

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

**SHAUN DURAN, MONICA FISCHETTI
PALMIERI WILLIAMS, ERDEM YILDIZ,
CORAL GONZALEZ-INAZ, and YOHANNA
GERGES, on behalf of themselves and others
similarly situated,**

Plaintiffs,

v.

No. D-101-CV-2023-00698

**NEW MEXICO DEPARTMENT OF
WORKFOCE SOLUTIONS, an executive
agency, and SARITA NAIR, in her official capacity
as secretary of the New Mexico Department
of Workforce Solutions,**

Defendants.

ORDER GRANTING JOINT MOTION FOR PRELIMINARY APPROVAL

The above-entitled matter came before the Court on the parties' Joint Motion for (1) Preliminary Approval of Class Action Settlement, (2) Certification of Settlement Class, (3) Approval of the Proposed Notice of Settlement and Class Action Settlement Procedure, and (4) Setting a Schedule for Final Approval ("Motion for Preliminary Approval"). Having considered the Joint Motion for Preliminary Approval, the proposed Settlement Agreement, the proposed notice of hearing, and for good cause shown, THE COURT FINDS:

I. CERTIFICATION OF SETTLEMENT CLASS

1. Rule 1-023 NMRA is a "remedial procedural device" that is to be interpreted liberally. *See Romero v. Phillip Morris, Inc.*, 2005-NMCA-035, ¶ 36, 137 N.M. 229.

2. The Rule requires the Court to make a certification decision "[a]s soon as practicable after the commencement of" the action. Rule 1-023(C)(1) NMRA.

3. Certification is appropriate if all requirements of Rule 1-023(A) are met, as well as at least one of the requirements of Rule 1-023(B).

4. For purposes of class certification, the relevant facts—though disputed—are those alleged in the class action complaint (“Complaint”). *See Brooks v. Norwest Corp.*, 2004-NMCA-134, ¶ 9, 103 P.3d 39 (stating that whether the requirements of Rule 23 are met may be decided on the pleadings, and that “certification is not an appropriate time to examine the merits.”); *Davis v. Devon Energy Corp.*, 2009-NMSC-048, ¶ 4, 147 N.M. 157 (stating that when applying Rule 23, courts “accept as true all well-pled factual allegations from Plaintiffs’ complaints.”).

5. The Court has broad discretion to grant class certification. *See Brooks*, 2004-NMCA-134, ¶ 7.

6. Based on the allegations in the Complaint and the arguments set forth in the Joint Motion, and without deciding any of the allegations in the Complaint on the merits, the Court concludes that all requirements of Rule 1-023(A) are met, the requirements of both Rule 1-023(B)(1)(A) and Rule 1-023(B)(2) are met, and that the following class shall be certified for settlement purposes only under Rule 1-023(B)(1)(A) and Rule 1-023(B)(2):

[A]ll individuals who received Federal Pandemic Benefits, who were subsequently assessed an overpayment of Federal Pandemic Benefits, and who did not receive a full waiver of those overpayments, either because they did not apply for a waiver, a waiver application was denied, a waiver application was granted as to some, but not all, of the overpaid Federal Pandemic Benefits, or a waiver application was granted but did not provide for a refund of amounts previously recouped.

II. PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

7. The Court has reviewed the proposed Agreement, which contains provisions for (1) processing of Blanket Waivers; (2) promulgation of regulations for an Individual Waiver and subsequent processing of Individual Waivers; (3) processing of refunds; and (4) closure of the litigation and release of Defendants.

8. Approval of a settlement class action under Rule 1-023(E) is appropriate when the requirements of Rule 1-023 are met and “the settlement would be fair, adequate, and in the best interests of the class.” *Rivera-Platte v. First Colony Life Ins. Co.*, 2007-NMCA-158, ¶ 26, 143 N.M. 158. To evaluate the fairness of a class action settlement, the Court must consider the three factors set forth in *Rivera-Platte*:

First, we examine the settlement process, including the adequacy of discovery, the fairness of the process afforded objectors, and the fairness and honesty of the negotiation. Then we look at the risks of litigation, including the merits and complexities of the parties’ claims and the potential duration and cost of trial. We view the reasonableness of the settlement in light of the risks of litigation and the possible recovery at trial. Finally, we examine the class members’ reaction to the settlement.

9. The Court finds that the first *Rivera-Platte* factor is met because the Agreement was reached after Class Counsel investigated and litigated the claims and was a result of extensive, arm’s-length negotiations between qualified counsel. The proposed class notice attached as *Exhibit 2* to the Motion for Preliminary Approval (“class notice”) concisely and accurately summarizes the major provisions of the proposed Agreement in a clear, readable format, and provides class members information about how to obtain the full Agreement and how to object to it. The parties’ plan for distributing the hearing notice to class members as set forth in Paragraph 25 of the Agreement is the best notice practicable under the circumstances, allows class members a full and fair opportunity to consider the proposed settlement, and is reasonably calculated to reach all members of the class who would be bound by the settlement. There is no additional method of distribution that would be financially feasible and reasonably likely to notify class members who may not receive notice pursuant to the proposed distribution plan.

10. The Court finds that the second *Rivera-Platte* factor is met because the Agreement is fair and reasonable. The Agreement achieves substantial benefits for the class and resolves

complex litigation with several legal disputes that would pose risks for the class on the merits, and the compromises the parties reached reasonably reflect these risks of litigation. *Rivera-Platte*, 2007-NMCA-158, ¶ 42.

11. The Court finds that the third *Rivera-Platte* factor is met because the Court and the parties are unaware of any negative reactions to the settlement.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

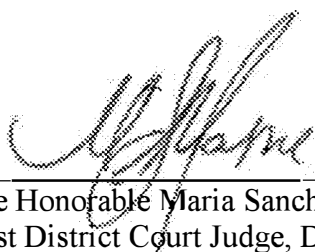
12. The Settlement Class is certified under Rules 1-023(B)(1)(A) and 1-023(B)(2).

13. The Settlement Agreement is preliminarily approved. Pursuant to Rule 1-023(E), final approval and entry of the Settlement Agreement is subject to a final hearing of any objections of members of the class to the proposed Settlement Agreement.

14. The Court approves the proposed class notice, which is attached as *Exhibit 2* to the Joint Motion.

15. Within fourteen days, Defendants are directed to provide notice to members of the proposed class by: (i) posting a copy of the approved notice on each class member's online portal account; and (ii) sending the approved notice to each class member by either email or U.S. Mail, depending on each class member's correspondence preference in the department's system. The approved notice shall be made available to class members in English and Spanish.

16. A Settlement Hearing shall be held before this Court on November 21, 2024, at 2:15 pm. For thirty (30) minutes to determine whether the settlement as defined by the Settlement Agreement, or as modified, is fair, reasonable and adequate and should be given final approval. Hearing is an in-person hearing.


11/13/24
The Honorable Maria Sanchez-Gagne
First District Court Judge, Div. II

Submitted by:

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