

SECOND JUDICIAL DISTRICT COURT  
COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

MARIA CUMMINGS, INDIVIDUALLY  
AND AS PERSONAL REPRESENTATIVE  
OF THE ESTATE OF SHAUN MICHAEL  
CHAVEZ; JANA VALLEJOS,  
INDIVIDUALLY AND AS PERSONAL  
REPRESENTATIVE OF THE ESTATE OF  
DONOVAN VALLEJOS; and LEON  
SALAZAR, INDIVIDUALLY, on behalf of  
themselves and ALL OTHERS SIMILARLY  
SITUATED,

Plaintiffs,

v.

BOARD OF REGENTS OF THE  
UNIVERSITY OF NEW MEXICO, et al.,

Defendants.

No. D-202-CV-2001-00579  
(As consolidated with  
No. D-202-CV-2001-1409)

**ORDER PRELIMINARILY APPROVING SETTLEMENT, APPROVING NOTICE  
TO SETTLEMENT CLASS MEMBERS, AND SETTING DATE FOR  
FINAL APPROVAL HEARING**

Class Plaintiffs by and through their respective counsel have moved for an order granting preliminary approval of a Settlement Agreement (“Agreement”) reached in the above-captioned action (the “Lawsuit”) on the terms and conditions in the Agreement (the “Settlement”). The Court having read and considered the Agreement and the accompanying documents submitted by Class Plaintiffs and Defendant Board of Regents of the University of New Mexico, finds and ORDERS as follows:

IT IS HEREBY ORDERED THAT:

1. The Agreement is hereby incorporated by reference in this Order and, in addition to the terms defined in this Order, all terms defined in the Agreement will have the same meanings in this Order.

2. The Parties include Plaintiffs Maria Cummings, individually and as personal representative of the estate of Shaun Michael Chavez and Jana Vallejos, individually and as personal representative of the estate of Donovan Vallejos, and Defendant Board of Regents of the University of New Mexico, a body corporate of the State of New Mexico, for itself and its public operations including University of New Mexico Health Sciences Center, and its components the University of New Mexico Hospital and University of New Mexico School of Medicine.

3. For purposes of determining whether the terms of the Agreement should be preliminarily approved, the following Settlement Class is conditionally certified, for purposes of this Settlement only:

Statutory beneficiaries of all pediatric cancer patients with a diagnosis of Acute Lymphoblastic Leukemia who presented for treatment at the University of New Mexico Health Sciences Center from January 1, 1977 through March 31, 1997, and who, by December 1, 2019, were deceased, excluding individuals with whom UNM previously reached settlements, except that also excluded from the Decedent Class are those individuals who received only temporary treatment at UNM Health Sciences Center and whose treatment protocols were principally administered or designed elsewhere and who did not receive initial or relapse induction treatment in New Mexico.

4. The Court expressly reserves the right to determine, should the occasion arise, whether the Lawsuit may be certified as a class action for purposes other than settlement, and Defendant retains all rights to assert that the Lawsuit may not be certified as a class action except for purposes of settlement only. This Preliminary Order is not intended to be a final order on certification of the class for settlement purposes.

5. The Court finds that (i) the Settlement resulted from extensive arms-length negotiations; (ii) the Settlement was concluded after counsel for the Parties had conducted adequate investigation; and (iii) the Settlement terms are well within the range of being sufficiently fair, reasonable, adequate and in the best interests of the Settlement Class so as to warrant sending notice and claim forms to the Settlement Class preliminarily certified for settlement purposes in accordance with Paragraph 33 of the Agreement and thereafter holding a hearing regarding, *inter alia*, (a) final approval of the Settlement and certification of a Settlement Class for settlement purposes only, (b) whether the Notice Procedures comply with the New Mexico Rules of Civil Procedure and due process; and (c) whether Class Counsel's request for attorneys' fees should be approved (the "Final Approval Hearing"). Accordingly, the Court grants preliminary approval of the Settlement and finds that it is sufficiently fair and reasonable to warrant sending notice to Persons who may be members of the Settlement Class preliminarily certified for settlement purposes in accordance with the Class Notice procedures set forth in the Agreement.

