

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

VINCENT R. GARCIA, ROBERTO
BORBON, MARK MORAN, and
KENNETH A. ZIEGLER, on behalf of
Themselves and all other similarly situated,

Plaintiffs,

v.

No. D-202-CV-2011-05563

THE BOARD OF REGENTS OF THE
UNIVERSITY OF NEW MEXICO,
SANDIA FOUNDATION and
ENTERPRISE BUILDERS, INC.,

Defendants.

MAILED NOTICE OF CLASS ACTION SETTLEMENT

THIS NOTICE CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS IN A CLASS ACTION LAWSUIT. PLEASE CAREFULLY READ THIS COURT-AUTHORIZED NOTICE. ALL OF ITS TERMS MAY AFFECT YOUR RIGHTS.

I. WHY DID YOU GET THIS NOTICE?

You have received this Notice because you have been identified as a member of a proposed class of employees who were employed by various contractors on the 2007-2009 construction project on the Bradbury Science Building (933 Bradbury) at the University of New Mexico that are affected by a proposed settlement of a class action lawsuit. The Court has given its preliminary approval of the settlement and preliminarily certified the Class, and has ordered that this notice be sent to you and all other class members (“Settlement Class Members”) so that you may consider your options.

This Notice summarizes essential terms of the Settlement which are fully detailed in the Settlement Agreement entered into among the parties. If there is any conflict between this Notice and the Settlement Agreement, the provisions of the Settlement Agreement govern. Capitalized terms not otherwise defined in this Notice shall have the meaning assigned to them in the Settlement Agreement. Your options are explained in detail in this Notice, but may be summarized as follows:

1. **You may choose to participate in Settlement Agreement by complying with the steps set forth in the Settlement Agreement and summarized below in Section V(B).** If the Court gives its final approval to the settlement and you have otherwise complied with the terms of the Settlement Agreement, you will be entitled to receive your portion of the settlement

amounts offered as compensation to the Class, and you will have benefited from the information and disclosures in this Notice. The deadline for submitting the documentation necessary to participate in the Settlement Agreement is **September 26, 2017**.

2. **You may do nothing, which will leave you in the Class but exclude you from any participation in the Settlement Agreement.** If the Court gives its final approval to the settlement and you have not taken the affirmative steps necessary to participate in the Settlement Agreement, you will not recover any amounts under the Settlement Agreement, but any claims you may have related to any work on the 2007-2009 construction project on the Bradbury Science Building (933 Bradbury) at the University of New Mexico will be waived.

3. **You may remove yourself from the Class by “opting out.”** The deadline is **September 26, 2017**.

4. **You may stay in the Class, but file an objection to the proposed settlement.** The deadline for filing an objection is **September 26, 2017**.

A hearing (“Final Approval Hearing”) relating to the proposed settlement will be held on **November 16, 2017**, at the Second Judicial District Court, 400 Lomas Blvd. NW, Albuquerque, New Mexico. The purpose of that hearing is described below.

II. DEFINITION OF THE CLASS – ARE YOU A MEMBER?

For purposes of the proposed settlement, Settlement Class Members are persons who were employed by various contractors on the 2007-2009 construction project on the Bradbury Science Building (933 Bradbury) at the University of New Mexico.

III. WHAT IS THIS CASE ABOUT?

This action was brought to enforce a 2010 settlement agreement between Defendants (The Board of Regents of the University of New Mexico, Sandia Foundation, and Enterprise Builders, Inc.) and the New Mexico Department of Workforce Solutions (DWFS) regarding the Bradbury Science Building Project (“the Project”). The DWFS alleged that the Project constituted a public works project under the New Mexico Public Works Minimum Wage Act, NMSA 1978, §§ 13-4-10, *et seq.* (“PWMWA”). Defendants’ disagreed. Ultimately, to resolve that litigation, the parties prepared a settlement agreement under which Defendants agreed to pay the affected workers the difference between DWFS’s calculation of wages and benefits that would have been due under the PWMWA and what they were actually paid, and an additional amount in recognition of the delay of those wages and benefits. For various reasons, the parties never carried out the terms of the 2010 settlement agreement. Plaintiffs brought this lawsuit to enforce the 2010 settlement agreement.

IV. WHY DID PLAINTIFFS AND DEFENDANTS AGREE TO SETTLE AND WHY DO THE CLASS REPRESENTATIVES AND CLASS COUNSEL RECOMMEND THE SETTLEMENT?

