are there any other sources of revenue that are</b></p> <p>19 <b>associated with the program?</b></p> <p>20 A. The only other one that I recall is, you know,</p> <p>21 we'll earn interest, you know, earn money. The city</p> <p>22 works with the banks to have a certain interest, but</p> <p>23 that's all that I'm aware of specific for the program.</p> <p>24 <b>Q. And I should back up a second. What are your</b></p> <p>25 <b>job responsibilities as the Executive Budget Analyst?</b></p>	<p>1 title; he's a CAO something administrative officer. I'm</p> <p>2 drawing a blank; I'm sorry. But and then we</p> <p>3 just -- sometimes have special projects that, you know,</p> <p>4 we're tasked with if we have to do an analysis of</p> <p>5 something.</p> <p>6 You know, our main role is -- really, our</p> <p>7 main role is really to monitor the expenditures. We do</p> <p>8 a lot with positions since labor is such a high cost of</p> <p>9 the city. You know, within -- APD is obviously another</p> <p>10 one of my departments, so whatever they have like fund</p> <p>11 (inaudible), Special Revenue Fund. So my primary role</p> <p>12 with that fund -- you know, I don't -- a lot of my time</p> <p>13 isn't spent on this fund, with the exception of, like at</p> <p>14 the end of the fiscal year, the Accounting Department</p> <p>15 reconciles it, verifies expenditures; they'll send it to</p> <p>16 me to look it over and make sure everything is lined up</p> <p>17 in the right project. I do a lot of that.</p> <p>18 And then when the budget cycle comes, I</p> <p>19 work with the APD's Fiscal Manager and kind of get</p> <p>20 his -- what he's projecting revenues to come in at. And</p> <p>21 I -- you know, sometimes I'll verify that, like, "Where</p> <p>22 did you get that number? Why do you think your revenue</p> <p>23 is going to be there? Why is it dropping?" He'll give</p> <p>24 me just what he knows.</p> <p>25 Sometimes the departments know more than we</p>

4 (Pages 10 to 13)

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Linda Cutler-Padilla

May 16, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 14</p> <p>1 do, sometimes just from -- you know, like the chief 2 works a lot with the legislation, sometimes in public 3 safety issues. 4 <b>Q. So have you had conversations with Aubrey, the</b> 5 <b>Fiscal Manager for the APD, about declines in revenue</b> 6 <b>from the DWI Seizure Program?</b> 7 A. We have. You know, a lot of it -- you know, it 8 was actually stated, which is actually good news, that 9 they haven't had as many I guess people that they've had 10 to pull over who have previous -- that's the primary 11 reason why he says it has dropped. 12 <b>Q. How does the drop in revenue affect the</b> 13 <b>budgeting process?</b> 14 A. Well, obviously, if the revenue is dropped, 15 their expenditures should be dropping as well. You 16 know, this is really honestly the first year, definitely 17 going into FY18, that we are concerned about the 18 expenditures and, you know, having a discussion with 19 them about what we're going to do with the program. 20 I think APD's expectation is that the 21 General Fund will absorb any overage. 22 COURT REPORTER: Could you repeat that. 23 A. The General Fund, their General Fund budget 24 will absorb any expenditures that exceed the revenues 25 that they're getting in for 280.</p>	<p style="text-align: right;">Page 16</p> <p>1 <b>spent?</b> 2 A. Yes, from what I've seen right now as I look at 3 the budget. And this will be in FY18, which starts July 4 1st. 5 <b>Q. What sort of -- well, what sorts of changes to</b> 6 <b>the expenditures for the program have been made in light</b> 7 <b>of the declines in revenues?</b> 8 A. Like I said, currently, we haven't made a lot 9 of -- we haven't -- we've had discussions. We've had 10 discussions during our CAO hearing; we've had 11 discussions with the Chief of Police. But to actually 12 sit down and, you know, cut them, we haven't, from the 13 budget office, made any of those cuts. 14 <b>Q. And is it accurate to say there haven't been</b> 15 <b>cuts made because it's been possible so far to draw</b> 16 <b>out -- to draw down fund balance from previous years?</b> 17 A. Yes. 18 <b>Q. Okay. For how long has the program been</b> 19 <b>drawing down that fund balance?</b> 20 A. For me, I know it's been the last two fiscal 21 years. And what happens is, like I said, when 22 Accounting does the reconciliation at the end of the 23 fiscal year, they do what's called a budget to actual, 24 and that's where we'll see that, you know, our -- and 25 it's really our budget. The budget amount has not -- is</p>
<p style="text-align: right;">Page 15</p> <p>1 But like I said, we haven't really 2 actually -- we've been working on our current FY18 3 budget, and probably within I would say the next month 4 or so, we'll be sitting down with APD and really coming 5 up with a plan on how we're going to manage. 6 <b>Q. So you said this is the first year that that's</b> 7 <b>been a concern. Does that mean in the past that the</b> 8 <b>program's revenues have covered its expenditures?</b> 9 A. Yes, and then they've had within that fund, you 10 know, previous years -- and this goes back before my 11 time where they've had -- maybe they've had extra 12 revenues, more revenues than expenditures at the end of 13 the fiscal year, so it has dropped what we call fund 14 balance. So there's been -- my last two years, I've 15 actually had to do -- we call it a cleanup, where we've 16 taken from fund balance and made it whole again. 17 But this year for sure is like the first 18 year that I see that the revenues just are not going to 19 cover what they've historically spent in that program. 20 COURT REPORTER: I'm sorry, what? 21 A. This year, the revenues that Aubrey has 22 projected, it will not cover what they've historically 23 spent in that program. 24 <b>Q. (By Mr. Johnson) And this is the first year</b> 25 <b>that the revenues won't cover what they've historically</b></p>	<p style="text-align: right;">Page 17</p> <p>1 understated compared to what they've actually been 2 appropriated. So we've had to fix that appropriation, 3 you know, because, you know, our appropriation should 4 always be what -- at least what they spent. You can't 5 have an appropriation less than what they've spent. 6 <b>Q. When you say the last two fiscal years, would</b> 7 <b>that be '17 and '16?</b> 8 A. It would be '16 and '15. 9 <b>Q. Okay. So the program has been spending down</b> 10 <b>the fund balance in fiscal years '15 and '16?</b> 11 A. Correct, yes, correct. 12 <b>Q. When you say it's necessary to go in and fix</b> 13 <b>the budget amounts in the budget to actual process, how</b> 14 <b>does that process work?</b> 15 A. Well, like we have kind of -- we have what's 16 called appropriation, which is -- basically, it's the 17 authority to spend the money. So we have legislation 18 where we appropriate the money. We say that they're 19 going to -- we'll give them like a million dollars. And 20 we base that -- because we think we're going to get a 21 million dollars in revenue, we'll allow them to spend a 22 million in expenditures. 23 So we'll appropriate -- you know, which 24 appropriation is the budget -- we'll appropriate the 25 million dollars, but if in that year they actually spend</p>

5 (Pages 14 to 17)

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Arlene Harjo v. The City of Albuquerque  
Linda Cutler-Padilla

May 16, 2017  
1:16-cv-01113-JB-WPL

Page 18

1 a million one hundred, we have to then go back and  
2 appropriate another hundred because the appropriation  
3 needs to match what they're -- what they spent.

4 And as long as they have the fund balance,  
5 you know, we can do that. If they don't, then it's  
6 actually -- I don't know what the right word is, but  
7 legally, we can't do that. They can't spend more than  
8 what they've been appropriated.

9 **Q. Does that appropriation happen for the next**  
10 **fiscal year or is it done retroactively for the previous**  
11 **fiscal year?**

12 A. Well, we'll -- what we do is we clean it up so  
13 it's in that fiscal year. We'll clean it up for that  
14 fiscal year. So before we finish our audit and it gets  
15 published, we've done a cleanup and fixed it.

16 **Q. Is that done through a new budget resolution?**

17 A. Yes.

18 **Q. Has it been necessary to do that kind of**  
19 **cleanup for recent fiscal years?**

20 A. I'm sorry, restate that. I don't understand.

21 **Q. I'm just trying to find out, did you do that**  
22 **kind of a fiscal cleanup, for instance, in fiscal year**  
23 **'16?**

24 A. Yes. I mean, when we did the budget to actual  
25 and we verified the numbers, we had to do a cleanup.

Page 19

1 **Q. Maybe you do it every fiscal year. I guess**  
2 **what I'm wondering is, do you do it every year or is it**  
3 **something that happens some years?**

4 A. Just some years. We don't always have to do  
5 that.

6 **Q. But it did happen this fiscal year, '16?**

7 A. It did happen in '16 and then in FY15 and FY16.

8 **Q. Okay. And does that only happen when revenue**  
9 **is less than expenditures?**

10 A. Well, it's not usually when it's revenue, and  
11 it's usually if our -- what we've appropriated, which is  
12 kind of hard to explain, but our appropriation is  
13 what -- you know, that's our authority for them to spend  
14 the money.

15 So if the appropriation is less than what  
16 they've spent, we have to clean it up. It  
17 doesn't -- it's not necessarily revenue. Revenue still  
18 might be okay, it's just the appropriation piece of it  
19 is less than what they've actually spent that year, and  
20 then we have to fix the appropriation. And as long as  
21 they have a fund balance, we're able to do that.

22 **Q. And when it happened in fiscal year '16 and**  
23 **'15, in both of those years, was it because they had**  
24 **spent more than the appropriation?**

25 A. Correct.

Page 20

1 **Q. And how is the amount of the appropriation set?**  
2 **What is the process for setting that amount?**

3 A. For Fund 280?

4 **Q. Yes.**

5 A. It is through the fiscal manager or through the  
6 department, APD. They provide us what they anticipate  
7 getting in revenues.

8 **Q. And that -- when you say "revenues," do you**  
9 **mean revenues from the DWI Program?**

10 A. Correct.

11 **Q. So the amount of the appropriation is based on**  
12 **the amount of expected revenue from the DWI Program?**

13 A. Correct.

14 **Q. I want to go back -- I was asking you about**  
15 **sources of revenue, and you mentioned the auctions of**  
16 **vehicles, and you mentioned settlements, and you**  
17 **specifically mentioned tow fees. But would the**  
18 **settlements also include other types of payments, like**  
19 **storage fees and agreements to pay money for the city to**  
20 **recover the car?**

21 A. It's possible. I'm not totally clear on  
22 what -- you know, what the settlement fees would  
23 include. APD or the Legal Department handles the  
24 actual -- I guess what they charge people, but I'm not  
25 familiar with that.

Page 21

1 **Q. Okay. But so the -- their sources of revenue**  
2 **that you're aware of are the auction fees or the auction**  
3 **revenues, the amounts paid in settlements, and then the**  
4 **insurance payments?**

5 A. Right. And I believe like the insurance is  
6 actually -- I mean, it's kind of separate I believe from  
7 the DWI, it's just where in the past, APD has -- if a  
8 police officer wrecks a car, whether it was bought with  
9 some other funds or if they wreck a car and we get --  
10 you know, just like your personal car, if you wreck it  
11 and the insurance company will pay you book value or  
12 whatever, they'll give us that, and we'll put it back in  
13 that fund just to kind of hold it.

14 And that's kind of where -- you get fund  
15 balance from that as well. Then as we build it, then  
16 we're able to go and replace it, buy other vehicles as  
17 we get enough to purchase new vehicles.

18 But the actual auction money, I believe  
19 when they sell a seized car after it's been getting --  
20 the city can take ownership of it, when they get  
21 that -- when they go to auction and sell it, that  
22 revenue is just strictly the DWI seizure money, and I  
23 guess anything that a person pays in fees for either --  
24 you know, because the city obviously has to tow the car  
25 from wherever they pick it up, and then they charge the

6 (Pages 18 to 21)

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Arlene Harjo v. The City of Albuquerque  
Linda Cutler-Padilla

May 16, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 22</p> <p>1 person for that fee and then maybe any court fees. I</p> <p>2 honestly don't know exactly what goes into that whole</p> <p>3 process.</p> <p>4 <b>Q. Sure.</b></p> <p>5 <b>So what types of expenses are then paid</b></p> <p>6 <b>using that revenue stream?</b></p> <p>7 A. Well, the expenses are to run the program or</p> <p>8 buy supplies. We actually pay a lease on a -- on the</p> <p>9 property where we're holding the vehicles. You know,</p> <p>10 that's probably the biggest cost.</p> <p>11 And then we do -- it's an expense to the</p> <p>12 program, but we do a transfer from that Fund 280 into</p> <p>13 110 to recover a part of the expense of the people that</p> <p>14 work that program, that are specifically involved in</p> <p>15 managing that program.</p> <p>16 <b>Q. Is it fair to say that's a transfer in order to</b></p> <p>17 <b>pay salaries of people who work in the program?</b></p> <p>18 A. Yeah, or to cover the cost of the people. It's</p> <p>19 not a one-to-one because the way we set up that</p> <p>20 transfer, you know, at the beginning -- that's something</p> <p>21 I guess I'm tasked with also -- is I go in and I figure</p> <p>22 out what positions are currently active. We have what's</p> <p>23 called a salary master, which is where everybody is</p> <p>24 budgeted with their rate of pay at that point in time,</p> <p>25 what benefits they've elected, and then I'll figure out</p>	<p style="text-align: right;">Page 24</p> <p>1 we don't adjust that transfer at any given time.</p> <p>2 <b>Q. When you say they use it all up, how is that</b></p> <p>3 <b>accounted for?</b></p> <p>4 A. I mean, the transfer just basically becomes</p> <p>5 revenue. It goes into revenue, into 110. But it's not</p> <p>6 a straight one for one. Like, we don't track that</p> <p>7 revenue dollar to a dollar of expense of an employee, it</p> <p>8 just becomes part of the 110 revenue.</p> <p>9 It just helps, you know, because 110</p> <p>10 revenue only covers -- I mean, the revenue we get for</p> <p>11 110 is primarily gross receipts tax, and if we don't,</p> <p>12 you know, get any less, you know, we look for other --</p> <p>13 you know, our economist goes out and tries to find other</p> <p>14 ways; otherwise, we do have to sometimes do a hold on</p> <p>15 positions or hiring freeze.</p> <p>16 But in the case of the Fund 280, those</p> <p>17 positions are working this program, you know, whether it</p> <p>18 be from APD or the Legal Department, and those positions</p> <p>19 are actually funded in 110, but the revenue helps offset</p> <p>20 the cost of those positions working on this program.</p> <p>21 <b>Q. So why is it that they don't pay for positions</b></p> <p>22 <b>directly out of Fund 280?</b></p> <p>23 A. It's just -- I don't know the exact answer.</p> <p>24 It's just a practice the city has done. Special Revenue</p> <p>25 Fund, it's a what we call a project fund. Every year,</p>
<p style="text-align: right;">Page 23</p> <p>1 what the cost of that is, and that's the transfer.</p> <p>2 Actuals might come in different because if</p> <p>3 a different person came into that position mid-year,</p> <p>4 they might be at a higher rate this year. They might</p> <p>5 have elected a family plan for insurance instead of a</p> <p>6 couple or a single.</p> <p>7 So it doesn't get reimbursed dollar for</p> <p>8 dollar, it's just kind of a -- you know, it's -- at one</p> <p>9 point in time -- it's really like February is when I'm</p> <p>10 building the budget. And we leave it; we don't adjust</p> <p>11 it or true it up.</p> <p>12 <b>Q. If the amount of the transfer ends up being</b></p> <p>13 <b>greater than the cost of paying for the salaries and</b></p> <p>14 <b>benefits of the positions that are covered, what happens</b></p> <p>15 <b>to the excess funds?</b></p> <p>16 A. It just ends up in the 110. I mean, they use</p> <p>17 it all up, to be honest with you, but they -- if it was</p> <p>18 in excess -- real excess money, it would just fall to</p> <p>19 their fund balance in 110.</p> <p>20 So like I said, they use it all up because</p> <p>21 the transfer -- I don't know if I said this, but the</p> <p>22 transfer doesn't cover like overtime. If a position has</p> <p>23 overtime, we don't -- that transfer doesn't take into</p> <p>24 account any overtime. You know, if our insurance</p> <p>25 benefit rate goes up, you know, the next year, you know,</p>	<p style="text-align: right;">Page 25</p> <p>1 it doesn't close at the end of the fiscal year. So like</p> <p>2 I said, if there is a balance remaining, they can roll</p> <p>3 it over and use it the next year.</p> <p>4 So we kind of treat it similar to like we</p> <p>5 do the GO bonds. If we get GO bonds and they go out and</p> <p>6 build a building -- or, you know, the project managers</p> <p>7 that work in our capital improvement program, we don't</p> <p>8 pay their salaries direct from a GO bond funding, but we</p> <p>9 do a labor recovery kind of similar, so we treat the</p> <p>10 special revenue funds and project funds the same way.</p> <p>11 It's just a practice that someone way before my time set</p> <p>12 into motion.</p> <p>13 <b>Q. So what positions are funded out of that</b></p> <p>14 <b>transfer?</b></p> <p>15 A. There's three positions -- yeah, three</p> <p>16 positions in APD and there are -- I don't exactly know</p> <p>17 their job title. So the DWI Coordinator, the DWI</p> <p>18 Seizure Assistant, I believe, and then there's four in</p> <p>19 the Legal Department.</p> <p>20 Right now, we're covering -- it's four</p> <p>21 positions in Legal. Two are city -- two city attorneys</p> <p>22 and then two paralegals, but then there's also other</p> <p>23 people. I know there's like a legal secretary that</p> <p>24 helps with the program that isn't covered. And then in</p> <p>25 police, I know there is a management analyst that does</p>

7 (Pages 22 to 25)

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Arlene Harjo v. The City of Albuquerque  
Linda Cutler-Padilla

May 16, 2017  
1:16-cv-01113-JB-WPL

Page 26

1 some work on this program that we don't cover -- or that  
2 transfer doesn't cover that person's salary.

3 **Q. When you say not covered, you mean those**  
4 **persons' salaries are not included in --**

5 A. Right. When I do the transfer, I don't include  
6 those people as part of the salary or the budgeted  
7 amount of the transfer.

8 **Q. Now, when you're calculating the amount of the**  
9 **transfer, do you look to both salary and benefits?**

10 A. Correct.

11 **Q. Do you -- you said you don't look to overtime?**

12 A. No.

13 **Q. And do you look to the person -- to the annual**  
14 **salary and benefits of the person who fills the**  
15 **position?**

16 A. Yes.

17 **Q. So the idea would be that the transfer would**  
18 **cover the entire annual salary and benefits of the**  
19 **person who fills the position?**

20 A. Correct.

21 **Q. Are there any people who would fill multiple**  
22 **positions so that only a part of their salary would be**  
23 **paid for by the transfer?**

24 A. Well, we've had, if I'm understanding your  
25 question correctly -- most certainly in Legal, they've

Page 27

1 had -- and I -- you know, I can't tell you how that  
2 department works, it's not one of my departments, but  
3 they've -- where we've covered a city position, let's  
4 say Bob, and Bob, mid-year, leaves and John takes over,  
5 that transfer would then start covering John's salary,  
6 and we don't end up going and getting both John and  
7 Bob's salary. Bob might have just worked three months  
8 in that fiscal year but then they replaced him with  
9 someone else.

10 **Q. But there's never been a situation where -- to**  
11 **your knowledge, where there's, say, this hypothetical,**  
12 **Bob is paid half out of the transfer and half out of**  
13 **some other source of revenue?**

14 A. In terms of the transfer, no; in terms of  
15 actual actual, yes. And I know it's very confusing, but  
16 like we have in 110, like they -- the city attorneys and  
17 the legal and even DWI, we put them in a department ID  
18 number that identifies that they work on that  
19 program -- or, you know, in the DWI Program, and so Bob  
20 might work -- you know, he might be assigned to the DWI  
21 Program for six months, but then they might move him  
22 into -- I don't know what else is in Legal, to be honest  
23 with you, but they might assign him to a different  
24 department ID in legal to do something else.

25 So 110, he'll get paid part of the year out

Page 28

1 of the DWI department ID, is where he'll be charged to;  
2 The other half he'll be charged to a general Legal  
3 Department ID.

4 **Q. Okay. But so long as the person is assigned to**  
5 **the program, 100 percent of their salary and benefits**  
6 **are coming out of the transfer?**

7 A. Or covered by the transfer.

8 **Q. Okay.**

9 A. Like I said, it's not one to one because their  
10 salaries actually end up usually being more than what  
11 the transfer covers.

12 **Q. Sure. No, I think I get it. I just want to**  
13 **make sure that I understand it. What I'm sort of trying**  
14 **to get at is just that there is -- I just want to make**  
15 **sure that there are people who have been identified as**  
16 **having their salaries paid out of the program, and what**  
17 **I want to understand is that -- what I think you're**  
18 **saying -- and I want to make sure it's true -- is that**  
19 **100 -- as long as they're working in this position, 100**  
20 **percent of their salary and benefits is being covered by**  
21 **the transfer and not -- it's not a situation where some**  
22 **portion is covered by the transfer but some portion is**  
23 **covered by some other source of revenue?**

24 A. No, you're correct on what you're saying. As  
25 long as they're working on that program, that transfer

Page 29

1 that we transfer over would cover a portion of their  
2 salary within that program that they're working in.

3 **Q. When you say "portion", I guess that's my**  
4 **question: What is that portion? Is it the entire**  
5 **salary?**

6 A. It is. You're now making this more  
7 complicated. I mean, if -- like I said, if they work  
8 overtime, it's, you know, so we might only transfer over  
9 for that position like \$69,000, let's say, but their  
10 actuals might be \$72,000, so there's a portion that  
11 transfer is not going to cover because they either  
12 worked overtime -- we may have, when I, you know,  
13 projected the transfer of the person -- or they were on  
14 a couple rate, but they ended up having a baby and now  
15 they went to a family rate of insurance, so it's higher.

16 **Q. Right. No, I understand it's complicated by**  
17 **the fact that there could be changes after the time that**  
18 **it's calculated. I guess what I'm really wondering is,**  
19 **at the time that it's calculated, you're always**  
20 **calculating it based off of their entire annual salary**  
21 **and benefits?**

22 A. At that point in time, yes.

23 **Q. Okay. Now, you mentioned -- you were talking**  
24 **about what types of expenses are paid. You mentioned**  
25 **the supplies for the program, the lease for the working**

8 (Pages 26 to 29)

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Arlene Harjo v. The City of Albuquerque  
Linda Cutler-Padilla

May 16, 2017  
1:16-cv-01113-JB-WPL

Page 30	Page 32
<p>1 <b>lot, and then the transfer to cover salaries. Are there</b>  2 <b>any other types of expenses that are paid for using that</b>  3 <b>revenue stream?</b>  4 A. Another one is -- you know, and I just see the  5 high levels, I don't see all the details, so this is  6 just -- but there is a lot of postage, so I'm assuming  7 they must mail stuff to people. And it's pretty -- a  8 lot of postage, so I'm sure it's like certified letters  9 and stuff. That's another thing.  10 That's all I can recall right now.  11 <b>Q. Do they use the revenue to buy vehicles?</b>  12 A. They have in -- definitely in the past, before  13 my time. They have used revenue to buy vehicles and,  14 like, equipment, you know, whether it be computers or  15 equipment for the police officers.  16 <b>Q. Do you know how those -- sorry, I'll give you a</b>  17 <b>chance.</b>  18 A. No, go ahead.  19 <b>Q. I was going to say, do you know who uses those</b>  20 <b>vehicles and that equipment?</b>  21 A. The police officers or the sworn staff.  22 <b>Q. Is the revenue ever used to purchase equipment</b>  23 <b>for the Legal Department, the part of the Legal</b>  24 <b>Department that works on the DWI Program?</b>  25 A. That I don't know. It may have in the past,</p>	<p>1 A. You know, I should know this -- I apologize, I  2 don't -- but there might be electric costs that we have  3 to pay for that would come out of 110; otherwise, it may  4 be in the lease agreement. We don't know for sure.  5 <b>Q. And you said it might be supplies. Do</b>  6 <b>you -- are you -- do you know or are you sort of</b>  7 <b>speculating?</b>  8 A. I'm speculating. I assume that's more what it  9 would be, would be a supply. There's a possibility it's  10 a contract they have for someone to help with the  11 program, maybe even a temp staff that they're charging  12 to the General Fund. They might have an office person  13 that helps with the paperwork.  14 <b>Q. One thing you know about for sure would be the</b>  15 <b>officer salaries?</b>  16 A. Correct. Those go to 110, anybody that works  17 over in -- over there at the DWI lot or even in the  18 traffic program, which is where the DWI is set up after.  19 They're all 110, our General Fund.  20 <b>Q. Sure.</b>  21 <b>Is there anything other than officer</b>  22 <b>salaries that you know for sure is not paid for out of</b>  23 <b>the DWI revenue stream?</b>  24 A. I mean, it's just another -- I mean, we have  25 Workers' Comp that we pay. Even for those seven</p>
Page 31	Page 33
<p>1 but not -- I don't know for sure.  2 <b>Q. Is it ever used to purchase equipment for the</b>  3 <b>Office of Administrative Hearings?</b>  4 A. Not that I'm aware of.  5 <b>Q. Are there any expenses associated with the DWI</b>  6 <b>Program that aren't paid for using the revenues that are</b>  7 <b>generated by the program?</b>  8 A. I mean, I'm certain that, you know, they  9 discharge the 110 program for some stuff, you know, and  10 then we do -- you know, and like I said, I mean, since I  11 don't work in AP or in that specific program, I don't  12 know the exact, intricate details of how they manage it,  13 but they do get DWI grants from the county to try to  14 combat, you know, DWI. But that's primarily -- those  15 grants primarily pay for the overtime of the officers  16 that are -- you know, do that.  17 But yeah, to be for sure, I'm sure Aubrey  18 probably does charge some stuff for that program to his  19 General Fund budget.  20 <b>Q. Do you know what sort of things that would be?</b>  21 A. More than likely, it would be supplies. That's  22 a big -- you know, and obviously, any officers that are  23 working the program, lieutenants, sergeants, police  24 officers, they get charged to 110.  25 <b>Q. So --</b></p>	<p>1 positions, the 110 pays for any of the Workers' Comp to  2 cover those employees. Any tort liability, that all  3 comes out of 110.  4 <b>Q. Other than officer salaries, Workers' Comp,</b>  5 <b>tort, is there anything else?</b>  6 A. Not that I can specifically pinpoint that is  7 directly related to the DWI seizure.  8 <b>Q. So I want to take a minute just to look at --</b>  9 <b>(Discussion off the record.)</b>  10 <b>Q. (By Mr. Johnson) So this is a spreadsheet that</b>  11 <b>was provided to us by the city in discovery and was</b>  12 <b>identified as the DWI General Ledger. Are you familiar</b>  13 <b>with this document?</b>  14 A. Uh-huh (yes).  15 MS. WILSON: Is that a "Yes" or "No"?  16 A. Oh, sorry -- yes, sir.  17 <b>Q. (By Mr. Johnson) What is it?</b>  18 A. It's just like our trial balance. It's like --  19 <b>Q. What do you mean by that?</b>  20 A. It's just where they pooled all the  21 expenditures and the revenues. It looks like it's the  22 high level, so it doesn't give all the detail, and this  23 is primarily like what I'll see when I'm either  24 reviewing their -- what we call budget to actual or  25 their expenditures versus their revenues.</p>

9 (Pages 30 to 33)

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Arlene Harjo v. The City of Albuquerque  
Linda Cutler-Padilla

May 16, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 54</p> <p>1 looking at their salaries, it looks like some of them 2 moved in and out or just, you know, worked for just part 3 of the year. 4 <b>Q. Right. But like for this period of time,</b> 5 <b>fiscal year -- I'm sorry, this probably seems pedantic;</b> 6 <b>I just want to make sure I've got it clear. So for the</b> 7 <b>period of time from 2013 -- fiscal year 2013 to fiscal</b> 8 <b>year 2017, these would be all of the Assistant City</b> 9 <b>Attorneys who were assigned to that program during that</b> 10 <b>period?</b> 11 A. Correct. 12 <b>Q. Got it, got it.</b> 13 <b>And then -- just so that we are clear on</b> 14 <b>what all this means, when it says -- towards the bottom</b> 15 <b>here, says, "Revenue for positions in DWI Seizure</b> 16 <b>Program," is that the amount of the transfer from 280 to</b> 17 <b>110?</b> 18 A. Correct. 19 <b>Q. Okay. And when it says, "Total Expense," is</b> 20 <b>that the total amount of compensation, including salary,</b> 21 <b>overtime and benefits, that was paid to these personnel</b> 22 <b>during the periods that they were assigned to the DWI</b> 23 <b>Program?</b> 24 A. Correct, yes. 25 <b>Q. Okay. Do you know who makes the decision what</b></p>	<p style="text-align: right;">Page 56</p> <p>1 pretty close with the City Attorney, I believe, to know 2 what the plan was in that department. 3 <b>Q. Sure, sure.</b> 4 <b>When you work on the budget, do you have</b> 5 <b>involvement in putting together the performance measures</b> 6 <b>that are included for the DWI Program?</b> 7 A. You know, the only involvement I have is asking 8 the department for the numbers. 9 <b>Q. Okay.</b> 10 A. And then they're -- you know, like I'll review 11 it and kind of see if any numbers look crazy off and ask 12 them why, you know, then we obviously have to format it 13 to pull it into the book. 14 But to be honest, for myself, that's 15 sometimes the last thing I do. I'm more worried about 16 the actual numbers, the dollars, making sure that the 17 dollars -- you know, I kind of rely on the department, 18 like "This is your -- these are your numbers." 19 Like I said, I will sometimes scan it 20 pretty quickly, and if I see a number -- one year, they 21 had \$10,000 and then this year, they only had 50. I'm 22 like, "Wait a minute, did you miss some zeros, or what 23 happened?" 24 <b>Q. Is there anything ever that jumped out at you</b> 25 <b>specifically about the performance numbers for the DWI</b></p>
<p style="text-align: right;">Page 55</p> <p>1 <b>positions will be paid out of the salary transfer from</b> 2 <b>280 to 110?</b> 3 A. For like APD, I know it has pretty much been 4 those three positions for as long as I've been part of 5 that. You know, obviously, their titles indicate that 6 they work on that for Legal. 7 In the past, I've either gotten with -- and 8 I don't know what her job title is, but anyway, she was 9 like their fiscal person. Or I would confirm with 10 her -- you know, what I would do is I would pull down, 11 like, that department ID and see who was in it. 12 But then I would also confirm with her, 13 like, these positions are going to be assigned, or 14 she -- like, if she knew like if they were going to do 15 some reorg or rearrange, she would let me know that. 16 But it was more just a confirmation, but it always 17 is -- has been for as long as I've been overseeing this 18 program, the seven positions. 19 <b>Q. Who was that in Legal who you would talk to? I</b> 20 <b>know you don't know her position, but what was her name?</b> 21 A. Roberta Duran. 22 <b>Q. Got it.</b> 23 A. And she was -- you know, I think she was like a 24 fiscal officer, but she kind of managed everything over 25 there, so she was like the go-to person and worked</p>	<p style="text-align: right;">Page 57</p> <p>1 <b>Program?</b> 2 A. No. 3 <b>Q. Okay. Are you familiar with the transfer -- I</b> 4 <b>believe it was in fiscal year 16 -- of 3.3 million</b> 5 <b>dollars out of the Fund 280 into Fund 305?</b> 6 A. Yes. Sorry. 7 <b>Q. Can you tell me a bit about that.</b> 8 A. Well, I know -- because I know APD, that's kind 9 of where the budget has kind of gotten involved with 10 them. We were considering buying a permanent lot just 11 because where we lease, it was -- we weren't quite sure, 12 and obviously, we don't want to be under a lease or fund 13 to raise our rent through extreme numbers, so we were 14 working with APD, possibly looking for a DWI seizure 15 lot. 16 But then there was some issues and 17 complications with that, you know, just finding a piece 18 of lot that the neighbors are going to be okay with that 19 we have the vehicles kind of far from the city. And we 20 don't want it so far out that the towing fees would be 21 enormous. 22 So we did have -- you know, it's been 23 difficult finding -- you know, as big as New Mexico is, 24 there's not a whole lot of big plots of land, so they 25 ended up using -- then APD's other dire need was police</p>

15 (Pages 54 to 57)

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Arlene Harjo v. The City of Albuquerque  
Linda Cutler-Padilla

May 16, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 58</p> <p>1 vehicles for the officers, so they used I think 1.7 of 2 it -- or 1.8, maybe -- 1.8 of it to purchase the police 3 vehicles, and then the remaining they used to enhance a 4 building for training purposes of the police officers. 5 As far as I know, that's what I recall they used it for. 6 And, you know, because what we did is we 7 actually took that and we did an actual transfer from 8 280 to 305, which is managed by our Capital Improvement 9 Department. So, you know, we did that transfer, and it 10 kind of fell in their hands to have their project 11 managers kind of oversee whatever APD was requesting. 12 <b>Q. Do you know what that building was going to be</b> 13 <b>used for, the educational building?</b> 14 A. I believe primarily training for the officers, 15 cadets. I think at one point in time, they were looking 16 at maybe having the DWI Seizure Program or everything 17 moved over there, but I think that the size of it wasn't 18 large enough. 19 And I recall the council wanting to put a 20 park kind of in the midst of it, which would have taken 21 away some acreage of land. Then we really didn't want 22 that park either next to the vehicles -- you know, we're 23 trying to keep the vehicles secure, is our primary 24 responsibility as to those vehicles while they're under 25 our custody -- is that the right word?</p>	<p style="text-align: right;">Page 60</p> <p>1 <b>Q. Right.</b> 2 A. Honestly, that's where a lot of my focus is 3 when I look on APD. 4 And they've been in dire need of vehicles. 5 You know, they just haven't maintained I guess keeping 6 up the vehicles. So that's been the major discussion 7 with the department, is "We need vehicles. We have new 8 cadet classes that aren't going to have vehicles." 9 So my boss -- that's part of what he does 10 brilliantly, is, you know, "What can we do? How can we 11 do this?" So when we had discussions with Aubrey, and 12 looking at other sources because one can't afford, you 13 know, vehicles -- or at least, you know, "So do we have 14 any capital money that can buy vehicles?" 15 "Yeah, we've got some, but not enough." 16 And then we started looking at, "Hey, we 17 have this Special Revenue Fund. What are the 18 restrictions? What can we do?" And that's when we 19 started looking at the fund balance -- at that point in 20 time, it was I want to say close to five million, maybe 21 a little bit over five million -- and then working with 22 Aubrey on what piece of that can be used for the 23 vehicles and/or, you know, to purchase a lot or to help 24 renovate a lot or whatever needs they had in the 25 department that were related to law enforcement.</p>
<p style="text-align: right;">Page 59</p> <p>1 <b>Q. Uh-huh (yes).</b> 2 A. -- that, you know, we keep them safe and free 3 from vandalism or, obviously, theft. 4 So having a park that close, you know, that 5 was more the Chief and our CAO, Chief Administrative 6 Officer -- I remembered his title -- you know, that's 7 more their discussion and more their decisionmaking on 8 that. 9 <b>Q. "On that," you mean it was -- the decision</b> 10 <b>about how to spend the 3.3 million dollars was made by</b> 11 <b>the CAO?</b> 12 A. Well, not necessarily that, but it would be 13 their decision that we take this property, I guess, you 14 know. They would -- that wouldn't come from me. I 15 wouldn't be like, "Yes, you can take that property," 16 it's more them working with our Real Property Department 17 and making sure that we're getting the right piece of 18 land at the right price and it's sustainable -- we don't 19 have to have any environmental protection, whatever -- 20 because we're putting cars on a piece of land. 21 <b>Q. So how did you first learn about the decision</b> 22 <b>to transfer the 3.3 million dollars out of Fund 280?</b> 23 A. Some of it just has been discussion, working 24 with APD, and not just specifically 280. You know, I 25 have their General Fund, which is huge.</p>	<p style="text-align: right;">Page 61</p> <p>1 <b>Q. And the -- when you say what piece of it could</b> 2 <b>be used, do you mean like what part of it was associated</b> 3 <b>with programs that you could use for that funding</b> 4 <b>stream, or what do you mean by that?</b> 5 A. Right. So within Fund 280, there's like four 6 components within that fund because it's a Special 7 Revenue Fund. So within that program, we also 8 have -- it's called law enforcement protection money 9 that they receive from the state, that they get revenue 10 from the state for the number of officers that we have. 11 And then there's also what we call crime lab, where they 12 get money for revenues to help the criminalistics, our 13 DNA and our crime lab. So they get monies from -- 14 people to pay for I guess if they get drug tested. 15 So, you know, there's revenues that are 16 specific to law enforcement, revenues specific to crime 17 lab, revenues that they receive specific to DWI seizure, 18 revenues specific to federal forfeitures, such as 19 drug-related stuff. So we have to figure out what 20 revenue is associated with each because we can't be 21 using revenue maybe from the crime lab -- crime lab 22 revenue is specifically just to provide kits that the 23 crime lab -- or supplies just specific for the crime 24 lab. 25 So within that, we'll have to figure out</p>

16 (Pages 58 to 61)

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Arlene Harjo v. The City of Albuquerque  
Linda Cutler-Padilla

May 16, 2017  
1:16-cv-01113-JB-WPL

Page 70

1 even kind of that way, too. We have an economist that  
2 kind of gauges how much, but then something happens.  
3 And he thought we were going to get four percent revenue  
4 and it dropped to two and now stop -- we've got to  
5 figure out cost cutting measures or we get more, you  
6 know, in good years.  
7 And then council or the administration  
8 says, "Oh, great, we can maybe do something. You know,  
9 we can do something that the public has been wanting,  
10 you know. Maybe we can even have a Summerfest downtown,  
11 a bigger one, and bring in a new artist." I mean,  
12 that's just -- I mean, that's kind of how it works. But  
13 then we, in the budget, have to go appropriate that  
14 extra money through legislation or a cleanup bill.  
15 So that's what we were doing here: We were  
16 doing a cleanup bill to take that money from fund  
17 balance and appropriate it so now they can spend their  
18 money.

19 **Q. Right.**

20 A. And this was like a -- I mean, it's an expense,  
21 but as a transfer, so we transferred to it 305, and then  
22 from 305, then they actually went out and bought  
23 whatever, the vehicles, or they did improvements on, you  
24 know, building.

25 **Q. Yeah. I guess what I'm wondering about,**

Page 72

1 to build the '18 budget and I started looking, I did  
2 bring it up to my boss because this is something we need  
3 to pay attention to.

4 We brought it up in the CAO hearing that  
5 this year, the DWI Program, along with even, you know,  
6 for that matter, crime lab monies, you know, there's  
7 been a decrease in that, for whatever reason. I mean,  
8 luckily, I mean, there is less people being stopped and  
9 less people -- repeat offenders and less convictions. I  
10 mean, it's actually -- from a personal perspective, I  
11 think it's a good thing.

12 So that's where we're at now, is what steps  
13 we're going to take in how we're going to go forward  
14 with this program. You know, like for Aubrey, you know,  
15 he'll probably start charging more stuff to General  
16 Fund, but at the same time, then, now we've got to watch  
17 General Fund. Well, it's an expense that you didn't --  
18 typically, you have another revenue source to pay for  
19 it. Now you're paying for it out of 110. So what are  
20 you going to do in 110? Maybe not have a contract that  
21 you normally have, or you need to cut that contract.

22 So that's kind of what we're -- in my area,  
23 I'm tasked with monitoring his expenses that he -- the  
24 department's expenses, that they stay within what they  
25 were appropriated.

Page 71

1 **because you testified -- what I'm wondering about is**  
2 **what you testified to earlier, that this is -- for the**  
3 **upcoming fiscal year, there's a concern that there might**  
4 **be an insufficient fund balance to cover the expenses**  
5 **that historically have been covered.**

6 **And would that be the case, that this 3.3**  
7 **million hadn't been transferred out of the fund?**

8 A. No, it wouldn't be the case. It would have  
9 gotten money to cover, you know, or we'd appropriate  
10 from there and we'd have the appropriation to be able to  
11 spend.

12 **Q. Is that something that people -- that you were**  
13 **concerned about or you were aware of anyone else being**  
14 **concerned about?**

15 A. I mean, I'm aware now. I mean, obviously, when  
16 this took place, we didn't -- you know, we don't operate  
17 with the expectation -- you know, obviously, you know,  
18 we do -- like for budget, we look further in the future  
19 and how are we going to buy stuff that -- you know, we  
20 still plan to operate the way -- you know, if this is  
21 what they need to operate within that year, continue  
22 operating.

23 Now that, you know, Aubrey has brought  
24 in -- you know, he's showing less revenue this year  
25 compared to other years, when he sent those numbers over

Page 73

1 **Q. Sure.**

2 A. You know, and appropriation always matches,  
3 like the revenues. We always have a balanced budget, so  
4 I don't necessarily worry about the revenue piece  
5 because I've appropriated this. When it comes to the  
6 Special Revenue Fund, you know, and even like General  
7 Fund, you know, we rely on, like, the economist to let  
8 us know revenues are dipping, and then that's when we  
9 start kind of looking like, "Okay, we're not getting the  
10 revenues you expected to cover what, you know, we  
11 appropriated. What are we going to do?"

12 Those are conversations we have when we  
13 meet with our departments; or it even gets to the point  
14 where it's the director, too, that's involved in those  
15 meetings. You know, "Mr. Director, you're -- things  
16 aren't looking good. What are you going to do?"

