

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

SHAUN DURAN, *et al.*,

Plaintiffs,

v.

No. D-101-CV-2023-00698
Judge Maria Sanchez-Gagne

NEW MEXICO DEPARTMENT OF
WORKFORCE SOLUTIONS, *et al.*,

Defendants.

AMENDED
ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT
(Settlement Agreement attached)

THIS MATTER came before the Court on January 9, 2025 for a Final Approval Hearing on the parties' Joint Motion for (1) Preliminary Approval of Class Action Settlement, (2) Certification of Settlement, (3) Approval of Proposed Notice of Settlement and Class Action Settlement Procedure, and (4) Setting a Schedule for Final Approval. The Plaintiffs were represented by their attorneys, Adam C. Flores, Stephanie Welch, Sovereign Hager and Emma O'Sullivan. The Defendants were represented by their attorneys, Richard Branch, Gregory Lauer and Will Lusk-Claiborne. Having considered the Motion for Preliminary Approval, the proposed Settlement Agreement ("Agreement"), the declarations from Plaintiffs, class members and Defendants that were entered into the record, and the arguments of counsel at the Final Approval Hearing, and for good cause shown:

THE COURT FINDS:

1. This Court has jurisdiction over the subject matter of the litigation and over all parties to the litigation, including the Rules 1-023(A), (B)(1)(a) and (B)(2) settlement class, which was certified by the Court on November 13, 2024, and is defined to include:

All 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.

2. The Court has reviewed the Agreement, which contains, among other terms, provisions for: (i) evaluating and applying federally approved overpayment waiver criteria (known as “Blanket Waivers”) to class members’ overpayments of pandemic related unemployment benefits; (ii) promulgating administrative rules for approving and denying Individualized Waivers and notifying class members about the process to apply for Individualized Waivers; (iii) processing applications for Individualized Waivers submitted by class members that are determined eligible to receive Individualized Waivers under those rules; (iv) issuing refunds of previously recouped overpayments that have been or are waived; and (v) terms for dismissing this Lawsuit with prejudice and terminating the Court’s continuing jurisdiction to enforce this Settlement Agreement. Approval of a settlement class action under Rule 1-023(E) is appropriate when the requirements of Rule 1-023 are met and the “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 *Rivera-Platte* factors:

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 class members’ reaction to the settlement.

Id. ¶ 42.

3. The Court finds that the first *Rivera-Platte* factor, the settlement process, is met because:

- a. *Adequacy of Discovery*: Plaintiffs undertook an extensive fact investigation prior to and since filing the case, including interviewing numerous affected federal pandemic benefits (FPB) claimants and filing a public records lawsuit against Defendants to obtain materials necessary for this litigation. The parties have also shared information during the extensive negotiation process.
- b. *Fairness of Process Afforded Objectors*: Plaintiffs and Defendants have also afforded objectors a fair process. The notice to the class is fair and appropriate. The parties drafted and the Court approved a Class Notice that concisely and accurately summarizes the major provisions of the Agreement. The Class Notice is in simple, understandable language. The Class Notice provides phone numbers and emails for people to contact counsel to ask questions or obtain additional information, including copies of the Agreement upon request. The process for distribution of the Class Notice concerning the Final Approval Hearing was also reasonably calculated to reach as many class members as possible. On December 6, 2024, Defendants: (a) posted a copy to each class member's online portal account and (b) sent a copy to each class member by either email or U.S. Mail, depending on each member's stated correspondence preference. Agreement ¶ 25. The Class Notice was made available to all class members in both English and Spanish. *Id.* The Class Notice was sent to 59,995 class members. This allowed class members approximately one month to object to the Agreement and/or appear at the Final Approval Hearing. Class members therefore had a full and fair opportunity to consider the proposed Agreement, and received the best possible notice of it.
- c. *Fairness and Honesty of Negotiations*: The Agreement provides for relief in the form of waivers of FPB overpayments to the maximum extent allowed by federal law and protections of class members' rights to due process. The parties worked diligently through contested negotiations over fifteen months at arm's length, representing their separate clients, to develop a settlement framework that enables the Department to implement waiver processes and ensure the protection of claimants' rights in those processes and class counsel to meaningfully enforce class members' rights under the Agreement. There was no self-dealing by counsel. Plaintiffs asked the Court to approve limited class representative incentives, costs, and attorneys' fees, and costs, up to an agreed upon cap, that are not taken from any funds shared with the class, but are to be paid separately from Defendants' budget based on actual successful work performed in this case.

