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January 19, 2015

Mr. Jim Mathieu  
Denny's Restaurant Owner  
5300 Remington Rd  
Las Cruces, NM 88011

Re: July 18-19, 2014 Discrimination Incident

Dear Mr. Mathieu:

My name is Brian Moore and I am an attorney in Albuquerque. We spoke on the phone several months ago regarding an incident that occurred on the night of July 18-19, 2014, at your Denny's restaurant ("Denny's" or "your restaurant") located at 120 North Platinum Ave, Deming, NM 88030. You called my office in response to a letter I wrote to the Denny's restaurant in Deming. In that conversation, you indicated that you are the owner of the Denny's restaurant in Deming.

In cooperation with the American Civil Liberties Union of New Mexico, I represent a group of individuals who were denied service at your restaurant on the basis of their sexual orientation and/or gender identity. My clients are Monique Norell, Manny Carlos, Elizabeth Pioquinto, Rozeanne Pioquinto, Harley Leach, Daniel Carrasco, Ray Marquez, April Palmer, and Victor Guerrero. As a public accommodation, your restaurant's refusal of service on the basis of my clients' sexual orientation and/or gender identity constitutes a violation of the New Mexico Human Rights Act. NMSA § 28-1-7.

We are planning on bringing a claim for Human Rights Act violations for each of our clients against your Denny's restaurant and against the manager and server who were involved in the incident. The details of the incident are attached in a copy of one of the complaints that I have drafted on behalf of each my clients to the New Mexico Human Rights Commission. My clients have suffered a great deal as a result of your employees' actions and would like to bring this episode to an amicable conclusion. Therefore, my clients would like to offer you an opportunity to settle the legal claims they have against your restaurant.

In order to resolve this incident, my clients ask that your Denny's restaurant take the following actions:

1. Your Denny's restaurant will pay \$20,000 to the Deming Pride organization. Deming Pride was founded in 2011 to promote and educate the importance of equality and pride. Deming Pride has organized an LGBT pride celebration annually for the past three years.

Within the past year, Deming Pride has participated in a number of events benefiting the Deming community. These community activities include organizing a baseball tournament fundraiser to help pay for the medical expenses of a Deming 5<sup>th</sup> grade student who died of cancer, participating in Deming's annual Zombie Walk where Deming Pride provided candy bags and supervision for trick-or-treaters on Halloween, and conducting a Christmas toy drive to collect gifts for over 160 underprivileged students at elementary schools in the district. With your help, Deming Pride will use the money from this settlement to further the organization's goal of making a positive impact on the Deming community.

2. Your Denny's restaurant will pay \$5,000 to Monique Norell. Ms. Norell was subjected to the worst of the harassment and humiliation by your employees. Ms. Norell, who is a transgender woman and was dressed in formal female pageant attire at the time, was called a "fag," "faggot," "joto," and "boy with tits". My clients feel that the severity of Ms. Norell's abuse deserves particular restitution.
3. All of the restaurants owned by you will implement a written policy that your employees must comply with NMSA § 28-1-7 and may not discriminate or refuse to serve customers on the basis of the customer's sexual orientation or gender identity.
4. All of the restaurants owned by you will work in cooperation with the ACLU of New Mexico to implement a reasonable LGBT sensitivity component to the training of all new employees in the future and providing that training component to all current managers and employees.
5. Your Denny's restaurant will publicly acknowledge that the behavior of its employees on July 18 and 19 was unacceptable, and detail the steps above that your restaurants are taking to make sure that its employees will not mistreat customers in the future.
6. Your Denny's restaurant will pay my clients' attorney fees incurred in pursuing their legal rights in this case.

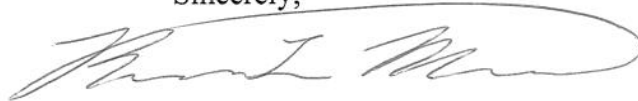
In exchange, my clients will agree not to pursue their individual legal claims against your restaurant and its employees arising from the incident at your restaurant on July 18 and 19, 2014.

My clients feel strongly that your employees' behavior on July 18 and 19 should not be allowed to be repeated. With that in mind, your restaurant is in a position to send a strong message that this conduct will not be tolerated in the future. By implementing a company policy, new employee sensitivity training, and acknowledging that your employees' behavior on July 18 and 19 was unacceptable, you have an opportunity to demonstrate that Denny's is a leader in the community when it comes to protecting its customers from the type of abuse my clients suffered. The ACLU and my firm are committed to working with you to ensure that these actions take place smoothly and with the least disruption of your business as possible.