17 **Q. You mentioned that the DWI Program specifically**  
18 **was discussed at the CAO hearing. Can you just tell us,**  
19 **what is the CAO hearing?**

20 A. It's the Chief Administrative Officer hearing.  
21 It's just what we do. Each department is able to  
22 present to the CAO their needs, wants, what they've done  
23 great. You know, it's time for the department to show  
24 off what they've done to the CAO and kind of -- and then  
25 that's when the CAO actually makes the decisions what

19 (Pages 70 to 73)

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Arlene Harjo v. The City of Albuquerque  
Linda Cutler-Padilla

May 16, 2017  
1:16-cv-01113-JB-WPL

Page 74

1 we're going to fund, what we're going to not fund.  
2 And so like Fund 280, you know, that's  
3 presented at the CAO hearing, you know, and this is what  
4 we're -- you know, so what was discussed is, you know,  
5 in the past, we've projected -- you know, I don't know  
6 the numbers off the top of my head, but like 1.7 million  
7 in revenue. This year, we're only projecting 1.2  
8 million. Actually, I think it was less than that.  
9 But, you know, so we're going to be  
10 tasked-- the department is going to be tasked  
11 with -- because if they're used to spending it at 1.7,  
12 let's just say, what are we going to do, you know.

13 They're going to have to manage something, and there's  
14 some costs that are fixed, like that lease on that  
15 property is a fixed cost. So where else are we going to  
16 cut down -- you're going to have to cut supplies, going  
17 have to use scrap paper instead of Post-It Notes or  
18 something.

19 But, you know -- or at that point in time,  
20 it just lets the CAO know, when we go into negotiations  
21 with that vendor, you know, he can't up his lease. We  
22 can't afford it. That's just something to be aware of.

23 That's kind of like earlier, when I said we  
24 were looking for a lot because we kind of were -- you  
25 know, our landlord lessor, you know, kind of had that

Page 75

1 over our head: "Oh, I can raise your lease, you know,  
2 50 percent if I want." It's like we, as a city, can't  
3 afford that, so we need to be prudent and maybe we need  
4 to look for something we can afford if we're going to  
5 continue this program at the same, you know, level.

6 **Q. So who presents on the program, the Fund 280,**  
7 **at the CAO hearing?**

8 A. It's kind of a combination. I mean, I'm kind  
9 of like the lead in going over the numbers, but then I  
10 turn it over to the department to go in more detail. I  
11 mean, I just have the high-level numbers, this is where  
12 we're at, but then it's up to the department to explain  
13 maybe why revenue dropped or why they think it's going  
14 to drop or what changes they've had in their department.

15 **Q. Did somebody -- at the most recent one, where**  
16 **the DWI Program was discussed, did somebody from the**  
17 **department talk about the decline in revenue?**

18 A. It was probably -- might be Aubrey would be the  
19 one to speak to that. He's the one that provides those  
20 figures. And it's not a lot of -- you know, like all  
21 the CWI, they're not all at that meeting. I mean, it's  
22 just the director, the fiscal manager, Budget. We have  
23 like -- internal audit is there, the council is  
24 there -- or a representative from council, I should say,  
25 not the city councilors.

Page 76

1 **Q. You mentioned that the lease is a fixed cost.**  
2 **There are any other fixed costs associated with the**  
3 **program?**

4 A. Obviously, wages, you know. I would say towing  
5 to some degree. Obviously, it fluctuates. If they have  
6 less towing, the towing costs go down. If they have  
7 more towing, it goes up.

8 You know, but that's something I guess they  
9 would have a little difficulty managing just because  
10 they don't know the number of cars that they're going to  
11 have to tow. You know, that's a hard thing with -- you  
12 know, there's not much costs for the department, and  
13 they can control -- like, if they have a contract with a  
14 vendor to help, they might have to, you know, cut that  
15 contract in half, like, "Oh, instead of having you five  
16 days a week, we can only have you three days a week."

17 There's things you can do with that. You  
18 can control maybe your supplies. You know, electric  
19 bills, you can't necessarily -- you can do some -- or  
20 you can -- you know, like, to use as an example, like my  
21 other department, Solid Waste, we have really high water  
22 costs, so they're really working with the Water  
23 Department on what can we do to maybe bring those down  
24 or put in water control features or more xeriscaping to  
25 try to bring those -- they can do stuff like that, not

Page 77

1 in that immediate moment, but that's just stuff when  
2 we're working with departments, we kind of highlight  
3 that for them think about: "What can you control and  
4 what are you guys going to do to control it?"

5 **Q. So you said that wages was a fixed cost. Was**  
6 **there ever any discussion of changing the number of**  
7 **positions that are associated with the program?**

8 A. Not most recently, but yes, it could be a  
9 discussion and it probably will be a discussion. You  
10 know, there could be a discussion that, especially if  
11 revenues are going down, do we need all these positions?  
12 You know, if revenues are going down, I would think that  
13 the work of the program may be going down.

14 So if you need two DWI Coordinators, you  
15 know, so the other person would -- you know, hopefully,  
16 there would be another job they could transfer into  
17 because the city doesn't like to lay people off. You  
18 know, like the City Attorney, you know, is there another  
19 legal thing they could work on?

20 And, I mean, like 110, we will do like a  
21 hiring slowdown, not necessarily (inaudible) a position,  
22 but we will maybe not allow them fill a position to try  
23 to make up their -- I mean, obviously, I've been at the  
24 city a while. We have had layoffs where they have  
25 actually put us on furlough days.

20 (Pages 74 to 77)

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Arlene Harjo v. The City of Albuquerque  
Linda Cutler-Padilla

May 16, 2017  
1:16-cv-01113-JB-WPL

Page 78	Page 80
<p>1 So it can get that bad for us.</p> <p>2 <b>Q. When was the last time the city had layoffs?</b></p> <p>3 A. I know for sure -- if I remember, it was back</p> <p>4 in 2001 or 2002. I know I was targeted, so I'll never</p> <p>5 forget that year. You know, we've had furlough days</p> <p>6 2009, I believe, 2010.</p> <p>7 You know, we really try to do hiring</p> <p>8 slowdown more than anything, you know, because if those</p> <p>9 positions aren't filled, we don't like to affect those</p> <p>10 people that are working. Those are the decisions that</p> <p>11 my boss and the council and -- they make.</p> <p>12 <b>Q. What is the current fiscal position of the</b></p> <p>13 <b>city? How much money is available for these kinds of</b></p> <p>14 <b>expenses?</b></p> <p>15 A. The whole budget or -- oh, gosh.</p> <p>16 <b>Q. Well, I don't mean the number, I mean, would</b></p> <p>17 <b>you say it's currently a flush time or a lean time or --</b></p> <p>18 A. No, it's a hard time. Our gross receipts tax</p> <p>19 is down, you know. A lot of programs -- I mean, the</p> <p>20 federal government obviously is in a bad situation, so</p> <p>21 we're not getting the federal money that we used to</p> <p>22 receive. The state, our state is not in a good fiscal</p> <p>23 position, so they've cut us on capital money, so</p> <p>24 projects that may have even started, we have to fight</p> <p>25 with the state.</p>	<p>1 And our economist is working pretty close</p> <p>2 with his contacts at the state. You know, he's working</p> <p>3 with other entities, other municipalities around the</p> <p>4 state to see if they're in the same situation, just to</p> <p>5 see if it's a fluke or something is really going on.</p> <p>6 Obviously, a lot of people do online sales that we don't</p> <p>7 get revenue for. That hurts us.</p> <p>8 <b>Q. Right.</b></p> <p>9 <b>What was the position of the city in like</b></p> <p>10 <b>fiscal year 2016 or '15?</b></p> <p>11 A. I don't want to say it was totally healthy, but</p> <p>12 we were balanced and we didn't overspend. We had enough</p> <p>13 revenue coming in to cover, you know, what we -- you</p> <p>14 know, our expenditures.</p> <p>15 <b>Q. I should -- it's my fault; I said both '15 and</b></p> <p>16 <b>'16. Really I'm interested only in fiscal year '16.</b></p> <p>17 A. We ended the year positive, which is what</p> <p>18 we're -- want to do; we don't want to end up in a</p> <p>19 deficit. So we did good, you know. And that's part of</p> <p>20 what kind of budget we're tasked with, is that our</p> <p>21 department, we have to get on them. We can't approve</p> <p>22 stuff. Stuff that we see, sorry, can't buy,</p> <p>23 can't -- that's our job, is to hopefully end the year</p> <p>24 still with a positive number.</p> <p>25 <b>Q. Right, sure.</b></p>
Page 79	Page 81
<p>1 Like we already started -- "You guys told</p> <p>2 us you'd give us this much money. They can come back</p> <p>3 and nail us, so we've got to figure out how to pay for</p> <p>4 that."</p> <p>5 So it's a hard time around the country, I</p> <p>6 think, federal government, too.</p> <p>7 COURT REPORTER: Could you repeat that.</p> <p>8 A. I just was saying it's a hard time, even from</p> <p>9 the federal level, so we're getting a lot of cuts</p> <p>10 not -- I mean, not just APD, it's all of our</p> <p>11 departments.</p> <p>12 So that's what budget we're tasked with,</p> <p>13 just kind of trying to help departments get through this</p> <p>14 time and helping them make decisions or maybe coming up</p> <p>15 with other ways that they can -- you know, or</p> <p>16 what -- like right now, currently, like what positions</p> <p>17 do you absolutely have to have so that people -- so that</p> <p>18 we still are providing the same level of service to the</p> <p>19 public and what positions can we -- maybe someone else</p> <p>20 can wear two or three hats for a while and get through</p> <p>21 the -- so --</p> <p>22 <b>Q. And you said that gross receipts are down. Has</b></p> <p>23 <b>that been true for several years?</b></p> <p>24 A. No, no, I think it's just been most recently,</p> <p>25 you know.</p>	<p>1 <b>In order to end it with a positive number,</b></p> <p>2 <b>was it necessary to make decisions about to not spend</b></p> <p>3 <b>money on certain types of expenses?</b></p> <p>4 A. Uh-huh (yes), we had to do that.</p> <p>5 <b>Q. And in I guess -- I'm just thinking about</b></p> <p>6 <b>fiscal year '16 in particular. Were there those kinds</b></p> <p>7 <b>of decisions that had to be made in fiscal year '16?</b></p> <p>8 A. To some level. And each department was kind of</p> <p>9 different, you know, like I -- you know, the Enterprise</p> <p>10 Fund, they had their own revenue, so that's a little</p> <p>11 different.</p> <p>12 You know, they have a Special Revenue Fund.</p> <p>13 That's revenue specific to that program. We don't use</p> <p>14 any of that money like to help, you know, make up a</p> <p>15 deficit in General Fund, you know. We don't do that</p> <p>16 kind of -- General Fund will help make a deficit in</p> <p>17 another operating fund, but it doesn't go the opposite.</p> <p>18 But yeah, I know last year, in FY -- '17</p> <p>19 right now -- '16, you know, with APD, you know, there</p> <p>20 was some things they would have to make the decision,</p> <p>21 "What's your priority? You want all this, but you can</p> <p>22 only afford this. What's your priority?" They would</p> <p>23 have to -- "Okay, we want this," and they had to do</p> <p>24 without this.</p> <p>25 And all departments have to do that, not</p>

21 (Pages 78 to 81)

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**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 8**

Arlene Harjo v. City of Albuquerque  
Donovan Rivera

May 17, 2017  
1:16-cv-01113-JB-WPL

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

ARLENE HARJO,                     )  
  )  
Plaintiff,                         )  
  )  
  )  
VS.                                 ) No. 1:16-cv-01113-JB-WPL  
  )  
  )  
  )  
  )  
  )  
CITY OF ALBUQUERQUE,             )  
Defendants.                         )

DEPOSITION OF DONOVAN RIVERA

May 17, 2017

9:08 a.m.

Trattel Court Reporting and Videography  
609 12th Street NW  
Albuquerque, New Mexico 87102

PURSUANT TO THE NEW MEXICO RULES OF CIVIL  
PROCEDURE, this deposition was:

TAKEN BY: ROBERT JOHNSON, ESQ.  
ATTORNEY FOR PLAINTIFF

REPORTED BY: ANNE D. WIESE, RPR, NM CCR #301  
TRATTEL COURT REPORTING  
609 12TH STREET NW  
ALBUQUERQUE, NEW MEXICO 87102

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Arlene Harjo v. City of Albuquerque  
Donovan Rivera

May 17, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES 2 FOR THE PLAINTIFF: 3 MR. ROBERT JOHNSON, ESQ. 4 MR. ROBERT FROMMER, ESQ. 5 INSTITUTE FOR JUSTICE 6 901 North Glebe Road 7 Suite 900 8 Arlington, VA 22203 9 rjohnson@ij.org 10 rfrommer@ij.org 11 12 FOR THE DEFENDANT: 13 MR. JAMES GRUBEL, ESQ. 14 Walz &amp; Associates, P.C. 15 133 Eubank Boulevard NE 16 Albuquerque, NM 87123-2709 17 jgrubel@walzandassociates.com 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 DONOVAN RIVERA, 2 having been first duly sworn, testified as follows: 3 EXAMINATION 4 BY MR. JOHNSON: 5 Q. Good morning. 6 A. Morning. 7 Q. Can you state your name for the record, please. 8 A. Donovan Rivera. 9 Q. Can you spell that for the court reporter. 10 A. First name D-O-N-O-V-A-N, R-I-V-E-R-A. 11 Q. Have you ever been deposed before? 12 A. Yes. 13 Q. How recently have you been deposed? 14 A. Probably about a year ago. 15 Q. Okay. And what's your current position at the 16 City of Albuquerque? 17 A. Lieutenant with the police department in the 18 seizure and DWI and traffic -- I'm sorry, School Safety 19 Program. 20 Q. Okay. How long have you been in that position? 21 A. Oh, since March of 2017, maybe April of 2017. 22 Q. And what was your position before that? 23 A. Sergeant of the Seizure Unit. Then I was 24 acting lieutenant for a year and a half from June of 25 2016 to November of 20 -- sorry, no, June 2015 to</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX 2 PAGE 3 EXAMINATION OF DONOVAN RIVERA 4 By Mr. Johnson..... 5 5 By Mr. Grubel..... 68 6 SIGNATURE/CORRECTION PAGE..... 70 7 CERTIFICATE OF COMPLETION OF DEPOSITION..... 71 8 9 EXHIBITS 10 MARK/ID 11 NO. DESCRIPTION 12 A Police Document..... 12 13 14 B e-mail chain between Donovan Rivera 15 and Shane Rogers..... 17 16 C DWI Seizure Monthly..... 21 17 D Employer Work Plan..... 28 18 E Performance Measures Document..... 29 19 F e-mail chain between Donovan Rivera 20 and Eric Locher..... 52 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 November of 2016. 2 Q. Okay. 3 A. Acting lieutenant same thing, DWI Unit Seizure 4 Program and the School Safety, which is the crossing 5 guards. 6 Q. And how long were you a sergeant in the DWI 7 program? 8 A. Oh, since August -- I believe August -- August, 9 September of 2013. 10 Q. How long have you worked for the Albuquerque 11 Police Department? 12 A. 2000 -- July of 2000. 13 Q. And what sorts of positions did you hold 14 between 2000 and 2013 when you started working at the 15 DWI unit? 16 A. Patrolman, just taking calls in the field, and 17 that was for approximately seven years; then a detective 18 in the White Collar Crimes Unit, Forgery and 19 Embezzlement, for a year and a half; and then the Vice 20 Unit, undercover for a year and a half; and then got 21 promoted to sergeant, was in the field as a supervisor 22 four months; and then went to the Motorcycle Unit for 23 approximately three years and then went to the Seizure 24 Unit as a sergeant, like I said, in August or September 25 of 2015.</p>

2 (Pages 2 to 5)

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Arlene Harjo v. City of Albuquerque  
Donovan Rivera

May 17, 2017  
1:16-cv-01113-JB-WPL

Page 6

**Q. In your role as a sergeant at the Seizure Unit, what were your job responsibilities?**

A. Maintain, like just the overall personnel there, make sure they're, you know, doing their job and showing up on time, not taking extra breaks or lunches, and fielded calls or complaints because I don't expect the civilians to have to handle complaints, so I would take those type of calls when they would come in.

But I'd also help out by moving cars within the tow yard or the lot because we'd have to tow some cars and move them out, booting cars, placing boots on cars, taking boots off. That was really about it, I mean.

And Saturdays I would do check-ins because I didn't have anyone that would work Saturday days or nights, I mean. So I would primarily do Saturdays, go to the intake lots at the Valley Substation, and if there was cars, take photos, check them into the system, move them into the lot. And some days, there were no cars, so I would just leave.

**Q. Sure, sure. And what were your responsibilities as the acting lieutenant between June and November?**

A. So really the same responsibilities for the Seizure Unit, and then the DWI Sergeant would report to

Page 7

me, fill me in on DWI-related incidents, like if there's a high profile arrest of an individual, political type official or whatnot, and then the crossing guard supervisor would report to me.

So I dealt with them the most and now deal with them. There's 150 crossing guards. They're older. I mean, their average age is probably 70 or older, so a lot of injury reports of them stepping off curbs, rolling their ankles, hurting their knees. So --

**Q. Have your responsibilities changed since you become a -- no longer the acting lieutenant but the lieutenant?**

A. No.

**Q. As the sergeant for the DWI Seizure Unit, were you responsible for supervising that unit?**

A. Correct.

**Q. So help me understand, what exactly is the DWI Seizure Unit?**

A. So the unit is made up of seven individuals that kind of had their own duties and responsibilities, and that's -- we maintain the vehicles in the lot, a vehicle that is seized from a patrolman that seize a vehicle for a person that's driving on a revoked or has a prior conviction.

So the officer, you know, makes a stop or

Page 8

gets dispatched to the wreck, runs the driving history of the individual, and then, like I said, if there's a prior conviction or a revoked, then officer, if they choose to, will seize the vehicle, tow it -- have it towed to the lot, and then from there, we kind of maintain control of that vehicle.

**Q. So that the officer will seize the vehicle if he chooses to?**

A. Yeah, the -- our SOP doesn't say they have to. It's not a must or a shall in our SOP.

**Q. How would an officer go about making the choice about whether to seize or not seize the vehicle?**

A. I don't know. I mean, it's discretion, just like an officer has right to either give you a speeding ticket or not.

**Q. You mentioned there was seven people in the unit, correct? Can you just run through those who those people are.**

A. Anna Griego, Robert Montano, they basically have the same job. They handle appointments. So let's say somebody gets their car seized; they call when they get out of jail and say, "Hey, I need to get a purse" or car seats out of the car. So they will come oversee the person picking -- we say things that aren't attached to the car, batteries, speaker boxes that are bolted in,

Page 9

because we don't have time to sit here and wait for people to do that.

Ray Martinez, R.D. Sanchez, Lacresia Rivera, Pepe Hernandez and Kyle Evans -- is that seven people and myself?

**Q. And you mentioned with Anna and Robert Montano what their responsibilities are. How about the other members of the unit?**

A. I'll kind of start I guess maybe easy. Kyle Evans primarily answers phones, just incoming calls, and then Pepe Hernandez will get reports, e-mail usually, through the -- to the officers, or they'll come on a fax machine, and he'll double-check that the officer did see a prior conviction or revocation and then runs a query on that, making sure, okay, yes, this is -- has a prior conviction or has a revoked. And then we'll -- he'll -- he's responsible for scanning and e-mailing that to the City Attorney's Office for the Hearing Office.

And then Lacresia is the coordinator. I mean, she's almost like the secretary. She orders supplies, but she also does a lot of the docketing of officers for when they have the hearings, does a lot of the abandonments that go to courts. She does a lot of the admin paperwork.

3 (Pages 6 to 9)

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May 17, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 10</p> <p>1 R.D. Sanchez is primarily in charge of the 2 boots, so if someone agrees to get a boot immobilization 3 placed on the vehicle, he's in charge of that, setting 4 that up, saying, "Okay, come in on Tuesday," you know, 5 "with a licensed driver or tow truck." 6 But then twofold, him and Roy Martinez are 7 both VIN-certified officers, so they -- if a vehicle is 8 going to go to auction, they have to do a full law 9 enforcement VIN inspection on it, make sure it's not 10 stolen or has any altered VINS on it. 11 Then Roy is also DWI instructor-certified, 12 so he's the one that teaches the cadets about DWI laws. 13 <b>Q. Sure. And so the backgrounds on offenders that</b> 14 <b>go to the Legal Department, is there a policy that sets</b> 15 <b>out how to put those together?</b> 16 A. Like what do you mean, the paperwork? 17 <b>Q. Yeah. Is there a written policy? What sort of</b> 18 <b>investigation is done that is sent to Legal?</b> 19 A. The police report and then the background that 20 Pepe Hernandez does through MVD records. So, I mean -- 21 and there's a cover sheet that the Seizure Unit has that 22 says -- you know, it's boilerplate, but it's just fill 23 in the blank, usually the driver's name, how many prior 24 convictions and when, like years. 25 So Pepe, when he sees it, he'll write down</p>	<p style="text-align: right;">Page 12</p> <p>1 it's revoked, it's one type of report, we call it a 2 regular police report, and then if you have a DWI 3 investigation, because a driver has a prior conviction, 4 then it's a DWI report. But they're both state-uniform 5 type of reports. 6 <b>Q. Okay. Is there any additional investigation</b> 7 <b>that's done if the vehicle is owned by a person who's</b> 8 <b>different from the driver?</b> 9 A. No. I'm trying to think. No, there's no type 10 of different investigation because the officer is 11 looking at the person driving the car. And then Pepe 12 just looks at the driving history of the person driving 13 the car. 14 <b>Q. So let me start with some documents here.</b> 15 A. Okay. 16 MR. JOHNSON: I'll go ahead and mark this 17 as Exhibit A. 18 (Deposition Exhibit A was marked for 19 identification.) 20 <b>Q. (By Mr. Johnson) Are you familiar with this</b> 21 <b>document?</b> 22 A. Yes, but there's a more revised version. 23 <b>Q. Sure.</b> 24 <b>When would this document have been in</b> 25 <b>effect?</b></p>
<p style="text-align: right;">Page 11</p> <p>1 the offender's name. I think the vehicle information is 2 on there, how many prior DWIs, and then he'll put the 3 year of the DWI and attach that to the report in the MVD 4 printout. 5 <b>Q. And other than the record search, is there any</b> 6 <b>sort of investigation that's done that goes to the Legal</b> 7 <b>Department?</b> 8 A. I mean, no. I mean, that is -- the 9 investigation is the report, and then Pepe 10 double-checking the background of the driver. And 11 that's through MVD searches, whether it's New Mexico or 12 50-state wide. 13 <b>Q. Got it.</b> 14 <b>Does the unit send any kind of a</b> 15 <b>description of the details of the seizure for the Legal</b> 16 <b>Department?</b> 17 A. The police report. 18 <b>Q. The police report, sure.</b> 19 <b>Other than that, is there any investigation</b> 20 <b>into the -- into the facts of the case?</b> 21 A. I mean, I guess so. I mean, it's still a 22 police report, but like I say, if it's a DWI 23 investigation, the DWI report is sent, you know, with 24 that same information that Pepe pulls from MVD to the 25 Legal Department. So it's still a police report, but if</p>	<p style="text-align: right;">Page 13</p> <p>1 A. It looks like June 2008 to 7 of July of 2013. 2 <b>Q. Is that right where it says, "Effective July</b> 3 <b>31st, 2013"?</b> 4 A. My bad, yes. 5 <b>Q. So does that mean it would have been effective</b> 6 <b>from July 31st of 2013?</b> 7 A. Correct. 8 <b>Q. Okay. I felt there was a more --</b> 9 <b>A. Right.</b> 10 <b>Q. -- a new policy put into effect.</b> 11 <b>A. Right.</b> 12 <b>Q. Do you know when a new policy would have been</b> 13 <b>put into effect?</b> 14 A. No, but I could find out. 15 <b>Q. Okay. I'm interested in the -- under "Concept</b> 16 <b>of Operations," the third paragraph here --</b> 17 <b>A. Okay.</b> 18 <b>Q. -- it says, "The DWI Seizure Unit will provide</b> 19 <b>support to the Department by administering the vehicle</b> 20 <b>nuisance ordinance and provide equipment to field</b> 21 <b>officers to enhance enforcement and education efforts."</b> 22 <b>Can you explain sort of how the unit</b> 23 <b>achieves that objective.</b> 24 A. Yes, so my understanding is money brought in 25 through auctions or the boots or storage fees. Some of</p>

4 (Pages 10 to 13)

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Arlene Harjo v. City of Albuquerque  
Donovan Rivera

May 17, 2017  
1:16-cv-01113-JB-WPL

Page 14

the equipment is PBTs, personal breath tests, that are brought from this money and given to officers for their DWI investigations out in the field. There's also radar units that are bought and given to officers to assist them in the field as well, and then just anything DWI-related -- enforcement; it could be training for specific officers if they want, you know, to get brushed up on more DWI or DRE, Drug Recognition Experts, drug-related driving.

So that was my understanding, is that the money goes back into DWI-related -- you know, it says equipment or education or prevention.

**Q. Sure, sure.**

A. I also would buy for kids -- because we take the Batmobile -- our big Batmobile to demos, usually at schools, so we'll give away like the police badge, badges for the kids, and my understanding is that comes out of the same type of money.

**Q. Sure.**

**So this is -- where it says the concept of operations, what does that mean, that it's the concept of operations?**

A. I'm taking it as just the ideas of the operations -- or how the department thinks how the operations of DWI and the Seizure Unit and the DRE

Page 15

Program should be ran and how it operates.

**Q. Sort of is it the overall goals for the section?**

A. Yeah. Usually there's its own section that says, "Goals," yeah, on the next page.

**Q. So how is it distinct from the goals?**

A. Like I said, I think the concept and operations is more of the idea of how the unit should be ran and the goals are more specific as to daily, weekly, monthly, yearly.

**Q. Sure.**

**So the concept of operations could be a sort of overall idea for how the Seizure Unit should be run?**

A. Correct; that's how I take it.

**Q. Sure. Okay.**

**Do you think the unit has been effective in achieving that goal?**

A. I would say yeah, I think people are -- they know they can get their vehicles seized if they have a prior conviction or are driving on revoked, so I think it makes people think about not driving drunk. I mean, over the years I've been there, seizures have gone down. Is it because people are getting the idea of seizures? Maybe. Is it because now you've got share

Page 16

riding services? Maybe. But they've gone down, but is it because of specifically the Seizure Unit? Maybe; I just don't know. That would be the million-dollar question.

**Q. You mention that the number of seizures has gone down.**

A. Uh-uh (yes).

**Q. Has that been true -- has that trend been true for all the time that you've been involved in the program?**

A. For the most part, yeah. Definitely they've gone down from when I first started there in August 2013 to current.

I mean, is it a downgrade slope consistently? No. I mean, one month might peak a little bit, but it's gone down over time quite a bit. We've even gotten rid some of extra spaces or lots because we don't need it and we don't want to pay for the -- because we lease the property where the seizure office is at. So there's no need for the spot, so we don't need it because seizures are down.

**Q. How has that affected the program?**

A. Less work for the people I supervise. In fact, a lot of the time they'll ask me. "Is there anything I can do?"

Page 17

"Go pull weeds," you know, because we have the wild elm trees that mess up the fencing. I'm like, "Go pull the elm trees. Go wash the tow truck if you want."

So there's some times where it's just low in the office. But also obviously, financially, it's hurting the program. I've asked for, in the past, nothing recent, for more types of stickers for the kids, and they're like, "No, can't order any more right now because of the funding."

**Q. Has there been any changes made to try to maintain program revenue as the number of seizures has declined?**

A. No. I mean, actually, like the tow fees have stayed consistently the same over the years, so there has not even been talk of raising tow fees to make up the difference. I mean, there's been no talk of changing or restructuring, you know, to bring in more money. I mean, it's up to the officers that are seizing the cars if there's going to be more seizures or not, and that's just how it is right now.

MR. JOHNSON: I have another exhibit. I'll mark this as Exhibit B.

(Deposition Exhibit B was marked for identification.)

5 (Pages 14 to 17)

Trattel Court Reporting & Videography  
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Arlene Harjo v. City of Albuquerque  
Donovan Rivera

May 17, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 18</p> <p>1 <b>Q. (By Mr. Johnson) Are you familiar with this</b> 2 <b>document?</b> 3 A. It's an e-mail. It was a long time ago. I 4 don't remember the specific e-mail. Do I remember 5 typing this? No. Do I remember reading it? No. But 6 obviously, it's between me and Shane Rogers, who was the 7 sergeant that I replaced. 8 <b>Q. Sure, sure.</b> 9 <b>And when Shane Rogers was writing his part</b> 10 <b>of the e-mail chain, was he the sergeant at that time?</b> 11 A. Correct. 12 <b>Q. Okay. And he has a list of six bullet points.</b> 13 <b>Can you tell us, from the context of the e-mails, do you</b> 14 <b>know what those six bullet points are?</b> 15 A. I mean, that helps a little bit. Below, where 16 it just says the 2012 and 2013 accomplishments, it must 17 be for -- I don't know if it's for the monthly or if 18 it's for the performance, like, evaluations for the 19 unit. 20 <b>Q. Is this a list of accomplishments achieved by</b> 21 <b>the Seizure Unit?</b> 22 A. Some of them are. Like No. 5, they haven't 23 located land, so I wouldn't say that's an 24 accomplishment, and No. 3, "New Grant Tracking Program," 25 I don't even know what that is.</p>	<p style="text-align: right;">Page 20</p> <p>1 <b>Q. If you had to speculate, what would you say?</b> 2 MR. GRUBEL: Objection, form. 3 <b>Q. (By Mr. Johnson) You can answer.</b> 4 A. I don't know. I don't know how he would answer 5 it because I know how I would do it. 6 <b>Q. But do you understand here that he's talking</b> 7 <b>about the DWI Seizure Program?</b> 8 A. Right. 9 <b>Q. Okay. When you were the sergeant for the DWI</b> 10 <b>Seizure Program, were you responsible for producing</b> 11 <b>monthly reports about the number of seizures, the amount</b> 12 <b>generated at auction?</b> 13 A. Yes. 14 <b>Q. And how were those reports used?</b> 15 A. The city just wants monthlies from every 16 unit -- really the department, not really the city. The 17 department wants monthlies from every unit, whether it's 18 one squad in the field or the Bomb Unit, DWI Unit -- 19 Seizure Unit. And what they do with that, I don't know. 20 It's above my level. 21 <b>Q. Who has access to those monthlies?</b> 22 A. Anyone can go into -- when I say "anyone," 23 departmentwise, they can go into APD SharePoint and look 24 at it. If I wanted to, I could look at the Foothills 25 Area Command, which is a patrol division. If I wanted</p>
<p style="text-align: right;">Page 19</p> <p>1 <b>Q. No. 5, when it says, "Continue process of</b> 2 <b>locating suitable land to purchase for program," is the</b> 3 <b>program that he's referring to there the DWI Seizure</b> 4 <b>Program?</b> 5 A. Yes, that's how I take it. 6 <b>Q. And below that, when you ask him for any 2013</b> 7 <b>accomplishments, are you asking for accomplishments for</b> 8 <b>the DWI Seizure Program?</b> 9 A. Yeah, I just don't know what -- like I said, 10 it's either performance plans for the Seizure Unit -- I 11 don't know why I started the e-mail. Honestly, I don't 12 know what I was looking at to say, "Hey, you know, all I 13 can find is 2012 accomplishments," because it was right 14 when I came over, so I just don't recall. 15 <b>Q. Sure. But when you do refer to the "program"</b> 16 <b>under Bullet Point 5, that is the DWI Seizure Program?</b> 17 A. Correct. 18 <b>Q. Okay. And then under No. 6, where it says,</b> 19 <b>"Maintain program revenue despite drop of intake," is he</b> 20 <b>referring there to the DWI Seizure Program as well?</b> 21 A. Yeah, I mean, I would assume so. 22 <b>Q. Sure.</b> 23 <b>How was it that Shane Rogers was able to</b> 24 <b>maintain program revenue despite a drop of intake?</b> 25 A. You'd have to ask him. I don't know.</p>	<p style="text-align: right;">Page 21</p> <p>1 to see what one squad was doing, I could go into 2 SharePoint and look at it. 3 <b>Q. You say "anyone." Do you mean anyone in the</b> 4 <b>Police Department?</b> 5 A. Right. 6 <b>Q. Does anyone outside the Police Department have</b> 7 <b>access to that?</b> 8 A. I'm sure. But yeah, you need a password or 9 pass code to get into the SharePoint drive. 10 <b>Q. When you say "the SharePoint drive," is that</b> 11 <b>like a computer drive?</b> 12 A. Right. It's a program. 13 MR. JOHNSON: I'm going to mark another 14 exhibit here. I'll mark this as Exhibit C. 15 (Deposition Exhibit C was marked for 16 identification.) 17 <b>Q. (By Mr. Johnson) Are you familiar with this</b> 18 <b>document?</b> 19 A. Yes. 20 <b>Q. What is this?</b> 21 A. The DWI seizure monthly. 22 <b>Q. Okay. And how do you generate this document?</b> 23 A. Lacresia, who's in charge of, like I said, 24 admin stuff, she keeps track of vehicles coming in, 25 vehicles going out, the number of vehicles on the lot.</p>

6 (Pages 18 to 21)

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Arlene Harjo v. City of Albuquerque  
Donovan Rivera

May 17, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 22</p> <p>1 Vehicles on the lot, though, at least in Kyle Evans, the 2 one who usually answers the phones, we just send him 3 into the office to count the number of keys on the rack. 4 That's how he get the number of vehicles on the lot. 5 Boot removals, again, are -- boots were 6 done every Monday in the morning. Now we moved it to 7 Tuesdays because there's a lot of the holidays on 8 Mondays, so we felt bad for people coming in on Monday, 9 and there was no one there because we're forced off. 10 Vehicles ready for auction is just 11 dependent on how many vehicles are either abandoned or 12 signed over to the city on a monthly basis. 13 Tow bill, Lacresia deals with that 100 14 percent. 15 Storage fees, boot fees, and tow fees, 16 again, Lacresia deals with that. So what she does, she 17 really just gives me -- I think it's just a Word 18 document of the breakdown of this, then I input it. And 19 then it's a spreadsheet, so it just totals year-to-date 20 and month-to-date, you know. As you type in, it will -- 21 like, for the bottom, total amount into the seizure 22 account. 23 <b>Q. Then the final column here, where it says,</b> 24 <b>"Percent of Difference," is that a number that's</b> 25 <b>generated automatically?</b></p>	<p style="text-align: right;">Page 24</p> <p>1 <b>fees charged by the auction house?</b> 2 A. Not that I'm aware of -- 3 <b>Q. Okay.</b> 4 A. -- not since I've been there. I know they were 5 using a different auction company -- 6 <b>Q. Right.</b> 7 A. -- before I got there, and what I was told, it 8 was higher. 9 <b>Q. Yeah, if you turn to the page for May or June</b> 10 <b>of 2016 and you look at the -- there it says six</b> 11 <b>percent.</b> 12 A. I actually talked to the creator of the monthly 13 and said, "No, that's not right." And he said, "Well, 14 what do you mean?" And I said it should be -- I can't 15 remember if it's eight percent or six percent now; now 16 I'm drawing a blank. 17 But I told him that it's -- yeah, I believe 18 it's eight percent, because a guy, Keith Burkstein 19 (phonetic), has to create the monthly for (inaudible), 20 Seizure Unit, the Motor Unit by hand, so I remember 21 catching that and calling him, saying, "Hey, it should 22 be eight percent." 23 <b>Q. Okay. Yeah, because I guess if you look at</b> 24 <b>August of 2016 and back up?</b> 25 A. Right.</p>
<p style="text-align: right;">Page 23</p> <p>1 A. Correct. 2 <b>Q. Okay. Is that the percent of difference</b> 3 <b>between the year-to-date total for 2016 versus 2015?</b> 4 A. Correct. 5 <b>Q. That would tell you, for instance, the number</b> 6 <b>of vehicles is -- that are being seized is down or up</b> 7 <b>from the year before?</b> 8 A. Correct. 9 <b>Q. And it would do the same: It would tell you if</b> 10 <b>the amount that's been generated at auction is down or</b> 11 <b>up from the year before?</b> 12 A. Correct. 13 <b>Q. And is this generated at the end of every</b> 14 <b>month?</b> 15 A. Well, it's due no later than the 5th of every 16 month that I have to complete it. 17 <b>Q. So --</b> 18 A. So I can't really do it like on the 30th or the 19 31st, it has to be between the 1st and the 5th for the 20 prior month. 21 <b>Q. So we're looking here at -- for January of</b> 22 <b>2016, this would have been compiled and then due on --</b> 23 <b>by February 5th?</b> 24 A. Correct. 25 <b>Q. Has there been any change in the percentage of</b></p>	<p style="text-align: right;">Page 25</p> <p>1 <b>Q. Okay. Interesting.</b> 2 <b>When you say someone creates it by hand,</b> 3 <b>what do you mean by that?</b> 4 A. They have to physically go in -- I don't know a 5 lot about Excel, but go in and put the values in for 6 each box so it can total out on the end column, "Percent 7 of Difference." 8 <b>Q. Okay. So Lacresia provides the Word document,</b> 9 <b>and then you look that over and send it to somebody else</b> 10 <b>who inputs the data?</b> 11 A. No. So she gives me the Word document, I log 12 into the SharePoint, and then just input what she says 13 on the Word document. 14 <b>Q. You would put into it SharePoint and then</b> 15 <b>somebody else creates an Excel document?</b> 16 A. Well no, SharePoint has this link in it for the 17 Excel document, so then it -- when I click on the 18 SharePoint, go to DWI Seizure Unit, then this pops up, 19 and then I just input each value. 20 <b>Q. Okay. So you're inputting it directly into the</b> 21 <b>Excel document?</b> 22 A. Correct. 23 <b>Q. I see.</b> 24 <b>So when you say someone creates it by hand,</b> 25 <b>you mean somebody is creating --</b></p>

7 (Pages 22 to 25)

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Arlene Harjo v. City of Albuquerque  
Donovan Rivera

May 17, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 26</p> <p>1 A. The boxes, the format. 2 <b>Q. Got it. Someone creates the Excel document</b> 3 <b>that you're inputting the data into?</b> 4 A. Correct. 5 <b>Q. I see. Do you know who that is, who creates</b> 6 <b>it?</b> 7 A. Keith Burkstein. 8 <b>Q. What is his position?</b> 9 A. I don't know his official title. He does all 10 the computer stuff, though, for the Metro Unit. Metro 11 Traffic Unit is -- like I said, it's the DWI Seizure 12 Unit, School Safety Program, Prison Transport Center, 13 Metro Court personnel, and the Motorcycle Unit. 14 <b>Q. In all the time that you've been associated</b> 15 <b>with the unit, has the format of this been -- of this</b> 16 <b>monthly report been the same?</b> 17 A. Yes. 18 <b>Q. Are you familiar with the annual performance</b> 19 <b>measures that are generated for the DWI Seizure Unit?</b> 20 A. Yes. 21 <b>Q. Can you just say a word about what they are.</b> 22 A. Kind of what the program was expected to 23 perform or how they're expected to perform every year. 24 <b>Q. When you say it's how the program is expected</b> 25 <b>to perform, what does that mean?</b></p>	<p style="text-align: right;">Page 28</p> <p>1 as Exhibit D. 2 (Deposition Exhibit D was marked for 3 identification.) 4 <b>Q. (By Mr. Johnson) Is this the format of</b> 5 <b>documents you were talking about?</b> 6 A. This is it, yes. 7 <b>Q. Okay. So can you say a little bit about how</b> 8 <b>this document is used.</b> 9 A. Yeah. So it's the Employer Work Plan that is 10 created by the City of Albuquerque, not the department, 11 and this -- all these, like, let's say descriptions and 12 outcome measures they're already input in here, and 13 then, you know, Lacsresia's name is there, obviously 14 inputted there. 15 And then I just have to go on -- the work 16 plan, for the last couple of pages, where it says daily 17 expectations, weekly expectations, did she meet or not 18 meet, and just go over it and then give her a copy. And 19 if she agrees, she signs the last page and then I sign 20 the last page. 21 <b>Q. You said the city stopped using these in 2016?</b> 22 A. Correct. 23 <b>Q. Do you know why they stopped using them?</b> 24 A. I don't know. I think they actually wanted to 25 go paperless, is what I heard.</p>
<p style="text-align: right;">Page 27</p> <p>1 A. Well, that's an old form that the city got away 2 from using last -- this past 2016, so I don't recall 3 exactly. But it's just almost boilerplate in there when 4 it's -- then when they're due, you -- as a supervisor, I 5 would just go over what the city has input into the box 6 and just say, "Okay, this is under your job 7 description," like Lacsresia's, is what you're expected 8 to do, and you either meet, exceed or you need guidance 9 on improving. 10 But that's the same with every individual. 11 So it's -- like I say, I haven't looked at that one 12 since probably the end of 2015, so I'm not really that 13 brushed up on it. 14 <b>Q. So we're talking not -- it's the performance</b> 15 <b>evaluation form for the individual employees, is what</b> 16 <b>you're talking about?</b> 17 A. Right. I'm sorry, what did you ask? 18 <b>Q. Oh, that's fine. I was thinking about the</b> 19 <b>annual performance measures for the unit --</b> 20 A. Oh, okay. 21 <b>Q. -- so, you know, we could talk about the</b> 22 <b>performance evaluation.</b> 23 A. I'm sorry, I misunderstood you. 24 <b>Q. No, it's fine.</b> 25 MR. JOHNSON: I'll go ahead and mark this</p>	<p style="text-align: right;">Page 29</p> <p>1 <b>Q. And when you said that these fields are created</b> 2 <b>by the City of Albuquerque, who in the City of</b> 3 <b>Albuquerque would input the language in the form?</b> 4 A. I'm assuming HR. 5 <b>Q. But you're not sure?</b> 6 A. I'm not sure. 7 <b>Q. Like, under "Output Measures," where there's a</b> 8 <b>list of bullet points, in all this time you've been</b> 9 <b>working in the unit, was that language ever changed?</b> 10 A. No -- 11 <b>Q. Okay.</b> 12 A. -- not that I know of, I mean. 13 <b>Q. When it says "Output Measures," what do you</b> 14 <b>understand that to mean?</b> 15 A. Just what the unit is putting out, whether it's 16 statistical or -- yeah, just the output. To me, it's 17 what it says, output measures. You've got to measure 18 the output of the unit. 19 <b>Q. Is that a measure of the unit's success or</b> 20 <b>failure at meeting its objectives?</b> 21 A. Yeah, I would say so. 22 MR. JOHNSON: Another exhibit here. I'm 23 going to mark this as Exhibit E. 24 (Deposition Exhibit E was marked for 25 identification.)</p>