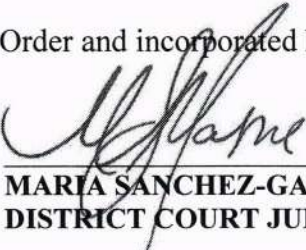
4. The Court finds that the second *Rivera-Platte* factor, the risks of litigation, is met because the Agreement provides for a substantial amount of the relief Plaintiffs sought in the Complaint, while recognizing the risks posed by several factual and legal defenses Defendants would otherwise assert in this litigation. In lieu of litigating a complex case to judgment and risking potential dismissal, the Agreement secures valuable relief for the class, likely exceeding \$100

million in total benefits that Defendants might otherwise seek to recoup from class members. From Defendants' perspective, the relief sought in the Agreement focuses the Department's resources not on this litigation, but on promptly providing the foremost relief to class members. The parties agree that it is in the best interests of the class to ensure that the Defendants work promptly to rectify past issues with the FPB. Removing the financial burden on class members by quickly processing waivers and refunds is the top priority of the parties, and this Agreement meets these goals.

5. The Court finds that the third *Rivera-Platte* factor is met because the reaction of the class to the Settlement Agreement is overwhelmingly positive. Class notice was sent to 59,995 class members, and the Court received only eight objections to the Settlement Agreement, which are better characterized as statements of class members or members of the public, as none of the submissions contained any objection to any actual term or provision of the Agreement. Others submitted declarations in support of the Settlement Agreement, including a New Mexico Legal Aid Staff Attorney with experience in government benefits and the Department's Director of the Unemployment Insurance Division. The Court also considered the declaration of Yohanna Gerges, one of the named plaintiffs in the case, who favors the Agreement, and statements from class counsel representing that counsel have spoken with over 300 class members who supported the settlement. The Court is unaware of any negative reaction to the settlement from class members.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

A. Pursuant to Rule 1-023(E) NMRA, the Court GRANTS final approval of the Settlement Agreement, which is attached to this Order and incorporated herein;


1/24/25
MARIA SANCHEZ-GAGNE
DISTRICT COURT JUDGE

SUBMITTED BY:

IVES & FLORES, PA

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APPROVED BY:

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

Approved via email – 1-22-2025

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

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

Plaintiffs,

v.

No. D-101-CV-2023-00698
Judge Maria Sanchez-Gagne

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

Defendants.

SETTLEMENT AGREEMENT

Recitals

1. Introduction. This action challenges certain alleged practices of Defendants New Mexico Department of Workforce Solutions (“NMDWS”) and Sarita Nair as the cabinet secretary of the department (collectively, “Defendants”) in the administration of federal unemployment benefits pursuant to one or more of the federal pandemic relief programs established under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Continued Assistance for Unemployed Workers Act, and the American Rescue Plan Act (collectively, “Federal Pandemic Benefits”). This Settlement Agreement only governs waivers of overpayments of Federal Pandemic Benefits. Nothing in this Settlement Agreement is intended to compel waivers of overpayments of regular state unemployment benefits or require any changes to policies or procedures with respect to regular state unemployment insurance benefits.

2. Nature of the Lawsuit. On March 27, 2023, five individuals who had been assessed overpayments of Federal Pandemic Benefits filed this lawsuit on behalf of themselves and others similarly situated (collectively, “Plaintiffs”). Plaintiffs claim that Defendants: (i) failed to provide claimants of Federal Pandemic Benefits adequate notice of the benefits they were receiving or the basis for those benefits, such that claimants could not assess whether Defendants’ determinations were accurate, or meaningfully challenge Defendants’ assessments; (ii) failed to provide notice of the serious financial and personal consequences of failing to appeal overpayments, including overpayments caused by Defendants’ own errors; (iii) assessed overpayments without providing

information sufficient to determine whether or why an overpayment occurred, thereby preventing meaningful challenges to overpayment assessments; (iv) recouped or collected overpaid benefits from claimants before the time had run to challenge Defendants' findings; (v) failed to provide claimants adequate notice of the availability of overpayment waivers and the information needed to determine whether claimants were eligible for a waiver; (vi) failed to promulgate regulations in conformity with the State Rules Act and the Workforce Solutions Department Act, governing the overpayment waiver application processes available to claimants, the criteria for granting or denying such overpayment waivers, and the right to appeal the denial of such waiver applications; (vii) failed to pause overpayment collections after a claimant requested a waiver; and (viii) after granting a waiver, failed to refund amounts that were collected towards the particular overpayment prior to the Determination of waiver eligibility.

3. **No Admission of Fault.** Defendants vigorously deny each and all of Plaintiffs' claims, including all assertions that Defendants' practices and administration of Federal Pandemic Benefits programs are violative of the United States and New Mexico Constitutions or any federal or state laws. Defendants have agreed to take the actions outlined in this Settlement Agreement as part of NMDWS's commitment to full transparency and integrity with respect to its administration of the Federal Pandemic Benefits programs. A finding by the Court that Defendants have violated any federal or state laws is not a necessary precondition to the parties entering into this Settlement Agreement or to the Court's acceptance of same. To that end, the parties agree expressly that no finding of such a violation has been or shall be made.

4. **Preservation of Defenses.** Defendants expressly reserve any and all rights, privileges, positions, and defenses to which they could have availed themselves, absent this Settlement Agreement, in the event that it is not executed, or it is voided or rejected in whole or in part by the parties or the Court. This includes but is not limited to any and all arguments related to the existence of a certifiable class, the proper forum for this action to be litigated in, and the standing of any and all the Plaintiffs to bring certain claims.