6. Solely for the purposes of the Settlement, the Court preliminarily finds that the prerequisites for a class action under Rule 1-023(A) and (B)(2) and (B)(3) NMRA have been satisfied in that: (i) the Class Members are so numerous that joinder of all Class Members is impracticable; (ii) there are questions of law and fact common to the Settlement Class; (iii) the claims of the Plaintiff are typical of the claims of the Class Members; (iv) the Plaintiff will fairly and adequately represent the interests of the Settlement Class; (v) the questions of law and fact common to the Class Members predominate over any questions affecting only individual Class Members; and (vi) certifying the Settlement Class is superior to other available methods for the fair and efficient adjudication of the controversy.

7. Plaintiffs are preliminarily found qualified to act as representatives of the Settlement Class and preliminarily appointed as Settlement Class Representatives; and the following Plaintiffs' Counsel are preliminarily appointed as Counsel for the Settlement Class ("Class Counsel"), based on the Court's determination that the requirements of Rule 1-023(G) are satisfied by this appointment:

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8. If final approval of the Settlement is not obtained or the events set forth in the Agreement are not satisfied, this preliminary certification order, including the above description of the Settlement Class, shall be vacated *ab initio*. Preliminary certification of the Settlement Class, appointment of Class Counsel and of the Class Representatives, and all actions associated therewith, are binding only with respect to the Settlement and are undertaken on the condition that the certification and designations may be vacated if the Agreement is terminated or is disapproved in whole or in material part by the Court, any appellate court and/or any other court of review, or, at the discretion of Defendant, if 25 or more class members elect to exclude themselves from the class, in which event: (i) the Agreement and any obligations of Defendant thereunder shall be null and void, except as otherwise expressly provided in the Agreement; (ii) the Court shall vacate the preliminary certification of the Settlement Class; (iii) Defendant and the Released Parties shall retain the right to object to the maintenance of the Lawsuit and/or any

other case on any grounds; and (iv) the Lawsuit shall proceed as if the Agreement had never been entered and the Settlement Class had never been certified, without prejudice or relevance to the Court's consideration on the merits of any arguments for or against a properly submitted motion for class certification.

9. The Settlement and its preliminary approval are not to be deemed an admission of liability or fault by Defendant or a finding of the validity of any claims asserted in the Lawsuit, or of any wrongdoing or of any violation of law by Defendant, or an admission by Defendant or Released Parties as to the certifiability of a litigation class in the Lawsuit, or any other case. Neither the preliminary certification of this Settlement Class, nor the Agreement, nor the fact that it was entered into, nor any of its terms, provisions or exhibits, nor any of the negotiations or proceedings connected with it, nor any filings or arguments made to the Court in support of preliminary approval of the Settlement, may be offered, received or construed, in any pending or future civil, criminal or administrative action, as: (i) an admission of or evidence of liability or fault by Defendant or a finding of the validity of any claims asserted in the Lawsuit or of any wrongdoing or of any violation of New Mexico law or; (ii) an admission of or evidence of the appropriateness of certification of a litigation class; or (iii) as evidence for any purpose in this or any other proceeding, including as to the certification of any class, except that such materials may be offered or received in proceedings to enforce the Agreement or if Defendant, at its sole discretion, stipulates to the admission of such evidence. Notwithstanding the foregoing, Defendant may file the Agreement, or any judgment or order of the Court related to it, in any other action that may be brought against them, to support any defenses based on *res judicata*, collateral estoppel, release, or any other theory of claim preclusion or issue preclusion.

10. Class Counsel shall present to the Court for preliminary approval a third-party class administrator (“Class Administrator”) within ten days of entry of this Order. The Court will determine whether the Class Administrator should be appointed at the Final Approval Hearing.