8 (Pages 26 to 29)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Donovan Rivera

May 17, 2017  
1:16-cv-01113-JB-WPL

Page 30	Page 32
<p>1 <b>Q. (By Mr. Johnson) Are you familiar with this</b> 2 <b>document?</b> 3 A. Not really. 4 <b>Q. Sure. Could you turn to Page -- I think Page 4</b> 5 <b>of the exhibit. It's marked here as Page 181.</b> 6 A. Okay. 7 <b>Q. Under "Performance Measures," have you seen</b> 8 <b>this table before?</b> 9 A. Yes. 10 <b>Q. Do you know what this is?</b> 11 A. Yeah, it's like -- kind of like a forecast of 12 how we think we should do and then I guess actual 13 numbers of how we did. 14 <b>Q. When you say "how we think we should do," what</b> 15 <b>do you mean by that?</b> 16 A. I think overall, whether it's the private 17 sector or the public sector, you've got to have goals, 18 and it's -- you know, aim for those goals. 19 <b>Q. So these would be the goals that the DWI</b> 20 <b>Seizure Unit is aiming for in the year ahead?</b> 21 A. Correct. 22 <b>Q. Okay. Who's responsible for coming up with</b> 23 <b>these goals?</b> 24 A. It would be me, but it would -- when I would 25 create, like, the forecasting, I would look at previous</p>	<p>1 <b>hop back in?</b> 2 A. Uh-huh (yes). 3 <b>Q. Okay. Great.</b> 4 <b>So after a car is seized by an officer, can</b> 5 <b>you just walk me through the process of what happens.</b> 6 A. After it's seized? 7 <b>Q. Yes.</b> 8 A. So it gets towed to the Valley Substation. 9 There's a designated parking spot there where the tow 10 company drops it off, puts the keys in the tow -- and 11 receipts in a drop box right by the door -- back door of 12 the substation. 13 The next morning, typically, Robert, Anna 14 come in, take overall photos of the vehicle, more so 15 people can't say it was damaged or items were stolen. 16 They'll take pictures just like through the window of 17 the inside. And then it's -- if it can be driven, it's 18 driven 20 feet into a secured parking lot. If it has to 19 be towed, because it's wrecked or sometimes we don't 20 have keys even if it's not wrecked, it's towed into that 21 same lot. 22 They -- when I say "they," typically, 23 Robert and Anna -- input the vehicle information in a 24 database. They mail out a second printout and mail out 25 a second notice of seizure to the registered owner. If</p>
Page 31	Page 33
<p>1 numbers. And I don't want to set myself up or the unit, 2 set them up for failure, so I try to be realistic on 3 numbers. 4 <b>Q. Sure, sure.</b> 5 <b>When you say you don't want to set yourself</b> 6 <b>up for failure, what would happen if you don't meet</b> 7 <b>these numbers?</b> 8 A. I don't know. 9 <b>Q. When you were with the unit, did it always meet</b> 10 <b>its numbers?</b> 11 A. No. 12 <b>Q. And you said that you would forecast these</b> 13 <b>based on past numbers. How exactly would that work?</b> 14 A. Just looking at the monthlies -- I keep track 15 of all the previous years' monthlies that I was there, 16 so I look at like number of vehicles seized, number of 17 vehicles -- like, on boots or owner is picking up. So I 18 would just go off of that and try to forecast 19 legitimately. Like I say, I just don't want to set 20 myself up for failure. 21 <b>Q. Sure.</b> 22 <b>All right. Why don't we take quick break</b> 23 <b>and we can all enjoy some of the Dunkin Donuts.</b> 24 <b>(Recess taken - 15 minutes.)</b> 25 <b>Q. (By Mr. Johnson) All right. Are we ready to</b></p>	<p>1 there's a lien, then there's a second form that has to 2 be filled out that's mailed out to the lienholder and -- 3 that portion of it. 4 And then once we start getting police 5 reports -- officers are supposed to e-mail them or fax 6 them at 24 hours. Do they ever? No. That was part of 7 me -- it seems like if Lacresia asks an officer for a 8 report because it's been a week, they don't reply to 9 her, but once the supervisor e-mails the officer, 10 they're like, "Oh, let me get this over." 11 So then the report, let's say it comes to 12 me. I'll put it on Pepe's desk, and that's when he'll 13 do the background, look through MVD's query of the 14 driving history. And then -- like I said, then he'll 15 compile that kind of face sheet of the person driving, 16 their information, name, date of birth and then how many 17 convictions and when, by year, and then related numbers 18 in our database for that -- for another seizure if 19 there's been a prior seizure. Then he scans and he 20 e-mails that to the Hearing Office. 21 And then let's say a person gets out of 22 jail and they want to come get, like I said, personal 23 property out of their vehicle. They'll call and make an 24 appointment. That's when Kyle answers the phone, Kyle 25 Evans. And they're scheduled every 30 minutes from I</p>

9 (Pages 30 to 33)

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Arlene Harjo v. City of Albuquerque  
Donovan Rivera

May 17, 2017  
1:16-cv-01113-JB-WPL

Page 34	Page 36
<p>1 believe it's 8:00 in the morning until 12:30 every day, 2 Monday through Friday. 3 So then people come get their property out 4 and then the vehicle is moved from the Valley lot to the 5 seizure lot off Edith, and they're towed from that lot 6 to that lot, which, as the crow flies, you could through 7 a rock from the Valley lot to the Edith lot. 8 And that's generally it. 9 <b>Q. Sure.</b> 10 <b>And then is there a fee for somebody to</b> 11 <b>request a hearing?</b> 12 A. Yes, a \$50 administrative hearing fee. But 13 it's all on the -- when a person is driving the vehicle, 14 is arrested that night, the officer is required to give 15 a notice of seizure to the driver even though we mail 16 one out separate to the registered owner, and it says on 17 there what you need to do, how you go about paying the 18 fee, where you have to mail it to, and then they get a 19 hearing date a week or two out. And that's when, you 20 know, the registered owner will go -- registered owner, 21 sometimes the offender, will go and plead their case. 22 <b>Q. What happens if somebody fails to pay the \$50</b> 23 <b>hearing fee?</b> 24 A. Then I believe it -- don't quote me on it, 25 that's more of Lacresia's deal -- I believe we send a</p>	<p>1 <b>doesn't request a hearing at all?</b> 2 A. Then it's the same type of -- we treat it like 3 an abandonment. So we send them a certified letter, you 4 know, "Hey, it's sitting here. What do you want to do 5 with that?" Then if we get nothing back, then we'll go 6 through the abandonment process. 7 <b>Q. Got it.</b> 8 A. It generally takes about three months. 9 <b>Q. Sure.</b> 10 <b>And you mentioned the hearing. Is there a</b> 11 <b>practice of having settlement talks with owners prior to</b> 12 <b>their hearing?</b> 13 A. I think they have done it. I don't know if 14 it's general practice. I don't have much to do -- or 15 what goes on at the hearing per se. You know, there has 16 been couple times where City Attorneys call and say, 17 "Hey" -- a person comes in ad they want to settle, so, 18 you know, "I'm going to handle it this way." 19 "Okay. You know, if you're happy with what 20 they want and what you want, feel free." 21 <b>Q. Do you ever have conversations with the City</b> 22 <b>Attorney's Office about settlement negotiations?</b> 23 A. Rarely. When they get a new attorney in there, 24 they might call more often in the beginning because 25 they're trying to figure out what to do. But Kyle</p>
Page 35	Page 37
<p>1 certified letter again 30 days after saying, "This is 2 going to be abandoned property unless you go forward and 3 want to go through your hearing and try to get your 4 vehicle back." 5 <b>Q. Sure.</b> 6 <b>And if a vehicle becomes abandoned</b> 7 <b>property, does that mean that it's sold at auction?</b> 8 A. Well, it still has to go through an ex parte 9 order through district court and the judge has to sign 10 off on that, but we have to advertise it in a newspaper 11 that this property is going to be auctioned if it's your 12 vehicle or your property and you need to come claim it 13 before it goes to auction. 14 <b>Q. Sure.</b> 15 <b>At that point, could a person claim it</b> 16 <b>without paying that \$50 hearing fee?</b> 17 A. No, then we'd say, "Okay, you still need to go 18 through a hearing and pay the fee," because the fee is 19 to cover paperwork, the hearing staff's scheduling time 20 and whatnot. 21 <b>Q. So if a person doesn't pay the \$50 hearing fee,</b> 22 <b>eventually, the car would be treated as abandoned and</b> 23 <b>then sold at auction?</b> 24 A. Right. 25 <b>Q. All right. What happens if a person just</b></p>	<p>1 Hibner has been there I don't know how long now, a 2 couple of years, so I rarely get calls anymore. 3 <b>Q. When Kyle was first starting out, would you get</b> 4 <b>calls from him?</b> 5 A. Weekly. 6 <b>Q. And what sort of things would you discuss in</b> 7 <b>those calls?</b> 8 A. Well, it's attorney-client privileged, so I 9 wouldn't get into detail, but he just might have general 10 questions about, "Well, you know, this is the person's 11 third seizure. You know, the matrix says this. What do 12 you want to -- can I bring it down?" 13 And generally, you know, I would say, "No, 14 stick to the matrix," because when Shane Rogers -- when 15 I replaced him, he just said to me -- he's like, "The 16 only advice I can give you is be consistent when it 17 comes to hearings. If attorneys are calling you" -- 18 he's like, "Just be consistent because, like, if you 19 waiver for one, you're going to have to waiver for all 20 of them." 21 <b>Q. Do you ever depart from that and say you --</b> 22 <b>in a particular case, you might be able to depart from</b> 23 <b>the matrix?</b> 24 A. Have I? Sure. I can't really recall a 25 specific scenario or incident, but yeah. I mean, if</p>

10 (Pages 34 to 37)

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Arlene Harjo v. City of Albuquerque  
Donovan Rivera

May 17, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 38</p> <p>1 anything, I go down. I never go more. But there has 2 been, you know, a couple of times where, just based on 3 the incident, I'll tell Kyle, "Yeah, let's go down to 4 the maxes," you know, matrix down.</p> <p>5 <b>Q. What sort of factors would make you consider</b> 6 <b>departing downwards?</b></p> <p>7 A. Probably more personal sympathy for the person. 8 It could be, you know, a death in the family or, you 9 know, they're not from Albuquerque, so it's a headache 10 for them to come back and forth. And could be a -- you 11 know, and just the registered owner isn't the offender, 12 but the registered owner is the one dealing with the 13 hearing and stuff that's not local.</p> <p>14 So I'll say let's just -- instead of them 15 having to pay more or come back for boots, because have 16 to come back usually the next week for a boot agreement, 17 let's just go down one. Like I said, I've done it three 18 to five times.</p> <p>19 <b>Q. Three to five times over the time you've been</b> 20 <b>with the unit?</b></p> <p>21 A. Right.</p> <p>22 <b>Q. Sure. So in most cases, your advice would be</b> 23 <b>to stick with the matrix?</b></p> <p>24 A. Right.</p> <p>25 <b>Q. Sure.</b></p>	<p style="text-align: right;">Page 40</p> <p>1 Was there injuries? Were there kids in the car, making 2 it a felony? So there's several different factors.</p> <p>3 <b>Q. Are those all the factors or are there others?</b></p> <p>4 A. There's others. I can't recall, without seeing 5 the matrix, what all the factors are, but it goes from 6 generally, you know, first offense to, you know, nine 7 offenses. And then it goes, you know, like I said, 8 injury, involved in the crash due to the drunk driver, 9 homicide by vehicle.</p> <p>10 So several different skews and incidents.</p> <p>11 <b>Q. Sure.</b></p> <p>12 <b>Has the matrix been revised since you've</b> 13 <b>been there?</b></p> <p>14 A. No, the numbers have all stayed the same. They 15 did add prostitution, I believe, while I was there.</p> <p>16 <b>Q. Do you know who was involved in creating the</b> 17 <b>matrix?</b></p> <p>18 A. I don't know who created it. It was before I 19 got there.</p> <p>20 <b>Q. Who has access to the matrix?</b></p> <p>21 A. I know I do and the City Attorneys do, or the 22 hearing -- City Attorney.</p> <p>23 <b>Q. Does anybody else?</b></p> <p>24 A. Not that I know of.</p> <p>25 <b>Q. Sure.</b></p>
<p style="text-align: right;">Page 39</p> <p>1 <b>Do you know why the attorneys would be</b> 2 <b>calling you with these kinds of questions rather than</b> 3 <b>the -- their supervisors from the City Attorney's</b> 4 <b>Office?</b></p> <p>5 A. Because I'm the client for the City Attorneys, 6 so they probably feel they need to ask the client, you 7 know, "Would you be happy or okay if I did this?"</p> <p>8 <b>Q. Sure. And if you tell them to stick with the</b> 9 <b>matrix, do they do what you recommend?</b></p> <p>10 A. Right. I've never had any pushback.</p> <p>11 <b>Q. Okay. Let's talk a little bit about the</b> 12 <b>matrix. What is it, exactly?</b></p> <p>13 MR. GRUBEL: Before we -- don't -- we have 14 withheld this as privileged, so I'm going to let him go, 15 but I may instruct my client not to answer.</p> <p>16 A. It's attorney-client privileged, but it's just 17 you've got a vertical column, horizontal column, and 18 it's just the scenario for the arrest. You just kind 19 of, okay, if that's what it says, you know, a boot for 20 30 days.</p> <p>21 <b>Q. (By Mr. Johnson) Sure.</b> 22 <b>And what kind of factors are taken into</b> 23 <b>account by the matrix?</b></p> <p>24 A. The number of prior DWI convictions. Did the 25 person refuse to blow? Were they involved in a crash?</p>	<p style="text-align: right;">Page 41</p> <p>1 <b>Are there ever cases where</b> 2 <b>somebody -- you'd be able to enter into an agreement</b> 3 <b>where they get the car back without having to have a</b> 4 <b>boot put on the car?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. Okay. Are there cases where they may get the</b> 7 <b>car back without having to either have a boot or pay any</b> 8 <b>money to get the car back?</b></p> <p>9 A. No, there's -- they usually have to pay the tow 10 bill because the city pays it up front. And typically, 11 he got towed for either -- you know, person didn't have 12 a license or they were driving drunk, so they would 13 have -- they'd have to pay a tow bill, even if it went 14 to a regular tow yard from the tow yard.</p> <p>15 <b>Q. So in some cases, people would have to pay the</b> 16 <b>tow bill. Are there other cases where they have to pay</b> 17 <b>extra money on top of the tow bill?</b></p> <p>18 A. Yeah. I mean, are you saying if there's a boot 19 or --</p> <p>20 <b>Q. Or without a boot.</b></p> <p>21 A. I'm trying to think of a scenario. I mean, it 22 just -- it's either going to be just the tow bill or, 23 like, the boot fee.</p> <p>24 <b>Q. Okay. So the monetary payments that people</b> 25 <b>would have to have would be the tow bill and/or the boot</b></p>

11 (Pages 38 to 41)

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505-830-0600

Arlene Harjo v. City of Albuquerque  
Donovan Rivera

May 17, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 42</p> <p>1 <b>fee?</b></p> <p>2 A. Not and the boot fee, It's either just the boot</p> <p>3 fee -- you know, if they agree to a boot, then it's just</p> <p>4 the boot fee, not in addition to the tow bill.</p> <p>5 <b>Q. So if you have a boot agreement, there's no tow</b></p> <p>6 <b>in addition to the boot?</b></p> <p>7 A. Right. I mean, it's just a set amount for the</p> <p>8 boot. You don't have to say, okay, it's \$850, you know,</p> <p>9 \$50 plus \$215 for the tow, it's just \$850.</p> <p>10 <b>Q. Got it. So people are either paying the tow</b></p> <p>11 <b>bill or they're paying a boot fee?</b></p> <p>12 A. Right.</p> <p>13 <b>Q. What sort of range is the boot fee?</b></p> <p>14 A. It goes -- it's been a while, because I just</p> <p>15 got back to the City Unit -- are we talking money or</p> <p>16 time?</p> <p>17 <b>Q. Money.</b></p> <p>18 A. So \$850 is the minimum for a boot fee up to</p> <p>19 \$5,100, I believe.</p> <p>20 <b>Q. And what's the range of time?</b></p> <p>21 A. Minimum is 30 days, maximum is two years, I</p> <p>22 believe.</p> <p>23 <b>Q. And are -- is the amount of money calculated</b></p> <p>24 <b>separately from the amount of time?</b></p> <p>25 A. So no, I mean, it's -- 30 days is \$850, and it</p>	<p style="text-align: right;">Page 44</p> <p>1 kick in, is if they miss their boot day, because they're</p> <p>2 told, "You need to be here on this Tuesday at the Valley</p> <p>3 Substation between 8:00 and 10:00. Have a licensed</p> <p>4 driver or a tow truck ready."</p> <p>5 <b>Q. What about if someone is picking up a car not</b></p> <p>6 <b>pursuant to a boot agreement but say because it's an</b></p> <p>7 <b>ordered release by a hearing officer?</b></p> <p>8 A. No, no fees for storage.</p> <p>9 <b>Q. Is that always true?</b></p> <p>10 A. Since I've been there.</p> <p>11 <b>Q. How are storage fees calculated in cases where</b></p> <p>12 <b>they're charged?</b></p> <p>13 A. They're -- we go by the PRC tow statute for how</p> <p>14 much the legislature, you know, regulates PRC that</p> <p>15 regulates the tow companies. We just go by what they</p> <p>16 recommend, \$10 a day, and then, you know, "This is how</p> <p>17 much an average tow should cost." That's how that's</p> <p>18 calculated.</p> <p>19 <b>Q. Are you the one who bills people for storage</b></p> <p>20 <b>fees?</b></p> <p>21 A. We don't bill them, we just tell them.</p> <p>22 <b>Q. Are you involved in collecting them?</b></p> <p>23 A. No, R.D. Sanchez primarily does it on the boot</p> <p>24 days if they missed it, but primarily it's -- R.D.</p> <p>25 answers that, would like tell the person, "Okay, you're</p>
<p style="text-align: right;">Page 43</p> <p>1 goes I believe -- no, 45 days is the set amount. 90</p> <p>2 days, six months, I can't remember that -- the month --</p> <p>3 or sometimes it's days, not even months. Like I said,</p> <p>4 45 days, then I think there's 120 days; I just don't</p> <p>5 recall. But it's the same amount for each increased</p> <p>6 time period, if that makes sense.</p> <p>7 <b>Q. It does.</b></p> <p>8 <b>When people pick up their car, do they also</b></p> <p>9 <b>charge storage fees?</b></p> <p>10 A. It depends. I'm trying to think. Let's say</p> <p>11 they go to hearing and they're supposed to come in the</p> <p>12 following Tuesday to get their boot on, but they don't</p> <p>13 come in, and weeks go by, months goes by, then the</p> <p>14 storage fees will kick in. But those -- usually people</p> <p>15 with the boot, the following week on Tuesday, they're</p> <p>16 usually there.</p> <p>17 But generally, R.D. Sanchez, who's in</p> <p>18 charge of the boot program, will get a call, "Hey, I</p> <p>19 can't come in this Tuesday" -- for whatever reason; we</p> <p>20 hear every excuse, whether it's a viable excuse or</p> <p>21 not -- "but I'll there be next Tuesday." And he'll tell</p> <p>22 them, "Okay, it's going to be \$10 additional for every</p> <p>23 day it's sitting in our lot."</p> <p>24 "Okay, okay."</p> <p>25 So that's the only time the storage fees</p>	<p style="text-align: right;">Page 45</p> <p>1 on another seven days," because if they missed Tuesday,</p> <p>2 they have to come the following Tuesday -- seven days.</p> <p>3 <b>Q. Sure.</b></p> <p>4 A. So, you know, tell the registered</p> <p>5 owner/offender, if it's the same person, then he</p> <p>6 collects it on that next Tuesday.</p> <p>7 <b>Q. Does it ever happen that somebody enters into a</b></p> <p>8 <b>boot agreement and then fails to show up to pay the boot</b></p> <p>9 <b>fee?</b></p> <p>10 A. Yes. You know, not often, but it has happened.</p> <p>11 <b>Q. Has it ever happened that somebody wins the car</b></p> <p>12 <b>back at a hearing and then fails to pick it up?</b></p> <p>13 A. I'm sure it has happened, but I can't recall,</p> <p>14 like, a specific incident.</p> <p>15 <b>Q. Sure, sure.</b></p> <p>16 <b>Can we just talk about the (inaudible) to</b></p> <p>17 <b>see if a car is located within the city limits at the</b></p> <p>18 <b>time that it's seized.</b></p> <p>19 A. So if the Seizure Unit -- you know, it's</p> <p>20 probably partly my responsibility, but Pepe, who's doing</p> <p>21 the background, who looks at the report, because I'd</p> <p>22 rarely see reports come across my desk unless there's an</p> <p>23 issue with them. Either Lacresia will bring them to me</p> <p>24 or Pepe will sometimes ask me. But I'll take</p> <p>25 responsibility for it, but Pepe does the background, and</p>

12 (Pages 42 to 45)

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Arlene Harjo v. City of Albuquerque  
Donovan Rivera

May 17, 2017  
1:16-cv-01113-JB-WPL

Page 46	Page 48
<p>1 that's what he's supposed to be looking for.</p> <p>2 And officers for APD, they shouldn't be</p> <p>3 outside the city limits, but they can, and because we're</p> <p>4 cross-commissioned countywise. So they could seize a</p> <p>5 vehicle or pull someone over in the county, but if it's</p> <p>6 outside the city limits, they shouldn't be seizing it</p> <p>7 because it's got to be within the city limits.</p> <p>8 <b>Q. Right, sure.</b></p> <p>9 <b>And does Lacresia also do the background</b></p> <p>10 <b>checks or investigate?</b></p> <p>11 A. Rarely. Like I said, that's primarily Pepe's</p> <p>12 job.</p> <p>13 <b>Q. Okay. Are there any policies that would direct</b></p> <p>14 <b>Pepe to check to see whether somebody is inside city</b></p> <p>15 <b>limits at the time it was seized?</b></p> <p>16 A. Not in writing, just an order by me.</p> <p>17 <b>Q. Okay.</b></p> <p>18 A. I used to double-check that.</p> <p>19 <b>Q. Sure, sure.</b></p> <p>20 <b>And are you familiar with Arlene Harjo?</b></p> <p>21 A. A little bit, just based on what I've seen in</p> <p>22 the media, but that's really about it.</p> <p>23 <b>Q. What's your understanding of what happened in</b></p> <p>24 <b>that case?</b></p> <p>25 A. Her son was driving the vehicle -- her vehicle,</p>	<p>1 like I said, I don't know where mile markers are</p> <p>2 mentally.</p> <p>3 <b>Q. Right.</b></p> <p>4 A. I mean, State Police, they could be in the City</p> <p>5 of Albuquerque on I-25 and Montgomery, but they'll still</p> <p>6 put mile marker whatever. It's Greek to me.</p> <p>7 <b>Q. How does it happen that a car is transferred</b></p> <p>8 <b>from the county to the APD?</b></p> <p>9 A. You mean towed or --</p> <p>10 <b>Q. Yeah. What's the process for transferring a</b></p> <p>11 <b>car that's initially pulled over by the county over to</b></p> <p>12 <b>the --</b></p> <p>13 A. So let's say a county deputy -- is that what</p> <p>14 you're asking -- pulls over a vehicle within the city</p> <p>15 limits?</p> <p>16 <b>Q. Or outside.</b></p> <p>17 A. Well, they shouldn't be coming to APD's DWI</p> <p>18 Seizure Unit if they're stopped in the county.</p> <p>19 <b>Q. Sure.</b></p> <p>20 A. But deputies, who can obviously make law</p> <p>21 enforcement decisions and actions within the city</p> <p>22 limits, if a deputy pulls over a vehicle within the city</p> <p>23 limits, they can just -- they call the wrecker that's on</p> <p>24 contract for that day, that time, and tell them it's</p> <p>25 going to the APD DWI Seizure Unit. The wrecker tows it</p>
Page 47	Page 49
<p>1 he got arrested for DWI, and State Police seized the</p> <p>2 vehicle and sent it to the APD Seizure Unit. She thinks</p> <p>3 she should get her vehicle back.</p> <p>4 And that's kind of what I know about it.</p> <p>5 <b>Q. Do you understand that the car was seized</b></p> <p>6 <b>outside of city limits?</b></p> <p>7 A. That came to my attention from Kyle, who -- we</p> <p>8 didn't know. That's what I don't like about State</p> <p>9 Police reports: They use mile markers. I don't know if</p> <p>10 you know mile marker from where you're from. It means</p> <p>11 this exit or -- so Kyle is like, "I finally got the</p> <p>12 lapel video from the State Police officer, and it looks</p> <p>13 like they're like up in the mountains."</p> <p>14 He's like, "Where's mile marker whatever it</p> <p>15 is?" I don't know. I had to Google it. So I Googled</p> <p>16 it and said, "No, that's just outside the city limits."</p> <p>17 He said, "Okay." And I said, "Why?" He was like, "It's</p> <p>18 the Arlene Harjo case. The State Police officer was</p> <p>19 like one mile outside the city limits." I said, "All</p> <p>20 right, then it's a bad seizure." And he's like, "Okay."</p> <p>21 <b>Q. And do you know if anybody checked the location</b></p> <p>22 <b>of that mile marker before?</b></p> <p>23 A. Not to my knowledge.</p> <p>24 <b>Q. Do you know if it was on the police report?</b></p> <p>25 A. The mile marker is on the police report, but</p>	<p>1 there, and then the deputy knows to send a report to the</p> <p>2 DWI Seizure Unit.</p> <p>3 <b>Q. Does the county get any kind of portion of the</b></p> <p>4 <b>ultimate --</b></p> <p>5 A. No.</p> <p>6 <b>Q. -- proceeds from the --</b></p> <p>7 A. Not that I know of.</p> <p>8 <b>Q. How often do you get cars from county deputies?</b></p> <p>9 A. I don't know. I mean, guessing, it could be</p> <p>10 zero in one week to five in one week. I mean, it just</p> <p>11 depends. It also depends on is there a holiday that</p> <p>12 week -- a drinking holiday, we call that, like Cinco de</p> <p>13 Mayo, New Year's Eve, the Wednesday before Thanksgiving.</p> <p>14 It just depends.</p> <p>15 <b>Q. Has there been any investigation of what</b></p> <p>16 <b>happened in Arlene's case to determine how it is that</b></p> <p>17 <b>nobody noticed the car was outside city limits?</b></p> <p>18 A. I know, like I said, I told Pepe after that</p> <p>19 incident, "Double-check the city limits and the</p> <p>20 jurisdiction."</p> <p>21 "Okay, sir."</p> <p>22 But I don't have any control. I can't</p> <p>23 discipline the State Police officer because I'm not</p> <p>24 employed by the State Police, so I don't know if their</p> <p>25 chain of command had done anything to that officer or</p>

13 (Pages 46 to 49)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Donovan Rivera

May 17, 2017  
1:16-cv-01113-JB-WPL

Page 50	Page 52
<p>1 not.</p> <p>2 <b>Q. Other than telling Pepe to double-check, have</b></p> <p>3 <b>you done anything else as a result of that incident?</b></p> <p>4 A. No.</p> <p>5 <b>Q. Did you provide Pepe with any instructions</b></p> <p>6 <b>about how to double-check?</b></p> <p>7 A. No, I mean, I just told him, "You need to</p> <p>8 double-check jurisdiction. If you're not sure, then</p> <p>9 either come to me" -- because he's an older gentleman,</p> <p>10 he's not that computer savvy. But I told him, "If it's</p> <p>11 a mile marker and you don't know where it's at, come to</p> <p>12 me and I'll look it up."</p> <p>13 And I told him, "The same with county: We</p> <p>14 need to watch theirs, too, because there's some areas of</p> <p>15 the city where one side of the street is city and the</p> <p>16 other side of the street is county," so I said, "If it's</p> <p>17 county, we need to double-check those addresses as</p> <p>18 well." And he said, "Okay."</p> <p>19 <b>Q. I'll ask you about what are called P-Cards. Do</b></p> <p>20 <b>you have a P-Card?</b></p> <p>21 A. I do.</p> <p>22 <b>Q. Do you use it for expenses associated with the</b></p> <p>23 <b>Seizure Unit?</b></p> <p>24 A. Sure.</p> <p>25 <b>Q. What sort of things do you buy using a P-Card?</b></p>	<p>1 <b>Q. Okay.</b></p> <p>2 A. I don't know. I don't ever buy anything</p> <p>3 exuberantly expensive with the P-Card. The tow straps</p> <p>4 are probably the most expensive, and they're like 50</p> <p>5 bucks per tow strap.</p> <p>6 <b>Q. Sure.</b></p> <p>7 <b>Does anybody else associated with the DWI</b></p> <p>8 <b>Unit have a P-Card?</b></p> <p>9 A. I believe Lacsresia has one -- got one recently</p> <p>10 because when I left, when I got promoted from sergeant</p> <p>11 to lieutenant, she was kind of like the</p> <p>12 manager -- civilian manager over the Seizure Unit, and</p> <p>13 she was told by not my current chain but then my last</p> <p>14 chain of command to probably get a P-Card for things</p> <p>15 like the tow truck and things like that.</p> <p>16 <b>Q. Sure. Does anybody else?</b></p> <p>17 A. Not that I know of.</p> <p>18 MR. JOHNSON: Let me look at another e-mail</p> <p>19 here. Let me mark this -- what are we up to? Exhibit</p> <p>20 F.</p> <p>21 (Deposition Exhibit F was marked for</p> <p>22 identification.)</p> <p>23 <b>Q. (By Mr. Johnson) Are you familiar with this</b></p> <p>24 <b>document?</b></p> <p>25 A. It's an e-mail. I'm familiar with the e-mail.</p>
Page 51	Page 53
<p>1 A. Well, anything that's not on contract through</p> <p>2 like a city contract or vendor. Example: We don't</p> <p>3 have -- the Seizure Unit has tow truck, so there's</p> <p>4 nothing on contract for a tow company to buy supplies</p> <p>5 for a tow truck, like the tow straps that you have to</p> <p>6 put down over the wheels to cinch it down so it stays on</p> <p>7 the tow truck. So Home Depot had those. I bought those</p> <p>8 one time at Home Depot on a P-Card.</p> <p>9 I bought some tiny screws last week for a</p> <p>10 remote that DWI uses for spike belt launcher. The</p> <p>11 screws were stripped where you have to change out the</p> <p>12 batteries.</p> <p>13 So things like that.</p> <p>14 <b>Q. About how often would you say you buy things</b></p> <p>15 <b>using the P-Card?</b></p> <p>16 A. Maybe once a month. It's not that easy. It</p> <p>17 has to be a tax exempt place as well, so Home Depot is a</p> <p>18 tax exempt place for the city. So if I were to go to --</p> <p>19 not that they're around anymore, but Radio Shack, and</p> <p>20 they don't have a tax exempt number from the city, it's</p> <p>21 like pulling teeth to try and buy something that are tax</p> <p>22 exempt.</p> <p>23 <b>Q. What's the limit on the size of things that you</b></p> <p>24 <b>can buy on the P-Card?</b></p> <p>25 A. I want to say it's \$500.</p>	<p>1 <b>Q. And is this an e-mail from you to Eric Locher?</b></p> <p>2 A. Yeah, I mean, it starts more Eric Locher to me.</p> <p>3 <b>Q. Right. So it's an e-mail chain. The first</b></p> <p>4 <b>e-mail is from Eric to you and the second is from you to</b></p> <p>5 <b>Eric?</b></p> <p>6 A. Right.</p> <p>7 <b>Q. Look at this e-mail from Eric to you. Do you</b></p> <p>8 <b>remember seeing this e-mail?</b></p> <p>9 A. Vaguely.</p> <p>10 <b>Q. He says, "Good speaking with you this morning."</b></p> <p>11 <b>Do you know what you spoke to him about?</b></p> <p>12 A. No.</p> <p>13 <b>Q. Okay. He says, "I now aware of several</b></p> <p>14 <b>deficiencies and will be tightening up procedures and</b></p> <p>15 <b>training our assigned attorneys."</b></p> <p>16 <b>Do you know what he's referring to there?</b></p> <p>17 A. No. And I went on to write, "Please go ahead</p> <p>18 and e-mail me the tracking regarding attorneys,</p> <p>19 releases, boots and dismissals. When I was assigned to</p> <p>20 the seizure cases, I never had more than two hearing</p> <p>21 dismissals a year for officers' FTAs."</p> <p>22 Like I said, it vaguely sounds familiar,</p> <p>23 but I can't recall exactly what I was talking -- talked</p> <p>24 about over the phone.</p> <p>25 <b>Q. Does FTA stand for failure to appear?</b></p>

14 (Pages 50 to 53)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Donovan Rivera

May 17, 2017  
1:16-cv-01113-JB-WPL

Page 54	Page 56
<p>1 A. Correct.</p> <p>2 <b>Q. Okay. Is it possible that he's talking about</b></p> <p>3 <b>the procedures for making sure that the officers appear</b></p> <p>4 <b>at the hearings?</b></p> <p>5 A. Yeah, I mean, I'm assuming that's part of that,</p> <p>6 but on the -- our spectrum of court for officers, like,</p> <p>7 federal court trumps district court; district court</p> <p>8 trumps metro court; metro court trumps MVD hearings, and</p> <p>9 MVD trumps these hearings. So lot of the times</p> <p>10 officers, especially DWI officers, they're in metro</p> <p>11 court all day, so they rarely make these type of</p> <p>12 hearings, or MVD hearings, for that matter.</p> <p>13 <b>Q. So you don't know what type of procedures and</b></p> <p>14 <b>training you'd be referring to here?</b></p> <p>15 A. I don't. I don't recall exactly what was said,</p> <p>16 what it was about. I mean, your guess would be as good</p> <p>17 as mine, based on this e-mail.</p> <p>18 <b>Q. Sure.</b></p> <p>19 <b>Have you had any other conversations with</b></p> <p>20 <b>Eric about training and procedures for attorneys?</b></p> <p>21 A. Not that I recall. I mean, definitely not any</p> <p>22 time in the recent past.</p> <p>23 <b>Q. Who would I have to talk to to get more</b></p> <p>24 <b>information about those e-mails?</b></p> <p>25 A. Probably Eric Locher.</p>	<p>1 school crossing guards, Metro Court Law Enforcement,</p> <p>2 Prisoner Transport, and Motorcycle Unit. And then, like</p> <p>3 I say, so it's just -- Metro Unit for DWI side is kind</p> <p>4 of what I'm lieutenant of, so I report to the commander</p> <p>5 on DWI Unit issues or, you know, anything that comes</p> <p>6 about either about the Seizure Unit and the crossing</p> <p>7 guards.</p> <p>8 <b>Q. I see.</b></p> <p>9 <b>So what's the difference between the DWI</b></p> <p>10 <b>Unit and the DWI Seizure Unit?</b></p> <p>11 A. The DWI Unit is sworn officers that have marked</p> <p>12 police vehicles. They work generally late at night,</p> <p>13 looking for DWI offenses, or they get called by the</p> <p>14 field guys to come check to see if a person is</p> <p>15 intoxicated because they're the specialist in it.</p> <p>16 Then the Seizure Unit is just responsible</p> <p>17 for maintaining the integrity of the vehicles that are</p> <p>18 on the lot because we want to keep them protected -- we</p> <p>19 have barbed wire, razor wire --</p> <p>20 <b>Q. Sure.</b></p> <p>21 A. -- and just make sure that the seizures are</p> <p>22 good seizures, meaning, like I said, if it's a bad</p> <p>23 seizure outside of the city limits, saying, you know,</p> <p>24 "Give it back; It's a bad seizure."</p> <p>25 Or if a person, for some reason -- it</p>
Page 55	Page 57
<p>1 <b>Q. Do you know if there are any written procedures</b></p> <p>2 <b>that govern the conduct of City Attorneys in these types</b></p> <p>3 <b>of cases?</b></p> <p>4 A. I don't know the answer to that. I'm assuming</p> <p>5 there would be, but I don't know.</p> <p>6 <b>Q. Do you know who might know the answer to that?</b></p> <p>7 A. I don't.</p> <p>8 <b>Q. If you were going to call someone to find out,</b></p> <p>9 <b>who would you call?</b></p> <p>10 A. Probably Eric Locher.</p> <p>11 <b>Q. Okay.</b></p> <p>12 MR. JOHNSON: Why don't we take a little</p> <p>13 break and reconvene.</p> <p>14 (Recess taken - 18 minutes.)</p> <p>15 <b>Q. (By Mr. Johnson) So I wonder if you can just</b></p> <p>16 <b>help me get a picture of how the DWI Seizure Unit fits</b></p> <p>17 <b>in the organization chart for the Albuquerque Police</b></p> <p>18 <b>Department?</b></p> <p>19 A. I mean, chain of commandwise, I mean, we</p> <p>20 just -- there's a major that oversees the Metro Division</p> <p>21 Unit, and he's got Tactical. So the major is right</p> <p>22 below the chief, and then Tactical has a commander and</p> <p>23 Metro Division has a commander, so talking DWI seizures.</p> <p>24 And under that, the commander oversees,</p> <p>25 like I said, the DWI Unit -- DWI Seizure Unit, the</p>	<p>1 happens rarely -- if an officer will seize a car because</p> <p>2 he thought he saw maybe a prior conviction but Pepe</p> <p>3 looks and can't find a prior, so then we'll get ahold of</p> <p>4 the registered owner and say, "You still have to pay the</p> <p>5 tow bill because it would have been towed that night,</p> <p>6 but you can come pick up your car whenever you want."</p> <p>7 <b>Q. How many officers are there in the DWI Unit?</b></p> <p>8 A. Eight and then a supervisor, so nine.</p> <p>9 <b>Q. And then are there any other personnel in that</b></p> <p>10 <b>unit?</b></p> <p>11 A. A Police Service Aide.</p> <p>12 <b>Q. So there's the eight officers, a supervisor and</b></p> <p>13 <b>a service aide. Is there anybody else in the unit?</b></p> <p>14 A. No.</p> <p>15 <b>Q. And then the DWI Seizure Unit, you mentioned</b></p> <p>16 <b>there were seven personnel in there?</b></p> <p>17 A. Right.</p> <p>18 <b>Q. Okay. To your understanding, when the revenue</b></p> <p>19 <b>was raised from the DWI seizure, can that be used for</b></p> <p>20 <b>expenses both for the DWI Unit and the DWI Seizure Unit?</b></p> <p>21 A. I mean, a lot of it goes to DWI enforcement, so</p> <p>22 yeah.</p> <p>23 <b>Q. Sure, sure.</b></p> <p>24 <b>So what sort of expenses of the DWI Unit</b></p> <p>25 <b>would be paid for using the seizure money?</b></p>

15 (Pages 54 to 57)

Trattel Court Reporting & Videography  
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Arlene Harjo v. City of Albuquerque  
Donovan Rivera

May 17, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 58</p> <p>1 A. I have not bought, but the previous supervisor 2 bought handheld radars for the DWI officers that were 3 there then. A lot of them aren't the same now. PBTs, 4 personal breath tests, that went to DWI officers. 5 I don't know of anything else off the top 6 of my head. I don't think -- I've been there since 7 2013 -- nothing -- I don't think they've requested any 8 equipment that I can recall. 9 <b>Q. Where in the organization chart do area 10 commands fit?</b> 11 A. Under the Field Services majors, there's two of 12 them, east and west. Is that what you're asking? So 13 there's Foothills, Northeast, Southeast -- that's east; 14 then there's Valley, Southwest and Northwest, and that's 15 considered west. 16 <b>Q. So those would be separate from the Metro 17 Division?</b> 18 A. Right. 19 <b>Q. Tell me, what are the area commands?</b> 20 A. It's just Foothills, Northeast, Southeast, 21 Valley, Northwest, Southwest. 22 <b>Q. Yeah, I meant more --</b> 23 A. How they're broken up? 24 <b>Q. How do they work?</b> 25 A. Foothills is everything east of Eubank, which</p>	<p style="text-align: right;">Page 60</p> <p>1 <b>Q. When you mentioned the DWI Sergeant, is that</b> 2 <b>the sergeant who oversees the DWI Unit?</b> 3 A. Correct. 4 <b>Q. Okay. And that's separate from the person who</b> 5 <b>oversees the DWI Seizure Unit? Would that be the</b> 6 <b>Seizure Sergeant, or how --</b> 7 A. That's me. 8 <b>Q. Well, that was you.</b> 9 A. It was me, but now I'm a lieutenant, and they 10 didn't make a sergeant for the DWI Seizure Unit, so now 11 I'm a supervisor over the Seizure Unit directly. 12 <b>Q. Oh, I see.</b> 13 A. And then I'm over DWI, but they have a 14 sergeant, so he oversees the everyday span of control 15 over that. And then the same with the crossing guards: 16 There's an officer that's in charge of them. 17 <b>Q. Okay. So currently, you run the DWI Unit -- or</b> 18 <b>Seizure Unit?</b> 19 A. Seizure Unit, correct. 20 <b>Q. Okay. Who currently runs the DWI Unit?</b> 21 A. Kyle Curtis. 22 <b>Q. Kyle Curtis. And how long has he been in that</b> 23 <b>role?</b> 24 A. Probably a year, year and a half. 25 <b>Q. Okay. Do you know who was in that role before</b></p>
<p style="text-align: right;">Page 59</p> <p>1 is a major boulevard in Albuquerque, to the city limits 2 north and, and then up against the mountains. 3 <b>Q. Yeah, sorry, I meant more like what are their</b> 4 <b>role within the Police Department?</b> 5 A. Oh, take calls for service. If someone calls 6 911 or 242-COPS -- it's a nonemergency phone number -- 7 they get dispatched, designated to the address based on 8 how the area commands are broken up. 9 <b>Q. They would deal with all types of different</b> 10 <b>offenses?</b> 11 A. Right, barking dogs, domestic violence, 12 shoplifting, everything. 13 <b>Q. So in your current role overseeing both the DWI</b> 14 <b>Unit and the DWI Seizure Unit, are you responsible for</b> 15 <b>determining like the frequency with which the city does</b> 16 <b>DWI interventions and checkpoints and things like that?</b> 17 A. I oversee it, but the DWI Sergeant is in charge 18 of scheduling checkpoints, saturation patrols. Those 19 all come from the federal requirements to have certain 20 checkpoints on Super Blitzez, is what the federal 21 government calls them, so that's nationwide. 22 And then saturation patrols are set up 23 every day. Does an officer work them every day? No. 24 We can't make them work the saturation patrol if they 25 don't want to.</p>	<p style="text-align: right;">Page 61</p> <p>1 <b>him?</b> 2 A. I'm trying to remember. Sergeant Mike Lopez. 3 <b>Q. Okay. And how long was he in that role?</b> 4 A. About a year, and then he got promoted to 5 lieutenant. 6 <b>Q. Okay. So that takes us back two years or so?</b> 7 A. Uh-huh (yes). 8 <b>Q. Do you remember who was before Sergeant Lopez?</b> 9 A. Then it was Sergeant Zak Cottrell. 10 <b>Q. How long was he in the role?</b> 11 A. I'm guessing two years, and then he got 12 promoted to lieutenant. 13 <b>Q. So let me go back to the process of settlement.</b> 14 <b>You said that you speak sometimes with City Attorneys</b> 15 <b>when they're settling cases?</b> 16 A. Right. 17 <b>Q. Do they call you every time they settle a case?</b> 18 A. No. 19 <b>Q. So they're able to settle a case without</b> 20 <b>consulting you?</b> 21 A. Correct. 22 <b>Q. Okay. Would they have to call you in order to</b> 23 <b>depart from the settlement matrix?</b> 24 A. Yes. 25 <b>Q. Okay. So they would call you any time they</b></p>

16 (Pages 58 to 61)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Donovan Rivera

May 17, 2017  
1:16-cv-01113-JB-WPL

Page 62

1 **depart from the matrix?**

2 A. I'd say generally. Occasionally they'll waver  
3 from that, but it's rare. But they'll tell me why they  
4 did after the fact. I'm like, "Okay, fine."

