

1 Nathan M. Galliant (Federal Bar # 21-241)
2 JABURG WILK
3 3200 N. Central Avenue, Suite 2000
4 Phoenix, AZ 85012
5 Tel: (602) 248-1006
6 Fax: (602) 248-0522
7 E-mail: nmg@jaburgwilk.com

8 Attorneys for Defendant Alum Financial, LLC

9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEW MEXICO**

11 KATHARINE H. HENDRICKS, for
12 herself and all other New Mexico
13 residences who are similarly situated,

14 Plaintiffs,

15 v.

16 ALUM FINANCIAL, LLC, a foreign
17 limited liability company,

18 Defendant.

Case No.:

[Lower Court Case No.; D-101-CV-2021-01371; State of New Mexico County of Santa Fe First Judicial District Court]

**NOTICE OF REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. § 1441(a)-(b)
AND 28 U.S.C. § 1332; AND DEMAND
FOR A JURY TRIAL**

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20 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
21 DISTRICT OF NEW MEXICO, ALL PARTIES AND THEIR ATTORNEYS OF
22 RECORD:

23 PLEASE TAKE NOTICE that Defendant ALUM FINANCIAL, LLC (“Alum
24 Financial”) notices the removal of this action to the United States District Court for the
25 District of New Mexico, pursuant to 28 U.S.C. § 1332, 28 U.S.C. § 1441, and 28 U.S.C.
26 § 1446. Alum Financial states the following grounds as the basis for removal:

27 1. On June 16, 2021, Plaintiff KATHARINE H. HENDRICKS
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LAW FIRM

1 (“Hendricks”) filed an action against Alum Financial in the District Court for the First
2 Judicial District for the County of Santa Fe, New Mexico entitled Katharine H.
3 Hendricks, et al. v. Alum Financial, District Court Case Number D-101-CV-2021-
4 01371 (the “State Court Action”).

5 2. The time within which Alum Financial is permitted to file a notice of
6 removal under 28 U.S.C. § 1446 has not expired as of the time of the filing and service
7 of this notice of removal. Less than thirty days have passed since the service and first
8 notice of the complaint in the State Court Action. Hendricks served the complaint on
9 Alum Financial on July 20, 2021. [Declaration of Andrew Burwell (“Burwell Decl.”), ¶
10 5.] A true and correct copy of the complaint, summons, and other papers filed in the
11 State Court Action are attached hereto as Exhibit “A.”

12 3. Venue is proper in this district and division pursuant to 28 U.S.C. §
13 1441(a) because this district embraces that place in which the removed action is
14 pending.

15 4. This Court has original subject jurisdiction over this action pursuant to §
16 28 U.S.C. 1332 because there is complete diversity between Hendricks and Alum
17 Financial, and the amount in controversy exceeds \$75,000. Alum Financial is not a
18 citizen of the state of New Mexico. As such, this action may be removed to this Court
19 pursuant to 28 U.S.C. § 1441.

20 5. Alum Financial is a citizen of California. Alum Financial is a limited
21 liability company. Its members are Jody Burwell and Andrew Burwell. Jody Burwell is
22 a citizen of California. Jody Burwell is domiciled in Placentia, California. Andrew
23 Burwell is a citizen of California. Andrew Burwell is domiciled in Laguna Beach,
24 California. [Burwell Decl., ¶¶ 2, 3, 4]

25 6. Hendricks is a citizen of New Mexico. Hendricks is domiciled in Santa
26 Fe, New Mexico. [Complaint, ¶ 1]

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1 7. Henricks brings this action as a class action on behalf of herself and all
2 other New Mexico residents who are similarly situated. The citizenship of unnamed
3 class members named in a state court complaint is disregarded. When determining
4 whether diversity of citizenship exists, only the citizenship of the representative class
5 plaintiff is considered. *Snyder v. Harris*, 394 U.S. 332, 339-340 (1969)