Definitions

5. **"Blanket Waiver"** refers to circumstances in which a state may approve waiver of recovery for overpayments of Federal Pandemic Benefits (FPBs) using a single set of facts. Application of these circumstances does not require the individual to submit a request for such a waiver. However, the state must include documentation of its waiver determination on the individual's claim.

6. **"Certification Date"** means the date this Settlement Agreement receives final approval from the Court.

7. **"Class," "Class Members," or "Settlement Class"** means all 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. Excluded from this definition are individuals who received state unemployment benefits pursuant to NMSA 1978, § 51-1-1 through 51-1-59, but who were not assessed an overpayment of Federal Pandemic Benefits. Individuals who received state unemployment benefits and were also assessed an overpayment of Federal Pandemic Benefits are Class Members, but will only be entitled to relief for overpayments of Federal Pandemic Benefits, and not state unemployment benefits. Also excluded from this definition are individuals who have been assessed overpayments of Federal Pandemic Benefits as a result of their knowingly false statements, knowingly false representations, or knowing failure to disclose material facts, as described in NMSA 1978, § 51-1-38(A) and (B) (2013) and as determined by NMDWS.

8. **“Class Counsel”** means attorneys with the New Mexico Center on Law and Poverty (Sovereign Hager, Emma O’Sullivan, and Stephanie Welch), and Ives & Flores, P.A. (Laura Schauer Ives and Adam C. Flores).

9. **“Class Representative”** means Shaun Duran, Monica Fischetti Palmieri Williams, Erdem Yildiz, Coral Gonzalez-Inza, and Yohanna Gerges.

10. **“Court”** means the court in which this Lawsuit is pending.

11. **“Defendants”** means the New Mexico Department of Workforce Solutions and Sarita Nair in her official capacity as the cabinet secretary of NMDWS. Because the individual defendant is sued solely in her official capacity, the parties incorporate the provisions of Rule 1-025(D) NMRA into this Settlement Agreement.

12. **“Determination”** means a determination or redetermination by Defendants regarding benefits, overpayment, waiver of overpayment, or fraud, whether based on monetary or non-monetary factors.

13. **“Federal Pandemic Benefits”** (FPBs) means the federal benefits described in Paragraph 1 of this Settlement Agreement.

14. **“Fraud Exclusion”** means any individual who would otherwise be a Class Member but is excluded from the Settlement Class because the individual obtained Federal Pandemic Benefits as a result of knowing false statements, knowing false representations, or knowing failure to disclose material facts, as determined by NMDWS and described in NMSA 1978, § 51-1-38(A) and (B) (2013).

15. **“Individualized Waiver”** refers to circumstances in which an individual who has been assessed an FPBs-based overpayment is not eligible for a blanket waiver but nevertheless may be eligible for a waiver of the overpayment based on a determination that 1) the individual was without fault in the overpayment, and 2) requiring repayment by the individual would be “contrary to equity and good conscience.” See generally UIPL No. 20-21 (May 5, 2021) at 6. Nothing in this Agreement requires NMDWS to grant an individualized waiver in the absence of an application from a claimant.

16. **“Lawsuit”** means the case described in Paragraph 2 of this Settlement Agreement, filed in the First Judicial District Court under Cause Number D-101-CV-2023-00698 and/or Federal Court Case No. 23-417-SCY-JFR.

17. **“Parties”** means Plaintiffs and Defendants.

18. Unless otherwise specified, **“Plaintiffs”** means the named plaintiffs in this Lawsuit and all Class Members.

19. **“Settlement Agreement”** means this document.

20. **“Shall,” “must,”** and **“will,”** are mandatory terms and mean a duty, obligation, and requirement bargained for and intended by the Parties.

Agreement as to Processes Prior to Joint Motion for Certification

21. **Binding Agreement as to Initial Processes.** Upon the execution of this Settlement Agreement between the parties, this section—the Agreement as to Processes Prior to Joint Motion for Certification—becomes a binding contract between the parties, enforceable prior to the Court’s approval of the entire Settlement Agreement.

22. **Initial Processes.** Pursuant to this Agreement as to Processes Prior to Joint Motion for Certification, and in furtherance of the shared goal of filing the joint motion to certify the Class for purposes of settlement only and preliminarily approve this Settlement Agreement, the Parties shall do the following:

- a. Class Counsel shall grant Defendants an indefinite extension to file an answer to the Complaint, and the Parties agree that Class Counsel will file notices of active prosecution with the Court so the Lawsuit is not dismissed for failure to prosecute. This extension of time shall continue until either the Settlement Agreement is voided or until the Court either accepts or rejects the Settlement Agreement.
- b. By April 30, 2024, if Defendants believe that any material term in the Settlement Agreement requires consultation with or approval by the Department of Labor, Defendants will provide to Class Counsel whatever materials and information Defendants propose to submit to the Department of Labor in order to seek such advice or approval. To the degree that any portion of Defendants’ request or presentation to the Department of Labor will be oral, Defendants will provide Class Counsel with the proposed substance in writing.
- c. By May 15, 2024, Defendants will submit to the Department of Labor any requests for advice or approval of any matters materially affecting the Settlement Agreement.
- d. If any response from the Department of Labor would prohibit or otherwise interfere with or impede some action contemplated by the Settlement Agreement, within seven

days of receiving DOL's response, Defendants will provide written evidence from the Department of Labor on the matter, along with any reasons the Department of Labor has provided orally, if it has done so. The Parties will meet in good faith to determine an alternative action prior to submitting their joint motion to certify the Class and preliminarily approve this Settlement Agreement. In the event the parties reach an impasse after meeting in good faith, either party shall have the right to void the Settlement Agreement.