Class Counsel has conducted a substantial investigation of the law and facts relating to the allegations made in the lawsuit. Class Counsel and the Class Representatives (Vincent R.

Garcia, Roberto Borbon, Mark Moran, and Kenneth A. Ziegler) are fully advised of the potential strengths and weaknesses of the Class Claims and are mindful of the defenses that Defendants could assert in response to those claims. The Class Representatives and Class Counsel believe that this lawsuit should be settled because the Settlement is fair and reasonable, it provides substantial benefits to the Class, and is in the best interests of the Class.

Class Counsel and the Class Representatives have considered the potential risks and rewards of continued litigation, the additional expense and length of continued litigation, and uncertainties in the outcome of continued litigation. Class Counsel have considered, among other things, the risk that the Class's various claims may not prevail on the merits.

Class Counsel and the Class Representatives also believe that the settlement offers real economic value and benefit to Settlement Class Members. Class Counsel and Class Representatives have concluded that the Settlement represents a fair, adequate and reasonable compromise of the Class Claims.

Defendants also have concluded that the Settlement is fair, reasonable and in their best interests and will eliminate the expense and disruption of further litigation.

V. WHAT DOES THE SETTLEMENT PROVIDE?

A. What is the Settlement for Which You Would Be Eligible?

The Settlement will provide payments to Participating Settlement Class Members (that is, Class Members who fully comply with the requirements of the Class Action Settlement Agreement, as described below in Section V(B)) as follows:

(a) 56.87% of the "Total Amount Due" listed on Exhibit A of the 2010 Settlement Agreement for him or her ("Settlement Class Member Payment"). Such Participating Settlement Class Member Payment will be made in two checks: (1) a payroll check consisting of the gross amount of the sum of the "Base Rate Total Amount Due" and "Benefit Rate Total Amount Due" shown on Exhibit A of the 2010 Settlement Agreement for that Settlement Class Member, multiplied by 56.87 % ("Payroll Check") and (2) a non-payroll check of \$250.53 ("Non-Payroll Check") representing the delay payments.

(b) The Payroll Check will be subject to payroll withholding and will result in the issuance of a W-2 to the Participating Settlement Class Member. The Non-Payroll Check will not be subject to withholding and will result in the issuance of an IRS 1099 form to the Participating Settlement Class Member for tax reporting purposes.

B. How Do I Participate?

In order to be a Participating Settlement Class Member and receive a Participating Settlement Class Member Payment, the Settlement Class Member must:

- i. Fully and accurately complete Internal Revenue Service Forms W-4 and W-9 ("Tax Forms") and present them to Sabio Systems, LLC, 4520 Montgomery Blvd NE #7, Albuquerque, NM 87109;

- ii. Present documents required by Form 1-9 to verify his or her authorization for employment in the United States, which shall be done **in person** at Sabio Systems, LLC at 4520 Montgomery Blvd NE #7, Albuquerque, NM 87109, or in accordance with the instructions attached as Exhibit 4 to the Class Action Settlement Agreement;
- iii. Execute the Release of Claims attached as Exhibit 5 to the Class Action Settlement Agreement (and as Exhibit A hereto);
- iv. Either complete a form for direct deposit provided by Sabio Systems, LLC or provide a mailing address for Sabio Systems, LLC to send the Participating Settlement Class Member Payment, W-2, and 1099; and
- v. Complete steps i. through iv, above, no later than **September 26, 2017**.

W-4, W-9, I-9 Forms, the Sabio Systems, LLC direct deposit form, and the Release of Claims can be completed at the offices of Sabio Systems, LLC (4520 Montgomery Blvd NE #7, Albuquerque, NM 87109).

If you need to submit your forms by mail, they can be submitted by mail to Sabio Systems, LLC, at the same address.

To obtain W-4, W-9, I-9 Forms, the Sabio Systems, LLC direct deposit form, or the Release of Claims, or if you have any questions about the procedure or requirements for submitting a claim, you may call the toll free number **1-888-755-9508** to speak with the Settlement Administrator, Dahl Administration, LLC. You may also contact attorneys for the Plaintiffs and the Settlement Class at the phone number identified in Section C below.