5 **Q. Do you know that they would tell you every**  
6 **time?**

7 A. No.

8 **Q. Okay. So it's possible there are times that**  
9 **they would depart from it but you wouldn't know about**  
10 **it?**

11 A. Probably.

12 **Q. Okay. So who would I have to talk to to find**  
13 **out more about that?**

14 A. I'm assuming Eric Locher, but it could be Kyle  
15 Hibner.

16 **Q. Sure.**

17 **When they talk to you after the fact, do**  
18 **they explain to you why they decided to depart from the**  
19 **settlement matrix?**

20 A. Yeah. And I'll be clear: The attorney that  
21 used to do that isn't there anymore.

22 **Q. Who is that?**

23 A. Seth Grant.

24 **Q. Okay.**

25 A. He would waver from the matrix and then tell me

Page 63

1 later either in a phone call or an e-mail as to why he'd  
2 waver from it.

3 **Q. What kind of reasons did he give?**

4 MR. GRUBEL: Let me think about that a  
5 second.

6 MR. JOHNSON: Okay.

7 MR. GRUBEL: I think the reasons touch upon  
8 specific cases in litigation and that would be  
9 privileged, so I'm going to instruct you not to answer  
10 that question.

11 **Q. (By Mr. Johnson) So without talking about any**  
12 **particular case, could you just tell me about just**  
13 **general types of reasons he'd give you.**

14 A. Officer FTA.

15 **Q. Any others?**

16 A. That's the only thing that comes to mind that I  
17 can think of. And I can't think of any other examples.

18 **Q. How long was he -- or do you know how long he**  
19 **was an attorney in the DWI Program?**

20 A. If I had to guess, a year, a year and a half.

21 **Q. And he's no longer there?**

22 A. Correct.

23 **Q. When was he an attorney?**

24 A. What's that?

25 **Q. About when was he an attorney in the program?**

Page 64

1 A. I mean, he left I'm guessing anywhere from

2 December to March, so backtrack a year, year and a half.  
3 I mean, I don't know when he started.

4 **Q. Of what year?**

5 A. When did he leave?

6 **Q. Yeah, what year did he leave?**

7 A. That's what I'm saying. So this  
8 past -- December to this March 2017, I mean, something  
9 between there, because I wasn't there then.

10 **Q. Okay. So he was there sometime between 2016**  
11 **and 2017?**

12 A. Yes.

13 **Q. Do you know if he's still employed by the City**  
14 **of Albuquerque?**

15 A. I don't know.

16 **Q. Do you know why he left the DWI Program?**

17 A. I don't.

18 **Q. Was it unusual that he would waver from the**  
19 **matrix?**

20 A. I mean, he didn't do it often, but he did it a  
21 few times.

22 **Q. Did he do it more often than other attorneys?**

23 A. Yes.

24 **Q. And you said the only reason you could remember**  
25 **was for officer failure to appear. Is it possible there**

Page 65

1 **were other reasons?**

2 A. It's possible.

3 MR. JOHNSON: Let's take another quick  
4 break.

5 MR. GRUBEL: Okay.

6 (Recess taken - nine minutes.)

7 **Q. (By Mr. Johnson) All right. Let's jump back**  
8 **in. I want to just go back a little bit to Seth. You**  
9 **were talking about Seth Grant. So who would have been**  
10 **his supervisor?**

11 A. Eric Locher

12 **Q. Okay. And if I wanted to know more about the**  
13 **reasons that he was moved out of the DWI Program, who**  
14 **would I have to talk to?**

15 A. I don't think he was moved out of it, he just  
16 left. I mean, the best person to ask is Seth.

17 **Q. Sure. Anyone other than Seth?**

18 A. I mean, I'm assuming Eric Locher, but maybe  
19 Seth didn't tell him why he was leaving. So Seth would  
20 be -- if you want to get it from the horse's mouth, it  
21 would be Seth.

22 **Q. Sure. But I could also talk to Eric Locher**  
23 **about it?**

24 A. Yeah. He might not know either; I don't know.

25 **Q. Sure, sure.**

17 (Pages 62 to 65)

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**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 9**

Arlene Harjo v. City of Albuquerque, et al.  
Lacresia Rivera

May 16, 2017  
1:16-cv-01113-JB-WPL

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

ARELENE HARJO,                     )  
   )  
Plaintiff,                            )  
   )  
VS.                                    ) No. 1:16-cv-01113-JB-WPL  
   )  
   )  
   )  
   )  
CITY OF ALBUQUERQUE,            )  
Defendants.                         )

DEPOSITION OF LACRESIA RIVERA  
May 16, 2017  
12:59 p.m.  
Trattel Court Reporting and Videography  
609 12th Street NW  
Albuquerque, New Mexico 87102

PURSUANT TO THE NEW MEXICO RULES OF CIVIL  
PROCEDURE, this deposition was:  
TAKEN BY: ROBERT JOHNSON, ESQ.  
ATTORNEY FOR PLAINTIFF

REPORTED BY: ANNE D. WIESE, RPR, NM CCR #301  
TRATTEL COURT REPORTING  
609 12TH STREET NW  
ALBUQUERQUE, NEW MEXICO 87102

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Arlene Harjo v. City of Albuquerque, et al.  
Lacresia Rivera

May 16, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES 2 FOR THE PLAINTIFF: 3 MR. ROBERT JOHNSON, ESQ. 4 MR. ROBERT FROMMER, ESQ. 5 INSTITUTE FOR JUSTICE 6 901 North Glebe Road 7 Suite 900 8 Arlington, VA 22203 9 rjohnson@ij.org 10 rfrommer@ij.org 11 12 FOR THE DEFENDANT: 13 MR. KYLE HIBNER, ESQ. 14 City of Albuquerque 15 City Attorney's Office 16 P.O. Box 2248 17 Albuquerque, New Mexico 87103-2248 18 khibner@cabq.gov 19 20 MR. JAMES GRUBEL, ESQ. 21 Walz &amp; Associates, P.C. 22 133 Eubank Boulevard NE 23 Albuquerque, NM 87123-2709 24 jgrubel@walzandassociates.com 25 26 ALSO PRESENT: 27 AMITA KANCHERLA (APPEARING TELEPHONICALLY)</p>	<p style="text-align: right;">Page 4</p> <p>1 MR. JOHNSON: Good morning -- or good 2 afternoon, I should say. I'm Robert Johnson. I'm an 3 attorney at the Institute For Justice. This is my 4 colleague, Robert Frommer. 5 MR. GRUBEL: I'm James Grubel on behalf of 6 the City of Albuquerque. 7 MR. HIBNER: I'm Kyle Hibner of behalf of 8 the City of Albuquerque. 9 LACRESIA RIVERA, 10 having been first duly sworn, testified as follows: 11 EXAMINATION 12 BY MR. JOHNSON: 13 Q. State your name for the record, please. 14 A. Lacresia Rivera. 15 Q. Can spell that for the court reporter. 16 A. L-A-C-R-E-S-I-A, R-I-V-E-R-A. 17 Q. Have you ever been deposed before? 18 A. No. 19 Q. So just to sort of orient you, the court 20 reporter will be taking down, you know, everything that 21 you say, so, you know, if I ask you a question, you 22 know, if it's a yes-or-no question, if you shake your 23 head or nod your head, she can't get that down. So just 24 bear in mind that -- say "Yes" or say "No." 25 So similarly, if we're both talking at the</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX 2 PAGE 3 EXAMINATION OF LACRESIA RIVERA 4 By Mr. Johnson..... 4 5 6 SIGNATURE/CORRECTION PAGE..... 79 7 CERTIFICATE OF COMPLETION OF DEPOSITION..... 80 8 EXHIBITS 9 NO. DESCRIPTION 10 A SOP for DWI Seizure Program..... 13 11 B Performance Measures..... 29 12 C Monthly Report..... 31 13 D Spreadsheet..... 44 14 E E-mail from Shane Rogers to Lacresia 15 Rivera dated 2/14/12..... 45 16 F E-mail from Aubrey Thompson to 17 Lacresia Rivera dated 11/22/16..... 49 18 G Class Specification Bulletin..... 50 19 H Employee Work Plan..... 51 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 same time, it's hard for her to get down what we're both 2 saying, so, you know, I'll try to finish what I'm saying 3 and then you can talk. And similarly, when you finish, 4 I'll try to let you finish your statements before I kind 5 of jump in with another question. 6 Your attorney may jump in with objections 7 every now and then. If he does, unless he specifically 8 instructs you not to answer, you then go ahead and 9 answer the question. 10 A. Okay. 11 Q. Do you have any -- does that all make sense to 12 you? 13 A. Yes. 14 Q. Okay. Is there any reason that you can't 15 provide your full and honest testimony here today? 16 A. No. 17 Q. Okay. What is your position at the city? 18 A. DWI Seizure Coordinator. 19 Q. Okay. And how long have you been in that 20 position? 21 A. Since 2009. 22 Q. And what was your position before that? 23 A. City Hearing Monitor. 24 Q. And how long were you in that position? 25 A. About twelve years.</p>

2 (Pages 2 to 5)

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Arlene Harjo v. City of Albuquerque, et al.  
Lacresia Rivera

May 16, 2017  
1:16-cv-01113-JB-WPL

Page 14	Page 16
<p>1 (Deposition Exhibit A was marked for 2 identification.) 3 (Discussion off the record.) 4 <b>Q. (By Mr. Johnson) Do you recognize this?</b> 5 A. Yes. 6 <b>Q. What is it?</b> 7 A. The SOP for DWI seizure forfeiture, duties and 8 responsibilities. 9 <b>Q. And what does that mean?</b> 10 A. This is what I abide by. 11 <b>Q. Okay. This is a policy document for the City</b> 12 <b>of Albuquerque?</b> 13 A. Yes. 14 <b>Q. Where it says, "DWI Seizure Coordinator's</b> 15 <b>Responsibilities" on the first page, are those your job</b> 16 <b>responsibilities?</b> 17 A. Yes. 18 <b>Q. Okay. Great.</b> 19 <b>Where it says, "Maintain database</b> 20 <b>information," what does that refer to, the third item?</b> 21 A. To ensure that all the database fields are 22 filled out. 23 <b>Q. What database does that refer to?</b> 24 A. The Prolog. 25 <b>Q. Okay. And it says, "Oversee all administrative</b></p>	<p>1 <b>Q. Can you say a bit more about how you would</b> 2 <b>check on Google Maps.</b> 3 A. Put in the address that the officer had seized 4 the vehicle at to see if I believed it was in city 5 limits. 6 <b>Q. Okay. Does Google Maps display the city</b> 7 <b>limits?</b> 8 A. Well, no, just from what I think I know what 9 city limits is. 10 <b>Q. So you look to see if it's within what you</b> 11 <b>think city limits are?</b> 12 A. Correct. 13 <b>Q. Do you do that for every car?</b> 14 A. No. 15 <b>Q. Are you familiar with a woman named Arlene</b> 16 <b>Harjo?</b> 17 A. Familiar with the name. 18 <b>Q. How are you familiar with the name?</b> 19 A. With this lawsuit, providing all the documents 20 that were requested. 21 <b>Q. And you're aware that her car was seized by the</b> 22 <b>unit?</b> 23 A. Correct. 24 <b>Q. Do you know if you checked to see if her car</b> 25 <b>was inside city limits at the time it was seized?</b></p>
Page 15	Page 17
<p>1 <b>functions of the DWI Seizure Unit."</b> 2 <b>What does that refer to?</b> 3 A. Make sure everything is getting done. 4 <b>Q. Okay. And it says, "Ensure all seized vehicles</b> 5 <b>meet city ordinance and SOP criteria."</b> 6 <b>What does that refer to?</b> 7 A. Meaning the police officer seizes the vehicle 8 properly. 9 <b>Q. Okay. Would that include that the vehicle is</b> 10 <b>inside city limits?</b> 11 A. Correct. 12 <b>Q. Okay. So is it your responsibility to ensure</b> 13 <b>that vehicles are within city limits at the time that</b> 14 <b>they're seized?</b> 15 A. Because I'm not too sure of where city limits 16 are at times, I sometimes refer -- I hope the officer is 17 seizing in the city limits. 18 <b>Q. So do you make an effort to determine if the</b> 19 <b>vehicle was in city limits?</b> 20 A. For the most part. 21 <b>Q. How do you do that?</b> 22 A. I have checked on the maps. I've Google Mapped 23 to check. There are some that have gone by me because 24 I'm assuming -- they put Mile Marker 125; I'm assuming 25 it's city limits.</p>	<p>1 A. I did not. 2 <b>Q. You didn't look?</b> 3 A. No. 4 <b>Q. Why didn't you look?</b> 5 A. I don't know. 6 <b>Q. Do you know if anybody else looked?</b> 7 A. Not that I'm aware of. 8 <b>Q. This says, "Facilitate the release of those</b> 9 <b>vehicles that do not meet those specific criteria,"</b> 10 <b>under Item 5.</b> 11 <b>What does that refer to?</b> 12 A. Usually, when an offender does not have a prior 13 conviction. 14 <b>Q. Does that happen?</b> 15 A. Yes. 16 <b>Q. How often would you say that vehicles are</b> 17 <b>released?</b> 18 A. Under that criteria? 19 <b>Q. Yeah.</b> 20 A. Maybe once every six months. 21 <b>Q. And these are vehicles that were seized for the</b> 22 <b>purpose of eventually forfeiting the vehicles?</b> 23 A. Seized under the city ordinance, yes. 24 <b>Q. How does it come that a vehicle is seized if</b> 25 <b>there's not a prior conviction?</b></p>

5 (Pages 14 to 17)

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Arlene Harjo v. City of Albuquerque, et al.  
Lacresia Rivera

May 16, 2017  
1:16-cv-01113-JB-WPL

Page 18	Page 20
<p>1 A. The officer may not have access to NCIC at that 2 point and an offender has told him he has been arrested 3 before for a DWI and -- or the offender has given us the 4 wrong name and date of birth, and that so-called person 5 did have a DWI conviction.</p> <p>6 <b>Q. Apart from people who don't actually have</b> 7 <b>convictions, are there other instances where vehicles</b> 8 <b>are released because they don't meet the criteria of the</b> 9 <b>city ordinance?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. What would those be?</b></p> <p>12 A. Outside city limits.</p> <p>13 <b>Q. And about how often are vehicles released on</b> 14 <b>that criteria?</b></p> <p>15 A. I would say maybe once every couple of years.</p> <p>16 <b>Q. There are any other reasons that vehicles are</b> 17 <b>released under this standard?</b></p> <p>18 A. No.</p> <p>19 <b>Q. Under Item 6, it says, "Prepares all background</b> 20 <b>information necessary for the forfeiture of seized</b> 21 <b>vehicles and fax to the City Attorney's Office within</b> 22 <b>ten working days."</b></p> <p>23 <b>What does that refer to?</b></p> <p>24 A. Preparing the police report and MVD history for 25 the offenders.</p>	<p>1 <b>vehicle is unclaimed after 30 days."</b></p> <p>2 <b>What does that refer to?</b></p> <p>3 A. Vehicles that were seized and nobody has 4 contacted us regarding those vehicles.</p> <p>5 <b>Q. How often does that happen?</b></p> <p>6 A. Very often.</p> <p>7 <b>Q. Do you think it's more than once a month?</b></p> <p>8 A. Oh, yes.</p> <p>9 <b>Q. Do you think it's more than once a week?</b></p> <p>10 A. Oh, yes.</p> <p>11 <b>Q. More than once a day?</b></p> <p>12 A. Uh-huh (yes). They have about 60 abandoned 13 vehicles a month.</p> <p>14 <b>Q. What happens when a vehicle is abandoned? What</b> 15 <b>happens to the vehicle?</b></p> <p>16 A. It gets prepared to be sold at auction.</p> <p>17 <b>Q. Is it eventually sold at auction?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. And just to be clear, when you say you have</b> 20 <b>about 60 abandoned vehicles per month, these are</b> 21 <b>vehicles that were seized under the city's DWI Seizure</b> 22 <b>Ordinance?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. Item No. 10 says, "Prepare a monthly DWI</b> 25 <b>seizure report."</b></p>
Page 19	Page 21
<p>1 <b>Q. Under Item 7, it says, Work with "City</b> 2 <b>Attorney's DWI Seizure counterpart in addressing all</b> 3 <b>forfeiture vehicles."</b></p> <p>4 <b>What does that refer to?</b></p> <p>5 A. Day-to-day activity, talking to them regarding 6 specific cases for specific issues.</p> <p>7 <b>Q. Who is the City Attorney's DWI Seizure</b> 8 <b>counterpart?</b></p> <p>9 A. The City Attorney.</p> <p>10 <b>Q. It refers here to "the City Attorney's DWI</b> 11 <b>Seizure counterpart." Who would that be?</b></p> <p>12 A. I deal with Kyle Hibner in the City Attorney's 13 Office, or Isabel Martinez or Crystal Juarez.</p> <p>14 <b>Q. What sorts of things do you work with those</b> 15 <b>people on?</b></p> <p>16 A. Issues regarding vehicles or offender's 17 history.</p> <p>18 <b>Q. What sorts of issues come up with vehicles or</b> 19 <b>offender's history?</b></p> <p>20 A. For offender's history, maybe we cannot find 21 that one prior conviction, we've got to search for it in 22 another state, or offender may not have been arrested 23 pending a summons, so we will talk regarding that.</p> <p>24 <b>Q. No. 8 says, "Ensure vehicle notices are mailed</b> 25 <b>to owner/lienholder when there has been no activity or</b></p>	<p>1 <b>What does that refer to?</b></p> <p>2 A. That's a report I prepare for my supervisor 3 which includes how many vehicles are seized a month, how 4 many vehicles went to auction, how many vehicles are on 5 our lot, how many were released, how many were booted, 6 stuff of that nature.</p> <p>7 <b>Q. Who receives a copy of that report?</b></p> <p>8 A. Lieutenant Rivera.</p> <p>9 <b>Q. Does anybody else?</b></p> <p>10 A. No.</p> <p>11 <b>Q. Do you know what use Lieutenant Rivera makes of</b> 12 <b>that report? Do you know what he does with it?</b></p> <p>13 A. He submits it into the monthly report database.</p> <p>14 <b>Q. What is that database?</b></p> <p>15 A. I don't know; it's a database that is tracked 16 by the Traffic Unit, which we're under for our 17 commander.</p> <p>18 <b>Q. Does he ever ask you -- does Lieutenant Rivera</b> 19 <b>ever ask you questions about the monthly report?</b></p> <p>20 A. No.</p> <p>21 <b>Q. Do you ever discuss it with him?</b></p> <p>22 A. Sometimes.</p> <p>23 <b>Q. What sort of things would you discuss?</b></p> <p>24 A. Numbers, our numbers, if they're going up or 25 down.</p>

6 (Pages 18 to 21)

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Arlene Harjo v. City of Albuquerque, et al.  
Lacresia Rivera

May 16, 2017  
1:16-cv-01113-JB-WPL

Page 22

1 **Q. What do you mean by numbers?**

2 A. Our seizure intake, our boots, our abandons,  
3 our auctions.

4 **Q. And what sort of conversations have you had  
5 about the numbers going up or down?**

6 A. It just basically looks like our numbers are  
7 going up or looks like our numbers are going down.  
8 That's pretty much it.

9 **Q. Do you ever discuss the amount of money that's  
10 brought in at auction?**

11 A. We do.

12 **Q. What's the nature of those discussions?**

13 A. Just basically trying to average out what a car  
14 was -- is bringing in.

15 **Q. And why would it be important to figure out  
16 what -- the average amount a car brings in?**

17 A. It is not important, we just want to figure out  
18 for our -- for my own purposes to see what an average --  
19 a car would be to be sold at auction.

20 **Q. And how often do you have those kinds of  
21 discussions?**

22 A. Just depending on the monthly I guess what it  
23 looks like. Our auctions are every other month, so it's  
24 not every month.

25 **Q. When you say it depends on the monthly, what do**

Page 23

1 **you mean? What about the monthly would cause you to  
2 have that kind of a discussion?**

3 A. Based on the numbers, if they're up or down.

4 **Q. Have you ever had discussions about the fact  
5 that numbers -- the amount brought in at auction is  
6 down?**

7 A. Yes.

8 **Q. What would you -- what sort of things would you  
9 talk about?**

10 A. Maybe there wasn't that many people at the  
11 auction, our auction was a low turnout; bad timing for  
12 the auction, too much stuff going on, we didn't get  
13 enough people at the auction.

14 **Q. So is it fair to say that Lieutenant Rivera  
15 would want to know why the number is down?**

16 A. No, he doesn't ask why.

17 **Q. Well, then explain for me, why would he -- why  
18 would he want to know -- why would he discuss the fact  
19 that --**

20 A. I think it's just what I would tell him,  
21 because I attend the auctions, so I would tell him our  
22 numbers are probably going to be down because we didn't  
23 have very many turnout.

24 **Q. So you discuss auctions with him, not just in  
25 the context of the monthly reports but also you talk to**

Page 24

1 **him after the auction?**

2 A. Just to that effect telling him we had a good  
3 turnout, we didn't have a turnout; or if I notice  
4 someone that's at the auction that I went to buy their  
5 vehicle back, I would tell him. I think I've seen the  
6 offender buy his car back.

7 **Q. Are offenders allowed to buy the car back?**

8 A. Yes.

9 **Q. Does it happen very often?**

10 A. Sometimes.

11 **Q. About how often?**

12 A. I don't really keep track, so I don't know.  
13 I've seen them just because I've noticed faces, but we  
14 don't keep track of that information. And some people  
15 make it obvious that it's their car and they want it  
16 back at auction.

17 **Q. Item No. 12 says, "Order and track office  
18 supplies for DWI Seizure Unit and City Attorney's  
19 Office."**

20 **What does that mean?**

21 A. I order paper, pens, folders, ink.

22 **Q. Anything else?**

23 A. Supplies that we need to operate daily.

24 **Q. Does that include electronic supplies?**

25 A. Are you talking about computers and --

Page 25

1 **Q. Yeah.**

2 A. No, I don't order these.

3 **Q. Okay. Does that include postage?**

4 A. We have a city mailroom that does our postage.

5 **Q. Sure.**

6 **This refers to both the DWI Seizure Unit  
7 and City Attorney's Office. Do you purchase supplies  
8 for the City Attorney's Office?**

9 A. I purchase file folders and the numbering for  
10 the file folders.

11 **Q. Anything else?**

12 A. I haven't in a long time, but I was getting in  
13 some pens and markers, little stuff of that nature, but  
14 it's been a while.

15 **Q. When you say it's been a while, how long?**

16 A. I would say over a year, at least.

17 **Q. Over a year?**

18 A. Uh-huh (yes). It would have just been folders  
19 from a year on.

20 **Q. So going back more than a year, other than pens  
21 and markers, folders, is there anything else that you  
22 would purchase for the City Attorney's Office?**

23 A. Not that I remember, no.

24 **Q. And you stopped buying those things about a  
25 year ago?**

7 (Pages 22 to 25)

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Arlene Harjo v. City of Albuquerque, et al.  
Lacresia Rivera

May 16, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 30</p> <p>1 A. I believe so.</p> <p>2 <b>Q. What is your role in putting together the</b></p> <p>3 <b>performance measure?</b></p> <p>4 A. I believe I give amounts of vehicles seized and</p> <p>5 amount made at auction.</p> <p>6 <b>Q. And you said that you give them the measure --</b></p> <p>7 <b>the numbers that you calculate?</b></p> <p>8 A. Correct.</p> <p>9 <b>Q. Do you calculate any other numbers?</b></p> <p>10 A. I don't think so.</p> <p>11 <b>Q. When you calculate those numbers, who do you</b></p> <p>12 <b>give them to?</b></p> <p>13 A. Donovan.</p> <p>14 <b>Q. Do you know what he does with them?</b></p> <p>15 A. He submits them to the Legal Department.</p> <p>16 <b>Q. Do you know what the Legal Department does with</b></p> <p>17 <b>them?</b></p> <p>18 A. I don't, I don't.</p> <p>19 <b>Q. Would I have to ask the Legal Department about</b></p> <p>20 <b>that question?</b></p> <p>21 A. They're budget questions -- or it's related to</p> <p>22 the budget, so we submit those numbers for them for</p> <p>23 budget purposes.</p> <p>24 <b>Q. Who's responsible for putting together the</b></p> <p>25 <b>performance measures -- the annual performance measures?</b></p>	<p style="text-align: right;">Page 32</p> <p>1 A. My monthly.</p> <p>2 <b>Q. Okay. So earlier, you referred to a monthly</b></p> <p>3 <b>report that you provided the defendant with regard to --</b></p> <p>4 A. This is it.</p> <p>5 <b>Q. How do you generate this report? How do you</b></p> <p>6 <b>make this?</b></p> <p>7 A. How do I generate the numbers?</p> <p>8 <b>Q. Yes.</b></p> <p>9 A. This report is already generated into the</p> <p>10 system, so I go in Prolog and I will do a -- the monthly</p> <p>11 on numbers of vehicles checked in. We will physically</p> <p>12 count the vehicles in the log. I will count the files</p> <p>13 that we returned vehicles to for that month. I will</p> <p>14 count the files of the boots returned. I will count the</p> <p>15 files of the booted vehicles.</p> <p>16 And obviously, the auction vehicles, if</p> <p>17 there were some, I would know that. I have a list of</p> <p>18 them. And tow bills approved -- I will calculate all</p> <p>19 the tow bills that I approved for that month. The total</p> <p>20 amount at auction, well, that will come from the auction</p> <p>21 itself. They will generate a report. The storage and</p> <p>22 boot and credit card payments, those are -- I obviously</p> <p>23 add up with receipts.</p> <p>24 And of course the last one generates off of</p> <p>25 all the amounts into the account. That's a database</p>
<p style="text-align: right;">Page 31</p> <p>1 A. I don't know.</p> <p>2 <b>Q. When you're compiling the number of vehicles</b></p> <p>3 <b>seized for the performance measures, where do you get</b></p> <p>4 <b>that information?</b></p> <p>5 A. Prolog.</p> <p>6 <b>Q. So how do you get that information from Prolog?</b></p> <p>7 A. I run a query.</p> <p>8 <b>Q. When you say you run a query, can you just walk</b></p> <p>9 <b>through what exactly that involves.</b></p> <p>10 A. It just involves me putting the dates -- the</p> <p>11 specific dates they're asking for. I'll put seized</p> <p>12 vehicles from May 1st to June 30th, and it will pull</p> <p>13 all -- populate how many vehicles were seized.</p> <p>14 <b>Q. Got it.</b></p> <p>15 <b>And when you're calculating the amounts at</b></p> <p>16 <b>auction, how do you generate that number?</b></p> <p>17 A. From my monthly.</p> <p>18 MR. JOHNSON: Let's look at another</p> <p>19 exhibit. I'm going to mark this as Exhibit C.</p> <p>20 (Deposition Exhibit C was marked for</p> <p>21 identification.)</p> <p>22 <b>Q. (By Mr. Johnson) Are you familiar with this</b></p> <p>23 <b>document?</b></p> <p>24 A. I am.</p> <p>25 <b>Q. What is it?</b></p>	<p style="text-align: right;">Page 33</p> <p>1 spreadsheet.</p> <p>2 <b>Q. Sure.</b></p> <p>3 <b>When you say "vehicles checked in" -- and</b></p> <p>4 <b>it may seem obvious, but I just want to make sure that I</b></p> <p>5 <b>know exactly what we're talking about here -- when it</b></p> <p>6 <b>says "vehicles checked in," that means the number of</b></p> <p>7 <b>vehicles that were checked into the seizure lot, that</b></p> <p>8 <b>were seized pursuant to the ordinance?</b></p> <p>9 A. Correct.</p> <p>10 <b>Q. Okay. And when it says "vehicle in lot," that</b></p> <p>11 <b>means the number of vehicles that were in -- physically</b></p> <p>12 <b>present in the lot as of the date of the report?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. And this is a report that we're looking at</b></p> <p>15 <b>right now for January 2016. Would that mean that there</b></p> <p>16 <b>were 365 vehicles on January 1st?</b></p> <p>17 A. No --</p> <p>18 <b>Q. Would it mean --</b></p> <p>19 A. -- end of the month.</p> <p>20 <b>Q. Okay. So on January 31st?</b></p> <p>21 A. Correct.</p> <p>22 <b>Q. Okay. It says, "Returned Vehicles." Does that</b></p> <p>23 <b>refer to the number of vehicles that were returned to</b></p> <p>24 <b>their owners?</b></p> <p>25 A. Correct, and/or lienholders.</p>

9 (Pages 30 to 33)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque, et al.  
Lacresia Rivera

May 16, 2017  
1:16-cv-01113-JB-WPL

Page 34	Page 36
<p>1 <b>Q. Okay. Does that include vehicles that are</b> 2 <b>returned pursuant to a settlement agreement?</b> 3 A. Correct. 4 <b>Q. Okay. The next line says, "Boot</b> 5 <b>removal/return." What does that refer to?</b> 6 A. Boots that have been removed off of a vehicle 7 for that month. 8 <b>Q. Okay. I see. So that would refer to vehicles</b> 9 <b>that -- where there is a boot agreement that has</b> 10 <b>terminated because the time of the agreement has run</b> 11 <b>out?</b> 12 A. Correct, and we remove their boot. 13 <b>Q. So if a person has their vehicle seized and</b> 14 <b>they enter into an agreement to have the vehicle booted</b> 15 <b>and returned to them, that would be counted under</b> 16 <b>returned vehicles?</b> 17 A. No, boot removal returns. 18 <b>Q. Let's walk through it. So if a person has</b> 19 <b>the -- enters into an agreement to pay a certain amount</b> 20 <b>of money and have the vehicle booted, at the time that</b> 21 <b>the vehicle is returned to them pursuant to that</b> 22 <b>agreement with a boot on it, where is that counted here?</b> 23 A. It's not; we only count when the boot is 24 removed from the vehicle. 25 <b>Q. Okay. I see.</b></p>	<p>1 <b>Q. More than five years?</b> 2 A. Probably more than five years. 3 <b>Q. Seven years?</b> 4 A. Could be. 5 <b>Q. Is it more than ten years?</b> 6 A. No, I don't think it's been more than ten. 7 <b>Q. Okay. So somewhere between five and ten years</b> 8 <b>ago?</b> 9 A. Yes. 10 <b>Q. Who made the decision to set that amount at</b> 11 <b>\$500?</b> 12 A. I don't know if it was someone specifically, 13 but I believe we all sat down and, at one point, the New 14 Mexico Public Regulation Commission raised their fees 15 and towing and storage, and so we also raised our fees 16 to that tow and storage fee. 17 <b>Q. Does the \$500 amount change depending on how</b> 18 <b>long the car has been in the lot?</b> 19 A. No. 20 <b>Q. Okay. So run me through this again. If the</b> 21 <b>vehicle is checked in, the vehicle is in lot and the</b> 22 <b>returned vehicles -- I understand the vehicles that are</b> 23 <b>returned to an owner with a monetary payment or no</b> 24 <b>monetary payment, but no -- without a boot?</b> 25 A. Correct.</p>
Page 35	Page 37
<p>1 <b>So returned vehicles, is that vehicles that</b> 2 <b>are returned without a boot?</b> 3 A. Correct. 4 <b>Q. Okay. So when it says "Returned Vehicles,"</b> 5 <b>that's vehicles that are returned without a boot. Would</b> 6 <b>that involve some sort of monetary payment?</b> 7 A. It could. 8 <b>Q. Okay. What kind of money would people have to</b> 9 <b>pay in that kind of a case?</b> 10 A. Usually \$500 is the release agreement. 11 <b>Q. And what -- that \$500 payment, is that</b> 12 <b>categorized as a tow fee or a storage fee or --</b> 13 A. Tow, storage, administrative fees, I believe. 14 <b>Q. When you say it's the usual amount --</b> 15 A. Correct. 16 <b>Q. -- how is that amount set?</b> 17 A. I believe we went through tow, storage and 18 administrative fees, came up with the \$500 release fee. 19 <b>Q. Has it always been \$500?</b> 20 A. No. 21 <b>Q. How long has it been \$500?</b> 22 A. I don't know. I couldn't give you exact date. 23 <b>Q. Well, I don't need an exact date. Two years,</b> 24 <b>more than two years?</b> 25 A. Probably more than two years.</p>	<p>1 <b>Q. "Boot Removal/Return" is the number of vehicles</b> 2 <b>that were -- had a boot removed in the month?</b> 3 A. Right. 4 <b>Q. When it says "Booted Vehicles," what does that</b> 5 <b>tell us?</b> 6 A. The number of vehicles booted monthly. 7 <b>Q. Is that the number of vehicles that had a boot</b> 8 <b>put on?</b> 9 A. Put on for the month of January, correct. 10 <b>Q. So that's not the total number of vehicles that</b> 11 <b>currently have a boot?</b> 12 A. No. 13 <b>Q. Okay. Do vehicles ever have a boot put on</b> 14 <b>other than where there's an agreement to have a boot?</b> 15 A. No. 16 <b>Q. So this would tell us the number of boot</b> 17 <b>agreements in the month of January?</b> 18 A. No, that's the number of booted vehicles. 19 <b>Q. Okay. So is a vehicle ever booted other than</b> 20 <b>where there's a boot agreement?</b> 21 A. No, but we have boot agreements where nobody 22 will come forward and pay their boot; therefore, they 23 sit pending. 24 <b>Q. Okay. How often does that happen?</b> 25 A. I would say probably about ten, twelve a month.</p>

10 (Pages 34 to 37)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque, et al.  
Lacresia Rivera

May 16, 2017  
1:16-cv-01113-JB-WPL

Page 38

1 **Q. So there's about ten to twelve cases a month**  
2 **where somebody will enter into a boot agreement but then**  
3 **fail to pay the amount for the car?**  
4 A. Correct.  
5 **Q. Do you ever hear from those property owners?**  
6 **Do they ever call the office?**  
7 A. People who have not come to pay a boot?  
8 **Q. Yeah.**  
9 A. They'll come in and get their property, yes.  
10 **Q. What do you mean by that?**  
11 A. They will call us to make an appointment to get  
12 their property and tell us, "Oh, well, I'm trying to get  
13 the money" or "I may come next week" or --  
14 **Q. What do you tell them?**  
15 A. We tell them, okay, they have 30 days to make  
16 that payment before we consider it abandoned.  
17 **Q. And of the ten to twelve per month, how many of**  
18 **those fail to make the payment in the 30 days?**  
19 A. About half.  
20 **Q. And in those cases where the people fail to**  
21 **make the payment, what then happens to the vehicle?**  
22 A. It either goes back to the lienholder or we  
23 abandon it.  
24 **Q. If you abandon it, what does that mean?**  
25 A. That means that we will prepare it for auction.

Page 39

1 **Q. So in about five to six cases per month, people**  
2 **will enter into a boot agreement, but then they won't**  
3 **pay within 30 days and the vehicle is ultimately sold at**  
4 **auction?**  
5 A. Correct.  
6 **Q. The next line is "Vehicles Auctioned." Is that**  
7 **the number of vehicles sold at auction in the month?**  
8 A. Right.  
9 **Q. And then the line below that, the "Vehicles**  
10 **Ready for Auction," what is that line?**  
11 A. That means we have titles to those vehicles and  
12 are ready to go to the next monthly auction.  
13 **Q. The next line says, "Tow Bill Approved." What**  
14 **does that tell us?**  
15 A. That is the amount of tow bills that I approved  
16 for the month of January.  
17 **Q. When you approve a tow bill, what does that**  
18 **mean?**  
19 A. That means I get the invoice from the tow  
20 company that tows the vehicle to our lot and I check it  
21 in our database to make sure the vehicle was towed to  
22 our lot. I okay it for approval and submit it to Fiscal  
23 for payment.  
24 **Q. Do you ever approve tow bills for vehicles that**  
25 **were towed somewhere other than the lot?**

Page 40

1 A. No.  
2 **Q. Okay.**  
3 A. I refer those tow bills to the proper division.  
4 **Q. Okay. The next line says, "Total Amount From**  
5 **Auction." Is that the amount -- the total amount,**  
6 **including the auction fees, that was brought in at the**  
7 **auction?**  
8 A. Yes.  
9 **Q. Okay. And the next line is "Manheim Auction**  
10 **Fees." Is Manheim the auction company?**  
11 A. Yes.  
12 **Q. Does that refer to the fees paid to the auction**  
13 **company?**  
14 A. Right.  
15 **Q. The next line says, "Total Amount Minus Manheim**  
16 **Fees." That's the amount earned at auction excluding**  
17 **the fees?**  
18 A. That would be the amount that's deposited in  
19 our account from Manheim.  
20 **Q. Okay. The next line says, "Total Amount From**  
21 **Storage/Boot/Tow." What does that refer to?**  
22 A. Okay. This month, it was done before I got  
23 there, so they used to separate it that way for reasons  
24 I don't know why. But it's actually the two -- the next  
25 line down, the credit card payments and the boot and

Page 41

1 storage/tow all go together because we collect the money  
2 with cashier's checks, money orders, Visa and  
3 MasterCard. So I believe they were separated at that  
4 point just with money orders, and then the bottom with  
5 credit cards.  
6 **Q. Just to be fair, the date on the document we're**  
7 **looking at is January of 2016?**  
8 A. Yes.  
9 **Q. So this was prepared while you were working at**  
10 **the unit; is that correct?**  
11 A. Yes.  
12 **Q. So when you say this is from before you got**  
13 **there, what do you mean by that?**  
14 A. I meant the way they separated storage to boot  
15 and tow and credit card payments, this form itself, this  
16 was made prior to me starting at that unit. I just  
17 followed the same monthly that was already there.  
18 **Q. Right, okay.**  
19 **And so when you're breaking it out,**  
20 **what -- how do you calculate the number under -- in the**  
21 **row that says, Total Amount From Storage/Boot/Tow?**  
22 A. I count the receipts from money orders.  
23 **Q. Okay. So that row reflects the monthly**  
24 **receipts from money orders?**  
25 A. Correct.