My firm and the ACLU have been approached by statewide news media organizations who have expressed eagerness to report on these events. My clients feel it is important to give you a chance to consider, and respond, to their demands in private before the incident is reported in the news media.

Please carefully consider our offer in consultation with your attorney and respond no later than the close of business on January 28, 2015. If I have not received your response by then, this offer of settlement will be revoked.

Sincerely,

A handwritten signature in dark ink, appearing to read "Brian L. Moore", with a large, sweeping loop at the end.

Brian L. Moore  
Attorney at Law

encl: Enclosures

**CHARGE OF DISCRIMINATION**

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA  
☐ EEOC

**New Mexico Dept of Workforce Solutions, Human Rights Bureau**

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Home Phone (Incl. Area Code)

Date of Birth

Street Address

City, State and ZIP Code

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

No. Employees, Members

Phone No. (Include Area Code)

**Denny's Restaurant of Deming, New Mexico**

**(575) 546-2258**

Street Address

City, State and ZIP Code

**120 North Platinum Ave**

**Deming, NM 88030**

Name

No. Employees, Members

Phone No. (Include Area Code)

**Jane Doe (Denny's Server) and John Doe (Denny's Manager)**

**(575) 546-2258**

Street Address

City, State and ZIP Code

**120 North Platinum Ave**

**Deming, NM 88030**

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN  
☐ RETALIATION ☐ AGE ☐ DISABILITY ☐ GENETIC INFORMATION  
☒ OTHER (Specify) **Sexual Orientation**

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

**July 18, 2014 July 19, 2014**

☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

**Statement of Harm:**

Denny's Restaurant of Deming, New Mexico ("Denny's"), is a public accommodation. On July 18, 2014, Denny's denied me service on the basis of my sexual orientation.

After celebrating the annual Deming Pride Pageant, I was part of a group of event organizers and contestants who decided to go to Denny's to eat. Some members of the group were wearing formal pageant attire and makeup and some members were in everyday clothes. All members of the group, including myself, identify as gay, lesbian, bisexual, and/or transgender. We arrived at Denny's at approximately 11:00 pm on July 18, 2014. When we arrived, we were seated by the host. We were never provided with menus, and after being seated we were ignored by waitstaff. Despite the fact that servers passed our tables multiple times, no server introduced him or herself or offered to take our drink order.

**CONTINUED ON NEXT PAGE**

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

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

NOTARY – When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.  
SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
(month, day, year)

Date

Charging Party Signature

**CHARGE OF DISCRIMINATION**

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☐ FEPA

☐ EEOC

**New Mexico Dept of Workforce Solutions, Human Rights Bureau**

and EEOC

*State or local Agency, if any*

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

**CONTINUED FROM PREVIOUS PAGE**

While the group waited, we observed waitstaff and cooks whispering, laughing, and pointing at our tables.

After waiting for over 30 minutes without receiving service, one member of our group, Monique Norell (legal name Victor De La Torre), approached a member of the waitstaff and asked if anyone would be serving us. Ms. Norell is a transgender woman who was dressed in formal female pageant attire. The server responded that she did not have to serve our group, and loudly directed derogatory slurs at Ms. Norell and the rest of our group including "fag," "faggot," "joto," and "boy with tits".

Ms. Norell then approached the Denny's manager to ask if he would allow his employee to treat his customers like that. The manager told the group that he would not require any of his staff to serve our table, and since Denny's would not serve us that we should all leave. Not wanting to be subjected to any more harassment, we left Denny's.

I felt threatened, harassed, marginalized, and publicly humiliated by Denny's employees, and when I asked for help from the restaurant manager, I was harassed and ridiculed even further. The server's use of words like "fag," "faggot," "joto," and "boy with tits," was an attack on who I am as a person. The actions of Denny's waitstaff and management have made me feel less safe in my community. Since the incident, I have been more fearful and anxious that other restaurants and businesses might treat me the same way that Denny's did. I am forced to be more on guard for signs that employees at businesses I use might publicly humiliate me.

Denny's treatment of me and my friends is shameful to the employees and managers who mistreated us, the restaurant, and the community of Deming. This kind of behavior by a local business should not be allowed to continue.

I am represented in this claim by Brian L. Moore and Maureen A. Sanders of the law firm of Sanders & Westbrook, P.C., 102 Granite Ave NW, Albuquerque, NM 87102, in cooperation with the American Civil Liberties Union of New Mexico, P.O. Box 566, Albuquerque, NM 87109.

Statement of Discrimination: I believe I have been discriminated against because of my sexual orientation in violation of NMSA 1978, § 28-1-7(F).

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

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

NOTARY – When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
(month, day, year)

Date

Charging Party Signature