C. Dismissal and Release of Settlement Class Members Against Defendants

In exchange for Defendants' agreement to make the Settlement Class Member Payments available, Settlement Class Members will release and discharge the Defendants from any liability for Class Claims, including unknown claims. *Because the Release is a critical element of the proposed Settlement, it is represented in its entirety as Exhibit A hereto.*

D. What Are The Attorneys' Fees and Expenses and The Class Representative's Fee and Who Is Paying For Them?

Defendants have agreed to pay Class Counsel's fees and reasonable litigation expenses in the amounts the Court may award up to \$150,000. These amounts were independently negotiated between Class Counsel and Defendants after the parties agreed on the settlement for the class. The award of fees and expenses will not diminish the value of the settlement payments available to the class. The Court has not yet made a determination as to what fees and reimbursement of expenses is appropriate. The Court will decide how much Class Counsel will receive following the Final Approval Hearing. Class Counsel believes the requested fee amount is supported by the unique nature of the claims asserted, the complexity of the legal and factual issues involved, the extensive time invested by Class Counsel, the financial burden assumed by

Class Counsel in prosecuting these claims, and the value of the settlement recovered for the class.

Class Counsel are:

Shane C. Youtz
James Montalbano
Youtz & Valdez, P.C.
900 Gold Avenue, SW
Albuquerque, New Mexico 87102
Telephone: (505) 244-1200

At the Final Approval Hearing, the Class Representatives intend to ask the Court for a Class Representative Fee (the “Incentive Award”) not to exceed \$5,000 for each Named Plaintiff. If the Court permits, the Incentive Award will reimburse each named Plaintiff for the risks he has assumed and the value of his time expended on this lawsuit.

Defendants have agreed to pay all costs associated with providing and administering the Settlement program, and the costs of Notice of the Settlement Agreement to Class Members, including costs of printing, mailing, and publication. The payment of the expenses listed above will not diminish the value of the settlement benefits to the class.

Individual Settlement Class Members shall be responsible for any fees and costs of any counsel they may individually retain.

E. Income Tax Consequences

Your receipts of Settlement Class Member Payments could have tax consequences for you. You should consult your own tax advisor to determine any federal, state, local or foreign tax consequences of the receipt of Settlement Class Member Payments in your particular circumstances.

VI. WHAT IS THE FINAL APPROVAL HEARING, AND WHEN IS IT?

A Final Approval Hearing will be held on **November 16, 2017**, at **9:00 a.m.** at the Second Judicial District Court, 400 Lomas Blvd. NW, Albuquerque, New Mexico. You may attend this hearing if you wish, but you are *not* required to do so in order to participate in the Settlement.

At the Approval Hearing, the Court will consider:

- (1) whether the proposed settlement, as set forth in the, Settlement Agreement, is fair, adequate and reasonable, and in the best interests of Class Members;
- (2) whether a Final Order should be entered approving the Class Action Settlement Agreement and dismissing the pending claims against Defendants with prejudice and on the merits, and releasing the Class Claims against Defendants;

(3) whether the Court should approve the application for payment of attorneys' fees and reimbursement of expenses that is to be filed by Class Counsel; and

(4) whether the Court should approve applications for payment of a Class Representative Fee (as explained above).

If, after conducting the Final Approval Hearing, the Court grants final approval of the settlement as set forth in the Settlement Agreement (including any modification or amendment thereto to which Defendants and the Class Counsel agree), it will enter a Final Order and Judgment.

The parties' obligations under the Settlement, including the provision of settlement payments to Class Members, do not become effective until final judicial approval, including the exhaustion of all appeals, if any, that result in the affirmance of the Final Order and Judgment. The Court may approve the Settlement Agreement with such modifications as may be agreed to by the Settling Parties and without further notice to the members of the Class. The Approval Hearing may be adjourned from time to time by the Court, without further prior notice.

VII. WHAT IS THE PROCEDURE TO OPT OUT OF THE CLASS AND BE EXCLUDED FROM THE SETTLEMENT?

If you want to opt out of the Class and be excluded from the Settlement, here is what you must do: Prepare an opt-out request in writing that contains: (1) your name and address, (2) a clear statement that you want to opt out of the Class, and (3) your signature or that of your Legally Authorized Representative.

