

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

ELIZABETH LEYBA, NATASHA
APODACA, NANCY ELLIN, MONICA
GARCIA, LUCY M. MARQUEZ, MARK
MILLER, COPPER PERRY, DAVID
SANDOVAL, KRISTI SEIBOLD, RUSSELLA
SERNA, and KIMBERLY WRIGHT,
on their own behalf and on behalf of a class of
similarly situated persons,

Plaintiffs,

vs.

No. CIV-05-0036 BB/ACT

SANTA FE COUNTY BOARD OF
COMMISSIONERS; MANAGEMENT
AND TRAINING CORPORATION;
SANTA FE COUNTY SHERIFF GREG
SOLANO, in his individual and official
capacities; FORMER SANTA FE COUNTY
SHERIFF RAYMOND L. SISNEROS, in his
individual and official capacities; and KERRY
DIXON, in his individual and official capacities,

Defendants.

**AFFIDAVIT OF JOHN C. BIENVENU IN SUPPORT OF
JOINT UNOPPOSED MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT AGREEMENT AND
APPROVAL OF ATTORNEYS FEES, COSTS AND INCENTIVE PAYMENTS**

STATE OF NEW MEXICO)
) ss:
COUNTY OF SANTA FE)

JOHN C. BIENVENU, being first duly sworn upon his oath, deposes and states as
follows:

1. This Affidavit is submitted in support of the Joint Unopposed Motion for Final
Approval of Class Action Settlement Agreement and Memorandum in Support of Approval of

Attorneys Fees, Costs and Incentive Payments. The facts set forth herein are true of my own personal knowledge and I am competent to testify thereto.

2. I am a graduate of Stanford Law School, having received a J.D. degree ("With Distinction") from that institution on June 12, 1988. I was an honors student at the University of California at Berkeley from 1975 to 1978. I received a B.A. degree (summa cum laude) from the University of New Mexico in 1985.

3. I am a member in good standing of the State Bar of New Mexico and the State Bar of California (inactive status). I am admitted to practice before the United States District Court for the District of New Mexico, the United States District Court for the Northern District of California, the United States District Court for the District of Arizona, the United States Court of Appeal for the Ninth Circuit, the United States Court of Appeal for the Tenth Circuit, and the United States Court of Federal Claims.

4. From 1988 to 1990, I practiced civil litigation with the law firm of Brobeck, Phleger & Harrison in San Francisco and Palo Alto, California; from 1990 to 1993, I practiced civil litigation with the law firm of Rothstein, Donatelli, Hughes, Dahlstrom, Cron & Schoenburg in Santa Fe, New Mexico; from 1993 to 2003, I practiced civil litigation in my own law office; and since 2004, I have been a partner with the law firm of Rothstein, Donatelli, Hughes, Dahlstrom, Schoenburg & Bienvenu, LLP.

5. My practice consists exclusively of civil litigation. My practice is primarily in the area of civil rights litigation, and I have experience in other complex civil litigation including commercial litigation, antitrust, RICO, and patent and copyright litigation. I have tried numerous cases to both judges and juries in state and federal court. I completed a two week course in trial

advocacy at the National Institute of Trial Advocacy in Boulder, Colorado in 1991. I have lectured on trial advocacy at the Intersession Trial Practice Course at the University of New Mexico School of Law. I have been retained as an expert witness to provide testimony on the standard of care in civil rights litigation. I am rated A-V by Martindale-Hubbell.

6. In addition to this case, I am counsel of record for the plaintiffs in the following class action lawsuits: *Garcia, et al. v. Regents of the University of California, et al.*, No. CIV-03-1404 WJ/RLP (co-lead counsel); *Kelley, et al. v. Regents of the University of California, et al.*, No. SF 96-2430 (co-lead counsel); *In re Ocwen Federal Bank FSB Mortgage Servicing Litigation*, MDL No. 1604 (counsel for the New Mexico class); *Lira, et al. v. Dona Ana County Board of Commissioners, et al.*, No. CIV 06-0179 WPJ/WPL (co-lead counsel); *Rodriguez v. Dona Ana County Board of Commissioners, et al.*, No. CIV 06-0416 JH/RHS (co-lead counsel).

7. The other attorneys in this law firm working on this case are highly experienced in the areas of civil rights litigation and complex civil litigation, including class actions. Robert R. Rothstein is one of the premier civil rights practitioners in the country and has also served as lead counsel for the plaintiffs in a number of class actions. Mark H. Donatelli also has extensive experience in complex civil litigation of this type and has litigated class action lawsuits. Mr. Donatelli and Mr. Rothstein are also very experienced in the areas of criminal law and are widely acknowledged for their expertise in correctional law.