- e. Within fourteen days after the parties have resolved any issues raised by the Department of Labor's responses to Defendants' inquiries, Defendants will provide to Class Counsel: (i) the number of Class Members and (ii) the number of Fraud Exclusions. Defendants will provide Class Counsel with the two categories of individuals who are excluded from the Class based on fraud: individuals who were incarcerated at the time they claimed benefits and individuals who failed to report earnings while receiving FPBs.
- f. Within seven days after receiving the information described in Paragraph 22(e), Plaintiffs will notify DWS of any dispute regarding class membership. The Parties will work in good faith to resolve the dispute prior to moving to certify the Class and preliminarily approve this Settlement Agreement. If the Parties are unable to reach agreement after good-faith negotiations, either party shall have the right to void the Settlement Agreement.
- g. If the Parties reach an agreement as to 1) the number of Class Members and 2) the number of Fraud Exclusions, the Parties shall file a joint motion for class certification within fourteen days of reaching that agreement.

Settlement Class Certification

23. Settlement Class Certification Motion and Order. The Parties will jointly submit to the Court a motion for an Order certifying this Lawsuit as a class action for purposes of settlement only and preliminarily approving this Settlement Agreement. In connection with the certification and preliminary approval process, the Parties will submit to the Court a proposed order setting a date for the final approval hearing pursuant to Rule 1-023(E) NMRA and approving both the form of notice of the final approval hearing and timelines for providing such notice to the Settlement Class. The Parties will also submit to the Court a proposed Order approving the Settlement Agreement. The proposed Order approving the Settlement Agreement will (i) contain findings required for class certification by Rule 1-023(A), Rule 1-023(B)(1), and Rule 1-023(B)(2); (ii) certify the Class for purposes of settlement only; (iii) incorporate the requirements of this Settlement Agreement, and enter judgment thereto, and (iv) provide for continuing jurisdiction over this Lawsuit to resolve disputes and enforce the terms of this Settlement Agreement until dismissal of the Lawsuit.

24. Preliminary Approval. If the Court grants the joint motion to certify the Class and preliminarily approve this Settlement Agreement, Class Members shall have the opportunity to object to this Settlement Agreement by attending the final approval hearing and presenting any objections to the Court. Class Members who wish to attend the final approval hearing to present

objections must notify Class Counsel in writing no later than three days prior to the hearing, stating their full name, address, telephone number, intention to appear, and a brief explanation of the basis for the Class Member's objection.

25. Class Notice. Within fourteen days of the Court's granting of the joint motion to certify the Class and preliminarily approve this Settlement Agreement, the Court's approved notice of the final approval hearing shall be provided to the Settlement Class informing Class Members of this Settlement Agreement and their right to object. Defendants will be responsible for providing notice by: (i) posting a copy of the Court's approved notice on each Class Member's online portal account; and (ii) sending the Court's approved notice to each Class Member either by email or U.S. Mail, depending on the Class Member's correspondence preference. The Court's approved notice shall be made available to Class Members in English and Spanish. Defendants shall bear all costs associated with the notice described in this Paragraph.

26. Preservation of Rights and Defenses. In the event this Settlement Agreement is not approved by the Court as required by Rule 1-023(E) NMRA, the Parties intend to reserve all claims, rights, and defenses that would have otherwise been extinguished by this Settlement Agreement. This includes but is not limited to any and all arguments related to the existence of a certifiable class, the proper forum for this action to be litigated in, or the standing of any of the Plaintiffs to bring certain claims.

27. Curing Class Certification Issues. In the event this Settlement Agreement is not approved by the Court as required by Rule 1-023(E) NMRA, the Parties, in their discretion, may renegotiate the terms of this Settlement Agreement to cure any issues preventing class certification or void the agreement.

Defendants' Obligation to Process Blanket Waivers

28. Preapproved Blanket Waivers. Within fourteen days of the Certification Date, Defendants will determine if any Class Members' overpayments are of one of the seven types for which the Department of Labor has preapproved Blanket Waivers. Defendants will then apply those Blanket Waivers to the overpayments meeting the preapproved criteria. Defendants shall notify Class Counsel when the processing of all preapproved Blanket Waivers is complete and disclose the number of Class Members who received a preapproved Blanket Waiver.