11 (Pages 38 to 41)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque, et al.  
Lacresia Rivera

May 16, 2017  
1:16-cv-01113-JB-WPL

Page 42	Page 44
<p>1 <b>Q. And those money orders, would they be for</b>  2 <b>anything other than storage, boot or tow agreements?</b>  3 A. Releases.  4 <b>Q. Release?</b>  5 A. Uh-huh (yes).  6 <b>Q. Those are all payments that are associated with</b>  7 <b>the DWI Seizure Program?</b>  8 A. Right.  9 <b>Q. So it would be storage, boot, tow, release</b>  10 <b>agreement?</b>  11 A. Yes.  12 <b>Q. And just to be clear, when it says "Tow," those</b>  13 <b>are tow fees that are charged to the owner of the car?</b>  14 A. Yes.  15 <b>Q. And who -- and "Boot" would likewise refer to</b>  16 <b>boot fees?</b>  17 A. Yes.  18 <b>Q. And "Storage" would likewise refer to storage</b>  19 <b>fees?</b>  20 A. Right.  21 <b>Q. The next line says, "Total Amount From Credit</b>  22 <b>Card Payments." Do I understand what you were saying</b>  23 <b>earlier that those are payments for storage, boot, tow</b>  24 <b>or release payments, just ones that are paid by credit</b>  25 <b>card?</b></p>	<p>1 spreadsheet and comes up with this.  2 <b>Q. I see. So you enter the monthly totals and the</b>  3 <b>year to date total of 2016?</b>  4 A. No, not the year to date, just the monthly.  5 <b>Q. So does Donovan enter the year to date?</b>  6 A. No, I believe it's a spreadsheet calculation  7 does it.  8 <b>Q. Automatically?</b>  9 A. Yes.  10 <b>Q. I see.</b>  11 <b>How long have you been generating these</b>  12 <b>monthly reports?</b>  13 A. Since I started there.  14 <b>Q. So that's since --</b>  15 A. 2009.  16 <b>Q. Nine, okay.</b>  17 <b>Has the format of the reports changed since</b>  18 <b>the time that you've been there?</b>  19 A. I don't think so.  20 <b>Q. Has the way that you calculate these numbers</b>  21 <b>changed since the time you've been there?</b>  22 A. No.  23 <b>Q. So if we were to go through a similar document</b>  24 <b>from 2009 and ask the same questions about all these</b>  25 <b>columns, the rows, the answer would be the same?</b></p>
Page 43	Page 45
<p>1 A. Yes, correct.  2 <b>Q. And then the next line says, "Total Amount Into</b>  3 <b>Seizure Account." That would be the total of the</b>  4 <b>auction minus the Manheim fees, plus the money order,</b>  5 <b>plus the credit card payment?</b>  6 A. Yes.  7 <b>Q. Okay. The last column of this -- where it</b>  8 <b>says, "Percent of Difference," what does that column</b>  9 <b>tell us?</b>  10 A. I don't know. This is a spreadsheet made by  11 someone in the Traffic Unit, so I couldn't tell you.  12 <b>Q. So you enter the numbers into the spreadsheet</b>  13 <b>but you don't --</b>  14 A. I don't -- I enter the numbers on this form and  15 give it to Donovan. He enters it into the spreadsheet.  16 <b>Q. Got it -- well, you know, let me try to</b>  17 <b>understand that, actually. Do you enter the numbers</b>  18 <b>into the spreadsheet or do you enter the numbers onto a</b>  19 <b>form that he then enters into the spreadsheet?</b>  20 A. Correct, I enter it onto a form almost  21 identical. I pretty much copied this form except for  22 those -- all those boots. The last three columns, all I  23 have is this first column and this first column.  24 And that's the information I put on my  25 form, give it to him. He enters that into the</p>	<p>1 A. It should be, yes.  2 MR. JOHNSON: I'm going to mark another  3 exhibit. This is Exhibit D.  4 (Deposition Exhibit D was marked for  5 identification.)  6 <b>Q. (By Mr. Johnson) Are you familiar with this</b>  7 <b>document?</b>  8 A. No.  9 <b>Q. Have you ever seen anything like this before?</b>  10 A. No.  11 <b>Q. Do you know what this is?</b>  12 A. No.  13 <b>Q. Okay. Do you know who might know?</b>  14 A. No.  15 <b>Q. Have you ever been -- has there ever been any</b>  16 <b>discussion of tracking information about the outcome of</b>  17 <b>vehicles herein, including whether the person owns the</b>  18 <b>car, whether the offender owns the car, information like</b>  19 <b>that?</b>  20 A. For me to track it?  21 <b>Q. Yeah.</b>  22 A. No.  23 MR. JOHNSON: I'm going to mark this as  24 Exhibit E.  25 (Deposition Exhibit E was marked for</p>

12 (Pages 42 to 45)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque, et al.  
Lacresia Rivera

May 16, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 46</p> <p>1 identification.)</p> <p>2 <b>Q. (By Mr. Johnson) Are you familiar with this</b></p> <p>3 <b>document?</b></p> <p>4 A. I think I've seen this.</p> <p>5 <b>Q. What is it?</b></p> <p>6 A. I think it's number of seizures for certain</p> <p>7 years.</p> <p>8 <b>Q. And at the very top, is that an e-mail from</b></p> <p>9 <b>Shane Rogers to you?</b></p> <p>10 A. I would say yes.</p> <p>11 <b>Q. Okay. Who is Shane Rogers?</b></p> <p>12 A. He was the sergeant of the Seizure Unit.</p> <p>13 <b>Q. When was he a sergeant of the Seizure Unit?</b></p> <p>14 A. I don't know dates.</p> <p>15 <b>Q. Is he --</b></p> <p>16 A. I don't remember.</p> <p>17 <b>Q. Was he the sergeant of the Seizure Unit at the</b></p> <p>18 <b>time he sent this e-mail?</b></p> <p>19 A. Yes.</p> <p>20 <b>Q. Was he your supervisor?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. Can you read what he wrote to you.</b></p> <p>23 A. "Well, their numbers are dropping."</p> <p>24 <b>Q. Do you remember receiving this e-mail?</b></p> <p>25 A. No.</p>	<p style="text-align: right;">Page 48</p> <p>1 A. Somewhat within our unit, speaking about</p> <p>2 morale, I believe, police numbers down, stuff of that</p> <p>3 nature.</p> <p>4 <b>Q. How would it affect morale?</b></p> <p>5 A. I believe police morale is what we were</p> <p>6 referring to.</p> <p>7 <b>Q. How would the dropping numbers affect police</b></p> <p>8 <b>morale?</b></p> <p>9 A. Not very many officers out on the street. Less</p> <p>10 officers, less help, more responding to priority calls.</p> <p>11 <b>Q. Can you explain what you mean by that a little</b></p> <p>12 <b>bit more.</b></p> <p>13 A. Meaning there are calls waiting. Officers have</p> <p>14 to respond to those calls as opposed to pulling over</p> <p>15 people and stopping them for infractions.</p> <p>16 <b>Q. So is it your understanding the number has</b></p> <p>17 <b>stopped because officers are being pulled away?</b></p> <p>18 A. That's one. I couldn't tell you totalitywide,</p> <p>19 but I think that, among our conversations, we believe</p> <p>20 that's a reason.</p> <p>21 <b>Q. Why would that hurt officer morale?</b></p> <p>22 A. The low numbers of officers, not enough back-up</p> <p>23 officers out there.</p> <p>24 <b>Q. Other than discussing morale, have you had any</b></p> <p>25 <b>discussions with anyone about the dropping number of DWI</b></p>
<p style="text-align: right;">Page 47</p> <p>1 <b>Q. What do you think he meant by that, or what</b></p> <p>2 <b>would you understand him to mean by that?</b></p> <p>3 A. Based on this, the forfeiture numbers are</p> <p>4 dropping.</p> <p>5 <b>Q. Would he have wanted you to do any</b></p> <p>6 <b>information -- anything with that information -- or</b></p> <p>7 <b>would you have understood him to have wanted you to do</b></p> <p>8 <b>anything with that information?</b></p> <p>9 A. No.</p> <p>10 <b>Q. So what would you have done with an e-mail like</b></p> <p>11 <b>this?</b></p> <p>12 A. There was nothing I could have done.</p> <p>13 <b>Q. Has there been any changes in that amount of</b></p> <p>14 <b>revenue brought in by the DWI Program in the time that</b></p> <p>15 <b>you have been working there?</b></p> <p>16 A. I believe so, based on the monthly.</p> <p>17 <b>Q. What kind of change?</b></p> <p>18 A. Dropping.</p> <p>19 <b>Q. How long has it been dropping?</b></p> <p>20 A. Ever since I got there.</p> <p>21 <b>Q. Do you know why it's dropping?</b></p> <p>22 A. No.</p> <p>23 <b>Q. How has that affected the program?</b></p> <p>24 A. We're still operating. It has not affected us.</p> <p>25 <b>Q. Have you ever discussed it with anyone?</b></p>	<p style="text-align: right;">Page 49</p> <p>1 seizures?</p> <p>2 A. No, that was it.</p> <p>3 <b>Q. Have you ever discussed it with anybody who</b></p> <p>4 <b>works on the fiscal side, the Fiscal Manager?</b></p> <p>5 A. No.</p> <p>6 MR. JOHNSON: I'm going to mark this as</p> <p>7 Exhibit E -- or are we up to F? I'm going to mark this</p> <p>8 as Exhibit F.</p> <p>9 (Deposition Exhibit F was marked for</p> <p>10 identification.)</p> <p>11 <b>Q. (By Mr. Johnson) Are you familiar with this</b></p> <p>12 <b>document?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. What is it?</b></p> <p>15 A. This is an e-mail from Aubrey asking me for</p> <p>16 information for the fiscal years '13, '14, '15 and '16.</p> <p>17 <b>Q. What kind of information does he want?</b></p> <p>18 A. Numbers of vehicles seized.</p> <p>19 <b>Q. And why did he want that information?</b></p> <p>20 A. I don't know.</p> <p>21 <b>Q. Okay. What did you tell him?</b></p> <p>22 A. I said, "Yes, you are correct. The number of</p> <p>23 seizures has dropped tremendously. Attached are the</p> <p>24 numbers we have. Let me know if you need more info."</p> <p>25 <b>Q. When you say, "Attached are the numbers we</b></p>

13 (Pages 46 to 49)

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Arlene Harjo v. City of Albuquerque, et al.  
Lacresia Rivera

May 16, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 50</p> <p>1 have," what would you have sent him?</p> <p>2 A. Probably my monthlies.</p> <p>3 Q. Apart from this e-mail, have you ever discussed</p> <p>4 the number of seizures with Aubrey Thompson?</p> <p>5 A. No.</p> <p>6 Q. Have you ever discussed the number of seizures</p> <p>7 with anybody who works for Aubrey Thompson?</p> <p>8 A. No.</p> <p>9 Q. Have you ever discussed the number of seizures</p> <p>10 with anybody who works in the Budget Office for the City</p> <p>11 of Albuquerque?</p> <p>12 A. No.</p> <p>13 MR. JOHNSON: I'm going to mark this as</p> <p>14 Exhibit G.</p> <p>15 (Deposition Exhibit G was marked for</p> <p>16 identification.)</p> <p>17 Q. (By Mr. Johnson) Are you familiar with this</p> <p>18 document?</p> <p>19 A. Yes.</p> <p>20 Q. What is it?</p> <p>21 A. My job description.</p> <p>22 Q. How would you have come across this document?</p> <p>23 A. When I applied for this job.</p> <p>24 Q. Okay. Is that in 2009?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. What is it?</p> <p>2 A. The "Employee Work Plan."</p> <p>3 Q. What does that mean?</p> <p>4 A. The performance evaluation.</p> <p>5 Q. Is this your performance evaluation?</p> <p>6 A. It is.</p> <p>7 Q. Okay. How often do you receive a performance</p> <p>8 evaluation?</p> <p>9 A. Quarterly.</p> <p>10 Q. Is it always in this format?</p> <p>11 A. No, it has since changed.</p> <p>12 Q. When did it change?</p> <p>13 A. Six to eight months ago.</p> <p>14 Q. But until six to eight months ago, it was</p> <p>15 always in this format?</p> <p>16 A. Yes.</p> <p>17 Q. I'd like to talk about on the first page,</p> <p>18 there's a "Service Activity" and then it has "Output</p> <p>19 Manager." Do you understand -- what do you understand</p> <p>20 that to be saying?</p> <p>21 A. "Maintain or increase the number of DWI-seized</p> <p>22 vehicles" --</p> <p>23 Q. Uh-huh (yes).</p> <p>24 A. -- what do I understand it?</p> <p>25 Q. What do you understand that to mean?</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. When it says "Essential and Supplemental</p> <p>2 Functions," are those the functions that you understand</p> <p>3 the functions of your job, the things you have to do for</p> <p>4 your job?</p> <p>5 A. Yes.</p> <p>6 Q. Do you see on the second page where it says,</p> <p>7 "Perform as liaison with the City Attorney's Office"?</p> <p>8 What do you understand that to mean?</p> <p>9 A. To work with them.</p> <p>10 Q. What sort of work would you have to do with</p> <p>11 them?</p> <p>12 A. With anything they need help with as far as</p> <p>13 providing reports and background checks.</p> <p>14 MR. JOHNSON: Okay. Let's take a quick</p> <p>15 break.</p> <p>16 (Recess taken - nine minutes).</p> <p>17 MR. JOHNSON: Are we ready to go?</p> <p>18 COURT REPORTER: Yes.</p> <p>19 MR. JOHNSON: Great. Another exhibit here.</p> <p>20 I'm going to mark this as Exhibit H.</p> <p>21 (Deposition Exhibit H was marked for</p> <p>22 identification.)</p> <p>23 Q. (By Mr. Johnson) Are you familiar with this</p> <p>24 document?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 53</p> <p>1 A. I have no control over increasing, but I can</p> <p>2 maintain the seizures I have in my lot.</p> <p>3 Q. When it says "Output Measures," what does that</p> <p>4 mean?</p> <p>5 A. I don't know.</p> <p>6 Q. You don't know what that means?</p> <p>7 A. No.</p> <p>8 Q. Have you ever seen -- have you ever read this</p> <p>9 before?</p> <p>10 A. I did.</p> <p>11 Q. The third item says, "Increase the amount of</p> <p>12 revenue generated from seized vehicles." What do you</p> <p>13 understand that to mean?</p> <p>14 A. I cannot increase revenue, so I don't know.</p> <p>15 Q. You don't know what that means? The second one</p> <p>16 says, "Decrease the number of vehicles stored in the</p> <p>17 seizure facility." What do you understand that to mean?</p> <p>18 A. To try to get rid of the vehicles that we have</p> <p>19 in our lot.</p> <p>20 Q. Okay. And how would you do that?</p> <p>21 A. Abandon -- that's the only way I can do it, is</p> <p>22 by abandoning them.</p> <p>23 Q. Okay. So when this says to "decrease the</p> <p>24 number of vehicles stored in the seizure facility,"</p> <p>25 under "Output Measures," do you understand that to mean</p>

14 (Pages 50 to 53)

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Arlene Harjo v. City of Albuquerque, et al.  
Lacresia Rivera

May 16, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 54</p> <p>1 that one of the measures under which you are going to be 2 judged is whether you succeed in decreasing the number 3 of vehicles in the facility? 4 A. Yes. 5 Q. Okay. And then the fourth item says to 6 "maintain good working relationship with the City 7 Attorney's Office." What do you understand that to 8 mean? 9 A. To be available to them for whatever they need 10 me for, provide them the documents they need. 11 Q. Do you understand -- having that under "Output 12 Measures," does that mean that one of the measures under 13 which you'll be judged is whether you maintain a good 14 working with relationship with the City Attorney's 15 Office? 16 A. Yes. 17 Q. Then the final bullet point, "Continue to 18 maintain the DWI Seizure Program to ensure the overall 19 effectiveness," what do you understand that to mean? 20 A. To do my job, do what I have to do to get what 21 needs done in the office. 22 Q. So you understand that to be one of the 23 measures under which you'll be judged? 24 A. Yeah. 25 Q. Okay. So at the top, where it says to</p>	<p style="text-align: right;">Page 56</p> <p>1 read and signed this document? 2 A. Yes. 3 Q. Okay. So to help us understand how this 4 program works, I'd like to go through step by step. 5 What happens to a car after it's been seized? 6 A. We check the car in, meaning the tow truck 7 drops it off at the substation in the parking lot. The 8 keys are dropped off in a drop box. We retrieve the 9 keys from the drop box, tag the keys, which are just the 10 car keys, ignition key and the door key. All of the 11 keys are left in the vehicle. We take the keys with the 12 VIN number, license plate, vehicle model, type and 13 color. 14 We then start the vehicle and we go to park 15 it into our secured lot. We take pictures of each 16 vehicle. So we take one of each side of the vehicle and 17 one from the driver's side door, one from the passenger 18 side door. We mark the date on the window, the date we 19 received the vehicle, and then once we park the vehicle 20 in a secured lot, we mark the parking lot spot number on 21 the vehicle as well. 22 We take the key tag into the office; we 23 create a physical file. Once we start a new file, 24 Prolog automatically gives us a Prolog ID number. 25 That's the ID number we put on our file.</p>
<p style="text-align: right;">Page 55</p> <p>1 "maintain or increase the number of DWI-seized 2 vehicles," is that in the same list of output measures? 3 A. Yes. 4 Q. Do you understand that to be one of the 5 criteria against which you'll be judged? 6 A. I cannot increase the number of seized 7 vehicles. I have no control over that. 8 Q. When it says to "increase the amount of revenue 9 generated from seized vehicles," do you understand that 10 to be one of the criteria under which you'll be judged? 11 A. No. 12 Q. So other than the first one, where it says to 13 "maintain or increase the number of DWI-seized 14 vehicles," do you understand that to be the criteria 15 under which you'll be judged? 16 A. Yes. 17 Q. How would you go about increasing the amount of 18 revenue generated from seized vehicles? 19 A. I cannot. I have no control over money. 20 Q. But do you understand that to be a criteria 21 under which you're judged? 22 A. Yes. 23 Q. Okay. The last page, is that your signature? 24 A. Yes. 25 Q. Okay. Does that mean that you, at the time,</p>	<p style="text-align: right;">Page 57</p> <p>1 We then run the VIN number through the MVD 2 database, which comes up with the vehicle information as 3 well as the owner and/or lienholder. We submit all that 4 information into the Prolog database. 5 The database will then populate a Notice of 6 Vehicle Seizure, which we will mail to the vehicle's 7 registered owner and lienholder. We mail out the notice 8 of seizure, and that is the file. The file starts at 9 that point, right there. 10 Once we get the police officer's report, we 11 do the background check on the offender, and we submit 12 all those documents to the Legal Department for their 13 clearance. That pretty much contains our file, the 14 (inaudible) file for a car. 15 Q. Are you familiar with the fee that a person has 16 to pay to request a hearing? 17 A. Correct. 18 Q. What's the amount of that fee? 19 A. \$50. 20 Q. Has it always been \$50? 21 A. Yes. 22 Q. Has anyone ever failed to pay that \$50 fee? 23 A. Yes. 24 Q. About how often does that happen? 25 A. Not very often.</p>

15 (Pages 54 to 57)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque, et al.  
Lacresia Rivera

May 16, 2017  
1:16-cv-01113-JB-WPL

Page 66	Page 68
<p>1 towing fees are charged, where does that -- where does 2 the money go? 3 A. I don't know. 4 <b>Q. Does it go into the city's account or does it</b> 5 <b>go to the towing company?</b> 6 A. No, all fees that we collect go into our 7 account. 8 <b>Q. Okay. So when you collect towing fees, that</b> 9 <b>then goes into the city's account?</b> 10 A. Correct. 11 <b>Q. Okay. Does the city ever waive towing fees or</b> 12 <b>agree to discount towing fees?</b> 13 A. Not that I can remember. We are charged back 14 to a bill. We have been billed that towing bill 15 already, so we're paying that tow bill. 16 <b>Q. I want to know more about the settlement</b> 17 <b>matrix. Who would be able to provide me with that</b> 18 <b>information?</b> 19 A. The City Attorney. 20 <b>Q. So I would have to talk to the City Attorney's</b> 21 <b>Office about that?</b> 22 A. Yes. 23 <b>Q. Let's talk more about the Prolog database. How</b> 24 <b>is that database used? Do you ever log into the</b> 25 <b>database to check information about a car?</b></p>	<p>1 A. No. 2 <b>Q. Do you know if Donovan uses his P-Card for</b> 3 <b>expenses associated with the program?</b> 4 A. Yes. 5 <b>Q. Do you know what sort of things he uses it for?</b> 6 A. Whatever is not on contract through our vendor, 7 but specifically, no. 8 <b>Q. Are you ever paid a bonus?</b> 9 A. No. 10 <b>Q. Is anybody else associated with the program</b> 11 <b>ever paid a bonus?</b> 12 A. No. 13 <b>Q. Are you aware that your salary is paid for</b> 14 <b>using the proceeds for the vehicle forfeiture program?</b> 15 MR. GRUBEL: Object to form. 16 A. I don't know where this salary comes from. 17 It's paid by the City of Albuquerque. 18 MR. JOHNSON: All right. Why don't we take 19 a quick break. 20 (Recess taken - 23 minutes.) 21 <b>Q. (By Mr. Johnson) What is your understanding of</b> 22 <b>how the money raised by the DWI Seizure Program is used?</b> 23 A. I don't know. It goes into the City Fund. 24 <b>Q. Have you ever talked to anybody about that?</b> 25 A. No.</p>
Page 67	Page 69
<p>1 A. Yes. 2 <b>Q. Why would you do that?</b> 3 A. To see if the vehicle is in our lot. If 4 someone calls on the phone, a lienholder, an owner calls 5 to see if we have their vehicle, I would check the 6 database to see. 7 <b>Q. Who else would check on the information in the</b> 8 <b>database?</b> 9 A. All the people who work in our unit. 10 <b>Q. What sort of information would they need to get</b> 11 <b>from the database?</b> 12 A. If a vehicle is in our lot, the status of the 13 vehicle. 14 <b>Q. Would Lieutenant Donovan check the database?</b> 15 A. Yes. 16 <b>Q. Okay. Are you familiar with P-Card?</b> 17 A. Yes. 18 <b>Q. Do you have a P-card?</b> 19 A. Yes. 20 <b>Q. When do you use it for?</b> 21 A. I have never used it. 22 <b>Q. Okay. Do other people in the DWI program have</b> 23 <b>P-Cards?</b> 24 A. Donovan. 25 <b>Q. Donovan. Does anybody else?</b></p>	<p>1 <b>Q. Have you ever talked to your supervisor about</b> 2 <b>that?</b> 3 A. No. 4 <b>Q. When you put together the monthly reports, is</b> 5 <b>one of the figures in the monthly report the amount of</b> 6 <b>money deposited into the city's accounts?</b> 7 A. Yes. 8 <b>Q. And you've been putting those monthly reports</b> 9 <b>together for eight years?</b> 10 A. Yes. 11 <b>Q. And you've never asked anybody what's done with</b> 12 <b>that money?</b> 13 A. It's none of my business, really. I get paid 14 to do my job. 15 <b>Q. Do you know that that money is used to buy</b> 16 <b>equipment?</b> 17 A. For police officers, yes, my understanding is. 18 <b>Q. How do you know that?</b> 19 A. The DWI Unit got new police cars. 20 <b>Q. Okay. And how do you -- how did you come to</b> 21 <b>understand that those police cars were paid for using --</b> 22 A. In overhearing conversations. 23 <b>Q. Okay. So it is your understanding that money</b> 24 <b>was used to buy police cars?</b> 25 A. Some, yes.</p>

18 (Pages 66 to 69)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque, et al.  
Lacresia Rivera

May 16, 2017  
1:16-cv-01113-JB-WPL

Page 70	Page 72
<p>1 Q. Okay. Is it your understanding that that money 2 was used to buy other equipment? 3 A. I'm not sure.</p> <p>4 Q. What kind of conversations about vehicles did 5 you overhear? 6 A. The DWI Unit got new police cars.</p> <p>7 Q. And in those conversations, it mentioned that 8 the police cars were paid for using forfeiture money? 9 A. I believe I heard that, yes.</p> <p>10 Q. Who was involved in those conversations? 11 A. Probably Sergeant Rogers at that point, maybe 12 Sergeant Luna. I just don't recall. It's been a while.</p> <p>13 Q. And have you ever heard any other conversations 14 about equipment being purchased using forfeiture 15 revenues? 16 A. Besides the police cars, I don't know.</p> <p>17 Q. You don't know? 18 A. No.</p> <p>19 Q. Does that mean yes or no? 20 A. I don't know.</p> <p>21 Q. So it's possible? 22 A. Anything is possible, yes.</p> <p>23 Q. When you heard conversations about the vehicles 24 being purchased using the money, what were people saying 25 about it?</p>	<p>1 Q. And how did you get that understanding? 2 A. The ordinance.</p> <p>3 Q. So you reviewed the ordinance? 4 A. I read the ordinance before, yes.</p> <p>5 Q. What does the ordinance say about how the funds 6 are supposed to be used? 7 A. To go back into the DWI funds for prevention, 8 education and enforcement, my understanding.</p> <p>9 Q. Okay. When did you read the ordinance? 10 A. Years ago.</p> <p>11 Q. Have you discussed the ordinance with anyone? 12 A. No.</p> <p>13 Q. Did you read it when you started at the 14 program? 15 A. I did.</p> <p>16 Q. So did you read that part of the ordinance 17 about how the funds are to be used? 18 A. I've read the whole ordinance.</p> <p>19 Q. So when you started with the program, you read 20 the part of the ordinance about how the funds are to be 21 used? 22 A. Yes.</p> <p>23 Q. And other than the ordinance, have you ever 24 discussed with anyone what it means for the funds to be 25 used for prevention and education and enforcement?</p>
Page 71	Page 73
<p>1 A. That the DWI unit got new police units.</p> <p>2 Q. And what else were they saying? 3 A. That the units were purchased from seized 4 funds. That's pretty much what I heard.</p> <p>5 Q. Do you know anything else about how the money 6 was used? 7 A. I don't.</p> <p>8 Q. You haven't heard anything else about how it 9 was used? 10 A. I don't know, no.</p> <p>11 Q. Have you overheard anything? 12 A. I have no control over that money. I don't 13 know where that money goes and how it's used.</p> <p>14 Q. I'm not asking to know where it goes, I'm 15 asking what you heard about where it goes. 16 A. It goes into the City Fund.</p> <p>17 Q. Did you discuss the purchase of the vehicles 18 with Shane Rogers? 19 A. I didn't personally discuss, it was overhearing 20 conversations with Shane and/or officers.</p> <p>21 Q. Okay. And did you hear conversations with 22 Shane and officers about the purchase of the vehicles 23 using the seized funds? 24 A. Correct. My understanding is these funds are 25 to be used for education, for prevention, for DWI stuff.</p>	<p>1 A. No.</p> <p>2 Q. What is your understanding of what that means? 3 A. Meaning we use the money to enforce DWI seizure 4 laws, to educate people on the DWI seizure laws, and 5 that's it.</p> <p>6 Q. And when you say "we," who is "we"? 7 A. Our unit, the DWI Unit and DWI Seizure Unit.</p> <p>8 Q. Okay. So it's your understanding that the 9 money then is used by your unit for those purposes? 10 A. Yes.</p> <p>11 Q. Okay. What do you understand by education? 12 A. The Batmobile goes out to schools, high 13 schools, middle schools, elementary schools. It goes 14 out to functions that the city has or organizations have 15 to promote DWI prevention.</p> <p>16 Q. And what do you understand by enforcement? 17 A. By the police officers out there doing DWI 18 saturation patrols and checkpoints, stuff of that 19 nature.</p> <p>20 Q. And what do you understand by prevention? 21 A. To educate the people, to prevent this from 22 happening.</p> <p>23 Q. So it's your understanding those were all 24 things that your unit could do using the DWI revenue? 25 A. Yes.</p>

19 (Pages 70 to 73)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque, et al.  
Lacresia Rivera

May 16, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 74</p> <p>1 <b>Q. Have you ever asked anybody why it is that you</b> 2 <b>track the amount of money that is brought in by</b> 3 <b>auctions?</b> 4 A. No. 5 <b>Q. Did anybody ever explain to you how those</b> 6 <b>numbers are used?</b> 7 A. No. 8 <b>Q. Have you ever asked how they were used?</b> 9 A. No. 10 <b>Q. How about the annual performance numbers? Does</b> 11 <b>anybody ever explain to you how those annual numbers are</b> 12 <b>used?</b> 13 A. My understanding is for budget purposes. 14 <b>Q. What do you mean by budget purposes?</b> 15 A. To submit these performance measures to the 16 Budget Office. 17 <b>Q. And then what would they do with the numbers?</b> 18 A. I don't know. 19 <b>Q. Is the Budget Office involved in determining</b> 20 <b>how much money your program has to spend?</b> 21 A. I don't know. 22 <b>Q. What do you understand to be the Budget</b> 23 <b>Office's role in the City of Albuquerque?</b> 24 A. For the City of Albuquerque? 25 <b>Q. Yes.</b></p>	<p style="text-align: right;">Page 76</p> <p>1 <b>money your program would have to spend?</b> 2 A. I don't know. 3 <b>Q. Would that be your assumption?</b> 4 A. Yes. 5 MR. JOHNSON: Take a quick break. 6 (Recess taken - six minutes.) 7 <b>Q. (By Mr. Johnson) You mentioned earlier that</b> 8 <b>there are instances where people enter into a boot</b> 9 <b>agreement and then fail to pay the amount that they owe</b> 10 <b>under the agreement?</b> 11 A. Right. 12 <b>Q. And you said that if they don't pay within 30</b> 13 <b>days, the vehicle is abandoned?</b> 14 A. Yes. 15 <b>Q. How is that 30-day period set?</b> 16 A. When they sign a boot agreement, they are given 17 a date to pay by on that boot agreement, which is 18 usually a week to two weeks after they sign it. So we 19 go by that date on that boot agreement. 20 <b>Q. So are you saying that if they don't pay by the</b> 21 <b>date on the agreement, at that point, it's deemed</b> 22 <b>abandoned?</b> 23 A. Yes. 24 <b>Q. Okay.</b> 25 A. If they call me and ask me for an extension,</p>
<p style="text-align: right;">Page 75</p> <p>1 A. I have no idea what their role is. I don't 2 know. 3 <b>Q. So you don't know what the Budget Office does?</b> 4 A. I don't. 5 <b>Q. Are they involved in budgeting?</b> 6 A. I'm assuming so. 7 <b>Q. What do you understand Budget to mean?</b> 8 A. They are the ones who keep track of the money 9 situation for the city. 10 <b>Q. Okay. And is it your understanding that the</b> 11 <b>performance measures go into how they allocate money for</b> 12 <b>the city?</b> 13 A. I don't know. 14 <b>Q. Does budgeting to you mean deciding how much</b> 15 <b>money goes to different purposes?</b> 16 A. I'm going to assume so. 17 <b>Q. So when performance measures go to the Budget</b> 18 <b>Office, do you assume that they're used for budgeting?</b> 19 A. Yes. 20 <b>Q. That would include deciding how much money</b> 21 <b>would go to the DWI Program?</b> 22 A. Probably. 23 <b>Q. So do you -- when you submit the numbers for</b> 24 <b>those performance measures, is it your assumption that</b> 25 <b>those measures would be relevant to determining how much</b></p>	<p style="text-align: right;">Page 77</p> <p>1 we'll be more than happy to give them an extension, 2 which we have. 3 <b>Q. And how many extensions do you give people?</b> 4 A. I've given up to about three extensions. 5 <b>Q. Does anyone ever ask for an extension that you</b> 6 <b>are not willing to give?</b> 7 A. No. 8 <b>Q. So if someone asks for ten extensions, would</b> 9 <b>you give them ten extensions?</b> 10 A. Probably so. 11 <b>Q. No one has ever done that?</b> 12 A. No. 13 <b>Q. So the most anyone has ever asked you for is</b> 14 <b>three?</b> 15 A. About three, yes. 16 <b>Q. Okay. And how do you make a decision to give</b> 17 <b>an extension?</b> 18 A. We just do it. 19 <b>Q. So it's your decision?</b> 20 A. Whoever they pretty much call and talk to -- 21 <b>Q. Okay.</b> 22 A. -- mine, Donovan's or Officer Sanchez's. 23 <b>Q. When you said 30 days, is that -- you're</b> 24 <b>getting that from the date on the agreement?</b> 25 A. Yes.</p>

20 (Pages 74 to 77)

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**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 10**

Arlene Harjo v. City of Albuquerque  
Pepe Hernandez

August 2, 2017  
1:16-cv-01113-JB-WPL

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

ARLENE HARJO,

Plaintiff,

No. 1:16-cv-01113-JB-WPL

CITY OF ALBUQUERQUE,

Defendant.

DEPOSITION OF PEPE HERNANDEZ

August 2, 2017

9:00 a.m.

Trattel Court Reporting & Videography

608 12th Street, NW

Albuquerque, New Mexico

PURSUANT TO THE NEW MEXICO RULES OF CIVIL PROCEDURE,  
this Deposition was:

TAKEN BY: ROBERT EVERETT JOHNSON  
ATTORNEY FOR THE PLAINTIFF

REPORTED BY: Rose C. Harms, NM CCR #54  
TRATTEL COURT REPORTING & VIDEOGRAPHY  
609 12th Street, NW  
Albuquerque, New Mexico 87102

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Arlene Harjo v. City of Albuquerque  
Pepe Hernandez

August 2, 2017  
1:16-cv-01113-JB-WPL

<div>Page 2</div> <div> <p>1 APPEARANCES</p> <p>2</p> <p>3 For the Plaintiff:</p> <p>4 ROBERT EVERETT JOHNSON</p> <p>5 Institute for Justice</p> <p>6 2901 N. Glebe Road, Suite 900</p> <p>7 Arlington, Virginia 22203</p> <p>8 (703)682-9320</p> <p>9 rjohnson@ij.org</p> <p>10 JUSTIN PEARSON</p> <p>11 Institute for Justice</p> <p>12 2 S. Biscayne Boulevard, Suite 3180</p> <p>13 Miami, Florida 33131</p> <p>14 (305)721-1600</p> <p>15 jpearson@ij.org</p> <p>16 For the Defendant:</p> <p>17 JAMES J. GRUBEL</p> <p>18 Walz &amp; Associates</p> <p>19 133 Eubank Boulevard, NE, Suite 2</p> <p>20 Albuquerque, New Mexico 87123-2750</p> <p>21 (505)275-1800</p> <p>22 jgrubel@walzandassociates.com</p> <p>23 INDEX</p> <p>24 Page</p> <p>25</p> <p>PEPE HERNANDEZ</p> <p>Examination by Mr. Johnson 4</p> <p>SIGNATURE/CORRECTION PAGE 38</p> <p>REPORTER'S CERTIFICATE 39</p> </div>	<div>Page 4</div> <div> <p>1 PEPE HERNANDEZ</p> <p>2 having been first duly sworn under oath, was</p> <p>3 questioned and testified as follows:</p> <p>4 EXAMINATION</p> <p>5 BY MR. JOHNSON:</p> <p>6 Q. Could you state your name for the record, please.</p> <p>7 A. My real name is Jose L. Hernandez, but everybody</p> <p>8 knows me by Pepe Hernandez.</p> <p>9 Q. Okay. And have you been deposed previously?</p> <p>10 A. No, I don't think so.</p> <p>11 Q. So just to give you a bit of background, I'm</p> <p>12 going to ask you questions, and if you could just wait</p> <p>13 for me to finish the question before you answer, that</p> <p>14 way we'll have a clear record.</p> <p>15 A. Okay.</p> <p>16 Q. Similarly, if you're answering something, I'll</p> <p>17 wait for you to finish your answer before jumping in, so</p> <p>18 that way we're not talking over each other.</p> <p>19 If I ask you a "yes" or "no" question, it would</p> <p>20 be best if you can either answer with a "yes" or a "no,"</p> <p>21 rather than shaking your head or nodding your head,</p> <p>22 because the court reporter can't capture that.</p> <p>23 A. Okay.</p> <p>24 Q. What is your position at the City of Albuquerque?</p> <p>25 A. My title is DWI assistant.</p> </div>
<div>Page 3</div> <div> <p>1 EXHIBITS</p> <p>2 Marked/Identified</p> <p>3 Page</p> <p>4 Exhibit 1 - State Police Document 14</p> <p>5 Exhibit 2 - 5/13/15 City of Albuquerque Employee 29</p> <p>6 Work Plan, Jose Hernandez</p> <p>7 Exhibit 3 - 7/16/14 Interoffice Memorandum from 31</p> <p>8 Rivera to Sworn/CSA DWI Seizure Personnel</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> </div>	<div>Page 5</div> <div> <p>1 Q. And what are your responsibilities as a DWI</p> <p>2 assistant?</p> <p>3 A. I do backgrounds on DWI drivers, I do a check on</p> <p>4 vehicles, I put them in the computer, I answer phones to</p> <p>5 make property appointments, and I tow vehicles from one</p> <p>6 lot to the other lot.</p> <p>7 Q. And how long have you had that position?</p> <p>8 A. Since 2006.</p> <p>9 Q. Have your responsibilities been the same that</p> <p>10 whole time?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. And what did you do before 2006?</p> <p>13 A. I was in the field as a sworn officer.</p> <p>14 Q. And how long were you a sworn officer?</p> <p>15 A. When I first started police work?</p> <p>16 Q. Yes.</p> <p>17 A. 1975.</p> <p>18 Q. So how did it come about that you made the</p> <p>19 transition from working in the field to being in the DWI</p> <p>20 seizure program?</p> <p>21 A. I was involved in a bad incident where two of my</p> <p>22 officers got killed, so they made me a civilian.</p> <p>23 Q. Okay. Is that something that you had to apply</p> <p>24 for, or what happened?</p> <p>25 A. No. They -- how can I say. They -- they created</p> </div>

2 (Pages 2 to 5)

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Arlene Harjo v. City of Albuquerque  
Pepe Hernandez