8. We began working on this litigation in November, 2004. Discovery in this case was extensive. We obtained and reviewed all relevant documents from the Defendants in discovery, in addition to computer records of some thirty thousand detainees. We developed a comprehensive computer database for the information obtained through discovery that allowed

us to keep track of the large volume of information. We consulted with third party witnesses and experts and retained expert witnesses and consultants to assist in the gathering of information and the analysis of the information received. All of the named Plaintiffs were deposed by the Defendants, and the Plaintiffs deposed the named Defendants and many other important witnesses. The extensive discovery completed provided a firm and comprehensive basis of knowledge of the relevant facts and issues on which the settlements were based.

9. The settlements were reached following extensive mediation efforts assisted by a very experienced and reputable mediator, retired United States District Judge Raul A. Ramirez. These settlement negotiations began in September of 2005 and continued for many more months with numerous meetings of the parties and their counsel, including six days of mediation with Judge Ramirez. The settlement negotiations were vigorous, intense, and hotly-contested. Even after reaching agreements in principle, it took the parties many more months of intensive negotiations to agree on the myriad details of the settlements and the form of the settlement documents. The final settlement was reached only after extensive arms-length negotiations, and these negotiations were in good faith.

10. The amount of attorneys fees was not negotiated until after agreement was reached on payments to the class. The settlement was intentionally structured to ensure that the payment of attorneys fees and costs would not come out of the recovery to the class members, but instead would be paid by the Defendants. The amount of attorneys fees was therefore subject to intensive, adversarial negotiation with the Defendants.

11. In addition to monetary relief, as a direct result of Plaintiffs' and Class Counsel's efforts, the unconstitutional strip search policies in place at the Santa Fe County Detention

Facility were abolished, and have since been completely revised.

12. While extensive discovery was undertaken before the settlements were reached, substantial additional discovery remained. We anticipated taking and defending numerous additional depositions, including expert depositions. Identification of trial witnesses and exhibits remained to be done. Due to the breadth of the allegations and the number of individual claimants, all parties anticipated a lengthy trial. Regardless of the outcome at trial, all parties anticipated appeals of the resulting judgments. Thus, future recovery, if any, to the class members through trial, was years away.

13. It is my considered opinion that the settlement fund established here is a very meaningful benefit to the members of the class, that the change in policies effected by this lawsuit is an extremely significant benefit to the community, and that the average class member's chances of obtaining better results by continuing the litigation or by pursuing separate claims would be uncertain at best.

14. For thirty years, our law firm has been involved in hundreds of civil rights cases. Based on my involvement in civil rights and employment cases and other complex litigation, I am very familiar with and knowledgeable about contemporary market rates for attorneys in New Mexico practicing in these areas. I have reviewed and studied numerous affidavits in support of fee applications as well as decisions of the federal and state courts awarding fees in this jurisdiction. My own customary hourly rate for civil litigation matters has been \$275 for the past two years, and was recently increased to the current rate of \$300 per hour, plus gross receipts tax. Other partners in this law firm have the same or higher customary hourly rate for civil litigation matters (other than in the special practice of Indian law in which lower hourly rates have

historically prevailed).

15. I began working on this litigation in November, 2004. I have maintained contemporaneous records of all time spent on this case in increments of one-tenth of an hour (six minutes). The other attorneys and staff working on this case have also maintained contemporaneous records of their time. I have reviewed these time records and can attest that these hours were reasonably and necessarily devoted to the prosecution of this lawsuit.

16. The hours spent by each timekeeper on this case through November 27, 2006 is as follows:

TIMEKEEPER	TOTAL HOURS	HOURLY RATE	TOTAL
RRR	356	\$300.00	\$106,800
MHD	238	\$300.00	\$71,400
JCB	805	\$300.00	\$241,500
JD	.5	\$200.00	\$100
JLS	21	\$200.00	\$4,200
SJF	25	\$200.00	\$5,000
FTA	70	\$200.00	\$14,000
BJ	24	\$100.00	\$2,400
RAM	137	\$100.00	\$13,700
LES	89	\$100.00	\$8,900
JC	659	\$100.00	\$65,900
JB	8	\$75.00	\$5,100
MB	8	\$75.00	\$225
	2,441	TOTAL	\$539,225

17. We are continuing to devote substantial attorney and staff time to this litigation with respect to obtaining final approval of the settlement agreement, communications with Class Members, and the claims determination process. I anticipate that hundreds of hours of additional

attorney and staff time will be devoted to such work through the first half of 2007. No additional compensation will be sought or received for such future work.

18. This law firm has advanced a total of \$77,548.71 in litigation expenses in this lawsuit through November 22, 2006. These expenses include expert witness fees, mediation expenses, expenses for consultants and private investigators, computer database access charges, document reproduction, long distance charges, telefax charges, deposition expenses, travel expenses, and miscellaneous litigation expenses. Each of these expenses is documented and itemized. In addition, this law firm has incurred additional expenses for claims administration and outreach efforts that have not yet been billed or paid, which I have estimated at \$33,000. All of these expenses were reasonably and necessarily incurred in the prosecution of this litigation.

