

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**JESUS LIRA, BEN GARCIA, GRACIELA
MARTINEZ, STEPHEN CULLER, CYNTHIA
ARCHER, FREDERICK GARCIA and DOUGLAS
BEIDLER, on their own behalf and on behalf of a
class of similarly situated persons,**

Plaintiffs,

vs.

Case No. CIV-06-0179 WPJ/WPL

**DONA ANA COUNTY BOARD OF
COMMISSIONERS; Dona Ana County
Detention Center administrator CHRISTOPHER
BARELA, in his individual and official capacities;
former Dona Ana County Detention Center
administrator DAVID WOOLEY, in his
individual and official capacities; former
Dona Ana County Detention Center
administrator ALFONSO SOLIZ, in his
individual and official capacities, and former
Dona Ana County Detention Center acting
administrator CHERYL ROACH, in her
individual and official capacities,**

Defendants.

**JOINT MOTION FOR APPROVAL OF FINAL
DISTRIBUTION OF SETTLEMENT PROCEEDS**

COME NOW the parties hereto, by and through their respective counsel, below-listed, and jointly move this Court for the entry of an order approving the final distribution of the remaining proceeds resulting from the settlement of the above-referenced cause. In support thereof, the parties jointly state:

1. On May 20, 2008, this Court entered its Final Judgment of Dismissal and Order Granting Final Approval of Settlement Agreement [Doc. No. 62]. That document gave final approval to the settlement agreement between the parties and authorized payments to be made to class members pursuant to the formula agreed to between the parties in the stipulation of settlement.

2. The claims administrator has now fully administered the fund and made distributions in accordance with the stipulation of settlement.

3. After payment of all verified claims, payment of attorney's fees and costs incurred by class counsel, and payment of all costs of claims administration, there remains a balance in the fund of \$22,009.99. This amount is primarily the result of checks to settlement class members which, despite repeated efforts of the claims administrator, were never negotiated and have become void.

4. The stipulation and other settlement documents do not address how leftover funds are to be disposed of. The parties are in agreement that, under the doctrine of *cy pres*, and subject to Court approval, it would be appropriate to disburse such amounts to a non-profit entity¹. Such a procedure has been utilized and approved in other class action

¹ The doctrine of *cy pres* allows the Court to authorize the distribution of unclaimed charitable funds so that they are put to their next best use in keeping with the law and the intent of the plaintiffs' claims in a class action. *Cook v. Rockwell International Corp.*, 564 F. Supp. 2d 1189, 1222 (D. Colo. 2008). Although the Tenth Circuit has never formally addressed the *cy pres* doctrine, there is precedent for this approach. *Id.*; *See Brewer v. S. Union Co.*, No. 83-F-1174 1987 U.S. Dist. Lexis 15940, * 7-18 (D. Colo. Aug. 13, 1987); *Ponca Tribe v. Continental Carbon Co.*, 2009 WL 28396508 at 5 (W. D. Okla. 2009).

litigation, including this Court's order, the strip search class action in *Allison v. Lincoln County Board of Commissioners, et al.*, USDC DNM No. CV 05-881 WPJ/WDS [Doc. No. 68], as well as by other judges of this district, including *Torres v. Valencia County Board of Commissioners, et al.*, USDC DNM No. CV 07-0328 MCA/WDS [Doc No. 78] and *Shannon v. Hidalgo County Board of Commissioners, et al.*, USDC DNM No. CV 08-0369 JH/LFG [Doc. No. 37].

5. The parties, having investigated appropriate recipients, jointly propose that the balance left in the account be distributed in equal shares of \$11,004.99 each to (1) the Mesilla Valley Community of Hope ("MVCH") and (2) the Community Foundation of Southern New Mexico ("CFSNM").

6. MVCH is a 501(C)(3) tax exempt non-profit entity which has as its mission to provide a variety of services to the homeless of Dona Ana County, including finding lodging, laundry services, arranging counseling, obtaining identification, providing free legal services and emergency financial support. Attached hereto as Exhibit 1 is a description of the structure, programs and accomplishments of MVCH, as well as its executive and administrative staff.

7. CFSNM is also a 501(C) (3) tax exempt non-profit entity which has its mission ensuring that the people of Southern New Mexico have access to quality healthcare close to home. Attached hereto as Exhibit 2 is a description of the structure, programs and accomplishments of CFSNM, as well as its executive and administrative staff.

8. The parties jointly seek the Court's approval of this proposed distribution of the remaining funds in the settlement account. After such distribution, all funds will be completely accounted for in connection with this settlement.

WHEREFORE, for all of the foregoing reasons, the parties hereto jointly propose that the Court enter its order approving the distribution of the remaining balance in the settlement account as set forth above.

Respectfully submitted,

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