29. Applying Individual Waivers During the Preapproved Blanket Waiver Process. If, during the process of determining whether any of the seven preapproved Blanket Waivers apply to a particular Class Member, a Class Member requests an individualized waiver and Defendants find that the criteria established by Department of Labor for applying an Individual Waiver are satisfied with respect to that Class Member, Defendants will apply an Individual Waiver to that Class Member's overpayment.

30. Opportunity to Request Additional Blanket Waivers. If any Class Members' overpayments do not satisfy the criteria for the Department of Labor's preapproved Blanket Waivers, Defendants will assist Class Counsel in identifying other potential categories of additional Blanket Waivers using available system resources. Within thirty days of the Certification Date, the Parties will confer in good faith to write a request for written approval from

the Department of Labor for any additional Blanket Waiver categories specific to the Class. If the Parties cannot agree on the proposed categories of additional Blanket Waivers for which to seek Department of Labor approval, the parties can resort to the dispute resolution process described in Paragraph 51 of this Settlement Agreement.

31. Requesting Additional Blanket Waivers. Within seven after the Parties reach an agreement about any additional Blanket Waivers that Defendants should request, Defendants shall submit the request for these additional Blanket Waiver categories to the Department of Labor.

32. Denial of Additional Blanket Waivers. If approval of any of the requested additional Blanket Waiver categories is denied by the Department of Labor, within seven days of receiving the denial, Defendants will provide written evidence from the Department of Labor stating that the proposed Blanket Waiver category is denied, along with any reasons the Department of Labor has provided. It shall not be a violation of this Agreement if the Department of Labor does not communicate to Defendants whether the requested categories are approved or denied, as Defendants would be unable to provide written evidence to Class Counsel in such eventuality.

33. Granting Additional Blanket Waivers. Within thirty days of receiving the Department of Labor's approval of any additional Blanket Waiver categories, Defendants will begin processing the additional Blanket Waivers. Defendants shall notify Class Counsel once the processing of all additional Blanket Waivers is complete and disclose the number of Class Members who received such waivers. Processing shall be complete within ninety days. However, in the event unforeseen circumstances arise that make completion within this timeframe impossible, Plaintiffs will permit a reasonable, agreed upon extension to complete processing. Disputes about extensions are subject to the dispute resolution process referenced in Paragraph 51 of this Settlement Agreement.

Defendants' Obligation to Promulgate Regulations and Process Individualized Waivers

34. Individualized Waiver Regulations. Within thirty days of the Certification Date, Defendants will begin the rulemaking process, in conformity with the State Rules Act and the Workforce Solutions Department Act, governing the Individualized Waiver application processes applicable to the Settlement Class, the criteria for granting or denying such Individualized Waivers, and the right to appeal the denial of such Individualized Waiver applications. The content of the regulations shall not conflict with the terms of this Settlement Agreement. As of the Certification Date and until the regulations become effective by publication, NMDWS may grant Class member's Individualized Waiver applications, but may not deny such applications. Any denials must be held in abeyance until the regulations become effective unless the denial is based on the requester's exclusion from the class due to fraud.

35. Involvement of Class Counsel. Class Counsel may participate in the public hearing and other aspects of the rulemaking process as allowed by the State Rules Act but shall not be afforded additional decision-making authority with respect to the content of these regulations. However, if Class Counsel has a good-faith concern that regulations contemplated, proposed, or passed by Defendants conflict with the terms of this Settlement Agreement, Class Counsel may resort to the dispute resolution process referenced in Paragraph 51 of this Settlement Agreement.

36. Drafting Individualized Waiver Notices. Within fourteen days after the Certification Date, Defendants will produce to Class Counsel proposed final versions of the Individualized Waiver notices described in Paragraph 37 of this Settlement Agreement. Class Counsel will then have fourteen days to provide proposed revisions to Defendants' proposed notices. If the Parties cannot agree on the final version of the Individualized Waiver notices within 14 days of Class Counsel providing their proposed revisions, the Parties can resort to the dispute resolution process described in Paragraph 51 of this Settlement Agreement.

37. Content of the Individualized Waiver Notices. The Individualized Waiver notice must be reasonably calculated and worded to inform Class Members of their rights and obligations in the Individualized Waiver process. The notice will state in plain English the following:

- (i) that an overpayment of Federal Pandemic Benefits was assessed to the Class Member's account(s);
- (ii) the date of the original overpayment Determination notice;
- (iii) the basis for any Determination that the overpayment occurred;
- (iv) the amount of the overpayment and the Federal Pandemic Benefits program(s) from which the overpayment originated;
- (v) an explanation of the eligibility of the Class Member to apply for an Individualized Waiver;
- (vi) specific instructions about the Individualized Waiver application process, including that claimants need only respond to the following two questions:

Question 1) "What is the reason you are requesting a waiver?"