6 8. The amount in controversy exceeds \$75,000. The complaint seeks
7 injunctive relief to enjoin Alum Financial from taking payment unless it forms a
8 partnership or association with a New Mexico attorney. [Complaint, p. 6] The amount
9 in controversy can be established in injunction cases by the measure of the loss to the
10 defendant were the defendant enjoined from engaging in the conduct for which an
11 injunction is sought. *Ronzio v. Denver & R.G.W.R. Co.*, 116 F.2d 604, 606–607 (10th
12 Cir. 1940). The gravamen of Hendrick’s injunction is to enjoin Alum Financial from
13 conducting business in the State of New Mexico. This is because the injunction
14 Hendrick’s requests would require a New Mexico attorney to form partnership or an
15 association with Alum Financial and split fees with Alum Financial when Alum
16 Financial is entirely owned by non-lawyers. [Burwell Decl., ¶¶ 3, 4] New Mexico
17 Rules of Professional Responsibility, Rule 16-504 prohibits the association and fee
18 splitting Hendricks seeks through her injunction. Rule 16-504 prohibits a New Mexico
19 attorney from forming a partnership or association with a non-attorney and/or from
20 splitting fees with a non-attorney. Alum Financial’s loss from being enjoined from
21 conducting further business in New Mexico would be in excess of \$75,000. [Burwell
22 Decl., ¶ 6] Alternatively, the amount in controversy for diversity jurisdiction under § 28
23 U.S.C. 1332 can be established in injunction cases by looking at the defendant’s cost of
24 complying with the injunction. *Justice v. Atchison, Topeka & Santa Fe Railway, Co.*,
25 927 F.2d 503, 505 (10th Cir. 1991). On the other hand, if Hendricks’ injunction would
26 require Alum Financial to be represented by an attorney licensed in New Mexico, the
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1 cost of using a licensed New Mexico attorney for each of Alum Financial’s clients
2 would exceed \$75,000 per client. [Burwell Decl., ¶ 6]

3 9. Hendricks seeks an award of attorney fees. [Complaint, p. 6] Where
4 attorney fees are recoverable by statute, the fee claim is included in determining the
5 amount in controversy, regardless of whether the fee award is mandatory or
6 discretionary *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150-1155-1156 (9th Cir. 1998);
7 *Morrison v. Allstate Indem. Co.*, 228 F.3d 1255, 1265 (11th Cir. 2000). Hendricks
8 alleges on cause of action for violations of the New Mexico Unfair Practices Act,
9 NMSA §§ 57-12-1 *et seq.* (the “Act”). Hendricks is entitled to attorney fees under the
10 Act as a prevailing plaintiff. N.M. Stat. Ann. § 57-12-10(C) (West 2021). It is
11 projected that Hendricks will demand in excess of \$75,000 in reasonable attorney fees
12 as a prevailing plaintiff on her claims and in pursuant of her injunction against Alum
13 Financial.

14 10. Alum Financial is the only named defendant and consents to this removal.

15 11. A true and correct copy of this Notice of Removal is being filed this date
16 with the Clerk of the First Judicial District Court for the County of Santa Fe, New
17 Mexico and served on counsel for Hendricks.

18 12. Based on the foregoing, Alum Financial removes the above action
19 pending in the First Judicial District of the State of New Mexico, County of New
20 Mexico, Case Number D-101-CV-2021-01371, to the United States District Court for
21 the District of New Mexico.
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23 JABURG WILK, P.C.



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26 DATED: August 20, 2021

27 By: _____
Nathan M. Gallinat
Attorneys for Defendant
Alum Financial, LLC

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DEMAND FOR A JURY TRIAL

PLEASE TAKE NOTICE that Defendant ALUM FINANCIAL, LLC hereby demands a trial by jury in this action.

JABURG WILK, P.C.



DATED: August 20, 2021

By: _____
Nathan M. Gallinat
Attorneys for Defendant
Alum Financial, LLC

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EXHIBIT A

SUMMONS	
District Court: First Judicial District Santa Fe County, New Mexico Court Address: Santa Fe County Courthouse 225 Montezuma Av Santa Fe, NM 87501 Court Telephone No.: 1-505-455-8250	Case Number: D-101-CV-2021-01371 Judge: Honorable Maria Sanchez-Gagne
Plaintiff: KATHARINE HENDRICKS, v. Defendant: ALUM FINANCIAL LLC,	Defendant Name: Alum Financial LLC Address: c/o Legalinc Registered Agents, Inc., Registered Agent Four Embarcadero Center, Suite 1400 #85 San Francisco, CA 94111

TO THE ABOVE NAMED DEFENDANT(S): Take notice that

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.
2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA.) The Court's address is listed above.
3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.
4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.
5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.
6. If you need an interpreter, you must ask for one in writing.
7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6227; or 1-505-797-6066.

Dated at Santa Fe, New Mexico, this 14 day of July, 2021.

Kathleen Vigil, CLERK OF COURT By:  Deputy 	Attorney for Plaintiff /s/ by Robert David Humphreys Robert David Humphreys Humphreys Wallace Humphreys, PC 1701 Old Pecos Trail, Suite B Santa Fe, NM 87505 (505) 933-7026 (918) 471-2223 fax david@hwh-law.com
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THIS SUMMONS IS ISSUED PURSUANT TO RULE 1-004 NMRA OF THE NEW MEXICO RULES OF CIVIL PROCEDURE FOR DISTRICT COURTS.

FILED 1st JUDICIAL DISTRICT COURT
Santa Fe County
6/16/2021 2:14 PM
KATHLEEN VIGIL CLERK OF THE COURT
Edith Suarez-Munoz

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

KATHARINE H HENDRICKS, for herself and all other
New Mexico residents who are similarly situated,

Plaintiffs,

v.