11. The Administrator shall cause the Class Notice submitted to the Court as Exhibit 2 to the Agreement to be distributed in accordance with the procedures set forth in Paragraph 33 of the Agreement within sixty (60) days after the entry of this Order.

12. The Court has reviewed the Class Notice, the Plan of Allocation and Distribution and Claim Form, each of which it approves in form and substance. The Court finds that the form and methods of notice set forth in the Agreement: (i) are reasonable and the best practicable notice under the circumstances; (ii) are reasonably calculated to apprise Settlement Class Members of the pendency of the Lawsuit, of their rights to object to or opt-out of the Settlement, and of the Final Approval Hearing; (iii) constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meet the requirements of the New Mexico Rules of Civil Procedure, the requirements of due process under the New Mexico and United States Constitutions, and the requirements of any other applicable rules or laws. In addition, the Court finds that the Plan of Allocation and Distribution, including the claim submission procedures and Claim Form are fair, reasonable and adequate. Those procedures allow sufficient time and are simple and straightforward so that any Class Member who chooses to submit a Claim Form has ample opportunity to do so. The Claim Form and claim submission procedures assist the Class Members in making informed decisions as whether to submit a Claim Form. The Court also finds that the Plan of Allocation and Submission promotes participation of potential Settlement Class Members in the settlement and complies with the requirements of the Wrongful Death Act

and Rule 1-105, NMRA. These findings do not prejudice the rights of any Settlement Class Member to object to the notice procedures at the Settlement Final Approval Hearing.

13. The Final Approval Hearing shall be held before this Court, in Courtroom 502 of this Courthouse, at **9:00 a.m., on June 29, 2020**, or such alternate date as the Court may set as close to 60 days after the date that the Class Notice is required to be disseminated, *i.e.*, 90 days from the date of entry of this Order, as is convenient with the Court's schedule. At that hearing, the Court shall consider and/or determine, among other things: (i) whether the Settlement should be finally approved as fair, reasonable, and adequate; (ii) whether to finally certify a Settlement Class for settlement purposes only; (iii) whether the notice procedures comply with the New Mexico Rules and due process; (iv) the amount of attorneys' fees to be awarded to Class Counsel and the amount of any service awards to be paid to Class Representative; (v) whether Settlement Class Members should be bound by the Releases set forth in the Agreement; (vi) whether the Final Judgment and Order approving the Settlement and dismissing all claims asserted in this Lawsuit on the merits, with prejudice and without leave to amend, should be entered; and (vii) other actions, if any, to be enjoined or dismissed. The Final Approval Hearing may be postponed, adjourned or rescheduled by order of the Court without further notice to the Members of the Settlement Class, other than that which may be posted at the Court and on the Court's website. The Court may approve the Settlement at or after the Final Approval Hearing with such modifications as may be consented to by the Parties and without further notice to the Class Members.

14. Any potential Settlement Class Member who wishes to exclude himself, herself, or itself from the Settlement Class must submit to the Class Administrator a written request for

exclusion postmarked not later than **June 9, 2020** [twenty (20) days before the date set by this Order for the Final Approval Hearing].

15. The Class Administrator shall promptly log each request for exclusion that it receives and provide copies of the log and all such requests for exclusion to Defense Counsel and Class Counsel as requested. Within ten days after the deadline for Settlement Class Members to request exclusion, Class Counsel and Defense Counsel shall exchange a complete list of all timely and valid requests for exclusion received by the Class Administrator as of that date. Any Settlement Class Member who does not timely and validly request to be excluded from the Settlement Class before the deadline waives the right to do so in the future.