In describing Question 1, the Individualized Waiver notice will inform Class Members that when they complete their application online or by contacting NMDWS by phone, information that would satisfy this question will include the following:

- The overpayment was due to the Department of Workforce Solutions' error or mistake; OR
- The employer provided incorrect or untimely information; OR
- The claimant provided all the information that the Department of Workforce Solutions requested, but the Department did not use the information or delayed using the information; OR

- The Department of Workforce Solutions' conflicting, changing, or confusing information or instructions caused the claimant to provide incorrect information; OR
- When the claimant had a question about their benefits, they tried, and were unable to reach the Department of Workforce Solutions to ask their question; OR
- The claimant did not understand what information the Department of Workforce Solutions needed from them.

Question 2)"Would repaying the overpayment cause a financial hardship?

In describing Question 2, the Individualized Waiver notice will inform Class Members that when they complete their application online or by contacting NMDWS by phone, information that would satisfy this question will include the following:

- Repayment would hurt the claimant financially; OR
- The claimant gave up something or is in a worse financial position because they relied on receiving and keeping these unemployment payments; OR
- Requiring repayment would be unconscionable, for example because it would be extremely unfair or it would undermine the claimant's financial stability.

- (vii) that the standard for granting a waiver is that the claimant was not at fault in receiving the overpayment and repayment would be a financial hardship, along with a reference to the NMAC regulations where Class Members may access the standards under which the Individualized Waiver application will be reviewed;
- (viii) that upon the granting of an Individualized Waiver, all previously collected amounts will be refunded and that a denial of a waiver may be appealed, with the exception of amounts offset from the individual's benefits as part of a reconciliation process to avoid or prevent double payment of benefits to that individual;
- (ix) contact information to request assistance from NMDWS with the Individualized Waiver process;
- (x) contact information for providers of free legal services, and
- (xi) that the Class Member may appeal Defendants' Determination of an overpayment of Federal Pandemic Benefits if the Class Member had good cause for failing to appeal within fifteen days of the original overpayment Determination.

38. Individualized Waiver Notice Process. Within fourteen days of the Parties' agreement as to the final form of the Individualized Waiver notices, Defendants shall then issue or reissue notices of the availability of an Individualized Waiver to all Class Members (including those previously granted partial waivers or fully denied waivers) who have not received a complete waiver of all overpaid Federal Pandemic Benefits and a complete refund of those benefits pursuant to a waiver. The notice will be (i) posted on each Class Member's online portal account; (ii) sent to each Class Member either by U.S. Mail; and (iii) for each Class Member who has selected electronic mail as a correspondence preference, sent to the Class Member via e-mail. Defendants will notify Class Counsel after the mailing and posting of all Individualized Waiver notices is complete.

39. Additional Processes to Ensure the Efficacy of the Individualized Waiver Process. At the time the Individualized Waiver notices are sent out, NMDWS will concurrently provide the public with information about the availability of Individualized Waivers, including the fact that anyone who has an overpayment of FPBs can apply, even if they previously submitted an application, previously had an overpayment partially waived, or had their overpayment fully recouped by NMDWS. This information will be posted prominently on NMDWS's UI website and portal with a link to the application, for at least two years from the date of posting or for as long as the Department of Labor continues to fund and/or reimburse NMDWS for the Individualized Waivers, whichever is longer. NMDWS staff will be trained to inform individuals who contact NMDWS for matters related to FPBs about the availability of Individualized Waivers. NMDWS will also disseminate information to the public about the availability of Individualized Waivers through television, radio, and print news outlets. NMDWS will complete processing the Individualized Waiver applications within ninety days of submission, and will track the number of applications submitted, the number approved, and the number denied each month, and will provide this information to Class Counsel. The ninety-day deadline to complete processing a Class Member's application will be extended where delays are justified by good cause.

40. Granting and Denying Individualized Waiver Applications. Based on fact-finding that Defendants will conduct for each Individualized Waiver application received, Defendants will grant or deny applications from Class Members in accordance with the standards set forth in Rule 11.3.300.325(B) NMAC. Once the Individualized Waiver applications are adjudicated in such manner, Defendants will issue a Notice of Determination of any applications that were granted along with any applicable refunds within a reasonable time. If a Class Member's Individualized Waiver is denied in whole or in part, Defendants will send a Notice of Determination to the Class Member specifying the reason for the denial and explaining appeal rights. The denial notice shall include a chronological list of each alleged overpayment for which the waiver was denied, with a reason for the overpayment.

41. Ceasing Collections, Reductions, and Recoupments While Administering the Class. Upon signing this Settlement Agreement, Defendants shall cease taking deductions from benefits or otherwise making efforts to recoup overpaid FPBs from any Class Member until the following time limits have passed: (1) For Class Members who submit a request for an Individualized Waiver, until a Determination has been made and the Class Member's appeal rights have been exhausted through all levels of administrative and judicial review, or until the deadline for appealing the Individualized Waiver Determination has passed without an appeal, whichever is

earlier; and (2) for all other Class Members, until the time limits set forth in Paragraph 39 have lapsed.

