

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

**CINDY PINO,
GENEVIEVE SANDOVAL,
CATHY SAAVEDRA,
ELIZABETH FINLEY, and
MICHAELA SILVA,
on behalf of themselves and others similarly situated,**

Plaintiffs,

v.

Case No. D-202-CV-2018-03591

CITY OF ALBUQUERQUE,

Defendant.

**ORDER GRANTING APPROVAL OF SETTLEMENT AGREEMENT, APPROVING
AWARD OF ATTORNEYS' FEES, TAXES AND COSTS**

THIS MATTER came before the Court upon Unopposed Motion of Plaintiffs Cindy Pino, Genevieve Sandoval, Cathy Saavedra, Elizabeth Finley, and Michaela Silva, individually and on behalf of others similarly situated who have opted into this collective action ("Plaintiffs") for Approval of Collective Action Settlement Agreement ("Motion"), Class Counsel's Application for Approval of Attorneys' Fees, Taxes and Expenses. The Court has considered (1) the facts and legal authorities set forth in the Motion and the declarations submitted in support thereof, (2) the matters presented to the Court at the hearing held on November 17, 2022, and has determined that there is good cause for approval of the Settlement Agreement and the entry of this Order. Therefore, the Court finds, concludes and orders as follows:

THE COURT FINDS:

1. On September 29, 2022, this Court approved the form and manner of Notice to the Class and set a hearing for approval of the settlement.

2. In accordance with the Settlement Agreement and the Court's approval of the Notice, Class Counsel mailed the Court-approved notice to all Class Members at their last known address as updated by the City of Albuquerque ("City") and the City conspicuously posted the Notice in all areas where Class Members worked. Class Counsel also had the Notice and Settlement Agreement posted on the Class website to provide information to Class Members.

3. 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.

4. Further litigation would be risky, expensive and prolonged. Liability has been contested and the City asserted numerous defenses to the claims raised by Class Plaintiffs. And the recovery is reasonable and fair in light of the risk involved had the parties continued through further litigation and to trial. The duration and expense of continuing the litigation against the City therefore weighs in favor of settlement approval.

5. The Settlement provides to the Class a Settlement Fund in the amount of \$17,000,000 which provides 100% back pay for all Class Members, plus substantial additional retirement benefits and raises for all Class Members. The Public Employee Retirement Administration ("PERA") has agreed to provide retirement benefits pursuant to the Settlement Agreement as shown by its letter attached to the Motion.

6. The Class Representatives and Class Counsel believe this Settlement is in the best interest of the Class Members. All of the parties' attorneys are experienced attorneys with special expertise in class and/or collective actions and complex litigation.

7. The \$4,145,908 fee requested by the Plaintiffs which includes gross receipts taxes represents 24.4% of the \$17,000,000 common fund recovered for the benefit of the Plaintiffs and Class Members. When factoring in the value of the additional benefits obtained through the Settlement estimated to be \$19,624,772, the requested fee is only 11.3% of the total benefit provided by the Settlement Agreement. Twenty four percent of the common fund is well within the normal range of fee awards in common fund settlements and is consistent with the market rate.

8. 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 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.

9. New Mexico imposes gross receipts tax on services. Accordingly, gross receipts tax of 7.75 percent is properly added to the amount of attorneys' fees. The gross receipts taxes are included in the \$4,145,908.

10. Litigation expenses incurred and advanced by Class Counsel were reasonably and necessarily incurred in the successful prosecution of the claims against the City in this lawsuit and

are properly reimbursed in full. The City has agreed to pay up to \$125,000 of these expenses. Therefore, any remaining amount above the \$125,000 shall be paid from the \$4,145,908 that will be used for attorneys' fees, taxes, and additional litigation costs.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

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 approval.

2. All claims in the action should be and hereby are dismissed as to the Released Parties, which dismissal shall become final and with prejudice on the date as defined in the Settlement Agreement.

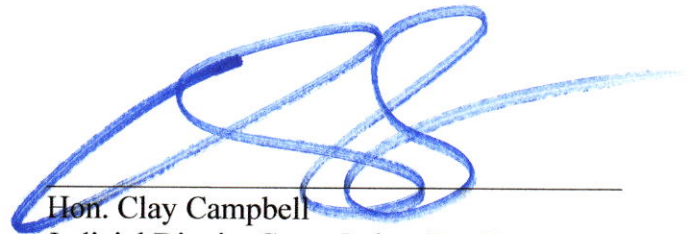
3. Each Released Party as defined in the Settlement Agreement is released from the claims which any Class Member has, had or may have in the future, against such Released Person arising out of the facts alleged in the Complaint, effective as of the date of dismissal with prejudice.

4. All 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 the City and Class Members, to administer, supervise, construe and enforce the Settlement Agreement in accordance with the terms for the mutual benefit of the Parties.

6. The Court approves the following award of attorneys' fees, taxes, and costs to be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement: attorneys' fees, gross receipts taxes on the fees, and litigation expenses in the amount of \$4,145,908.

IT IS SO ORDERED.



Hon. Clay Campbell
Judicial District Court Judge, Pro Tempore
Second Judicial District of New Mexico

Approved:

/s/ Alexandra Freedman Smith
Alexandra Freedman Smith
Attorney for Plaintiffs

/s/ David A. Freedman
Attorney for Plaintiffs

/s/ Ian G. Stoker
Ian G. Stoker
Managing City Attorney,
City of Albuquerque

/s/ Jason M. Burnette
Jason M. Burnette
Attorney for Defendant