No. D-101-CV-2021-01371

ALUM FINANCIAL, LLC, a foreign limited liability
company,

Case assigned to Sanchez-Gagne, Maria

Defendant.

**CLASS ACTION COMPLAINT FOR
DAMAGES, DECLARATORY RELIEF AND INJUNCTIVE RELIEF**

Defendant Alum Financial LLC is engaged in unfair, deceptive and unconscionable trade practices in the course of offering services as a for-profit student loan debt relief organization.

Parties

1. Plaintiff Katharine Hendricks (“Hendricks”) resides in Santa Fe, New Mexico.
2. Defendant Alum Financial LLC (“Alum”) is a California Limited Liability Company engaged in the business of student loan debt relief. Alum is not registered to do business in the State of New Mexico, but the conduct complained of here was all directed at a resident of New Mexico at her home in Santa Fe and this Court has specific jurisdiction over these claims.

Facts

3. Experian estimates Americans have 165.2 million student loan accounts with approximately \$1.57 trillion in outstanding debt. <https://www.experian.com/blogs/ask-experian/state-of-student-loan-debt/>. In New Mexico, some 200,000 people have student

loans with an average balance of \$32,986.00 or \$6.6 billion in student loan debt.

<https://studentloanhero.com/featured/new-mexico-student-loans-refinance/>

4. Alum looks at these numbers and presents it like this:

Student loans are stressful, but with the right knowledge and support it's easy to get on track to manage your student loan debt. At Alum Financial, we can help. We are a document preparation company specializing in the student loan industry. We have cultivated a performance-based system that focuses on our client's needs. It's only natural that client satisfaction has been our goal from the beginning. . . .

After graduation, it's common for people to explore the freedom that replaces mandatory class attendance, acknowledge the hard-earned accomplishments, and daydream about what the future holds. Instead, for many the optimism of starting a new career or business quickly fades once faced with the outstanding amount of debt owed immediately out of school.

Instead of investing in a new business or going after the career they dreamed of while still in the classroom, people place their dreams on hold. They often settle for a job that forces them to live paycheck to paycheck. They find themselves unable to save or borrow money, purchase a home, or even pay for basic necessities.

A majority of their disposable income goes toward their monthly student loan payments. They feel trapped in a vicious cycle of debt that limits their otherwise limitless potential.

Does this sound familiar?

<https://alumfinancial.com/about-us/>

5. Hendricks is one of those 200,000 New Mexico residents struggling with student loan debt. She was eligible for and was seeking forgiveness of specific student loan payments under a federal program. She was entitled to payment forgiveness because of her work as a mental health care professional employed by a nonprofit provider of mental health care services for members of certain Pueblos tribes in Northern New Mexico.
6. Hendricks was seeking assistance with her student loan debt and believed her employment qualified her for one of the many programs administered by the U.S. Department of Education. In her case, it was the Public Service Loan Forgiveness program.
7. Hendricks submitted her application for this program by faxing it to U.S. Department of Education FedLoan Servicing's fax number.

8. Shortly after submitting this application, Hendricks began getting calls from unfamiliar numbers which she let go to voicemail. These callers repeatedly left messages stating she was eligible for the program, but her application was incomplete. The messages further stated that she need to complete the process in a timely manner because eligibility is on a first come first served basis.
9. Hendricks called them back and spoke with an employee of Alum. Alum represented that it was the agency that people must work through to qualify for these loan consolidation programs.
10. Hendricks believed she had to work with Alum to get the relief she was seeking.
11. Alum offered her a contract which included a payment plan. When she asked about the payment plan Alum led her to believe the payment plan they offered was for her student loan payments under the consolidation program.
12. Alum is not an agency people must go through in order to qualify for these loan consolidation programs and the payment plan is not a student loan payment plan but rather a payment plan for payment of Alum's fees.
13. Alum's contract and conduct is not premised on the particular program for which an individual with student loan debt qualifies but is instead a contract for services that Alum claims will find all the programs for which a person qualifies and help determine the best option for that person.
14. Alum took fees from this payment plan before providing any benefit to Hendricks including prior to her being enrolled in a qualified loan consolidation and forgiveness plan.
15. Upon information and belief, the representations made to Hendicks to induce her into entering into a contract with Alum are part of scripts used by Alum with any person it

speaks with regarding student loan relief.

16. Upon information and belief, the contract signed by Hendricks is a form agreement used with any person who agrees to engage Alum for its services.
17. The express language of the agreement states “I hereby authorize Alum Financial (AF) to initiate automatic debits from my bank account or card on file, for the authorized services, fees and terms outlined in my Service Agreement with Alum Financial.”
18. The agreement later states “I, [insert name], authorize AF to charge my account on See Below for the sole purpose of my student loans.”
19. This statement in the contract is false and misleading and, at a minimum, tends to deceive consumers into believing these payments are student loan payments and not simply fees paid to Alum for its services.
20. Upon information and belief, Alum keeps all of the funds paid to it by consumers and no portion of these payments are used to make monthly payments on the student loan or loans.