Defendants' Obligation to Process Refunds

42. Refunds. For Class Members who have already been granted an Individualized Waiver or Blanket Waiver, Defendants will refund all unrefunded amounts previously recouped within a reasonable time, except that NMDWS shall not issue a refund for any benefits that were restored and then subsequently paid to the individual. For Class Members who, after the Certification Date, are granted an Individualized Waiver or Blanket Waiver, Defendants shall refund all amounts previously recouped within a reasonable time after granting the Individualized Waiver or Blanket Waiver, with the exception of amounts offset from the individual's benefits as part of a reconciliation process to avoid or prevent double payment of benefits to that individual. When issuing refunds, Defendants will employ reasonable strategies to increase the likelihood that checks are received by Class Members. This will include media outreach, periodic review of settlement payments by DWS staff, and DWS's ordinary processes for following up on returned benefits payments. Additionally, the parties agree to cooperate to make reasonable efforts to locate Class Members who are entitled to payments, and as part of that cooperation, DWS will provide Class Counsel information about checks that are being returned. Prior to dismissal of the Lawsuit, Defendants will certify by affidavit that all Federal Pandemic Benefits overpayment refunds have been processed with respect to all class members who: (a) received a blanket waiver or (b) applied for an Individualized Waiver and were granted one either at the administrative determination or appellate stage. Any refunds the Defendants attempt to distribute to Class Members pursuant to this agreement but are unable to because a Class Member's whereabouts are unknown shall be handled according to the procedures set forth in the New Mexico Unclaimed Property Act, NMSA 1978, § 7-8A-1, *et seq.*

Attorneys' Fees and Class Representative Incentives

43. Payment of Attorneys' Fees, Costs, and GRT. Subject to Court approval, Plaintiffs may request an amount not to exceed \$400,000 in attorneys' fees plus gross receipts taxes (at the Bernalillo County rate) plus litigation costs to be paid to Class Counsel. Defendants will not oppose this request and will pay the amounts approved by the Court within sixty days of the Certification Date or when the payment has been processed according to all of the necessary state procurement procedures, whichever occurs latest.

44. Payment of Class Representative Incentives. Subject to Court approval, Plaintiffs may request an amount not to exceed \$10,000 per Class Representative as an incentive for assisting in this Lawsuit. Defendants will not oppose this request and will pay the amounts approved by the Court within thirty days of the Certification Date.

Agreement to Release Defendants and Dismiss the Lawsuit

45. Dismissal of the Lawsuit. If the preceding conditions have been satisfied, then fourteen days after Defendants have processed all timely filed Individualized Waiver applications, and all appeals of denials of Individualized Waiver applications have been resolved or the time to file such appeals has expired, the Parties will file a joint motion or notice with the Court dismissing this Lawsuit with prejudice and terminating the Court's continuing jurisdiction to enforce this

Settlement Agreement. If one party does not agree with the other that this matter should be dismissed, then a single party on their own may petition the Court for closure of the case. If the Court grants said petition, the party opposing it shall be liable to the other party for their reasonable attorney fees and costs associated with petitioning the Court for closure.

46. Intent to Limit Court's Enforcement Jurisdiction. Apart from the requirements set forth in this Settlement Agreement, Defendants do not agree to any indefinite period during which the Court retains enforcement jurisdiction. Plaintiffs will consent to any good-faith motion to partially dismiss the Lawsuit with respect to any issue that is resolved as referenced herein.

47. Option to Repeal. Defendants may, at their discretion, repeal the regulations described in Paragraph 34 of this Settlement Agreement at any point after this Lawsuit is dismissed.

48. Release. Contingent on the Court's approval, this Settlement Agreement releases Defendants from all future claims and actions brought by Class Members arising from the alleged failure to lawfully administer the waiver process for overpayments of Federal Pandemic Benefits. This Settlement Agreement does not release any claims or actions brought by Class Members related to regular state unemployment insurance benefits or to appeals of any overpayment determinations, including overpayment determinations with respect to Federal Pandemic Benefits.

Other Provisions

49. Cooperation. The Parties agree to cooperate to effectuate the terms of this Settlement Agreement, including by working together in good faith to compromise and agree on necessary language for multiple documents referenced in this Settlement Agreement, draft documents necessary to certify the Class—which Defendants are agreeing to solely for purposes of this settlement—obtain Court approval, draft class notice, draft regulations that are consistent with terms of this Settlement Agreement, propose Blanket Waiver categories designed to secure waivers to the maximum degree permitted by federal law and to the extent that it is technically feasible and cost-effective for NMDWS to identify those cases with a single set of facts in common, draft appropriate Individualized Waiver notices calculated to effect the spirit and intent of this Settlement Agreement, and draft and submit any documents required by the Court, including proposed orders and dismissal documents. The Parties will work together in good faith to meet the deadlines set forth in this Settlement Agreement. If they are unable to meet these deadlines, neither Party will be considered in violation of this Settlement Agreement so long as the Parties continue to meet and confer in good faith and have not reached an impasse.

50. Opportunity to Cure. Class Counsel will notify Defendants of alleged noncompliance with any provision of this Settlement Agreement and provide a reasonable opportunity to cure the noncompliance prior to bringing any motion to enforce this Settlement Agreement or otherwise seek to hold Defendants in contempt.