August 2, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 6</p> <p>1 this position for me instead of firing me or letting me 2 go. 3 <b>Q. So when you say that "they created the position,"</b> 4 <b>what do you mean by that?</b> 5 A. They made the position where they needed like an 6 assistant for DWI to check in cars, things like that, 7 because sometimes the sworn officers couldn't do it. 8 <b>Q. Okay. And who exactly was involved in creating</b> 9 <b>the position? Who were you talking with about that?</b> 10 A. Ray Schultz, the chief. 11 <b>Q. Okay. You had a conversation with him about it?</b> 12 A. No. They -- they -- they had me in another 13 position working in report review, but they figured I'd 14 do better, instead of being stuck inside a building all 15 the time, if I was moving around, things like that, 16 after what I went through. 17 <b>Q. Sure. I'm just trying to get a sense. You said</b> 18 <b>that "they" did this. I'm just trying to figure out who</b> 19 <b>"they" is.</b> 20 A. Okay. 21 <b>Q. So who are you referring to when you talk about</b> 22 <b>"they"?</b> 23 A. They, the administrative, like the chief, Ray 24 Schultz, the deputy chief. I don't know who works in 25 Human Resources, you know. Those are the people that I</p>	<p style="text-align: right;">Page 8</p> <p>1 got a letter saying to report to the DWI Seizure Unit. 2 <b>Q. I see. So it was by letter?</b> 3 A. Right. 4 <b>Q. Okay. I want to go back to, you mentioned</b> 5 <b>earlier that you are in charge of doing backgrounds on</b> 6 <b>vehicles. Can you tell me a little bit what that</b> 7 <b>involves?</b> 8 A. Mostly what it involves with the driver is I 9 check the Metro Case Lookup, if they've been in court 10 for DWI or for a revoked license. I check -- it's 11 called LEADS, which is NCIC, you know. I check MVD, you 12 know, and I check their driving record there. Then I 13 check our program where -- to see if we've seized their 14 vehicle before or if we haven't before, you know. Then 15 I send it to Lacsia, and she sends it to City Legal. 16 <b>Q. Does that process differ if this car was seized</b> 17 <b>by an officer for the County rather than for the City?</b> 18 A. I don't know what the County seizure is, but if 19 it's within the city limits, it's the same procedure. 20 <b>Q. So if it's within the city limits, even if it was</b> 21 <b>seized by a County officer, it's the same procedure?</b> 22 A. Yes, sir. 23 <b>Q. What documents would you look at as part of that</b> 24 <b>investigation?</b> 25 A. A report first.</p>
<p style="text-align: right;">Page 7</p> <p>1 know right now. 2 <b>Q. Who would you have been talking to about this?</b> 3 A. I haven't talked to nobody. They just told me 4 where I was going to go. 5 <b>Q. So why is it that a sworn officer couldn't have</b> 6 <b>done this type of work?</b> 7 A. They do. We have two sworn officers that do the 8 same job I do. 9 <b>Q. Okay. Who are they?</b> 10 A. J.R. Sanchez and Roy Martinez, but they got other 11 duties also. One is an instructor for DWI, and the 12 other does the boots, but if they're needed, then 13 they're going to do our job too. 14 <b>Q. So you mentioned earlier that the position was</b> 15 <b>created just for you. How is it that you came to</b> 16 <b>understand that?</b> 17 A. I wouldn't know. I mean, I was willing to work 18 anywhere they put me. You know, I think it was just the 19 status of my -- they said I had PTSD, and they figured 20 that it would be a good place for me instead of putting 21 me back in the streets. 22 <b>Q. Right. So I'm just trying to understand, from</b> 23 <b>your perspective, how this -- who told you that you were</b> 24 <b>going to work in the DWI Unit.</b> 25 A. Ray Schultz, the chief of police at that time. I</p>	<p style="text-align: right;">Page 9</p> <p>1 <b>Q. By the "report," you mean the police report?</b> 2 A. Police report. 3 <b>Q. Anything else?</b> 4 A. That's what I mostly go on. It has all the 5 information on the driver, so I go with that, and I do 6 the background. 7 <b>Q. What do you do with the police report?</b> 8 A. What I do is after I've done all the background 9 on the driver and everything, it comes up with a -- it 10 has a file number. I put that report on the file 11 number, and I put it in the file so it stays with the 12 file. 13 <b>Q. You mentioned that you run a number of record</b> 14 <b>searches?</b> 15 A. I do -- like I say, if it comes back to a 16 "before," I put in front of that folder -- it says 17 "Prior," and then I put the case number there -- I mean, 18 the file number. 19 <b>Q. You mentioned a folder. Is this a --</b> 20 A. A manila folder like that (indicating), you know. 21 Just put the report, put the driver's record there, put 22 the court documents that it has, past reports, 23 sometimes, if they have them, whatever pertains to the 24 driver. 25 <b>Q. Do you write notes in the folder?</b></p>

3 (Pages 6 to 9)

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Arlene Harjo v. City of Albuquerque  
Pepe Hernandez

August 2, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 10</p> <p>1 A. I write notes where it says "Comments," and I 2 also write the notes on the computer, the data, which is 3 called ProLaw. 4 <b>Q. What sorts of things would you write in those</b> 5 <b>notes?</b> 6 A. If they had a prior seizure, I put that down. I 7 put down if it's the same driver. I put down if it's 8 the same vehicle. I put down if it's the same owner, 9 and then I put how many previous DWIs he's had. 10 <b>Q. Does that process change if the car is owned by</b> 11 <b>somebody other than the driver?</b> 12 A. No. I wouldn't put -- I put "new owner" instead 13 of, you know, "old owner," but I put the same vehicle. 14 <b>Q. If the car is owned by somebody other than the</b> 15 <b>driver, do you investigate both the owner and the</b> 16 <b>driver?</b> 17 A. Sometimes I do, you know, to see if he hasn't 18 been arrested before or if we've had his vehicle before. 19 <b>Q. But you don't always?</b> 20 A. Not always. Sometimes the vehicle belongs to the 21 driver, you know. If it's a different owner, then I 22 check that. 23 <b>Q. So if it is a different owner, do you always</b> 24 <b>investigate both the owner and the driver?</b> 25 A. Uh-huh.</p>	<p style="text-align: right;">Page 12</p> <p>1 <b>investigating these sorts of seizures?</b> 2 A. No, sir. 3 <b>Q. Do you ever go to speak with anybody in person?</b> 4 A. No, sir. 5 <b>Q. Other than reading the police report and making</b> 6 <b>these record searches, do you do any investigation?</b> 7 A. No, sir. 8 <b>Q. Does anybody do any type of investigation?</b> 9 A. I wouldn't know. I just do my assignment, and 10 that's it. 11 <b>Q. Now, you mentioned earlier that a seizure has to</b> 12 <b>be within the city limits of Albuquerque; is that</b> 13 <b>correct?</b> 14 A. Yes, sir. 15 <b>Q. So if a car is seized outside the city limits,</b> 16 <b>it's your understanding that it's not subject to</b> 17 <b>forfeiture?</b> 18 A. That's true. 19 <b>Q. Who told you that?</b> 20 A. It's a City ordinance. 21 <b>Q. Is it part of your job to verify that a seizure</b> 22 <b>occurred within city limits?</b> 23 A. Not really. It's the responsibility of the 24 officers. They should know. 25 <b>Q. Now, if a car is seized not by an Albuquerque</b></p>
<p style="text-align: right;">Page 11</p> <p>1 MR. GRUBEL: Is that a "yes"? 2 A. Yes. I forgot. 3 <b>Q. (By Mr. Johnson) So what would it mean to</b> 4 <b>investigate the owner? So if it's an owner who wasn't</b> 5 <b>the driver, what sort of investigation would you do?</b> 6 A. On ProLaw, it would say "Matter Description," 7 which will give me a history of the owner. So I put the 8 owner's last name and then his first name, and it will 9 pop up previous files on the owner. 10 <b>Q. And what sort of information would you get about</b> 11 <b>the owner from ProLaw?</b> 12 A. Sometimes it will show that he wasn't the driver, 13 but it was somebody else driving, or he owned a 14 different vehicle. 15 <b>Q. So ProLaw would tell you about past vehicle</b> 16 <b>seizures involving --</b> 17 A. Right, if this is another vehicle that she owns 18 or he owns. 19 <b>Q. Other than looking at ProLaw, do you do any</b> 20 <b>investigation on an owner who wasn't driving the</b> 21 <b>vehicle?</b> 22 A. No, not really. 23 <b>Q. Do you ever call the owner?</b> 24 A. No, sir. 25 <b>Q. Do you ever make phone calls to anybody</b></p>	<p style="text-align: right;">Page 13</p> <p>1 <b>police officer but by a County officer, is it still the</b> 2 <b>responsibility of the officer?</b> 3 A. Yes, but most of the time, I glance at the 4 location, and I know most of the streets here in 5 Albuquerque. The only thing, I don't know the freeways. 6 I don't have a map. 7 <b>Q. So if a seizure is by a County officer, you would</b> 8 <b>look at the location?</b> 9 A. Right. 10 <b>Q. And the purpose of that would be to make sure</b> 11 <b>that it was seized within the city limits?</b> 12 A. Correct. 13 <b>Q. When you say you "glance at the location," what</b> 14 <b>do you mean by that?</b> 15 A. I just like to see what area it was, Northeast, 16 Southeast, Southwest, you know. Sometimes I'll catch 17 some that are in the county, you know, because I used to 18 live in the county, so I know some of the streets. 19 <b>Q. So you have seen cases where there's been a car</b> 20 <b>seized in the county that was brought to you for</b> 21 <b>forfeiture?</b> 22 A. Yeah, and we call County to come pick it up 23 because they have a seizure program also. 24 <b>Q. About how many times would you say that's</b> 25 <b>happened?</b></p>

4 (Pages 10 to 13)

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Arlene Harjo v. City of Albuquerque  
Pepe Hernandez

August 2, 2017  
1:16-cv-01113-JB-WPL

Page 14

1 A. Very few. Hardly any. You know, probably once a  
2 year or something like that.  
3 **Q. Once a year that you're aware of?**  
4 A. Yeah. I don't catch that much. County is pretty  
5 good about that.  
6 **Q. But in the time that you've been doing it, you,**  
7 **yourself, have seen about once a year that the County --**  
8 A. Yeah.  
9 **Q. Now, are you familiar with a concept of mile**  
10 **markers on a highway?**  
11 A. No, sir.  
12 **Q. Let me go ahead and show you something. I will**  
13 **mark this as Exhibit 1.**  
14 **(Exhibit 1 marked.)**  
15 **Q. You get the marked copy, and then that goes to**  
16 **the court reporter. Is this type of document familiar**  
17 **to you?**  
18 A. It's a State Police report.  
19 **Q. Is this the type of document that you would get**  
20 **when a vehicle is seized?**  
21 A. Yes, sir.  
22 **Q. Okay. Do you see where it says "Location of**  
23 **Arrest"?**  
24 A. Yes, uh-huh.  
25 **Q. Is that sort of in the upper left-hand corner of**

Page 15

1 the document?  
2 A. Yes, sir.  
3 **Q. What does it say under "Location of Arrest"?**  
4 A. I think it says "I-40 Milepost 170 Westbound."  
5 **Q. What does that mean when it says "Milepost"?**  
6 A. I don't know where the milepost is. I don't know  
7 the mileposts on I-40 or I-25.  
8 **Q. Just more generally, what is a milepost?**  
9 A. Milepost is -- I guess it's a location on the  
10 freeway, you know.  
11 **Q. And using a milepost, would you be able to figure**  
12 **out where the seizure happened?**  
13 A. No, sir.  
14 **Q. If somebody knew where the mileposts were, would**  
15 **they be able to figure that out?**  
16 A. Probably, if they work it that often, you know.  
17 **Q. You are familiar with the concept of a milepost,**  
18 **though?**  
19 A. Yeah, I know. I see them on I-40, I-25, you  
20 know, within the city limits, but I don't remember them.  
21 **Q. Right. But if you knew a highway and you knew**  
22 **where the mileposts were, you could use that to figure**  
23 **out whether it was within the city limits or not?**  
24 A. If I had a map, yes, but they don't give us maps  
25 where I work.

Page 16

1 **Q. Okay. Just to be clear, if you had a map, you**  
2 **could use this information to figure out if the seizure**  
3 **occurred in the city limits?**  
4 A. Probably, yeah.  
5 **Q. But you didn't have a map, and you don't have a**  
6 **map?**  
7 A. My purpose is the driver; not the location, you  
8 know. I figure it's the officer's responsibility to  
9 know if it's city or county.  
10 **Q. Okay. So has anybody ever suggested that it's**  
11 **your responsibility to determine the location of the**  
12 **seizure?**  
13 A. Never. That's a good idea. Next time, I'll do  
14 it.  
15 **Q. Are you familiar with -- well, do you know**  
16 **anything about this case, why you're here today?**  
17 A. A little bit, yeah.  
18 **Q. What do you know?**  
19 A. Just that the State policeman wasn't within the  
20 city limits.  
21 **Q. And how do you know that? Who told you that?**  
22 A. I think my lieutenant told me. I'm not sure. I  
23 can't remember.  
24 **Q. When you say your "lieutenant," do you mean**  
25 **Donovan Rivera?**

Page 17

1 A. Yes, sir.  
2 **Q. So you've spoken with Donovan Rivera about this**  
3 **case?**  
4 A. Briefly. He just told me recently when I was  
5 going to come over here, and I told him, "I don't  
6 remember the case, but I remember doing the background."  
7 **Q. Right. Did you talk about anything else related**  
8 **to the case with him?**  
9 A. No, sir.  
10 **Q. Did you talk with anybody else about the case?**  
11 A. No, sir.  
12 **Q. As you were preparing to come here today, did you**  
13 **look at any documents?**  
14 A. No.  
15 **Q. Did you do anything else to prepare?**  
16 A. No. Well, I did. I talked to him yesterday  
17 (indicating Mr. Grubel).  
18 **Q. Right.**  
19 A. Yeah.  
20 **Q. You don't have to tell me what you talked about**  
21 **with him.**  
22 A. I forgot. I'm 64, so...  
23 MR. GRUBEL: I'm not memorable.  
24 **Q. (By Mr. Johnson) So you mentioned that you don't**  
25 **remember the case, but you do remember doing the**

5 (Pages 14 to 17)

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Arlene Harjo v. City of Albuquerque  
Pepe Hernandez

August 2, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 18</p> <p>1 <b>background on the case?</b>  2 A. I believe, if it's -- if it was the same one, he  3 had a previous DWI, yeah. Like I do over a thousand  4 reports.  5 <b>Q. When you say you "do over a thousand," is that</b>  6 <b>over a thousand per year?</b>  7 A. Let's see. Yes.  8 <b>Q. So how long does it take you to do a report?</b>  9 A. It takes me between 15, 20 minutes, depending how  10 much he has in his Case Lookup. I have to write it  11 down.  12 <b>Q. In this particular case, you see the name at the</b>  13 <b>top, "Tino Harjo"?</b>  14 A. Yes.  15 <b>Q. Just to be clear that's who we're talking about.</b>  16 <b>So you do remember doing the background investigation</b>  17 <b>for the Tino Harjo seizure?</b>  18 A. I remember the last name.  19 <b>Q. Was that a pretty typical background</b>  20 <b>investigation, from your perspective?</b>  21 A. Yes, sir.  22 <b>Q. About how long did it take you?</b>  23 A. I wouldn't remember, it's been so long.  24 <b>Q. Okay. But is it fair to say it probably took</b>  25 <b>around 15 to 20 minutes?</b></p>	<p style="text-align: right;">Page 20</p> <p>1 A. Usually when it comes up on his Social Security  2 or date of birth, it would pop his name up.  3 <b>Q. So you would search for him by name, Social, and</b>  4 <b>date of birth?</b>  5 A. Yes.  6 <b>Q. Would you run any other searches?</b>  7 A. If it was a different driver -- or owner,  8 correct.  9 <b>Q. In this case, the owner of the car was a woman</b>  10 <b>named Arlene Harjo. Do you remember that?</b>  11 A. Yes.  12 <b>Q. Did you run any searches for her?</b>  13 A. No, sir.  14 <b>Q. So you didn't run any search through LEADS or the</b>  15 <b>Metropolitan Court for her?</b>  16 A. Not for her.  17 <b>Q. Did you search through ProLaw for her?</b>  18 A. No, sir. When did this happen? Let's see. I  19 don't think so. I don't actually remember, but "Arlene"  20 don't ring a bell.  21 <b>Q. Why would you have not run any searches for her?</b>  22 <b>I thought you said earlier that you run searches for the</b>  23 <b>owner.</b>  24 A. They got a new attorney, and she's not there no  25 more, I don't think. She wanted the owner checked also.</p>
<p style="text-align: right;">Page 19</p> <p>1 A. Probably.  2 <b>Q. And in this particular case, what would you have</b>  3 <b>done with this document? How would you have</b>  4 <b>investigated it?</b>  5 A. Same thing, going through LEADS, NCIC, MVD, Case  6 Lookup.  7 <b>Q. Let's just go through those. I know those are</b>  8 <b>databases that are familiar to you, but let's just go</b>  9 <b>through them one by one and sort of spell out exactly</b>  10 <b>what they are.</b>  11 A. Okay. LEADS is the motor vehicle history.  12 <b>Q. Is that L-E-A-D-S?</b>  13 A. Yeah, and that's MVD.  14 <b>Q. And then the second one?</b>  15 A. The Metro Case Lookup.  16 <b>Q. And then was there a third database?</b>  17 A. Oh, our database, ProLaw.  18 <b>Q. Is there anything else that you would have done?</b>  19 A. That would be it right there.  20 <b>Q. Okay. So you would have looked at the motor</b>  21 <b>vehicle history for the driver, the Metropolitan Court</b>  22 <b>Lookup, and then you would have looked through ProLaw?</b>  23 A. Correct.  24 <b>Q. And in all three of those databases, would you</b>  25 <b>have searched for the name Tino Harjo?</b></p>	<p style="text-align: right;">Page 21</p> <p>1 <b>Q. Okay. Who is that attorney?</b>  2 A. I don't know. Lacsresia gave me the order.  3 <b>Q. About when was that?</b>  4 A. About three months ago.  5 <b>Q. So before three months ago, it was the policy to</b>  6 <b>not run any searches on the owner?</b>  7 A. Correct.  8 <b>Q. So then there was a change three months ago to</b>  9 <b>start running the searches on the owner?</b>  10 A. Correct.  11 <b>Q. Now, I asked you earlier if you would ever call</b>  12 <b>anybody or talk to anybody, and I just want to be sure</b>  13 <b>it's clear. That's true now, and it was also true at</b>  14 <b>the time that --</b>  15 A. It's true.  16 <b>Q. And it was also true at the time that you would</b>  17 <b>have been looking into the Harjo seizure?</b>  18 A. That's true.  19 <b>Q. So you never called Tino Harjo or Arlene Harjo?</b>  20 A. No, sir.  21 <b>Q. You never spoke to them?</b>  22 A. No, sir.  23 <b>Q. Other than the arresting officer, are you aware</b>  24 <b>of anybody else who would have done that?</b>  25 A. No, sir.</p>

6 (Pages 18 to 21)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Pepe Hernandez

August 2, 2017  
1:16-cv-01113-JB-WPL

Page 22	Page 24
<p>1 <b>Q. Okay. Now, in this particular case, did you do</b> 2 <b>anything to verify the location of the seizure?</b> 3 A. No, sir. 4 <b>Q. Were you aware that it was a seizure by the</b> 5 <b>Bernalillo County? Was it the County or the State</b> 6 <b>Police?</b> 7 A. It was State Police. 8 <b>Q. State Police. Were you aware that it was a</b> 9 <b>seizure by the State Police?</b> 10 A. Yes, sir. On the report, it says "New Mexico 11 State Police." 12 <b>Q. So you would have known that it was a State</b> 13 <b>Police seizure?</b> 14 A. Yes, sir. 15 <b>Q. Now, we were talking earlier about how, when it's</b> 16 <b>a County police officer, you might check to make sure</b> 17 <b>that the seizure occurred within the city limits?</b> 18 A. City limits. 19 <b>Q. Is the same true with a State Police officer?</b> 20 A. Yes, sir. 21 <b>Q. Okay. So if it was a State Police officer, you</b> 22 <b>might also check, just to glance and see if it was</b> 23 <b>within the city limits?</b> 24 A. I really don't -- their reports are hard to look 25 at, you know, trying to find -- I couldn't find the</p>	<p>1 report or something and I see it, you know, she'll say, 2 "Okay. I'll get ahold of them," because I guess she has 3 the e-mails of all the officers. 4 <b>Q. I see. So if there's a location on a report and</b> 5 <b>you don't know if it's in the city or not, you pretty</b> 6 <b>much just leave it there and don't do anything further?</b> 7 A. If I see the location, but my concentration is on 8 the driver, so I concentrate on the driver mostly, 9 because I have, you know, stacks of reports to do. I 10 try to assume that they know whether it's the city 11 limits. 12 <b>Q. You said earlier that there's been a few times a</b> 13 <b>year that there will be a seizure by the County police</b> 14 <b>that was outside the city limits. Does that ever happen</b> 15 <b>with the State Police?</b> 16 A. No, sir, that I know of. 17 <b>Q. Other than this incident?</b> 18 A. This is the first one, I guess. 19 <b>Q. Of course, there might be ones that you're not</b> 20 <b>aware of?</b> 21 A. Correct. 22 <b>Q. So it's possible that there are others that</b> 23 <b>either somebody else caught or that just never -- no one</b> 24 <b>ever caught?</b> 25 MR. GRUBEL: Objection; form.</p>
Page 23	Page 25
<p>1 location. The location, you know, mostly it's the 2 freeway, and I don't know the freeways, but if it's a 3 street, if I recognize it, then... 4 <b>Q. If it was a State Police officer, you would look</b> 5 <b>to see if you recognized the location and if it's in the</b> 6 <b>city?</b> 7 A. Yes. 8 <b>Q. But if you don't recognize it, you wouldn't do</b> 9 <b>anything further?</b> 10 A. I assume that it's in the city limits. 11 <b>Q. Would you ever call up the officer who made the</b> 12 <b>seizure to ask where it occurred?</b> 13 A. No, sir. 14 <b>Q. Could you do that if you wanted to?</b> 15 A. I don't do it. I don't deal with the officers at 16 all. I just get the reports. 17 <b>Q. But would anything stop you from calling the</b> 18 <b>officer if you wanted to?</b> 19 A. Yeah, but sometimes I don't need to call them. I 20 just do the reports, what I'm supposed to do. 21 <b>Q. Right. I understand you --</b> 22 A. But the one that calls the reports mostly is 23 Lacresia. 24 <b>Q. What do you mean by that?</b> 25 A. If there's, you know, something wrong with the</p>	<p>1 <b>Q. (By Mr. Johnson) Is it possible there are other</b> 2 <b>cases where the State Police seized a car outside city</b> 3 <b>limits that --</b> 4 A. I wouldn't know. That would be the officer 5 saying where he got them, because I wouldn't know. 6 <b>Q. Now, are you aware of anybody who is responsible</b> 7 <b>for checking the location of the seizure to make sure</b> 8 <b>that it's within city limits?</b> 9 A. No. 10 <b>Q. Has there been any change in the policy regarding</b> 11 <b>looking to check the location of the seizure?</b> 12 A. No. 13 <b>Q. Has anybody given you any new instructions about</b> 14 <b>that since --</b> 15 A. No. 16 <b>Q. Has there been any discussion with your</b> 17 <b>supervisor or anybody else at the Police Department</b> 18 <b>about ways to avoid having seizures like this one, where</b> 19 <b>it was outside city limits and nobody noticed?</b> 20 A. No. 21 <b>Q. Has anybody spoken to you about the Harjo seizure</b> 22 <b>apart from preparing for this deposition?</b> 23 A. No, except (indicating Mr. Grubel). 24 <b>Q. Except for the lawyer?</b> 25 A. The lawyer.</p>

7 (Pages 22 to 25)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Pepe Hernandez

August 2, 2017  
1:16-cv-01113-JB-WPL

Page 26	Page 28
<p>1 <b>Q. Has anybody suggested ways that you could avoid</b>  2 <b>having cases like this in the future, where it was</b>  3 <b>outside city limits and nobody noticed?</b>  4 A. No.  5 <b>Q. I'm going to go back to your previous</b>  6 <b>responsibilities as a field officer. What kind of work</b>  7 <b>did you do as a field officer?</b>  8 A. I was a -- I answered calls for domestics, I did  9 accidents. I just answered all the calls that were  10 needed. Shoplifting, you know, things like that.  11 Regular patrol.  12 <b>Q. As a field officer, would you ever make stops on</b>  13 <b>the highway?</b>  14 A. I hardly made any stops on the highway.  15 <b>Q. But you would do it sometimes?</b>  16 A. Sometimes, you know. Sometimes I had accidents  17 on the freeway which I had to handle.  18 <b>Q. Okay. And you would have filled out reports in</b>  19 <b>connection with those incidents?</b>  20 A. Correct.  21 <b>Q. How would you have noted the location of the</b>  22 <b>incident on that kind of a report?</b>  23 A. I would mostly say like "Sixth Street" or "Fourth  24 Street," and I'd say "I-40" or "Carlisle," you know. I  25 wouldn't -- I wouldn't use the mile marker. Once in a</p>	<p>1 <b>to conduct these investigations?</b>  2 A. Just the way they told me, you know, through  3 their driver's license number or their name and the date  4 of birth, and that's how I would check.  5 <b>Q. Have you received any follow-up training since</b>  6 <b>you started on the job?</b>  7 A. No, sir.  8 <b>Q. So you received training in 2006, when you</b>  9 <b>started the job, and there's been no training since</b>  10 <b>then?</b>  11 A. It's been the same. It hasn't changed.  12 <b>Q. Does anybody ever talk to you when there's a case</b>  13 <b>where there's something that should have been noted on</b>  14 <b>the background that wasn't or where there was an</b>  15 <b>omission in the report?</b>  16 A. No.  17 <b>Q. So no one ever gives you feedback on how you're</b>  18 <b>doing on the job?</b>  19 A. Sometimes I forget to put a number, and Lacsresia  20 will advise me about it, but something real minor, you  21 know.  22 <b>Q. Other than minor issues like that, nobody gives</b>  23 <b>you any feedback on how the investigations are going?</b>  24 A. No, sir.  25 <b>Q. And do you ever have discussions with people</b></p>
Page 27	Page 29
<p>1 while, if I had -- I used to have a map where I had the  2 mile markers, and I used that sometimes.  3 <b>Q. Okay. So sometimes you would use the mile marker</b>  4 <b>to note the location of an incident?</b>  5 A. Yes.  6 <b>Q. So it's fair to say that you're familiar with how</b>  7 <b>mile markers work from your previous responsibilities?</b>  8 A. I'm familiar within the city. And like I say, if  9 I had a map, you know, I would know exactly where  10 they're at.  11 <b>Q. Sure. Have you ever discussed with anybody the</b>  12 <b>idea of being provided with a map?</b>  13 A. No.  14 <b>Q. Has anyone ever suggested that they might provide</b>  15 <b>you with a map?</b>  16 A. No.  17 <b>Q. Did you receive any training when you started</b>  18 <b>your position with the DWI Seizure Unit?</b>  19 A. Just on the computer and the tow truck.  20 <b>Q. Okay. Specifically on the computer, what did</b>  21 <b>that training consist of?</b>  22 A. The ProLaw program, how to get to LEADS, how to  23 get to the Metro Case Lookup, things like that.  24 <b>Q. Apart from training in how to use those</b>  25 <b>databases, did you receive any other training about how</b></p>	<p>1 <b>about how to make the investigations better or more</b>  2 <b>thorough?</b>  3 A. No, sir.  4 MR. JOHNSON: Why don't we take a quick  5 break and come back in a few minutes.  6 (Recess taken from 9:37 to 9:42.)  7 <b>Q. (By Mr. Johnson) Why don't we jump back in while</b>  8 <b>we're getting that booted. I'm going to mark this as</b>  9 <b>Exhibit 2.</b>  10 (Exhibit 2 marked.)  11 <b>Q. Have you seen this document before?</b>  12 A. Yes, sir.  13 <b>Q. What is it?</b>  14 A. That's my employee performance evaluation.  15 <b>Q. And how would you use this document?</b>  16 A. It kind of helps both the supervisor and me on  17 how my performance is on my job.  18 <b>Q. Okay. And would you receive this type of</b>  19 <b>document fairly regularly?</b>  20 A. I think it's -- I don't know how many months, but  21 I do, yes.  22 <b>Q. And it always looks about the same?</b>  23 A. Mostly, yes.  24 <b>Q. Can you read under where it says "Output</b>  25 <b>Measures"? Do you see that on the first page?</b></p>

8 (Pages 26 to 29)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Pepe Hernandez

August 2, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 30</p> <p>1 A. Oh, okay.</p> <p>2 <b>Q. Do you see the first bullet point there?</b></p> <p>3 A. "Maintain or increase the number of DWI Seized</p> <p>4 vehicles."</p> <p>5 <b>Q. Okay. And then can you read the third bullet</b></p> <p>6 <b>point?</b></p> <p>7 A. "Increase the amount of revenue generated from</p> <p>8 Seized vehicles."</p> <p>9 <b>Q. And when it says that those are output measures,</b></p> <p>10 <b>what do you understand that to mean?</b></p> <p>11 A. Excuse me?</p> <p>12 <b>Q. Those are listed under "Output Measures." What</b></p> <p>13 <b>do you understand that to mean?</b></p> <p>14 A. That I guess I could do some of those jobs, you</p> <p>15 know, if I was needed, but some of them, I'm not even</p> <p>16 trained on.</p> <p>17 <b>Q. But are these things that the unit is intended to</b></p> <p>18 <b>do?</b></p> <p>19 A. Right.</p> <p>20 <b>Q. And they're things that you could perhaps assist</b></p> <p>21 <b>the unit in doing if you were trained?</b></p> <p>22 A. Correct.</p> <p>23 <b>Q. Is it fair to say that these are the objectives</b></p> <p>24 <b>of the unit?</b></p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 32</p> <p>1 <b>assigning you to the DWI Unit?</b></p> <p>2 A. I do now.</p> <p>3 <b>Q. Did you at the time?</b></p> <p>4 A. At that time, I didn't know what was happening.</p> <p>5 I was in a depressed mood. I had just lost two of my</p> <p>6 co-workers, and I was real depressed, and I wasn't</p> <p>7 thinking right, probably, at that time. I really don't</p> <p>8 remember the incident of what they meant in the third</p> <p>9 paragraph.</p> <p>10 <b>Q. So your understanding is this refers to events</b></p> <p>11 <b>that happened before you came to work at the DWI Unit;</b></p> <p>12 <b>not anything that's happened since you started working</b></p> <p>13 <b>there?</b></p> <p>14 A. Correct.</p> <p>15 <b>Q. Okay.</b></p> <p>16 (Discussion off the record.)</p> <p>17 <b>Q. I will put the computer here. So I am going to</b></p> <p>18 <b>play a video. This is a video of the Santa Fe Vehicle</b></p> <p>19 <b>Forfeiture Conference in September of 2014, and the</b></p> <p>20 <b>video is available. We're playing this off of YouTube.</b></p> <p>21 <b>The URL is www.youtube.com/watch?v=HHrgsda5g3c. I'm</b></p> <p>22 <b>starting this at -- the time stamp is 4:23:49.</b></p> <p>23 MR. GRUBEL: Counsel, I have a question. Is</p> <p>24 this the same video that was recently produced in your</p> <p>25 fourth supplemental Rule 26 disclosure?</p>
<p style="text-align: right;">Page 31</p> <p>1 <b>Q. Okay. I don't have any other questions about</b></p> <p>2 <b>this. I'm going to mark another exhibit.</b></p> <p>3 (Exhibit 3 marked.)</p> <p>4 <b>Q. I'll hand you what is marked as Exhibit 3. Are</b></p> <p>5 <b>you familiar with this document?</b></p> <p>6 A. Yes, sir.</p> <p>7 <b>Q. What is it?</b></p> <p>8 A. It's an EWP meeting, or it talks about my</p> <p>9 evaluation.</p> <p>10 <b>Q. Okay. Do you see under the third paragraph it</b></p> <p>11 <b>says, "CSA Hernandez stated his concerns about his job</b></p> <p>12 <b>duties are what personally happened between him and the</b></p> <p>13 <b>department years ago." What does that refer to?</b></p> <p>14 A. Which one was it?</p> <p>15 <b>Q. The third paragraph (indicating).</b></p> <p>16 A. I think he's talking about the incident I was --</p> <p>17 the shootout and everything. I took it pretty hard, and</p> <p>18 I had some, I guess, issues with the department.</p> <p>19 <b>Q. When you say "issues with the department," what</b></p> <p>20 <b>do you mean?</b></p> <p>21 A. Just that I felt like I wasn't treated right.</p> <p>22 <b>Q. Was that related to being assigned to the DWI</b></p> <p>23 <b>Unit?</b></p> <p>24 A. No.</p> <p>25 <b>Q. Do you feel like they treated you right by</b></p>	<p style="text-align: right;">Page 33</p> <p>1 MR. JOHNSON: Yes.</p> <p>2 <b>Q. (By Mr. Johnson) I'm actually going to go back</b></p> <p>3 <b>just a few seconds before that.</b></p> <p>4 (Video played.)</p> <p>5 <b>Q. So I just played a couple minutes of that video</b></p> <p>6 <b>there. There was an individual who was referred to as</b></p> <p>7 <b>"Roy." Do you know who that would be?</b></p> <p>8 A. He's a DWI officer.</p> <p>9 MR. GRUBEL: I'm going to object to form and</p> <p>10 foundation.</p> <p>11 <b>Q. (By Mr. Johnson) Go ahead, you can answer.</b></p> <p>12 A. He's an officer, police officer.</p> <p>13 <b>Q. Was there an individual who was speaking who was</b></p> <p>14 <b>referred to as "Roy" in the video?</b></p> <p>15 A. Yes, sir.</p> <p>16 <b>Q. Who was that individual?</b></p> <p>17 A. He's a police officer, DWI.</p> <p>18 <b>Q. And what's his full name?</b></p> <p>19 A. Roy Martinez.</p> <p>20 <b>Q. You mentioned Roy Martinez earlier as one of the</b></p> <p>21 <b>officers who works with you at the program. Is that the</b></p> <p>22 <b>same Roy Martinez?</b></p> <p>23 A. Yes, sir.</p> <p>24 <b>Q. Okay. In the video, Roy discusses the benefits</b></p> <p>25 <b>of the money being used to fund the DWI program. Do you</b></p>

9 (Pages 30 to 33)

Trattel Court Reporting & Videography  
505-830-0600

Arlene Harjo v. City of Albuquerque  
Pepe Hernandez

August 2, 2017  
1:16-cv-01113-JB-WPL

<p style="text-align: right;">Page 34</p> <p>1 <b>agree with those remarks?</b>  2 A. I don't know because I don't deal with the  3 revenue. I just deal with the backgrounds.  4 <b>Q. Do you know how the money from auctioning off</b>  5 <b>seized cars is used?</b>  6 A. No, sir.  7 <b>Q. Have you ever discussed it with anybody?</b>  8 A. No, sir.  9 <b>Q. Has anybody ever mentioned to you how it's used?</b>  10 A. No, sir.  11 <b>Q. Do you ever talk to Roy Martinez about it?</b>  12 A. No, sir.  13 <b>Q. How closely do you work with Roy Martinez?</b>  14 A. He teaches a lot, so I don't hardly see him. His  15 office is farther down than mine.  16 <b>Q. So is your testimony that you have absolutely no</b>  17 <b>awareness of how the money from the seizures is used?</b>  18 A. No, sir.  19 <b>Q. Understanding that you may not know conclusively,</b>  20 <b>do you have any sense of how it would be used?</b>  21 A. I have a sense, you know, because we got a new  22 Batmobile and, you know, breath analyzers, a lot of DWI  23 items. It has to come from somewhere.  24 <b>Q. So it was your sense that those things were paid</b>  25 <b>for with the revenue from the seizures?</b></p>	<p style="text-align: right;">Page 36</p> <p>1 A. That it goes back into the DWI Unit.  2 <b>Q. Did he say anything about how the officers who</b>  3 <b>work in the program feel about the program?</b>  4 A. They benefit on getting equipment.  5 <b>Q. Did he say that they appreciate that benefit?</b>  6 A. I didn't hear that, but it sounded like they did.  7 <b>Q. Do you think it's accurate to say that the</b>  8 <b>officers who work in the program appreciate that they</b>  9 <b>can get equipment using the money from the program?</b>  10 MR. GRUBEL: Object to form.  11 A. I think so. They get new units, you know.  12 <b>Q. (By Mr. Johnson) So the officers who work in the</b>  13 <b>program like that they get new equipment?</b>  14 A. True.  15 MR. GRUBEL: Objection; form.  16 <b>Q. (By Mr. Johnson) How about a person like</b>  17 <b>yourself, a civilian employee? Is the same true?</b>  18 A. We get -- like I got a new computer. You know,  19 some of them are real old, you know, but that's a  20 benefit for us. Our computers run faster and better,  21 and the data is even better. So, yes, I think it's  22 working.  23 <b>Q. Does it make the day-to-day experience of your</b>  24 <b>job better to have a new computer?</b>  25 A. Yes, sir.</p>
<p style="text-align: right;">Page 35</p> <p>1 A. Yes, sir.  2 <b>Q. And has that always been your sense ever since</b>  3 <b>you've been working in the program?</b>  4 A. Yes, sir.  5 <b>Q. I'm going to play just another quick clip. Just</b>  6 <b>to be clear, I'm going to start playing this at about --</b>  7 <b>the time stamp here is 4:42:06.</b>  8 (Video played.)  9 <b>Q. So in that clip, was Roy Martinez speaking in</b>  10 <b>that clip as well?</b>  11 MR. GRUBEL: I will lodge an objection to  12 the foundation of the video in general. Answer the  13 question, please.  14 A. I didn't understand the question.  15 <b>Q. (By Mr. Johnson) Well, watching this video that</b>  16 <b>we've just played for you, was Roy Martinez speaking in</b>  17 <b>that video?</b>  18 A. Yes, sir.  19 <b>Q. That's the same Roy Martinez who you work with in</b>  20 <b>the DWI Unit?</b>  21 A. Yes, sir.  22 <b>Q. Now, did Roy Martinez say anything in that clip</b>  23 <b>about the benefits of the DWI program?</b>  24 A. Yes, sir.  25 <b>Q. And how would you characterize what he said?</b></p>	<p style="text-align: right;">Page 37</p> <p>1 <b>Q. It makes things a little easier?</b>  2 A. More relaxed and less stressful, yeah.  3 <b>Q. So is it fair to say that you like that you have</b>  4 <b>a new computer?</b>  5 A. Yes, sir.  6 <b>Q. Okay. I know you don't how the computer was paid</b>  7 <b>for, necessarily, but was it your sense that it was paid</b>  8 <b>for with the seizure money?</b>  9 A. Yes, sir.  10 MR. JOHNSON: Why don't we take another  11 quick break. We're about done here, so let's take a  12 quick break, and we'll come back.  13 (Recess taken from 10:14 to 10:15.)  14 MR. JOHNSON: I think we're complete on our  15 end. I don't know if you have any questions.  16 MR. GRUBEL: I have no questions. Read and  17 sign.  18 (The deposition was concluded at 10:15 a.m.)  19 * * * * *  20  21  22  23  24  25</p>

10 (Pages 34 to 37)

Trattel Court Reporting & Videography  
505-830-0600

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 11**

# CITY OF ALBUQUERQUE

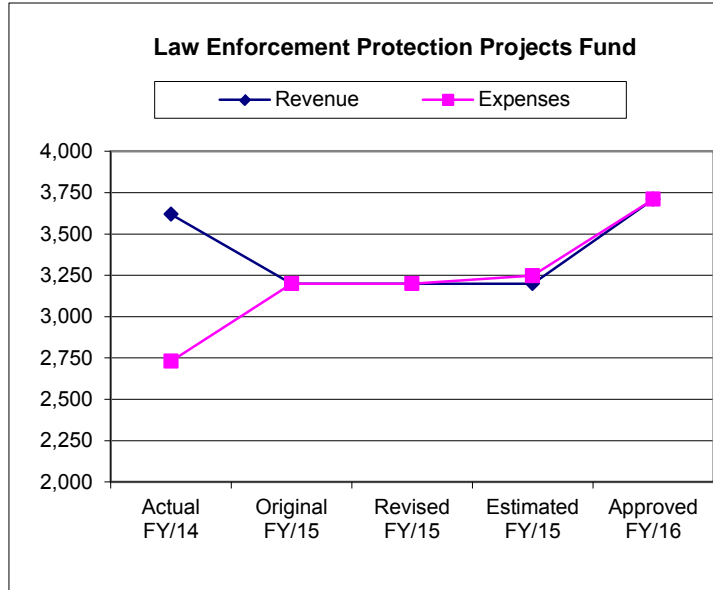
MAYOR RICHARD J. BERRY



FY/16  
APPROVED BUDGET

## LAW ENFORCEMENT PROTECTION PROJECTS FUND – 280

The Law Enforcement Protection Fund (LEPF) accounts for several special revenues from local, state and federal sources. The fund is part of the Public Safety Goal to achieve communities where the public is safe and secure and shares responsibility for maintaining a safe environment. The fund originated to handle state distributions under the Law Enforcement Protection Act. State and federal forfeitures of cash and other assets seized in the enforcement of drug laws were later included. Also, revenues from court fees to defray the cost of crime lab tests to prosecute criminal cases are deposited in the fund, as well as revenues from the seizure of vehicles for repeat DWI offenders.



➤ The funding level for FY/16 increased slightly to \$3.7 million from the FY/15 original budget. Resources and appropriations match as it is difficult to anticipate what revenues will be received in this fund.

➤ Funding decreased by \$70 thousand for the law enforcement protection program for a total of \$580 thousand. Funding for the DWI Ordinance Enforcement is budgeted at \$1.8 million, of which \$512 thousand is a transfer to the General Fund; the crime lab is \$130 thousand; and federal forfeitures are \$1.3 million, for a total net increase of \$510 thousand from the FY/15 level.

➤ The transfer to the General Fund increases by \$30 thousand due in part to a wage increase in FY/15. Seven positions are funded through this transfer and include two paralegals, two attorneys, two DWI seizure assistants and one DWI seizure coordinator.

➤ The amount of \$3.3 million has been reserved for the purpose of acquiring property for a DWI seizure lot.