You must mail your request for exclusion (opt out) to:

Garcia v. UNM
c/o Dahl Administration, LLC
PO Box 3613
Minneapolis, MN 55403-0613

A request for exclusion (opt out) will be invalid if it does not provide the requested information, is postmarked after the deadline, or is not sent to the correct addresses. A Class Member sending an invalid request for exclusion will be treated as if he or she did not send any request for exclusion at all.

There are two Important Things to Remember About Opting-Out: *First*, if you opt-out, you will not receive the Settlement Class Member Payment and you cannot object to the Settlement. *Second*, if you do not opt-out and the Court finally certifies the Class and approves the settlement, you will be a member of the Class, your individual claims against Defendants will be released, and, if you comply with the requirements for doing so, you will be entitled to receive the Settlement Class Member Payments.

YOUR REQUEST FOR EXCLUSION (OPT OUT) MUST BE POSTMARKED NO LATER THAN **SEPTEMBER 26, 2017**.

VIII. WHAT IS THE PROCEDURE FOR OBJECTING TO THE SETTLEMENT?

You can stay in the Class, but object to the Settlement. You do not have to attend the Final Approval Hearing to object to the Settlement. **If you want to object to the Settlement, here is what you must do:** Prepare a written objection containing: (1) the objector's name, current address, and telephone number; (2) a heading referring to Case Number D-202-CV-2011-05563 in the Second Judicial District Court, and to *Garcia v. The Board of Regents of the University of New Mexico, et al.*; (3) a statement of the specific basis for the objection; (4) a statement as to whether the person objecting intends to appear at the Final Approval Hearing, either in person or through counsel; (5) a description of the evidence and identification of witnesses the objector will present at the Final Approval Hearing; (6) a list of other cases in which the objector has appeared as an objector in the last five years; (7) the objector's signature or that of his or her authorized representative; and (8) if represented by counsel, counsel's name, address and telephone number.

You must mail a copy of your objection to **Garcia v. UNM**, c/o Dahl Administration, LLC, **PO Box 3613, Minneapolis, MN 55403-0613**, and file your objections with the Clerk of Court on or before **September 26, 2017**.

An objection will be invalid if the submission does not provide all of the requested information or is mailed or filed after the deadline stated above. An invalid submission will not be considered by the Court.

Only Settlement Class Members who have timely submitted valid objections may appear at the Final Approval Hearing in person or through an attorney hired at the Settlement Class Member's expense to object to the fairness, reasonableness or adequacy of the Agreement or proposed settlement or to the award of attorneys' fees. If a Settlement Class Member hires an attorney to represent him or her, the attorney must (i) file a notice of appearance with the Clerk of the Court and (ii) mail a copy of that notice to Dahl Administration, LLC no later than sixty (60) days after the Mailed Notice Date. All objectors shall make themselves available to be deposed by any Party in the county of the objector's residence within seven (7) days of service of his or her timely written objection.

YOUR OBJECTION TO THE SETTLEMENT AND ANY REQUEST TO APPEAR AT THE APPROVAL HEARING MUST BE FILED WITH THE CLERK OF COURT, WITH COPIES TO DAHL ADMINISTRATION, LLC NO LATER THAN [DATE], 2017 OR IT WILL NOT BE CONSIDERED BY THE COURT.

Any judgment entered in the Action, whether favorable or unfavorable to the Class, will include and be binding on all Class Members who have not been excluded from the Class, even if they have objected to the proposed settlement and even if they have any other claim, lawsuit or proceeding pending against Defendants.

IX. WHERE CAN YOU GET MORE INFORMATION?

This Notice is only a summary. You may seek the advice and guidance of your own attorney, at your own expense, if you desire. For more detailed information, you may review the pleadings, records and other papers on file in this litigation, which may be inspected on

weekdays during regular business hours at the offices of the Clerk of the Court, 400 Lomas Blvd. NW, Albuquerque, New Mexico.

The Court's order preliminarily approving the Settlement, the Settlement Agreement, and this Notice are available for public inspection during regular business hours at the offices of the Clerk of the Court, Second Judicial District Court, 400 Lomas Blvd. NW, Albuquerque, New Mexico.

You may also call Class Counsel at (505) 244-1200.

PLEASE DO NOT CALL THE COURT FOR FURTHER INFORMATION. In addition, you should not call Defendants' counsel for further information.

Dated: July 28, 2017

The Honorable Nan Nash
Second Judicial District Court
Bernalillo County, New Mexico