16. Any Settlement Class Member who does not submit a timely, written request for exclusion will be bound by all proceedings, orders and judgments in the Lawsuit, including the terms of the Settlement, if approved. All members of the Settlement Class who do not timely request exclusion in the manner set forth in the Class Notice and the Agreement shall be bound by any Final Judgment entered pursuant to the Agreement, and shall be barred and enjoined, now and in the future, from asserting any claims arising out of the facts alleges in the Second Amended Complaint against any Released Parties, as defined in the Agreement. Upon entry of a Final Judgment approving the Settlement, all members of the Settlement Class shall be conclusively deemed to have fully and finally released all of the Released Parties from any and all Released Claims.

17. Settlement Class Members who do not file a timely request for exclusion, may file a Notice of Intent to Object to the Settlement, or to Intervene in the Lawsuit to contest the Settlement, in accordance with Paragraph 32 of the Agreement. Any such notice of intent to object and/or intervene must be: (a) filed with the Clerk of the Court not later than **June 9, 2020**

[twenty (20) days before the date set by this Order for the Final Approval Hearing], and (b) sent by first-class mail to designated counsel such that they will be received by that date by:

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18. Any Notice of Intent to Object or Intervene must contain: (a) a heading which refers to the Lawsuit; (b) the name, address, telephone number and signature of the Settlement Class Member filing the objection or intervention request; (c) a statement whether the objector or intervenor intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying counsel by name, address and phone number; (d) a detailed statement of the specific legal and factual bases for intervention and/or each and every objection, and, if through counsel, a legal memorandum in support of the objection or intervention; and (e)

a list of any witnesses, along with the expected testimony of each such witness, and photocopies of exhibits which the objector intends to introduce at the Final Approval Hearing. Any Settlement Class Member who fails to object or seek to intervene in accordance with this Order will be deemed to have waived the right to object or intervene and shall be barred from raising their objections to the Settlement or Final Judgment in this or any other proceeding, including in an appeal.

19. Plaintiff's Motion for Final Approval of Class Action Settlement, and for attorneys' fees and on behalf of the Class Representative for a service award, as set forth in the Settlement Agreement shall be filed on or before **June 19, 2020** [ten (10) days before the date set by this Order for the Final Approval Hearing].

20. Class Counsel and/or Defense Counsel may file and serve a written response to any Notice of Intent to Object or to Intervene not later than 10 days before the Final Approval Hearing. Objections to the Settlement shall be heard, and any papers or briefs submitted in support of said objections shall be considered by the Court (unless the Court in its discretion shall otherwise direct), only if they comply with the objection procedures set forth herein.

21. The Court further preliminarily finds that neither Defendants, Defense Counsel nor Class Counsel, shall be responsible in any way for any attorneys' lien(s) or medical lien(s) submitted for any of the Settlement Class Members, nor shall any such liens be created by any of the efforts of the Parties to effectuate any of the terms of the Settlement Agreement.

22. Pending final determination of whether the Settlement should be approved, Plaintiffs and all Settlement Class Members are preliminarily enjoined from bringing any new action, including a new alleged class action, or attempting to amend an existing action, against Defendant, to assert any claims that would be released pursuant to the Settlement, and Plaintiffs

and all Settlement Class Members are also enjoined from proceeding with any pending action which asserts against Defendant claims, including putative class claims, arising out of or related to the claims and allegations asserted in the Lawsuit or that would otherwise fall within the scope of the Agreement and be released pursuant to the Settlement. The Court finds that no bond is necessary for issuance of this injunction.

23. If final approval of the Settlement is not obtained or the events set forth in the Agreement are not satisfied, this preliminary certification order, any final certification of a Settlement Class, and Final Judgment approving the Settlement shall be vacated *ab initio*. In that circumstance, the Settlement and any obligations Defendant may have under the Settlement (including, but not limited to, any obligation to pay attorneys' fees), and any order or judgment hereon (including, but not limited to, any preliminary or final certification of a Settlement Class) will be null and void and of no force and effect.

24. Upon motion of any party, the Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Settlement Class.

25. If any deadline in this order falls on a non-business day, then the deadline is extended until the next business day.

IT IS SO ORDERED.

Dated: 3/30/2020,  
2020



Carl Butkus  
District Court Judge