LAW ENFORCEMENT PROTECTION FUND 280  
RESOURCES, APPROPRIATIONS AND AVAILABLE FUND BALANCE

	FY14 ACTUAL EXPENSES	FY15 ORIGINAL BUDGET	FY15 REVISED BUDGET	FY15 EST. ACTUAL EXPENSES	FY16 APPROVED BUDGET	CURRENT YR/ ORIGINAL CHG
(\$000's)						
<b>RESOURCES:</b>						
Total Miscellaneous/Project Revenues	3,619	3,200	3,200	3,200	3,710	510
<b>TOTAL REVENUES</b>	<b>3,619</b>	<b>3,200</b>	<b>3,200</b>	<b>3,200</b>	<b>3,710</b>	<b>510</b>
BEGINNING FUND BALANCE	4,512	5,399	5,399	5,399	5,351	(48)
<b>TOTAL RESOURCES</b>	<b>8,131</b>	<b>8,599</b>	<b>8,599</b>	<b>8,599</b>	<b>9,061</b>	<b>462</b>
<b>APPROPRIATIONS:</b>						
Police Projects	2,264	2,718	2,718	2,766	3,198	480
Total Transfers to General Fund - 110	467	482	482	482	512	30
<b>TOTAL APPROPRIATIONS</b>	<b>2,731</b>	<b>3,200</b>	<b>3,200</b>	<b>3,248</b>	<b>3,710</b>	<b>510</b>
<b>FUND BALANCE PER CAFR</b>	<b>5,399</b>	<b>5,399</b>	<b>5,399</b>	<b>5,351</b>	<b>5,351</b>	<b>(48)</b>
ADJUSTMENTS TO FUND BALANCE	0	0	(3,300)	(3,300)	(3,300)	(3,300)
<b>AVAILABLE FUND BALANCE</b>	<b>5,399</b>	<b>5,399</b>	<b>2,099</b>	<b>2,051</b>	<b>2,051</b>	<b>(3,348)</b>

## LEGAL

The Legal Department represents the City's interests in all courts in New Mexico, before administrative and legislative bodies, and is responsible for handling and oversight of civil lawsuits filed against the City, its officials, and its departments. In addition to trial work in a broad range of areas, the department advises clients in labor and employment matters, contract issues, protection of environmental resources, the management of risk in the operation of City services, and land use and planning issues. Additionally, the Legal Department administers DWI vehicle seizures and forfeitures hearings as well as oversees the Metropolitan Court Traffic Arraignment Program, enforcement of the City's Minimum Wage Ordinance, Notices, and Rules and counsels the Office of the City Clerk in legal matters related to elections and to public records requests made pursuant to Inspection of Public Records Act. The Diversity and Human Rights section of the Legal Department offers numerous services and resources to the city employees and residents in civil rights matters as well as alternative dispute resolutions.



### MISSION

To provide timely and quality legal advice to the Mayor's Office, City Council, and City departments and to effectively represent the City of Albuquerque in litigation in state and federal courts and administrative hearings at a reasonable cost.

Operating Fund Expenditures by Category (\$000's)	FY14 ACTUAL EXPENSES	FY15 ORIGINAL BUDGET	FY15 REVISED BUDGET	FY15 EST. ACTUAL EXPENSES	FY16 APPROVED BUDGET	CURRENT YR/ ORIGINAL CHG
PERSONNEL	4,160	4,643	4,717	4,022	4,768	125
OPERATING	800	816	999	1,256	820	4
CAPITAL	0	0	0	0	0	0
TRANSFERS	63	129	129	129	83	(46)
GRANTS/PROJECTS	0	0	0	0	0	0
<b>TOTAL</b>	<b>5,023</b>	<b>5,588</b>	<b>5,845</b>	<b>5,407</b>	<b>5,670</b>	<b>82</b>
<b>TOTAL FULL-TIME POSITIONS</b>	<b>59</b>	<b>58</b>	<b>58</b>	<b>58</b>	<b>58</b>	<b>0</b>

### BUDGET HIGHLIGHTS

The approved FY/16 General Fund budget for the Legal department is \$5.7 million, an overall increase of 1.5% above the FY/15 original budget. Technical adjustments include an increase of \$124 thousand in personnel cost due in part to the wage adjustment in FY/15. Internal service costs associated with risk, fleet and communications decreased by \$42 thousand.

The approved FY/16 budget combined the safe city strike force program with legal services to align the primary function of providing legal services in one program once the administrative function for nuisance abatement moved to the Planning department in FY/15.

(\$000's)	FY14 ACTUAL EXPENSES	FY15 ORIGINAL BUDGET	FY15 REVISED BUDGET	FY15 EST. ACTUAL EXPENSES	FY16 APPROVED BUDGET	CURRENT YR/ ORIGINAL CHG
<b>PROGRAM STRATEGY SUMMARY BY FUND:</b>						
<b>GENERAL FUND - 110</b>						
LG-Safe City Strike Force	891	879	893	728	0	(879)
LG-Legal Services	4,132	4,709	4,952	4,679	5,670	961
<b>TOTAL GENERAL FUND - 110</b>	<b>5,023</b>	<b>5,588</b>	<b>5,845</b>	<b>5,407</b>	<b>5,670</b>	<b>82</b>
<b>TOTAL APPROPRIATIONS</b>	<b>5,023</b>	<b>5,588</b>	<b>5,845</b>	<b>5,407</b>	<b>5,670</b>	<b>82</b>
Intradepartmental Adjustments	0	0	0	0	0	0
<b>NET APPROPRIATIONS</b>	<b>5,023</b>	<b>5,588</b>	<b>5,845</b>	<b>5,407</b>	<b>5,670</b>	<b>82</b>

## LEGAL

### REVENUE

Charges for risk legal services revenue are estimated to be flat in FY/16. Revenue from CIP for FY/14 is included in FY/15 Estimated Actual of \$160 thousand. FY/16 CIP revenue is estimated to be at the same level as the original FY/15 budget. The Water Authority uses legal services on an as needed basis and in FY/16 revenue is estimated to be \$15 thousand.

Department Generated Fees for Service (\$000's)		FY14 ACTUAL REVENUES	FY15 ORIGINAL BUDGET	FY15 ESTIMATED ACTUAL	FY16 APPROVED BUDGET	CURRENT YR/ ORIGINAL CHG
General Fund	Chgs for Risk Mgt Legal Svcs	2,419	2,200	2,200	2,200	0
General Fund	Chgs for CIP Legal Svcs	0	80	160	80	0
General Fund	Contrib- Bernalillo-Shared Ops	30	30	30	30	0
General Fund	Land Use Mediation Chgs	10	10	10	10	0
General Fund	Chgs for WUA Legal Svcs	0	0	40	15	15

### PERFORMANCE MEASURES

**GOAL 8: GOVERNMENTAL EXCELLENCE AND EFFECTIVENESS** - Government is ethical, transparent, and responsive to its citizens. Every element of government contributes effectively to meeting public needs.

Measure	Actual FY/13	Actual FY/14	Approved FY/15	Est. Actual FY/15	Approved FY/16
<i><b>DESIRED COMMUNITY CONDITION</b> - Government protects the civil and constitutional rights of citizens</i>					
# Lawsuits received	200	169	200	156	200
# active cases	311	424	300	436	350
# cases closed	132	160	90	122	100
# of Traffic Cases going to Arraignment	39,169	24,600	50,000	39,541	50,000
% of approx 40,000 Pleds resolved	92%	70%	70%	87%	70%
# Federal Court, District Court or Metro Court land use proceedings or administrative appeals and other land use actions	183	109	100	244	100
# DWI Seizure Reports reviewed	1,672	1,301	1,500	1,200	1,500
# of Vehicle Forfeiture actions	160	112	200	120	200
# vehicles booted	524	520	600	450	600
# vehicles released on agreement	190	270	350	141	350
# vehicle seizure hearings	1,124	1,054	1,200	1,013	1,200
# vehicles auctioned	339	576	625	570	625
\$ from auctions (000s)	411	694	615	471	615

Measure	Actual FY/13	Actual FY/14	Approved FY/15	Est. Actual FY/15	Approved FY/16
<i><b>DESIRED COMMUNITY CONDITION</b> - The work environment for employees is healthy, safe, and productive.</i>					
# ADR mediation referrals	873	1,183	750	844	950
# of mediations/facilitations	72	108	70	96	125
% ADR mediations successfully resolved	92%	96%	80%	89%	90%

Measure	Actual FY/13	Actual FY/14	Approved FY/15	Est. Actual FY/15	Approved FY/16
<i><b>DESIRED COMMUNITY CONDITION</b> - Relations among Albuquerque's cultures and races are positive and respectful.</i>					
# ADA cases closed	9	58	50	80	60
# Employment cases closed	12	63	50	49	60
# Housing cases closed	10	61	50	44	40
# Other cases closed	10	90	50	73	90
Referral (passed to another agency after intake)	15	136	100	114	130
Brief (provided answer to basic problem)	14	68	50	82	60
Extended (research, visit, more complex issue)	11	54	50	43	50
Investigation (report or forma document for intake)	1	14	10	7	10

## LEGAL

### ***PRIOR YEAR ACCOMPLISHMENTS***

- Completed its directive of the Mayor's Pay Equity Task Force and submitted an ordinance which unanimously passed by the City Council. The ordinance supports and coordinates the efforts of the task force to encourage City of Albuquerque contractors to achieve equal pay for the same work regardless of gender.
- Completed Phase 1 of the Community Police Dialogues with the public and is moving into Phase 2 in providing liaison services for the APD Community Outreach Project.
- Assisted the City in mediating successor collective bargaining agreements with AFSCME Local 624 (Blue Collar and Transit), Local 1888 (Security), and Local 2962 (Clerical). Such agreements were the first in existence between the parties since they reached impasse in 2011.
- Auctioned 570 vehicles which were forfeited, disclaimed, or abandoned, generating \$471,000 in proceeds to fund law enforcement efforts.
- The October 2014 amendment of the DWI Vehicle Seizure and Forfeiture Ordinance was unanimously passed by the City Council. The ordinance supports and updates the last amendment dating back to 2008 and included recommendations from the DWI Seizure Unit (Legal and APD) to increase the protections for innocent owners and clarify procedures.
- Defended the City against over \$5 million in non-tort claims, preserving and creating favorable case law to protect the City's lawful planning efforts and actions and assisted various City departments in the collection of over \$730,000 of monies owed.

### ***PRIORITY OBJECTIVES***

**GOAL 8: GOVERNMENTAL EXCELLENCE AND EFFECTIVENESS** – GOVERNMENT IS ETHICAL, TRANSPARENT, AND RESPONSIVE TO ITS CITIZENS. EVERY ELEMENT OF GOVERNMENT CONTRIBUTES EFFECTIVELY TO MEETING PUBLIC NEEDS.

- OBJECTIVE 2. Implement a comprehensive ethics training program for City officials to include elected officials and executive and senior staff in order to reaffirm that the City is dedicated to fostering an environment of fairness and accountability in all of its dealings. Provide the Mayor and the City Council with a report on the status of the program by the end of the second quarter of FY/16.

## POLICE

A major reorganization was completed for the FY/16 budget in an effort to better align the budget with the department's current organizational structure and to bring it more in line with department spending. Two program strategies, Communications and Records and Family Advocacy, have been deleted and the activities within those programs were moved to current programs where they are a better fit organizationally.

The department added 17 full-time positions mid-year FY/15 at a total cost including benefits of \$1.1 million. Sixteen of these positions were created to assist with the United States Department of Justice (US DOJ) requirements and one is an APD records division manager. Eight data management positions were administratively moved to the Department of Technology and Innovation and one senior buyer position moved to the Department of Finance and Administration which accounts for a decrease of \$833 thousand in personnel and \$44 thousand in operating.

The FY/16 budget adds \$2.1 million for Department of Justice (DOJ) related costs bringing the total to \$4.7 million. The addition includes five full-time positions at a cost of \$292 thousand and \$1.8 million in operating to primarily fund professional technical contracts which include the monitor contract. A forensic scientist lab tech is being added at a cost of \$53 thousand, requested for the Metropolitan Forensic Science Center to assist in meeting the New Mexico Supreme Court rule requirements. The FY/16 approved budget also includes an increase for B, C and transport officer union employees.



The approved General Fund civilian count is 452 and sworn count is 1,000 for a total of 1,452 full-time positions.

Funding resources in the Law Enforcement Protection Fund (LEPF) are \$510 thousand more than the original FY/15 level of \$3.2 million. The FY/16 approved budget is \$3.7 million and is comprised of four components: the law enforcement protection project for \$580 thousand; the crime lab project for \$130 thousand; the DWI enforcement project for \$1.8 million; and the federal forfeiture project for \$1.2 million. Funding for DWI enforcement includes a \$512 thousand transfer to the General Fund to pay for four positions in the Legal Department and three positions in the Police Department associated with the enforcement of the DWI seizure program.

Approved operating grants for FY/16 total \$5 million. The department's omnibus bill, which sets the budget for more than 30 of APD's grants, increased by \$639 thousand from the FY/15 original budget level. Eleven full-time civilian positions are funded with operating grants.

(000's)	FY14 ACTUAL EXPENSES	FY15 ORIGINAL BUDGET	FY15 REVISED BUDGET	FY15 EST. ACTUAL EXPENSES	FY16 APPROVED BUDGET	CURRENT YR/ ORIGINAL CHG
<b>PROGRAM STRATEGY SUMMARY BY FUND:</b>						
<b><u>GENERAL FUND - 110</u></b>						
PD-Administrative Support	15,596	16,557	16,690	17,504	16,818	261
PD-Communications and Records (INACTIVE)	14,219	14,694	14,949	14,608	0	(14,694)
PD-Family Advocacy Ctr Program (INACTIVE)	8,179	8,307	8,703	8,411	0	(8,307)
PD-Investigative Services	16,641	19,820	20,705	17,513	30,888	11,068
PD-Neighborhood Policing	87,772	84,363	90,058	93,558	87,436	3,073
PD-Off Duty Police OT Program	1,554	1,825	1,825	1,792	1,825	0
PD-Prisoner Transport Program	1,821	1,820	1,937	1,863	1,951	131
PD-Professional Accountability	1,438	1,489	1,584	1,745	19,285	17,796
PD-Trsf to CIP Fund	0	1,000	1,000	1,000	0	(1,000)
<b>TOTAL GENERAL FUND - 110</b>	<b>147,219</b>	<b>149,875</b>	<b>157,451</b>	<b>157,994</b>	<b>158,203</b>	<b>8,067</b>
<b><u>OPERATING GRANTS FUND 265</u></b>						
Project Program (265) - Police	5,537	4,610	4,610	4,610	4,985	375
<b><u>ARRA OPERATING GRANTS FUND - 266</u></b>						
Project Program (266) - Police	382	0	0	0	0	0
<b><u>LAW ENFORCEMENT PROTECTION FUND - 280</u></b>						
Project Program (280) - Police	2,731	3,200	3,200	3,248	3,710	510

## POLICE

(\$000's)	FY14 ACTUAL EXPENSES	FY15 ORIGINAL BUDGET	FY15 REVISED BUDGET	FY15 EST. ACTUAL EXPENSES	FY16 APPROVED BUDGET	CURRENT YR/ ORIGINAL CHG
<b>PHOTO ENFORCEMENT FUND - 288</b>						
PD-Photo Enforcement (INACTIVE)	109	0	0	0	0	0
<b>TOTAL APPROPRIATIONS</b>	<b>155,979</b>	<b>157,685</b>	<b>165,261</b>	<b>165,852</b>	<b>166,898</b>	<b>9,213</b>
Intradepartmental Adjustments	0	0	0	0	0	0
<b>NET APPROPRIATIONS</b>	<b>155,979</b>	<b>157,685</b>	<b>165,261</b>	<b>165,852</b>	<b>166,898</b>	<b>9,213</b>

### REVENUE

Revenues are projected lower in FY16 compared to FY15 primarily as a result of a renegotiated contract with Bernalillo County for the Crime Lab. Off Duty Police revenue is the leading driver of police revenues, providing requested police support to various groups and organizations within Albuquerque. Police officers perform this function during overtime work hours.

Department Generated Fees for Services (\$000's)	FY14 ACTUAL REVENUES	FY15 ORIGINAL BUDGET	FY15 ESTIMATED ACTUAL	FY16 APPROVED BUDGET	CURRENT YR/ ORIGINAL CHG
General Fund Off Duty Police	1,594	1,800	1,700	1,700	(100)
General Fund Police Services	1,747	1,710	1,474	1,474	(236)
General Fund Photocopying	144	75	155	155	80
General Fund Wrecker Fees	0	70	77	77	7
General Fund Alarm Ordinance Fees	1,156	900	900	900	0
General Fund Photo Enforcement	382	0	0	0	0
General Fund Other Property Sales-Taxable	16	0	0	0	0

### PERFORMANCE MEASURES

**GOAL 2: PUBLIC SAFETY** - The public is safe and secure, and shares responsibility for maintaining a safe environment.

	Actual FY13	Actual FY14	Approved FY15	Est. Actual FY15	Approved FY16
<b>DESIRED COMMUNITY CONDITION - The public is safe.</b>					
# calls for service	503,416	518,553	500,000	518,751	525,000
# felony arrests	10,215	9,507	9,000	8,603	9,000
# misdemeanor arrests	32,756	27,125	23,000	22,334	23,000
# DWI arrests	3,024	2,704	4,700	2,213	2,300
# of domestic violence arrests	2,896	2,632	N/A	2,437	2,500
Average response time for Priority 1 calls (minutes)	10:02	10:34	10:00	10:57	10:43
% of service calls that resulted in use of force	N/A	N/A	N/A	N/A	0.01%
% Homicide clearance rate (UCR definable)	100%	83%	84%	79%	80%
# APD vehicles over 5 years/total vehicles	674/1102	698/1061	693/1050	693/1050	700/1000
# alcohol involved accident investigations	741	660	700	687	660
# of tactical activations (warrants/building & area searches, SWAT, Bomb, K-9)	406	394	N/A	178	300
# cadet graduates	18	31	60	32	60
# of sworn officers	945	913	1,000	879	1,000
	Actual FY13	Actual FY14	Approved FY15	Est. Actual FY15	Approved FY16
<b>DESIRED COMMUNITY CONDITION - The public feels safe.</b>					
# of 911 calls received	321,097	319,306	313,050	363,842	375,000
% of 911 calls answered within 10 seconds (National standard is 90%)	92.42%	93.10%	92.00%	91.56%	92.00%
# of 242-COPS calls received (non-emergency)	494,059	515,213	513,355	520,003	530,000
# of calls in which the Real Time Crime Center was utilized	N/A	12,171	12,000	26,000	26,000

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 12**

# CITY OF ALBUQUERQUE

MAYOR RICHARD J. BERRY



## FY/15 APPROVED BUDGET

## LEGAL

### REVENUE

Charges for risk legal services revenue are increased by \$100 thousand from the original FY/14. FY/15 revenue from CIP is estimated to be \$45 thousand less than the FY/14 original budget. In FY/15, The Water Authority will no longer use the City for legal services.

Department Generated Fees for Service (\$000's)	FY13 ACTUAL REVENUES	FY14 ORIGINAL BUDGET	FY14 ESTIMATED ACTUAL	FY15 APPROVED BUDGET	CURRENT YR/ PRIOR YR CHG
General Fund Chgs for Risk Mgt Legal Svcs	2,282	2,100	2,200	2,200	100
General Fund Chgs for CIP Legal Svcs	0	125	157	80	(45)
General Fund Contrib- Bernalillo-Shared Ops	60	30	30	30	0
General Fund Land Use Mediation Chgs	11	0	10	10	10
General Fund Chgs for WUA Legal Svcs	68	15	30	0	(15)

### PERFORMANCE MEASURES

**GOAL 2: PUBLIC SAFETY** - The public is safe and secure, and shares responsibility for maintaining a safe environment.

#### PROGRAM STRATEGY

**SAFE CITY STRIKE FORCE** - Provide legal services for the Planning Department Safe City Strike Force services established to address neighborhood quality of life and public safety to the nuisance abatement actions, graffiti and vandalism collections, attorney staffing of Metro Court Arraignment Program and DWI Vehicle Forfeiture Program; provide counsel services to the ABQ Police Department (APD) Nuisance Abatement Unit.

Measure	Actual FY/12	Actual FY/13	Approved FY/14	Est. Actual FY/14	Approved FY/15
<i>DESIRED COMMUNITY CONDITION - Residents, businesses, and public safety agencies work together for a safe community.</i>					
Provide attorneys and support staff to negotiate plea agreements in Metro Traffic Arraignment Court					
# of Traffic Cases going to Arraignment	51,222	39,169	50,000	49,200	50,000
% of approx 40,000 pleas resolved	72%	92%	70%	70%	70%

Initiate and process to conclusion DWI vehicle forfeiture actions

# DWI Seizure Reports reviewed	1,747	1,672	1,500	1,301	1,500
# of Vehicle Forfeiture actions	225	160	300	112	200
# vehicles booted	617	524	600	520	600
# vehicles released on agreement	182	190	300	270	350
# vehicle seizure hearings	1,424	1,124	1,200	1,054	1,200
# vehicles auctioned	755	339	600	576	625
\$ from auctions (000s)	773	411	700	694	615

**GOAL 8: GOVERNMENTAL EXCELLENCE AND EFFECTIVENESS** - Ensure that all existing communities are adequately and efficiently served with well planned, coordinated, and maintained infrastructure. Ensure that new development is efficiently integrated into existing infrastructures and that the costs are balanced with the revenues generated.

#### PROGRAM STRATEGY

**LEGAL SERVICES** - Provide effective representation and sound legal advice to the Mayor's Office, City Council and client departments.

Measure	Actual FY/12	Actual FY/13	Approved FY/14	Est. Actual FY/14	Approved FY/15
<i>DESIRED COMMUNITY CONDITION - Government protects the civil and constitutional rights of citizens</i>					
Defend the CoA against all types of claims including employment, negligence, breach of contract, purchasing, civil rights and environmental represent COA and Police lawsuits alleging police rights violations					
# Lawsuits received	311	200	200	133	200
# active cases	299	311	300	191	300
# cases closed	142	132	90	124	90

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 13**



# City of Albuquerque

**Mayor Richard J. Berry**



## FY14 Approved Budget

## LEGAL

### REVENUE

Charges for Risk Legal Services revenue are increased by \$100 thousand from the original FY/13. FY/14 revenue from CIP is estimated to be \$29 thousand above the FY/13 original budget. All others remain the same as the FY/13 original budget.

Department		FY12	FY13	FY13	FY14	CURRENT YR
Generated Fees for Service		ACTUAL	ORIGINAL	ESTIMATED	APPROVED	PRIOR YR
(\$000's)		REVENUES	BUDGET	ACTUAL	BUDGET	CHG
General Fund	Chgs for Risk Mgt Legal Svcs	2,335	2,000	2,100	2,100	0
General Fund	Chgs for CIP Legal Svcs	0	96	260	125	(135)
General Fund	Contrib- Bernalillo-Shared Ops	0	30	60	30	(30)
General Fund	Chgs for WUA Legal Svcs	30	15	80	15	(65)
General Fund	Land Use Mediation Chgs	12	0	0	0	0

### PERFORMANCE MEASURES

**GOAL 2: PUBLIC SAFETY** - The public is safe and secure, and shares responsibility for maintaining a safe environment.

#### PROGRAM STRATEGY

**SAFE CITY STRIKE FORCE** - Provide oversight of and legal services for the Safe City Strike Force established to address neighborhood quality of life and public safety through nuisance abatement actions, graffiti and vandalism collections, attorney staffing of Metro Court Arraignment Program and DWI Vehicle Forfeiture Program; provide counsel services to the ABO Police Department (APD) Nuisance Abatement Unit.

Measure	Actual FY/11	Actual FY/12	Approved FY/13	Est. Actual FY/13	Approved FY/14
<i>DESIRED COMMUNITY CONDITION - Residents, businesses, and public safety agencies work together for a safe community.</i>					
Provide attorneys and support staff to negotiate plea agreements in Metro Traffic Arraignment Court					
# of Traffic Cases going to Arraignment	57,094	51,222	60,000	39,169	50,000
% of approx 40,000 Pleads resolved	74%	72%	78%	92%	70%
Draft package of Nuisance Abatement properties and prepare resolutions as needed.					
# of Cases By City Council District	680	1,788	1,400	1,408	1,400
Measure	Actual FY/11	Actual FY/12	Approved FY/13	Est. Actual FY/13	Approved FY/14
Evaluate the condition of nuisance properties, taking enforcement action as necessary					
# properties evaluated	980	1,812	1,400	1,643	1,400
Initiate and assist with the securing of nuisance properties					
# board ups and clean ups	528	380	200	220	200
# tear downs	7	17	10	15	10
Initiate and process to conclusion DWI vehicle forfeiture actions					
# DWI Seizure Reports reviewed	2,062	1,747	1,500	1,672	1,500
# of Vehicle Forfeiture actions	474	225	500	160	300
# vehicles booted	689	617	600	524	600
# vehicles released on agreement	485	182	500	190	300
# vehicle seizure hearings	1,562	1,424	1,200	1,124	1,200
# vehicles auctioned	743	755	600	339	600
\$ from auctions (\$000's)	824	773	800	411	700

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 14**

# City of Albuquerque

**Mayor Richard J. Berry**



## FY 2013 Approved Budget

## CHIEF ADMINISTRATIVE OFFICER

The Chief Administrative Officer Department supports the Mayor of the City of Albuquerque as well as general city functions. The Chief Administrative Officer (CAO) is appointed by the Mayor with the consent of the City Council to provide day-to-day management of the City. Together, the Mayor and CAO provide the leadership and direction to execute policies legislated by the City Council. The department oversees the provision of municipal goods, services, facilities, and infrastructure required of a modern city.



Operating Fund Expenditures by Category (\$000's)	FY11 ACTUAL EXPENSES	FY12 ORIGINAL BUDGET	FY12 REVISED BUDGET	FY12 EST. ACT. EXPENSES	FY13 APPROVED BUDGET	CURRENT YR/ PRIOR YR CHG
PERSONNEL	2,161	2,492	2,492	2,372	2,111	(261)
OPERATING	303	341	341	379	294	(85)
CAPITAL	0	0	0	0	0	0
TRANSFERS	15	35	35	35	66	31
GRANTS	1,120	1,585	1,585	1,585	0	(1,585)
<b>TOTAL</b>	<b>3,599</b>	<b>4,452</b>	<b>4,452</b>	<b>4,371</b>	<b>2,471</b>	<b>(1,900)</b>
<b>TOTAL FULL-TIME POSITIONS</b>	<b>35</b>	<b>35</b>	<b>35</b>	<b>35</b>	<b>23</b>	<b>(12)</b>

### BUDGET HIGHLIGHTS

The FY/13 General Fund budget reflects a decrease of 13.1% or \$374 thousand below the original FY/12 level. The approved budget is \$2.5 million. Technical adjustments include an increase of \$52 thousand for the cost of health care and retiree health care benefits, internal costs associated with risk, fleet and communications.

In the administrative hearing office, the suspension of the Safe Traffic Operations Program (Red Light) in December 2011 results in a reduction in operations for a total decrease of \$371 thousand from the original FY/12 budget. This program was eliminated by the voters in October 2011, six positions are deleted from the Administrative Hearing Office for FY/13.

The Office of Emergency Management is moving to the Police department in FY/13 with a total of six positions. This move will facilitate better coordination between the City and various entities in the Metropolitan area.

(\$000's)	FY11 ACTUAL EXPENSES	FY12 ORIGINAL BUDGET	FY12 REVISED BUDGET	FY12 EST. ACT. EXPENSES	FY13 APPROVED BUDGET	CURRENT YR/ PRIOR YR CHG
<b>PROGRAM STRATEGY SUMMARY BY FUND:</b>						
<b><u>GENERAL FUND - 110</u></b>						
CA Chief Administrative Office	1,491	1,857	1,857	1,857	1,854	(3)
CA Administrative Hearing Office	984	988	988	908	617	(291)
<b>TOTAL GENERAL FUND - 110</b>	<b>2,475</b>	<b>2,845</b>	<b>2,845</b>	<b>2,764</b>	<b>2,471</b>	<b>(293)</b>
<b><u>OPERATING GRANTS FUND 265</u></b>						
Office of Emergency Management Grants	1,124	1,607	1,607	1,607	0	(1,607)
<b>TOTAL APPROPRIATIONS</b>	<b>3,599</b>	<b>4,452</b>	<b>4,452</b>	<b>4,371</b>	<b>2,471</b>	<b>(1,900)</b>
Intradepartmental Adjustments	0	0	0	0	0	0
<b>NET APPROPRIATIONS</b>	<b>3,599</b>	<b>4,452</b>	<b>4,452</b>	<b>4,371</b>	<b>2,471</b>	<b>(1,900)</b>

## LEGAL

### REVENUE

General Fund revenues for the charges for Risk Legal Services revenue are adjusted down from original FY/12 to the estimated actual FY/12 level. Revenue from Bernalillo County is revised to the actual collection in FY/11. All others remain at the same level as FY/12.

Department Generated Fees for Service (\$000's)		FY/11 ACTUAL REVENUES	FY/12 ORIGINAL BUDGET	FY/12 ESTIMATED ACTUAL	FY/13 APPROVED BUDGET	CURRENT YR/ PRIOR YR CHG
General Fund	Chgs for Risk Mgt Legal Svcs	1,982	2,700	2,000	2,000	0
General Fund	Chgs for CIP Legal Svcs	160	96	96	96	0
General Fund	Contrib- Bernalillo-Shared Ops	30	0	30	30	0
General Fund	Chgs for WUA Legal Svcs	0	15	15	15	0
General Fund	Land Use Mediation Chgs	11	0	0	0	0

### PERFORMANCE MEASURES

GOAL 2: PUBLIC SAFETY - The public is safe and secure, and shares responsibility for maintaining a safe environment.

#### PROGRAM STRATEGY

SAFE CITY STRIKE FORCE - Provide oversight of and legal services for the Safe City Strike Force established to address neighborhood quality of life and public safety through nuisance abatement actions, graffiti and vandalism collections, attorney staffing of Metro Court Arraignment Program and DWI Vehicle Forfeiture Program; provide counsel services to the ABQ Police Department (APD) Nuisance Abatement Unit.

Measure	Actual FY/10	Actual FY/11	Approved FY/12	Est. Actual FY/12	Approved FY/13
<i>DESIRED COMMUNITY CONDITION - Residents, businesses, and public safety agencies work together for a safe community.</i>					
Provide attorneys and support staff to negotiate plea agreements in Metro Traffic Arraignment Court					
# of Traffic Cases going to Arraignment	55,760	57,094	68,000	82,369	60,000
% of approx. 40,000 Pleads resolved	82%	74%	78%	84%	78%
Draft package of Nuisance Abatement properties and prepare resolutions as needed.					
# of Cases By City Council District	520	680	750	714	1,400
Evaluate the condition of nuisance properties, taking enforcement action as necessary					
# properties evaluated	520	980	1,100	1,405	1,400
Initiate and assist with the securing of nuisance properties					
# board ups and clean ups	95	528	600	235	200
# tear downs	3	7	10	16	10
Initiate and process to conclusion DWI vehicle forfeiture actions					
# DWI Seizure Reports reviewed	2,060	2,062	1,500	2,062	1,500
# of Vehicle Forfeiture actions	470	474	500	474	500
# vehicles booted	768	689	600	689	600
# vehicles released on agreement	552	485	500	485	500
# vehicle seizure hearings	1,740	1,562	1,200	1,562	1,200
# vehicles auctioned	1,046	743	600	743	600
\$ from auctions (\$000's)	1,527	824	800	824	800

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 15**

**DWI SEIZURE UNIT****MONTH OF: MARCH 2016**

		<b>MONTHLY TOTALS</b>	<b>YTD TOTAL 2016</b>	<b>YTD TOTAL 2015</b>	<b>% OF DIFFERENCE</b>
VEHICLES CHECKED IN		77	232	310	-25%
VEHICLES IN LOT		335	1084	1384	-22%
RETURNED VEHICLES		24	51	136	-63%
BOOT REMOVAL/RETURN		14	30	72	-58%
BOOTED VEHICLES		23	70	100	-30%
VEHICLES AUCTIONED		0	143	93	54%
VEHICLES READY FOR AUCTION		95	256	130	97%
TOW BILLS APPROVED		\$0.00	\$15,314.97	\$33,259.72	-54%
TOTAL AMOUNT FROM AUCTION		\$0.00	\$122,700.00	\$87,635.00	40%
MANHEIM FEES (8%)		\$0.00	\$9,816.00	\$7,010.80	40%
TOTAL AMOUNT MINUS MANHEIM FEES (8%)		\$0.00	\$112,884.00	\$80,624.20	40%
TOTAL AMOUNT FROM STORAGE/BOOT/TOW		\$24,748.00	\$61,778.00	\$106,986.00	-42%
TOTAL AMOUNT FROM CREDIT CARD PAYMENTS		\$14,867.00	\$55,018.00	\$64,925.00	-15%
TOTAL AMOUNT INTO SEIZURE ACCOUNT		\$39,615.00	\$229,680.00	\$252,535.20	-9%

**NEXT AUCTION DATE****April 16, 2016****Invoices Paid:**

Garcia Process Serving \$322.67

**DWI SEIZURE UNIT****MONTH OF: APRIL 2016**

		<b>MONTHLY TOTALS</b>	<b>YTD TOTAL 2016</b>	<b>YTD TOTAL 2015</b>	<b>% OF DIFFERENCE</b>
VEHICLES CHECKED IN		72	304	392	-22%
VEHICLES IN LOT		371	1455	1857	-22%
RETURNED VEHICLES		17	68	160	-58%
BOOT REMOVAL/RETURN		25	55	92	-40%
BOOTED VEHICLES		11	81	125	-35%
VEHICLES AUCTIONED		92	235	152	55%
VEHICLES READY FOR AUCTION		0	256	158	62%
TOW BILLS APPROVED		\$3,584.88	\$18,899.85	\$52,658.68	-64%
TOTAL AMOUNT FROM AUCTION		\$66,847.00	\$189,547.00	\$142,935.00	33%
MANHEIM FEES (8%)		\$5,347.76	\$15,163.76	\$11,434.80	33%
TOTAL AMOUNT MINUS MANHEIM FEES (8%)		\$61,499.24	\$174,383.24	\$131,500.20	33%
TOTAL AMOUNT FROM STORAGE/BOOT/TOW		\$15,615.00	\$77,393.00	\$133,596.00	-42%
TOTAL AMOUNT FROM CREDIT CARD PAYMENTS		\$11,370.00	\$66,388.00	\$83,070.00	-20%
TOTAL AMOUNT INTO SEIZURE ACCOUNT		\$88,484.24	\$318,164.24	\$348,166.20	-9%

**NEXT AUCTION DATE****June 11, 2016****Other Paid Invoices:**

Encinias Process Server \$358.45

Garcia Process Serving \$75.04

**DWI SEIZURE UNIT****MONTH OF: MAY 2016**

		<b>MONTHLY TOTALS</b>	<b>YTD TOTAL 2016</b>	<b>YTD TOTAL 2015</b>	<b>% OF DIFFERENCE</b>
VEHICLES CHECKED IN		66	370	483	-23%
VEHICLES IN LOT		345	1800	2276	-21%
RETURNED VEHICLES		27	95	181	-48%
BOOT REMOVAL/RETURN		9	64	116	-45%
BOOTED VEHICLES		30	111	147	-24%
VEHICLES AUCTIONED		0	235	152	55%
VEHICLES READY FOR AUCTION		40	296	218	-36%
TOW BILLS APPROVED		\$9,057.62	\$27,957.47	\$67,919.81	-59%
TOTAL AMOUNT FROM AUCTION		\$0.00	\$189,547.00	\$142,935.00	33%
MANHEIM FEES (6%)		\$0.00	\$11,372.82	\$11,434.80	-1%
TOTAL AMOUNT MINUS MANHEIM FEES (6%)		\$0.00	\$178,174.18	\$131,500.20	35%
TOTAL AMOUNT FROM STORAGE/BOOT/TOW		\$29,330.00	\$106,723.00	\$160,041.00	-33%
TOTAL AMOUNT FROM CREDIT CARD PAYMENTS		\$16,235.00	\$82,623.00	\$98,350.00	-16%
TOTAL AMOUNT INTO SEIZURE ACCOUNT		\$45,565.00	\$367,520.18	\$389,891.20	-6%

**NEXT AUCTION DATE****June 11, 2016****Other Invoices Paid:**

Defined Publishing \$342.21

Cinias Process Server \$280.44

Garcia Process Serving \$675.32

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 16**

SUPPORT SERVICES BUREAU  
\* TRAFFIC DIVISION – DWI/AIR SUPPORT SECTION \*

Effective: 07/31/2013; Replaces: 06/05/2008

4-07

## TRAFFIC DIVISION- DWI SECTION

### PURPOSE

The purpose of this policy is to outline the goals, objectives, procedures, and responsibilities of the DWI Section of the Albuquerque Police Department. This includes the DWI Unit, **DRE program**, the DWI Seizure Unit and the Air Support Unit.

### CONCEPT OF OPERATIONS

The Albuquerque Police Department DWI Section shall operate under the concept of providing **support to the Field Services Bureau**. The Section will plan, train, **provide resources**, and provide administrative support. Squads and squad members are empowered to utilize the concepts of problem oriented policing, both formally and informally, to develop innovative solutions to address the problem of impaired driving.

The DWI Unit will then be in a position to more effectively deal with any problems that **arise in the City**. The DWI Sergeant will establish liaison with **Area Commanders** and identify areas of concern. Solutions will involve providing support to the area command through the use of Sobriety Checkpoints and Saturation Patrols. The DWI Unit will provide updated training in the area of impaired driving detection and apprehension to all officers throughout the Department as well as the District Attorneys Office upon request.

**The DWI Seizure Unit will provide support to the Department by administering the City's vehicle nuisance ordinance and provide equipment to field officers to enhance enforcement and education efforts. The unit will coordinate with the Cities legal department and manage all seized vehicles.**

**The DRE program will provide trained and certified Drug Recognition Officers. These officers will support investigations of individuals who are found to be operating a motor vehicle while impaired by substances other than alcohol. This should result in a reduction of alcohol and drug related crashes.**

The Air Support Unit shall provide a swift response to life threatening incidents, professional support for Public Safety Units on the ground, and the increased efficiency to detect, prevent and reduce crime through effective aerial patrols.

### DWI UNIT PHILOSOPHY

The **philosophy of the DWI Unit is to increase safety on the streets and highways**, by the identification, apprehension and prosecution of impaired drivers. This should be supplemented by providing public information and education to all citizens in the community to the dangers associated with impaired driving. Enforcement action **and education are the principle tools** used by the police to reduce the number and severity of alcohol related crashes. Studies have shown that specific enforcement programs, when accompanied by public information and education, can reduce crashes.

### MISSION

4-07

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 17**

Legal FTE's = 12  
Fund 110  
Program 3400004  
Department(s) 3414000 & 3418000  
*Yellow highlighted is the requested reclass.*

**Legal Department  
Safe City Strike Force Division**

Eric Locher  
Managing Asst. City Attorney  
Uncl.  
10005138  
(Legal 3418000)

**Nuisance Abatement  
3418000**  
(Not generally Risk  
Reimbursable; MOU  
With Bern Co to reimb  
One support staff pos.)