51. Dispute Resolution. If any disputes arise about the meaning of this Settlement Agreement, the implementation of this Settlement Agreement, or the application of state or federal law, the Parties will meet in good faith to resolve the dispute. If the dispute cannot be resolved after a good-faith meeting, the Parties will seek a resolution from the Court, provided the dispute occurs during the time in which the Court has retained enforcement jurisdiction.

52. Complete and Final Agreement. This Settlement Agreement, although prospective in nature, represents the complete and final agreement between the Parties on the issues in this Lawsuit. No modifications to this Settlement Agreement may be made without the written consent of the Parties, except by Court order.

53. Execution in Counterparts. The Parties agree that this Settlement Agreement may be executed in counterparts. Furthermore, signatures delivered via PDF shall have the same force and effect as originals thereof.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the dates indicated below.

CLASS REPRESENTATIVES:
(Signatures on behalf of the Plaintiffs and the Class)

Shaun Duran
Class Representative
Date: _____

Monica Fischetti
Class Representative
Date: _____

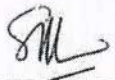
Palmieri Williams
Class Representative
Date: _____

Erdem Yildiz
Class Representative
Date: _____

Coral Gonzalez-Inza
Class Representative
Date: _____

Yohanna Gerges
Class Representative
Date: _____

DEFENDANT, NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS:



SARITA NAIR
NMDWS Cabinet Secretary
Date: 9/19/24

INDIVIDUAL DEFENDANT, SARITA NAIR:



SARITA NAIR
In her official capacity as a
named defendant
Date: 9/19/24


IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the dates indicated below.

CLASS REPRESENTATIVES:

(Signatures on behalf of the Plaintiffs and the Class)

Shaun Duran

Class Representative

Date: 9/18/24 

Monica Fischetti Palmieri Williams

Class Representative

Date: _____

Erdem Yildiz

Class Representative

Date: _____


Coral Gonzalez-Inza

Class Representative

Date: _____

Yohanna Gerges

Class Representative

Date: Yohanna Gerges  09-18-2024

DEFENDANT, NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS:

Sarita Nair

Cabinet Secretary, New Mexico Department of Workforce Solutions

Date: _____

INDIVIDUAL DEFENDANT, SARITA NAIR:

Sarita Nair

In her official capacity as a named defendant

Date: _____

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the dates indicated below.

CLASS REPRESENTATIVES:

(Signatures on behalf of the Plaintiffs and the Class)

Shaun Duran

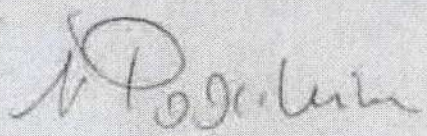
Class Representative

Date: _____

Monica Fischetti Palmieri Williams

Class Representative

Date: SEPTEMBER 18 2024



Erdem Yildiz

Class Representative

Date: _____

Coral Gonzalez-Inza

Class Representative

Date: _____

Yohanna Gerges

Class Representative

Date: _____

DEFENDANT, NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS:

Sarita Nair

Cabinet Secretary, New Mexico Department of Workforce Solutions Date:

INDIVIDUAL DEFENDANT, SARITA NAIR:

Sarita Nair

In her official capacity as a named defendant

Date: _____

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the dates indicated below.

CLASS REPRESENTATIVES:

(Signatures on behalf of the Plaintiffs and the Class)

Shaun Duran

Class Representative

Date: _____

Monica Fischetti Palmieri Williams

Class Representative

Date: _____

Erdem Yildiz

Class Representative

Date: 09/19/24 *Erdem Yildiz*

Coral Gonzalez-Inza

Class Representative

Date: _____

Yohanna Gerges

Class Representative

Date: _____

DEFENDANT, NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS:

Sarita Nair

Cabinet Secretary, New Mexico Department of Workforce Solutions

Date: _____

INDIVIDUAL DEFENDANT, SARITA NAIR:

Sarita Nair

In her official capacity as a named defendant

Date: _____

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the dates indicated below.

CLASS REPRESENTATIVES:

(Signatures on behalf of the Plaintiffs and the Class)

Shaun Duran

Class Representative

Date: _____

Monica Fischetti Palmieri Williams

Class Representative

Date: _____

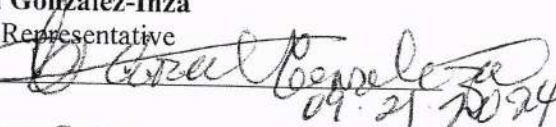
Erdem Yildiz

Class Representative

Date: _____

Coral Gonzalez-Inza

Class Representative

Date: 
09.21.2024

Yohanna Gerges

Class Representative

Date: _____

DEFENDANT, NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS:

Sarita Nair

Cabinet Secretary, New Mexico Department of Workforce Solutions

Date: _____

INDIVIDUAL DEFENDANT, SARITA NAIR:

Sarita Nair

In her official capacity as a named defendant

Date: _____