Class Action Allegations

21. Plaintiff brings this lawsuit as a class action.
22. The class consists of all New Mexico residents who were enrolled by Alum in its student loan relief and/or consolidation program.
23. The number of class members is so numerous that joinder is impractical.
24. The way Alum handled the enrollment process directed at Plaintiff is typical and representative of the way that Alum handled the enrollment process directed at the class members.
25. There are questions of law and fact common to the class. Common questions of fact and law include but are not limited to whether the representations made by Alum were

scripted for use with all New Mexico customers, did Alum take payment of its fees for debt relief prior to providing any benefit to New Mexico customers, did Alum use a form agreement with all New Mexico customers, and did Alum's statements and conduct have a tendency to deceive New Mexico customers.

26. The claims brought in this lawsuit can be determined principally from documents in the possession of Alum.
27. Plaintiff's claims and the claims of the class members are based on similar facts and legal theory.
28. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained attorneys who are experienced at handling consumer class actions. Plaintiff and her counsel have no interests which may conflict with the interests of the class.
29. Hybrid certification of the class under NMRA 1-023(B)(2) and NMRA 1-023(b)(3) is appropriate in that:
 - a. Alum has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole;
 - b. the questions of law and fact common to the members of the class predominate over any questions affecting an individual member; and,
 - c. a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

First Claim for Relief: Violations of the Unfair Practices Act

30. Alum's representations, actions, inactions and omissions constitute unfair trade practices, within the meaning of the New Mexico Unfair Practices Act, NMSA §§ 57-12-1 *et seq.*

("UPA"), including NMSA § 57-12-2(D) generally and NMSA §§ 57-12-2(D)(2), 57-12-2(D)(3), 57-12-2(D)(11), 57-12-2(D)(14), and 57-12-2(D)(15) specifically.

31. Alum's representations, actions, inactions and omissions constitute unconscionable trade practices, within the meaning of the UPA, including NMSA § 57-12-2(E) generally and NMSA § 57-12-2(E)(1) and 57-12-2(E)(2) specifically.
32. Alum acted willfully regarding the actions that violate the UPA.
33. Plaintiff is entitled to recover actual or statutory damages, trebled if it is determined that Alum acted willfully, plus attorney fees and costs.
34. Class members are entitled to recover actual damages, trebled if it is determined that Alum acted willfully, plus attorney fees and costs.

Request for Relief

Plaintiff requests that this Court:

- A. Certify this lawsuit to proceed as a class action;
- B. Enjoin Alum from taking payment unless represented by a New Mexico licensed attorney;
- C. Award Plaintiffs and the class members statutory damages of \$1,000 each, trebled to \$3,000 each if it is determined that Alum acted willfully, plus, to each, return of all monies received;
- D. Award Plaintiff actual or statutory damages, trebled if it is determined that Alum acted willfully, under the UPA;
- E. Award class members actual damages, trebled if it is determined that Alum acted willfully, under the UPA;
- F. Award attorney fees and costs; and
- G. Provide such other relief as the Court deems just and proper.

Respectfully submitted,

HUMPHREYS WALLACE HUMPHREYS, P.C.

/s/ Robert David Humphreys

Robert David Humphreys

Lucius James Wallace

1701 Old Pecos Trail, Suite B

Santa Fe, NM 87505

(505) 933-7026 / (918) 471-2223 fax

david@hwh-law.com

luke@hwh-law.com

ATTORNEYS FOR PLAINTIFF

JURY TRIAL DEMANDED
ATTORNEY LIEN CLAIMED

FILED 1st JUDICIAL DISTRICT COURT
Santa Fe County
6/16/2021 2:14 PM
KATHLEEN VIGIL CLERK OF THE COURT
Edith Suarez-Munoz

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

KATHARINE H HENDRICKS, for herself and all other
New Mexico residents who are similarly situated,

Plaintiffs,

v.

No. D-101-CV-2021-01371

ALUM FINANCIAL, LLC, a foreign limited liability
company,

Defendant.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by a jury of six (6) persons on all issues so triable and deposits
the requisite fee with the Clerk of the Court.

Respectfully submitted,

HUMPHREYS WALLACE HUMPHREYS, P.C.

/s/ Robert David Humphreys

Robert David Humphreys

Lucius James Wallace

1701 Old Pecos Trail, Suite B

Santa Fe, NM 87505

(505) 933-7026 / (918) 471-2223 fax

david@hwh-law.com

luke@hwh-law.com

ATTORNEYS FOR PLAINTIFF

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Alum Financial Misrepresents Student Loan Relief Services](#)