Yvette Gurule  
Paralegal  
E14  
10000169  
(Legal 3418000)

Lara C. Sundermann  
Asst. City Attorney  
Uncl.  
10004329  
(Legal 3418000)

Ashley Schweizer  
Asst. City Attorney  
Uncl.  
10000364  
(Legal 3418000)

Krista Baca  
Paralegal  
E14  
10006135  
(Legal 3418000)

Sandra Garcia  
Paralegal  
E14  
10004873  
(Legal 3418000)

Vacant  
Sr. Admin. Asst.  
E13  
10000953  
(Legal 3418000)

**DWI Vehicle Forfeiture  
3414000**  
(2 Asst CAs and 2 Paralegals  
Reimbursed by Fund 280  
Law Enforcement Fund)

Kyle Hibner  
Asst. City Attorney  
Uncl.  
10005668  
(Legal 3414000)

Seth Grant  
Asst. City Attorney  
Uncl.  
20000045  
(Legal 3414000)

Carolyn Sue Postlewait  
Paralegal  
E14  
10000098  
(Legal 3414000)

Isabel Martinez  
Paralegal  
E14  
10006541  
(Legal 3414000)

Crystal Velarde  
Legal Secretary  
E12  
10005774  
(Legal 3414000)

Updated 10/10/2016

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 18**



City of Albuquerque Employee Work Plan  
(Performance and Evaluation)

Page 1

EMPLOYEE NAME		EMPLOYEE ID	DEPT/DIV	JOB TITLE	EWP for FY
Rivera, Lacresia		000013895	Police DWI Seizure Unit	Forfeiture Coordinator	6/2015 to 5/2016
GOAL (in which the employee is budgeted)					
Number	Title	Description			
2	2. Public Safety	2. Citizens are safe, feel safe and secure, and have trust and shared responsibility for maintaining a safe environment.			
PROGRAM STRATEGY		OUTCOME MEASURES for Program Strategy			
Community Policing		Provide Law Enforcement Services in support of FSB to include: Forfeiture of vehicles, maintaining and updating DWI Seizure files, vehicles, and data base. Monthly reports documenting: # of vehicles seized, # of vehicles forfeited, # of vehicles auctioned, amount of revenue generated and amount of training provided and equipment purchased.			
SERVICE ACTIVITY		OUTPUT MEASURES		QUALITY MEASURES	
Metro Operational Support Section DWI Seizure Unit		<ul style="list-style-type: none"> <li>Maintain or increase the number of DWI Seized vehicles</li> <li>Decrease the number of vehicles stored in the Seizure Facility</li> <li>Increase the amount of revenue generated from Seized vehicles</li> <li>Maintain a good working relationship with the City Attorney's Office</li> <li>Continue to maintain the DWI Seizure Program to ensure its overall effectiveness</li> </ul>			



**City of Albuquerque Employee Work Plan**  
(Performance and Evaluation)

Page 2

WORK PLAN			Expectations	
			Met	Not Met
EXPECTATION: <u>Expectation:</u> <u>Daily</u>				
1. Respond to all requests for information from the general public, officers and the City Attorneys office			X	
2. Set up and maintain an appointment schedule for the timely release of property, vehicles and interlock device installation			X	
3. Coordinate and schedule the installation of interlock devices with the interlock companies and the DWI Seizure Unit			X	
4. Track all monies paid to tow companies for seized vehicles			X	
5. Maintain all DWI Seized Vehicle Files			X	
6. Prepare offender background information for the City Attorneys office for Seizure hearings			X	
7. Schedule and subpoena officers for DWI Seizure hearings			X	
EXPECTATION: <u>Expectation:</u> <u>Weekly</u>				
1. Track and order supplies as needed for the DWI Seizure Unit and City Attorneys office			X	
2. Document and evaluate all bills from tow companies to ensure proper billing			X	
3. Maintain statistics on the DWI Seizure Program			X	
4. Coordinate information with the City Attorneys office on all vehicle hearings			X	
5. Compile a list of abandoned vehicles and send out notices to the owners			X	
6. Track and maintain a list of all credit card payments and forward a copy to fiscal			X	



**City of Albuquerque Employee Work Plan**  
(Performance and Evaluation)

Page 3

<b>EXPECTATION: <u>Monthly</u></b>  1. Complete a monthly DWI Seizure Report for the Division Commander  2. Audit DWI Seizure files ensuring that vehicle/file match  3. Compile a current list of overtime and supply expenditures		X  X  X	
<b>SUPERVISOR COMMENTS AND RECOMMENDATIONS</b>  Lacresia is an excellent employee. She needs little to no supervision. Lacresia is very reliable and shows up to work eager and ready for her job duties. She assists citizens with their questions and also assists other employees if they have questions.  Lacresia acted as a civilian manager while I was out on FMLA from May 2016 – July 2016 (added to this EWP due to the fact this additional job duty was during this EWP fiscal year. This will also be added to the next EWP Fiscal Year since it carried over).			
<b>EMPLOYEE COMMENTS</b>			



City of Albuquerque Employee Work Plan  
(Performance and Evaluation)

Page 4

EMPLOYEE SIGNATURE		SUPERVISOR SIGNATURE	
I acknowledge that my supervisor and I reviewed my performance ratings for the previous period and discussed my performance expectations for the upcoming period. Any exceptions are noted in the Employee Comments section.		SUPERVISOR NAME (printed): <u>Danovan Rivera</u>	
<u>Lacresia Rivera</u>	<u>8/30/16</u>	<u>[Signature]</u>	<u>8-30-16</u>
Signature	Date	Signature	Date
REVIEWED BY:			
Signature	Date	Reviewer's Name (printed)	

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 19**



City of Albuquerque Employee Work Plan  
(Performance and Evaluation)

Page 1

EMPLOYEE NAME	EMPLOYEE ID	DEPT/DIV	JOB TITLE	EWP for FY
Hernandez, Jose	000015693	Police DWI Seizure Unit	DWI Seizure Assistant	6/2015 – 5/2016
GOAL (in which the employee is budgeted)				
Number	Title	Description		
2	2. Public Safety	2. Citizens are safe, feel safe and secure, and have trust and shared responsibility for maintaining a safe environment.		
PROGRAM STRATEGY		OUTCOME MEASURES for Program Strategy		
Community Policing		Provide Law Enforcement Services in support of FSB to include: Forfeiture of vehicles, maintaining and updating DWI Seizure files, vehicles, and data base. Monthly reports documenting: # of vehicles seized, # of vehicles forfeited, # of vehicles auctioned, amount of revenue generated and amount of training provided and equipment purchased.		
SERVICE ACTIVITY	OUTPUT MEASURES		QUALITY MEASURES	
Traffic Division, DWI Section, DWI Seizure Unit	<ul style="list-style-type: none"> <li>Maintain or increase the number of DWI Seized vehicles</li> <li>Decrease the number of vehicles stored in the Seizure Facility</li> <li>Increase the amount of revenue generated from Seized vehicles</li> <li>Maintain a good working relationship with the City Attorney's Office</li> <li>Continue to maintain the DWI Seizure Program to ensure its overall effectiveness</li> </ul>			



**City of Albuquerque Employee Work Plan**  
(Performance and Evaluation)

Page 2

WORK PLAN		Expectations	
		Met	Not Met
<b>EXPECTATION: <u>Expectation:</u></b> <b><u>Daily</u></b>			
1. Respond to all requests for information from the general public, officers and the City Attorneys office		X	
2. Set up and maintain an appointment schedule for the timely release of property, vehicles and interlock device installation		X	
3. Maintain the tow trucks in the Seizure Fleet.		X	
4. Prepare offender background information for the City Attorneys office for Seizure hearings		X	
5. Operate CRV1 as needed		X	
6. Conduct background reports on suspects whose vehicles are seized. These reports are for the use at the Administrative Hearings.		X	
7. Move or tow vehicles on the seizure lot and/or update files once vehicles are moved, released or booted.		X	
8. Assist with boot immobilization devices (inspections, removals or apply).		X	
<b>EXPECTATION: <u>Expectation:</u></b> <b><u>weekly</u></b>			
1. Coordinate information with the City Attorneys office on all vehicle hearings		X	
2. Compile a list of abandoned vehicles and send out notices to the owners		X	



**City of Albuquerque Employee Work Plan**  
(Performance and Evaluation)

Page 3

**EXPECTATION: Monthly**

1. Audit DWI Seizure files ensuring that vehicle/file match
2. Maintain background files for all suspects whose vehicles are seized.

X

X

**SUPERVISOR COMMENTS AND RECOMMENDATIONS**

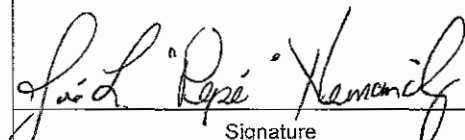
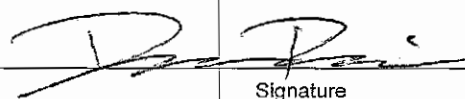
Jose ("Pepe") is an excellent employee. He constantly helps other employees with questions and/or physical duties required of the job (towing, booting, etc.). He needs little to no supervision.

**EMPLOYEE COMMENTS**



City of Albuquerque Employee Work Plan  
(Performance and Evaluation)

Page 4

<b>EMPLOYEE SIGNATURE</b> I acknowledge that my supervisor and I reviewed my performance ratings for the previous period and discussed my performance expectations for the upcoming period. Any exceptions are noted in the Employee Comments section.		<b>SUPERVISOR SIGNATURE</b>	
 Signature		 Signature	
8/30/16 Date		8-30-16 Date	
<b>REVIEWED BY</b>			
Signature		Reviewer's Name (printed)	

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 20**

*Omitted Pursuant to Confidentiality Order*

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 21**



## City of Albuquerque

Office of the Mayor/CAO

**Richard J. Berry, Mayor**

**Date:** January 6, 2015

**To:** City of Albuquerque Department Directors

**From:** Robert J. Perry, Chief Administrative Officer

**Subject:** Budget Call for Fiscal Year 2016

As we submit the City of Albuquerque Budget Call for Fiscal Year 2016, we are monitoring revenues closely given some recent weakness in our gross receipts tax distributions and other economic indicators. As in past years, department needs will likely exceed the projected available resources which means the budget process for FY/16 will still require a lot of hard work and coordination among key staff as difficult choices will have to be made.

The Budget Instructions and Forms for FY/16 will be emailed today by your budget analyst. The budget forms, including a current vacancy list, are due back to Budget by January 20<sup>th</sup>. This vacancy list should include all retirements as of December 31, 2014. CAO Hearings are being scheduled to begin February 9 and run through February 27. This year, OMB will be accepting issue papers that are neutral, negative, and related to CIP Coming-On-Line. Departments will be allowed to re-arrange non-personnel line items as long as the net result is neutral.

Revenue related forms should be coordinated with your budget analyst and the City Economist. Use conservative assumptions for any proposed revenue enhancements. No tax or enterprise rate increases may be proposed unless directed by the CAO. Police, Fire, and Family & Community Services may submit Public Safety Quarter Cent Tax issue papers, if funding is available. The estimates of available Public Safety Tax Revenues are included in the budget instructions.

OMB will adjust salary forecasts to accommodate any changes in salaries or benefits. OMB will input the risk, fleet fuel and maintenance, and telecommunication costs. Indirect overhead and fringe benefit factor costs are provided in this packet for your use in budget preparation. If these rates are adjusted, your budget analyst will inform you and adjust your budget accordingly.

We are also asking for an update to your performance plan at this time. Performance measures will be reviewed during your CAO hearing.

I want to thank you in advance for the excellent work done by you and your staff. I look forward to working with you to make this process as positive and productive as possible.

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 22**

**From:** Thompson, Aubrey D.  
Defendant's 010885

**Sent time:**

11/22/2016 03:07:44 PM

**To:**

Rivera, Lacsresia O.

**Subject:**

RE: DWI Seizure Program

---

Thank you.

**From:** Rivera, Lacsresia O.  
**Sent:** Tuesday, November 22, 2016 3:07 PM  
**To:** Thompson, Aubrey D.  
**Subject:** RE: DWI Seizure Program

Yes you are correct, the number of seizure has dropped tremendously. Attached are the numbers we have. Let me know if you need more info.

Thanks

Lacsresia

**From:** Thompson, Aubrey D.  
**Sent:** Tuesday, November 22, 2016 2:46 PM  
**To:** Rivera, Lacsresia O.  
**Subject:** FW: DWI Seizure Program

Hello Lacsresia,

Do you have any reports on the numbers of vehicles seized in FY13, FY14, FY15 and FY16? The auditors are asking for some sort of documentation for why the receipts have dropped so quickly. I would guess that the receipts have dropped because the number of vehicles seized have dropped somewhat proportionately.

1:16-cv-01113-JB-WPL  
Defendant's 010885

Thank you,

Aubrey

**From:** Hendricks, Lyndol  
**Sent:** Tuesday, November 22, 2016 2:15 PM  
**To:** Thompson, Aubrey D.  
**Subject:** DWI Seizure Program

Aubrey

I am in need of your assistance again. We were able to explain the decrease in Revenue of the Federal Forfeiture program over the last four years. The auditors are now asking about the DWI Seizure Program. It looks like it has decreased from \$1,640,311.83 in FY2013 to \$760,465.92 in FY16

I am assuming that there might be a tie to the Federal funding no longer coming in, but am still learning all the sources of revenue. If you have any sort of documentation or statistics that would support the decrease in the DWI revenue program revenue, that will be helpful as well.

Thank you,

**Lyndol Hendricks | City of Albuquerque**

***Principal Accountant Financial Reporting***

W: 505-768-3423 | F: 505-768-2264

One Civic Plaza, 8th Floor| Albuquerque, NM 87103

[lhendricks@cabq.gov](mailto:lhendricks@cabq.gov) <<mailto:lhendricks@cabq.gov>> | [www.cabq.gov](http://www.cabq.gov) <<http://www.cabq.gov>>

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 23**

**From:** [Hibner, Kyle J.](#)  
**To:** [Burnham, Becky M.](#)  
**Subject:** RE: FY17 Performance Measure Approved (2).xlsx  
**Date:** Thursday, July 14, 2016 11:25:02 AM  
**Attachments:** [Copy of FY17 Performance Measure Approved \(2\).xlsx](#)

---

Becky,

Attached are my estimated actual numbers. Please let me know if you need anything else.

Kyle Hibner  
Assistant City Attorney  
Office of the City Attorney  
P.O. Box 2248  
Albuquerque, NM 87103  
Ph. (505) 768-4500 FAX (505) 768-4570

---

**From:** Burnham, Becky M.  
**Sent:** Thursday, July 14, 2016 10:10 AM  
**To:** Page, Elizabeth A.; Jamison, Sandra M.; Jacobi, Jenica L; Hibner, Kyle J.; Campos, Gabriel J.; Hummell, Tyson  
**Cc:** Saiz, Annette  
**Subject:** FY17 Performance Measure Approved (2).xlsx

Good Morning,

Please fill out your respective sections and return to me as soon as possible.

If you have any questions, don't hesitate to contact me.

Thank you,  
Becky

**LEGAL**  
FINANCIAL BUDGET DOCUMENT

**GOAL 8: GOVERNMENTAL EXCELLENCE AND EFFECTIVENESS** - Government is ethical, transparent, and responsive to its citizens. Every element of government contributes effectively to meeting public needs.

Measure	Actual FY/14	Actual FY/15	Approved FY/16	Est. Actual FY/16	Approved FY/17
<b>DESIRED COMMUNITY CONDITION</b> - Government protects the civil and constitutional rights of citizens					
# Lawsuits received	169	124	200		200 Lisa & Sandra
# active cases	424	310	350		350 Lisa & Sandra
# cases closed	160	114	100		100 Lisa & Sandra
# of Traffic Cases going to Arraignment	24,600	39,541	50,000		50,000 Sandra Colorado-Garcia
% of approx 40,000 Pleds resolved	70%	50%	70%		70% Sandra Colorado-Garcia
# Federal Court, District Court or Metro Court land use proceedings or administrative appeals and other land use actions	109	226	100		100 Jenica
# DWI Seizure Reports reviewed	1,301	1,229	1,500	1,300	1,500 Kyle
# of Vehicle Forfeiture actions	112	124	200	150	200 Kyle
# vehicles booted	520	398	600	450	450 Kyle
# vehicles released on agreement	270	383	350	300	350 Kyle
# vehicle seizure hearings	1,054	969	1,200	1,000	200 Kyle
# vehicles auctioned	576	570	625	575	550 Kyle
\$ from auctions (000s)	694	474	615	480	500 Kyle

Measure	Actual FY/14	Actual FY/15	Approved FY/16	Est. Actual FY/16	Approved FY/17
<b>DESIRED COMMUNITY CONDITION</b> - The work environment for employees is healthy, safe, and productive.					
# ADR mediation referrals	1,183	844	950		900 Gabe & Tyson
# of mediations/facilitations	108	96	125		85 Gabe & Tyson
% ADR mediations successfully resolved	96%	89%	90%		90% Gabe & Tyson

Measure	Actual FY/14	Actual FY/15	Approved FY/16	Est. Actual FY/16	Approved FY/17
<b>DESIRED COMMUNITY CONDITION</b> - City employees are competent and well-trained to deliver city services efficiently and effectively.					
# ADA cases closed	58	81	60		70 Gabe & Tyson
# Employment cases closed	63	49	60		50 Gabe & Tyson
# Housing cases closed	61	44	40		50 Gabe & Tyson
# Other cases closed	90	75	90		100 Gabe & Tyson
Referral (passed to more appropriate agency after intake)	136	114	130		130 Gabe & Tyson
Brief (provided answer/solution to standard problem)	68	84	60		125 Gabe & Tyson
Extended (research, visited site, more complex issue)	54	44	50		40 Gabe & Tyson
Investigation (report or formal document for intake)	14	7	10		5 Gabe & Tyson

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 24**

1:16-cv-01113-JB-WPL  
Case 1:16-cv-01113-JB-JHR Document 67-27 Filed 10/16/17 Page 2 of 3  
From: Thompson, Aubrey D.  
Defendant's Privileged Files 000899  
Sent time: 08/11/2016 12:54:38 PM  
To: Burnham, Becky M.; Zamir-Gonzalez, Ramona  
Subject: FW: Performance Measures and Budget for APD DWI Forfeiture Program

---

Eric J. Locher

Managing Assistant City Attorney

Safe City Strike Force Division

Office of the City Attorney

P.O. Box 2248

Albuquerque, NM 87103

Tel. (505) 768-4511 Fax (505) 768-2525

**From:** Thompson, Aubrey D.  
**Sent:** Thursday, December 17, 2015 10:08 AM  
**To:** Locher, Eric J. <elocher@cabq.gov>  
**Cc:** Hibner, Kyle J. <khbner@cabq.gov>; Rivera, Donovan <drivera@cabq.gov>  
**Subject:** RE: Performance Measures and Budget for APD DWI Forfeiture Program

Good Morning,

The revenue amounts listed in #1 are accurate.

The revenue amount listed in #22 is accurate for recent years.

The revenue for FY15 was \$1,124,079.

The FY16 budget is found on pages 356 and 357 of the City budget document. There is a line item for \$1,238,000 and a line item for \$512,000 for a total of \$1,750,000. The \$512,000 is a transfer from fund 280 to fund 110 to reimburse fund 110 for civilian personnel expenditures.

The program does not fund any salaries of the police officers that are assigned directly to the program and very little of their overtime. From FY10 through FY15, there has been less than a total of \$50,000 of overtime charged to the program. The vast majority of overtime for this program is funded by the general fund. A large amount of DWI enforcement is also performed by officers that are not directly assigned to the program and not funded by the program.

Aubrey

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 25**

**From:** [Locher, Eric J.](#)  
**To:** [Hibner, Kyle J.](#)  
**Subject:** FW: DWI stats for FY12  
**Date:** Monday, August 31, 2015 9:12:00 AM  
**Attachments:** [FY12 Forfeiture Stats.xls.xlsx](#)

Eric J. Locher

Managing Assistant City Attorney

Safe City Strike Force Division

Office of the City Attorney

P.O. Box 2248

Albuquerque, NM 87103

Ph. (505) 768-4511 FAX (505) 768-2525

---

**From:** Locher, Eric J.  
**Sent:** Thursday, September 20, 2012 11:07 AM  
**To:** Wheeler, Gregory S.  
**Subject:** FW: DWI stats for FY12

Greg,

Here's the data I have that includes revenues from auctions. Total revenues would include release fees and boot fees – I don't think that is listed with auctions, but it might be – I'd check with Shane.

As far as expenses go, Aubrey Thompson stated that two attorney and two paralegal positions are funded in Legal from DWI \$271K in FY11. You would have to ask him for FY12. I will forward you that email. Shane would have information on APD salaries paid, expenses such as service of process, and Seizure Lot rent fees.

Thanks,

Eric

Eric J. Locher

Assistant City Attorney

Office of the City Attorney

P.O. Box 2248

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 26**

From: Defendant's 011419  
Sent time: 08/23/2013 02:58:54 PM  
To: Rodgers, Shane  
Subject: Re: 2013 Accomplishments

That's a ton of help! Thanks!

Sergeant Donovan Rivera

Albuquerque Police Department

DWI Seizure Unit

(505) 761-4089 (W)

(505) 274-2881 (C)

(505) 761-4098 (F)

E-mail: [drivera@cabq.gov](mailto:drivera@cabq.gov)

On Aug 23, 2013, at 2:52 PM, "Rodgers, Shane" <[srodgers@cabq.gov](mailto:srodgers@cabq.gov)> wrote:

- > 1) Instituted successful bait car program, providing all area commands with vehicles to be used to fight property crime
- > 2) increased fleet of vehicles to be used for UC ops by impact teams
- > 3) implemented new grant tracking program simplifying the capturing of information
- > 4) ordered a flatbed tow truck
- > 5) continued process of locating suitable land to purchase for program
- > 6) maintained program revenue despite drop of intake

>

> S. Rodgers

> 553-2275 cell

> Sent from my iPad

>

> On Aug 23, 2013, at 2:35 PM, "Rivera, Donovan" <[drivera@cabq.gov](mailto:drivera@cabq.gov)> wrote:

>

>> Sir, all I'm finding is 2012 Accomplishments.

>>

>> Can you think of any 2013 Accomplishments?

>>

>> I'll put vehicles auctioned and amount netted, YTD.

>>

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 27**

From: Defendant's Privileged Files 001066

Sent time: 10/30/2012 02:04:48 PM

To: Wheeler, Gregory S.; Harada, Stan D.

Cc: Tourek, David J.; Romero, Gerald E.; Thompson, Aubrey D.; Hoffman, Lou D.; Payton, Chris

Subject: RE: IGA Vehicle Seizure Oct 2012 DRAFT

Attachments: IGA Vehicle Seizure Oct 2012 DRAFT.doc

---

Greg, I have made an adjustment to section 4 b. We found out today that the warehouse is working with APD to auction the vehicles using the warehouse auctioneer. If this is done there will more than likely be a surcharge by the warehouse to cover their costs. This would be in addition to the amount retained by the auctioneer regardless if it is the one APD currently uses or the one the warehouse uses. Do we need to put in a definition of what is net revenue?

Also, Lou wants us to attend a meeting with him on Thursday with the CAO to discuss the MOU. We will let you know if anything changes. Please let us know if there are any changes on your side. Thanks.

Mark

**From:** Wheeler, Gregory S.  
**Sent:** Tuesday, October 30, 2012 1:36 PM  
**To:** Harada, Stan D.  
**Cc:** Tourek, David J.; Romero, Gerald E.; Sandoval, Mark A.  
**Subject:** FW: IGA Vehicle Seizure Oct 2012 DRAFT

I talked to Stan about this and he thinks the 25% assumption is probably safe. But he had some other concerns about the MOU that are best discussed between Stan and Rob at their regular Friday meeting. I will wait until after that to get back to the County. But I will call Henry and let him know where we are in the process.

**From:** Thompson, Aubrey D.  
**Sent:** Saturday, October 27, 2012 10:03 AM  
**To:** Sandoval, Mark A.; Romero, Gerald E.; Wheeler, Gregory S.  
**Subject:** FW: IGA Vehicle Seizure Oct 2012 DRAFT

**From:** Lisa Sedillo-White [mailto:lswhite@bernco.gov]  
**Sent:** Thursday, October 25, 2012 5:51 PM  
**To:** Thompson, Aubrey D.  
**Subject:** IGA Vehicle Seizure Oct 2012 DRAFT

Aubrey,

I made a few more changes, highlighted in yellow. Please call me to discuss 264-9440. Thanks! Lisa

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 28**

1:16-cv-01113-JB-WPL  
Case 1:16-cv-01113-JB-JHR Document 67-31 Filed 10/16/17 Page 2 of 2  
From: "Rodgers, Shane"  
Sent time: 02/14/2012 09:16:29 AM  
To: Rivera, Lacsresia O.  
Subject: Fwd: also....

---

Wow! Their numbers are dropping!

Sgt Shane Rodgers  
DWI Seizure Unit  
Office #761-4089 ext 222  
  
Cell #553-2275

Begin forwarded message:

**From:** "Martinez, Isabel A." <[imartinez@cabq.gov](mailto:imartinez@cabq.gov) <<mailto:imartinez@cabq.gov>>>  
**Date:** February 14, 2012 8:45:18 AM MST  
**To:** "Locher, Eric J." <[elocher@cabq.gov](mailto:elocher@cabq.gov) <<mailto:elocher@cabq.gov>>>, "Wheeler, Gregory S." <[GWheeler@cabq.gov](mailto:GWheeler@cabq.gov) <<mailto:GWheeler@cabq.gov>>>  
**Cc:** "Driggers, Jeffrey B." <[jdriggers@cabq.gov](mailto:jdriggers@cabq.gov) <<mailto:jdriggers@cabq.gov>>>, "Rodgers, Shane" <[srodgers@cabq.gov](mailto:srodgers@cabq.gov) <<mailto:srodgers@cabq.gov>>>, "Rivera, Lacsresia O." <[LRivera@cabq.gov](mailto:LRivera@cabq.gov) <<mailto:LRivera@cabq.gov>>>, "Baca, Krista R." <[kbaca@cabq.gov](mailto:kbaca@cabq.gov) <<mailto:kbaca@cabq.gov>>>  
**Subject:** RE: also....

Total number of forfeitures filed for each of the following years:

2007 I dont have this information

2008 268

2009 589

2010 336

2011 272

2012 28 thru 2/6/12

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 29**

---

In the matter of one (1) Nissan  
Versa Silver, VIN -42551

ARLENE HARJO, Claimant.

KYLE HIBNER, City Attorney

---

TRANSCRIPT OF VEHICLE SEIZURE HEARING

HEARING OFFICER STANLEY HARADA

May 25, 2016

---

PAUL BACA PROFESSIONAL COURT REPORTERS  
500 FOURTH STREET NORTHWEST, SUITE 105  
ALBUQUERQUE, NEW MEXICO 87102  
(505) 843-9241

1 (Recording begins.)

2 THE COURT: This is Stanley Harada. I'm the  
3 administrative hearing officer. It is Wednesday, May 25, 2016.  
4 Time is 10:44 a.m.

5 This is a vehicle seizure hearing in the matter of  
6 one silver 2014 Nissan Versa, last five of the VIN is 5 --  
7 42551. Individual requesting hearing and appearing pro se is  
8 Arlene Harjo. City is represented by assistant city attorney  
9 Kyle Hibner.

10 Ms. Harjo and Officer, if you'll raise your right  
11 hands, please. Do you swear to tell the truth under penalty of  
12 perjury?

13 OFFICER LAFAVE: I do.

14 MS. HARJO: I do.

15 THE COURT: Thank you. Mr. Hibner, status of your  
16 case, please.

17 MR. HIBNER: The city is ready to proceed.

18 THE COURT: You may proceed.

19 MR. HIBNER: (inaudible) I'd like to offer Exhibit 1  
20 (inaudible) vehicle registration for purposes of standing. I  
21 (inaudible) copy (inaudible)

22 THE COURT: Ms. Harjo, do you have any objection to  
23 the admission of city's Exhibit 1, the registration and title  
24 on the vehicle?

25 MS. HARJO: No.

---

PAUL BACA PROFESSIONAL COURT REPORTERS  
500 FOURTH STREET NORTHWEST, SUITE 105  
ALBUQUERQUE, NEW MEXICO 87102  
(505) 843-9241

6

1 night, Mr. Harjo provided two (inaudible) samples that were at  
2 or above the (inaudible) legal limit -- or actually they were  
3 above the aggravated (inaudible) legal limit. (inaudible)  
4 secondary tests. A check of his driving record at NCIC  
5 revealed two prior DWI arrests with charges, making this  
6 offense a third offense.

7 Q And what were the breath scores?

8 A The breath scores were 0.20 and 0.21.

9 Q Okay. And how many clues did you observe on the  
10 horizontal gaze nystagmus?

11 A Six. Six out of six.

12 Q And can you tell us if this took place in the city  
13 of Albuquerque?

14 A Yes, it did. It was at milepost 170.

15 Q And did Mr. Harjo ever -- did you ever get any  
16 information whether or not there was any controlled substances  
17 involved?

18 A Mr. Harjo stated that he was also under the  
19 influence of methadone. I asked him if he was prescribed it  
20 and he said that he is.

21 Q I'm going to hand you what's been marked as Exhibit  
22 2. It's a New Mexico driver's license (inaudible) can you tell  
23 me if the identifying information on that matches the driver of  
24 the blue Versa?

25 A Yes, it did. That is the driver, Tino Harjo.

PAUL BACA PROFESSIONAL COURT REPORTERS  
500 FOURTH STREET NORTHWEST, SUITE 105  
ALBUQUERQUE, NEW MEXICO 87102  
(505) 843-9241

1 know, you didn't even know he was going to Clovis.

2 MS. HARJO: I didn't.

3 THE COURT: Well, is --

4 MS. HARJO: Is that my fault?

5 THE COURT: Well, yeah. You should be -- he should  
6 be communicating with you.

7 MS. HARJO: Am I supposed to be -- I was  
8 communicating with him, and people lie. I mean he lied to me.

9 THE COURT: Well, that means you shouldn't trust him.

10 MS. HARJO: Okay. So don't let him use a car that's  
11 in my name. I know that now.

12 THE COURT: In 2009 he proved that -- he showed you  
13 that you couldn't trust him.

14 MS. HARJO: Well --

15 THE COURT: Your name was on that car.

16 MS. HARJO: Well, both our names were on it. He paid  
17 for it --

18 THE COURT: Well, if he'd killed somebody then and he  
19 wasn't around, guess who'd get sued?

20 MS. HARJO: Uh-huh.

21 THE COURT: I mean, you're putting your whole entire  
22 economic life out here every time you trust him and he does  
23 this. You know, all it's going to take is one death.

24 MS. HARJO: No, I understand. I understand. We -- I  
25 have discussed -- I even had him going to rehab but that didn't

---

PAUL BACA PROFESSIONAL COURT REPORTERS  
500 FOURTH STREET NORTHWEST, SUITE 105  
ALBUQUERQUE, NEW MEXICO 87102  
(505) 843-9241

18

1 work out. He's been in rehab for his drinking problem and drug  
2 problem. I mean, you know,

3 THE COURT: Well, ma'am, people just can't keep  
4 making excuses for him. He's got to stand --

5 MS. HARJO: I'm not making excuses. He needs help.

6 THE COURT: Well, he needs to do it on his own.

7 MS. HARJO: He needs help, okay? And I understand  
8 that.

9 THE COURT: Well, you know, at this time I can't  
10 release your vehicle. You're going to have to go to district  
11 court, and you're going to have to notify your bank because  
12 they have an -- you have an obligation to them also.

13 MS. HARJO: oh, I understand. I -- we'll have to  
14 make the payments no matter what. I understand that. I'm  
15 obligated to that loan, and I understand that.

16 (Recording ends.)

17

18

19

20

21

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24

25

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PAUL BACA PROFESSIONAL COURT REPORTERS  
500 FOURTH STREET NORTHWEST, SUITE 105  
ALBUQUERQUE, NEW MEXICO 87102  
(505) 843-9241

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 30**

SECOND JUDICIAL DISTRICT COURT  
COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

NO. D-202-CV-2016-03614

CITY OF ALBUQUERQUE, EX REL.,  
ALBUQUERQUE POLICE DEPARTMENT,  
Plaintiff,

vs.

ONE (1) 2014 NISSAN 4DR SILVER,  
V.I.N. 3N1CN7AP4EL842551,  
NEW MEXICO LICENSE NO. 116SMW,  
Defendant.

**FORFEITURE COMPLAINT**

COMES NOW the City of Albuquerque, ex rel., Albuquerque Police Department, pursuant to City Ordinance 7-6-1 et seq., ROA 1994, as amended, and alleges the following:

1. Plaintiff, the City of Albuquerque, is a Municipal Corporation, duly organized under the laws of the State of New Mexico.
2. TINO HARJO and ARLENE HARJO were, at all times material hereto, residents of the State of New Mexico.
3. KIRTLAND FEDERAL CU is a company in the business of loaning money in the State of New Mexico.
4. On April 23, 2016, TINO HARJO was stopped by officers for traffic violations at I-40/MM170, in Albuquerque, New Mexico. (N.M.S.P. Report #2016-10121).

5. TINO HARJO was driving a 2014 NISSAN 4DR SILVER, V.I.N. 3N1CN7AP4EL842551, New Mexico License No. 116SMW, registered to ARLENE HARJO, with a(n) current New Mexico registration.

6. Through investigation, New Mexico State Police officers found TINO HARJO to be intoxicated and placed him under arrest on the offense of Driving While Intoxicated in violation of Section 8-2-1-8 R.O.A. 1994 or Section 66-8-102 N.M.S.A. 1978.

7. The Albuquerque Police Department has conducted an investigation and determined that the parties who may claim ownership or a security interest in the aforementioned vehicle are:

- a) TINO HARJO, 6041 Sequoia Rd. D-11, NW, Albuquerque, NM 87120, or c/o Metropolitan Detention Center, 100 Deputy Dean Miera Drive SW, Albuquerque, NM 87151,
- b) ARLENE HARJO, 6041 Sequoia Rd. D-11, NW, Albuquerque, NM 87120; and
- c) KIRTLAND FEDERAL CU, P.O. Box 80570, Albuquerque, NM 87198.

8. TINO HARJO operated the aforementioned motor vehicle while intoxicated in violation of Section 8-2-1-8 R.O.A. 1994 or Section 66-8-102 N.M.S.A. 1978. Pursuant to the provisions of City Ordinance 7-6-1 et seq., ROA 1994, as amended, the operation of the aforementioned vehicle by TINO HARJO constitutes a public nuisance.


9. In accordance with City Ordinance 7-6-1 et seq., ROA 1994, as amended, the aforementioned vehicle is in the custody of the Albuquerque Police Department, subject only to the orders and decrees of the District Court of the Second Judicial District, Bernalillo County, New Mexico.

**WHEREFORE**, the Albuquerque Police Department prays for a judgment in its favor, that any right, title or interest in the aforementioned 2014 NISSAN 4DR SILVER, V.I.N. 3N1CN7AP4EL842551, New Mexico License No. 116SMW, be forfeited to the City of Albuquerque Police Department and that the City receive the costs of this action and any such other and further relief as the Court may deem just and reasonable.

Respectfully Submitted,

**CITY OF ALBUQUERQUE**

Jessica M. Hernandez  
City Attorney

/s/ Kyle J. Hibner   
Kyle J. Hibner  
Assistant City Attorney  
P.O. Box 2248  
Albuquerque, New Mexico 87103  
(505) 768-4500

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 31**

# CITY OF ALBUQUERQUE



## Legal Department DWI Seizure Unit

P. O. BOX 2248  
Albuquerque, New Mexico 87103

(505) 768-4500 • Fax (505) 768-4570

Richard J. Berry, Mayor

Jessica M. Hernandez, City Attorney

August 3, 2016

Arlene Harjo  
6041 Sequoia Rd., NW  
Albuquerque, NM 87120

RE: **ONE (1) 2014 NISSAN 4DR SILVER,  
V.I.N. 3N1CN7AP4EL842551,  
NEW MEXICO LICENSE NO. 116SMW  
SECOND JUDICIAL DISTRICT COURT NO. CV-2016-03614**

Dear Ms. Harjo:

PO Box 1293

Albuquerque

New Mexico 87103

www.cabq.gov

Enclosed please find the original and one (1) copy each of Plaintiff's First Set of Interrogatories to Claimant Arlene Harjo and Plaintiff's First Set of Request for Production to Claimant Arlene Harjo, along with a copy of the Certificate of Service. You have **thirty (30) days** from the date you receive these discovery requests to mail your answers to our office. In addition, you must sign the enclosed Verification before a Notary Public and return it with your responses. If your answers are not received within those thirty (30) days, we will proceed with filing a Motion to Compel the responses.

Alternatively, I have also enclosed a Disclaimer. Should you decide that you would prefer to give up your interest in the subject vehicle, you can sign the Disclaimer and return it to this office and your interest in the vehicle will be relinquished to the City. You will be dismissed from this action with no further responsibility. Should you choose to sign the Disclaimer, you must do so in the presence of a Notary Public and return the Disclaimer to this office in the enclosed self-addressed, stamped envelope which has been provided for your convenience.

Please do not hesitate to call me at 505-768-2557, should you have any questions.

Sincerely,

Sue Postlethwait, Paralegal  
City of Albuquerque  
DWI Seizure Unit

/sp

Enclosures: as stated

**SECOND JUDICIAL DISTRICT COURT  
COUNTY OF BERNALILLO  
STATE OF NEW MEXICO**

**NO. D-202-CV-2016-03614**

**CITY OF ALBUQUERQUE, EX REL.,  
ALBUQUERQUE POLICE DEPARTMENT,  
Plaintiff,**

**vs.**

**ONE (1) 2014 NISSAN 4DR SILVER,  
V.I.N. 3N1CN7AP4EL842551,  
NEW MEXICO LICENSE NO. 116SMW,  
Defendant.**

**DISCLAIMER**

Claimant ARLENE HARJO disclaims any interest in the property, which is the subject matter of the above captioned case. This action may proceed without further notice to ARLENE HARJO, provided no costs or fees are assessed against her. Claimant acknowledges that this is a final disposition of the case and thereby knowingly waives her right to a hearing or trial on this matter.

\_\_\_\_\_  
ARLENE HARJO  
6041 SEQUOIA RD., NW  
Albuquerque, NM 87120

STATE OF NEW MEXICO       )  
  ) ss.  
COUNTY OF BERNALILLO    )

**SUBSCRIBED AND SWORN** to before me by ARLENE HARJO, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

My Commission Expires:

**INTERROGATORY # 4:** For each residence listed in the Answer to Interrogatory #3, please state whether you owned, rented, leased or simply occupied the residence for each address you have listed and, the name and address of the mortgage company if you owned, the name and address of the landlord or lessee if you rented or leased or the name of the actual owner, rentor, or lessor if you simply occupied the residence.

**ANSWER:**

**INTERROGATORY # 7:** For each job you held for the last five (5) years, please list the

following:

- a. name, address and telephone number of employer;
- b. type of business of employer;
- c. beginning and ending dates of employment;
- d. job title and duties;
- e. wages or salary; and
- f. a description of the vehicle(s) you used to travel to and from work including the registered owner, the V.I.N. and license numbers.

**ANSWER:**

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 32**

**SECOND JUDICIAL DISTRICT COURT  
COUNTY OF BERNALILLO  
STATE OF NEW MEXICO**

**CITY OF ALBUQUERQUE, EX REL.,  
ALBUQUERQUE POLICE DEPARTMENT,**

**Plaintiff,**

**vs.**

**No. D-202-CV-2016-03614**

**ONE (1) 2014 NISSAN 4DR SILVER,  
V.I.N. 3N1CN7AP4EL842551,  
NEW MEXICO LICENSE NO. 116SMW,**

**Defendant.**

**STIPULATED DISMISSAL OF PLAINTIFF'S FORFEITURE COMPLAINT**

**COME NOW**, the City of Albuquerque ex rel. Albuquerque Police Department (the "City"), by and through its attorneys, Kyle Hibner and Jerry A. Walz, and Claimant/Counterplaintiff Arlene Harjo, by and through her attorneys Arash Kashanian, Robert Johnson, and Robert Frommer, and Kirtland Federal Credit Union, by and through its attorney Kevin Hammar, and hereby stipulate to the dismissal with prejudice of the City's Forfeiture Complaint pursuant to Rule 1-041(A)(1)(b) NMRA. Claimant/Counterplaintiff's counterclaims and Motion for Judgment on the Pleadings will remain pending.

More particularly, the parties stipulate that:

1. The Court has jurisdiction over the parties and the subject matter herein.
2. Upon review of the dash camera video documenting the traffic stop that led to the seizure of the Defendant rem (the "Vehicle"), which was only recently obtained from the New

Mexico State Police officer who effected the seizure, it is the City's contention that the stop and subsequent seizure of the Vehicle did not occur within the City limits.

3. The location of the seizure is confirmed by the police incident report, which the City cited in paragraph 4 of its Forfeiture Complaint. *See* Compl. ¶ 4. The police incident report states that the seizure occurred on I-40 at mile marker 170. Mile marker 170 is located outside the City of Albuquerque.

4. Because the stop and seizure of the Vehicle did not occur within the City limits, the City is not authorized under Albuquerque City Ordinance § 7-6-1 *et seq.* to seek a judgment of forfeiture against the Vehicle.

5. The City returned the Vehicle to Claimant/Counterplaintiff Arlene Harjo on December 22, 2016. The Vehicle is therefore no longer in Plaintiff's possession.

6. Claimant/Counterplaintiff Arlene Harjo was not required to pay any monetary amount for storage or towing for the return of the vehicle.

7. Plaintiff City of Albuquerque states that it will voluntarily refund Claimant/Counterplaintiff Arlene Harjo the \$50.00 Administrative Hearing fee that she paid to obtain an Administrative Hearing.

8. The above stipulations fully resolve the City of Albuquerque's Forfeiture Complaint, as the City has now admitted that it is not entitled to forfeiture of the Vehicle.

9. The above stipulations do not, however, resolve Claimant/Counterplaintiff Arlene Harjo's counterclaims seeking damages, injunctive relief, declaratory relief, costs and fees, and any other legal or equitable relief that the Court deems proper. *See* Amended Answer, Affirmative Defenses, and Counterclaims ¶¶ B-I. Those counterclaims shall remain pending.

10. In addition, the above stipulations do not resolve Claimant/Counterplaintiff's

Motion for Judgment on the Pleadings on Count I of her counterclaims. That motion will likewise remain pending.

11. The above stipulations are adopted and approved as the Order of the Court.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that based upon the stipulation of the parties, Plaintiff's Forfeiture Complaint is hereby dismissed with prejudice.

A handwritten signature in black ink, appearing to read 'Carl Butkus', is written over a horizontal line.

Carl Butkus  
District Court Judge

**SUBMITTED BY:**

WALZ AND ASSOCIATES, P.C.

/s/ Jerry A. Walz "electronically filed"

Jerry A. Walz  
*Attorney for City of Albuquerque*  
133 Eubank Blvd., N.E.  
Albuquerque, NM 87123  
(505) 275-1800

Kyle J. Hibner  
Assistant City Attorney  
P.O. Box 2248  
Albuquerque, NM 87103  
(505) 768-4500

**STIPULATED AND AGREED:**

Email approval on 1/30/17  
Robert Everett Johnson  
Robert Frommer  
Institute for Justice  
*Attorneys for Plaintiff*  
901 North Glebe Rd., Suite 900

Arlington, VA 22203  
(703) 682-9320

Arash Kashanian  
*Attorney for Plaintiff*  
525 Figueroa St.  
Albuquerque, NM 87123  
(631) 805-0027

Telephonic approval 01/31/17  
Kevin Hammar  
*Attorney for Kirtland Federal Credit Union*  
1212 Pennsylvania NE  
Albuquerque, NM 87110  
(505) 266-8787

**DECLARATION OF ROBERT E. JOHNSON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT 33**

*Videotape to be submitted to the Court with a Notice of Lodging, pursuant to CM/ECF Admin. Proc. G(4)*