19. A summary of these expenses is as follows:

AMOUNT	DESCRIPTION OF COSTS
\$1,535.29	Electronic Research
\$938.36	Long Distance and Conference Calling
\$469.97	Postage and Federal Express
\$4,177.75	Document Reproduction
\$159.00	Facsimiles
\$10,056.52	Court Reporters and Videographers
\$1,659.77	Food and Travel
\$4150.00	Filing Fees
\$22,453.76	Mediation
\$28,448.29	Claims Administration/Outreach
\$3,500.00	Expert Witness
\$33,000.00	Outstanding Claims Administration/Outreach (estimated)
\$110,548.71	TOTAL

20. Additional out of pocket expenses continue to be incurred in connection with this

litigation and the claims determination process. No further reimbursement will be sought or obtained for these additional out of pocket expenses.

21. My customary fee arrangement for a contingency case is one-third of the recovery, plus gross receipts tax and out-of-pocket expenses. I am familiar with the customary fee arrangements in Santa Fe and New Mexico for contingency cases, which are for one-third or more of the recovery, plus gross receipts tax and out-of-pocket expenses.

22. Fee Agreements were entered into between Class Counsel and each of the named Plaintiffs in this case. Those Fee Agreements provided that Class Counsel would represent the Plaintiffs on a contingency basis whereby Class Counsel would be entitled to 33 1/3% of any recovery (plus gross receipts tax), but would receive no compensation in the event no recovery was obtained.

23. I am familiar with hourly rates in Santa Fe and New Mexico for complex civil litigation. For partners, such rates range from \$250 to \$375. My current hourly rate for a case of this type, if I were to make an hourly rate arrangement, would be \$300 per hour plus gross receipts tax. However, I would not take a case of this type on a contingency basis unless I expected to receive significantly more than that hourly rate to compensate for the uncertainty of payment and the delay in payment.

24. This case has required a significant percentage of my time over the past several years and I have turned down other cases in order to ensure that I had sufficient time to devote to this matter.

25. Named Plaintiffs Elizabeth Leyba, Natasha Apodaca, Nancy Ellin, Monica Garcia, Lucy M. Marquez, Mark Miller, Copper Perry, David Sandoval, Kristi Seibold, Russella

Serna, and Kimberly Wright agreed to assume significant responsibilities when they agreed to become Class Representatives. These named Plaintiffs understood and agreed that they would be ultimately responsible for the litigation expenses incurred in this case in the event that there was no recovery. They also understood and agreed that they would be required to participate in decision-making regarding this litigation, to attend hearings, to attend depositions, to be deposed themselves, to respond to interrogatories, requests for production and requests for admission, to attend meetings with Class Counsel, to participate in mediation, and to testify at trial. They performed all of the duties that were required and their participation was essential to the successful prosecution of this lawsuit. I would estimate that each of these named Plaintiffs has devoted a minimum of one hundred hours to their duties, and some of them substantially more. They took their duties seriously and acted responsibly. By agreeing to be named Plaintiffs, they exposed themselves to financial liabilities, as well as to public scrutiny and the scrutiny of the Defendants and their attorneys. They each devoted substantial time and expense in traveling to meetings, depositions, and settlement conferences in Santa Fe and Albuquerque. They were required to, and did, put the interests of the class members ahead of their own self-interest in this matter. It is my firm belief that they are entitled to the additional incentive awards set forth in the proposed settlement agreement, and as agreed to by the Defendants.

26. In addition to the notice provided by the Claims Administrator, we separately undertook extensive outreach efforts in an effort to locate potential Class Members and inform them of the settlement and the procedure for filing claims. We developed a database to track contacts with all potential Class Members. We hired staff dedicated to making telephone and in-person contacts with potential Class Members. We mailed thousands of additional notice

packages and claim forms to potential Class Members. We published additional advertisements in various newspapers, and placed additional radio advertisements in a number of radio stations in Santa Fe and Rio Arriba Counties. We invested many hundreds of hours in staff time and approximately \$60,000 in these outreach efforts. I believe that these efforts directly resulted in doubling or tripling the number of Claim Forms received.

27. As of November 30, 2006, 3,481 individuals have filed Claim Forms. No Class Members have objected to the settlement. Three individuals have opted out of the settlement. Claim Forms will be considered timely if they are postmarked no later than November 27, 2006. Assuming that several hundred additional timely and valid Claim Forms will be received, I estimate that the total amount of claims to be paid will be well over \$4,000,000, but somewhat less than the amount allocated for payment of claims (\$5,529,750).

FURTHER AFFIANT SAYETH NAUGHT.


JOHN C. BIENVENU

SUBSCRIBED AND SWORN TO before me this 30th day of November, 2006, at Santa Fe, New Mexico.


Notary Public

My commission expires:

June 14 2010