

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 GRANTING FINAL APPROVAL OF SETTLEMENT AGREEMENT,  
APPROVING AWARD OF ATTORNEYS' FEES AND COSTS AND AWARD OF  
INCENTIVE PAYMENTS**

THIS MATTER came before the Court upon <sup>the largely</sup> Unopposed Motion of 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  
("Plaintiffs") for Final Approval of Class Action Settlement Agreement ("Motion"), Class

Counsel's Application for Approval of Attorneys' Fees and Expenses and Award of Incentive

Payments to Class Representatives. The Court has considered (1) the facts and legal authorities  
*as well as the response by Defendants and Reply ("Plaintiffs' Response To Defendants' Response")* (2) the matters 

presented to the Court at the Final Fairness Hearing held on July 28, 2020, and has determined

that there is good cause for final approval of the Settlement Agreement and the entry of this

Order. Therefore, the Court finds, concludes and orders as follows:

*by Plaintiffs and the briefing and arguments as  
between Plaintiffs and Kenneth Ange  
Braley PC*

THE COURT FINDS:

1. On March 30, 2020, this Court granted Class Plaintiffs' Motion for Preliminary Approval of Class Action Settlement Agreement. In that Order, the Court (1) preliminarily approved the Settlement Agreement, (2) approved the form and manner of Notice to the Decedent Settlement Class, (3) approved the Plan of Allocation and Distribution and Claim Form, (4) set deadlines for exclusion requests and opt-outs, (5) appointed Angeion Group, LLC ("Angeion") as Class Administrator, and (6) set a hearing for final approval of the settlement.


2. In accordance with the Settlement Agreement and the Court's Order, Angeion mailed the Court approved notice package to potential Decedent Settlement Class members. Angeion also caused the publication of the Court-approved Notices as directed in the Court's order of preliminary approval. Angeion created a website to provide information to and answer questions from potential Decedent Settlement Class members, and further provided a toll-free number for potential Class members to call with questions.

3. The Notices provided all the information necessary for Decedent Settlement Class members to make an informed decision with respect to whether to remain in or opt out of the Decedent Settlement Class or whether to object to the proposed Settlement. The method of providing notice to potential Decedent Settlement Class members also complied with the requirements of due process. The Court-approved notice procedure provided all Decedent Settlement Class members with an opportunity to submit objections to the Settlement.

4. The deadline for filing Requests for Exclusion and for filing Objections to the settlement was July 6, 2020. No Requests for Exclusion or Objections to the Settlement were received.

5. The settlement process was well-informed, fair and adversarial. The extensive discovery engaged in by the parties provided them with a full opportunity to evaluate all aspects of the claims and defenses raised in this action. Settlement negotiations were adversarial and overseen by an experienced neutral mediator. The parties had sufficiently developed the facts in the action to fully analyze the pros and cons of settlement.

6. Further litigation would be risky, expensive and prolonged. Liability has been contested and Defendants asserted numerous defenses to the claims raised by Class Plaintiffs.

And the amount of the recovery is virtually the same as what could have been awarded because *upon best and reasonable estimates of potential claimants* of the damages limitations imposed by the Tort Claims Act. The duration and expense of continuing the litigation against these Defendants therefore weighs in favor of settlement approval. 

7. The Settlement provides to the Class a Settlement Fund in the amount of \$38,050,000.

8. The Class Representatives and Class Counsel believe this Settlement is in the best interest of the Decedent Settlement Class. All of the parties' attorneys are experienced trial attorneys with special expertise in class action and complex litigation.

9. The \$13,317,500 fee requested by the Plaintiffs represents thirty-five percent of the \$38,050,000 common fund recovered for the benefit of the Decedent Settlement Class. Thirty-five percent of the common fund is within the normal range of fee awards in common fund settlements and is consistent with the market rate.

10. The Court has reviewed the "Fryar factors" and concludes that these factors support the reasonableness of the requested fee: (1) the time and labor required, the novelty and difficulty, and requisite skill factor supports the reasonableness of the requested fee; (2) the

preclusion of other employment by the attorneys due to acceptance of the case factor supports the reasonableness of the requested fee; (3) the customary fee for similar actions in the locale factor supports the reasonableness of the requested fee; (4) the amount involved and the results obtained factor supports the reasonableness of the requested fee; (5) time limitations imposed by the client or the circumstances factor support the reasonableness of the requested fee; (6) the nature and length of the professional relationship with the client is immaterial under these *but, in any event, supports the reasonableness of the requested fee* circumstances; (7) the experience, reputation, and ability of the attorneys supports the reasonableness of the requested fee; and (8) whether the fee is fixed or contingent factor supports the reasonableness of the requested fee.

*JB*

11. As of December 5, 2019, Class Counsel's lodestar is \$9,383,607.90. The requested fee of \$13,317,000, is equivalent to applying a multiplier of 1.4 to the current lodestar. This multiplier is at the lower end of the range of multipliers commonly applied in other class actions and supports the reasonableness of the requested fee.

12. New Mexico imposes gross receipts tax on services. Accordingly, gross receipts tax of 7.875 percent is properly added to the amount of attorneys' fees.

13. Litigation expenses incurred and advanced by Class Counsel total \$1,680,446.05.

*settled* These expenses were reasonably and necessarily incurred <sup>*in part,*</sup> in the successful prosecution of the <sup>*part.*</sup> claims against the Defendants in this lawsuit and are properly reimbursed <sup>*in full.*</sup> *The Court is*

*JB*

*JB*

14. Given the circumstances presented in this case and the work performed by the Class Representatives on behalf of the Class, the requested incentive award of \$50,000 for each Class Representative is reasonable.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

*of the opinion that half of the requested expenses should be awarded out of the present settlement and that the other half should be attributed to the remaining as yet unresolved claims.*

1. The Settlement Agreement was entered into in good faith, is reasonable, fair and adequate, and in the best interest of the Class and is hereby granted final approval.

2. All claims in the action should be and hereby are dismissed as to the Released Parties including all claims for declaratory and injunctive relief, which dismissal shall become final and with prejudice on the Final Resolution Date as defined in the Settlement Agreement.

3. Each Released Party as defined in the Settlement Agreement is released from the claims which any Decedent Settlement Class member has, had or may have in the future, against such Released Person arising out of the facts alleged in the Complaint, effective as of the Final Resolution Date.

4. All Decedent Settlement Class members are hereby enjoined from asserting against any Released Party, any and all claims which they had, have, or may have in the future arising out of the facts alleged in the Complaint.

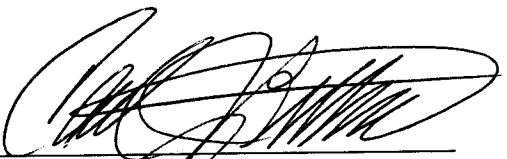
5. The Court retains continuing and exclusive jurisdiction over the parties to the Settlement Agreement, including Defendants and Decedent Settlement Class members, to administer, supervise, construe and enforce the Settlement Agreement in accordance with the terms for the mutual benefit of all the Parties.

6. The Court approves the following award of attorneys' fees, costs and incentive payments to be paid from the settlement fund in accordance with the terms of the Settlement Agreement: attorneys' fees in the amount of \$13,317,000; gross receipts tax on fees in the amount of \$738,959.12; litigation expenses in the amount of ~~\$1,680,446.05~~ <sup>\$840,223.03</sup>; and incentive awards to each Class Representative in the amount of \$50,000.



IT IS SO ORDERED.

DATED: 8/10/2020

  
HONORABLE CARL BUTKUS  
DISTRICT COURT JUDGE