

**IF YOU ARE/WERE A NMSU FACULTY MEMBER AND YOU HAD A BABY, ADOPTED A CHILD OR HAD A FOSTER CHILD PLACED WITH YOU A PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.**

*A court has authorized this Notice. This is not a solicitation from a lawyer.*

- 9-month faculty members have sued NMSU, alleging denial of leave and other violations of the Family and Medical Leave Act (“FMLA”).
- The Court has not decided whether NMSU did anything wrong. After court-facilitated negotiations, the parties have agreed on the terms of a Settlement affecting your rights. You have a choice to make now:

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT</b>	
<b>Submit a Claim Form</b>	<p><b>This is the only way to be eligible to receive money from the Settlement Fund.</b></p> <p>You must submit a claim form by March 15, 2016.</p>
<b>Do Nothing</b>	<p><b>Stay in this lawsuit. Receive no money from the Settlement Fund. Give up certain rights.</b></p> <p>By doing nothing, you will not receive any money from the Settlement Fund, and you give up any rights to sue NMSU separately about the same FMLA claims in this lawsuit.</p>
<b>Ask to Be Excluded (Opt Out)</b>	<p><b>Get out of this lawsuit (opt out). Receive no money from the Settlement Fund. Keep any rights you might have.</b></p> <p>If you ask to be excluded, you will not be eligible to receive any money from the Settlement Fund, but you keep any rights to sue NMSU separately about the same FMLA claims.</p> <p>You must submit your request to opt-out by February 25, 2016.</p>
<b>Object</b>	<p><b>Write to the Court about why you don’t think the Settlement is overall fair to the class.</b></p> <p>You must submit your objection(s) by February 25, 2016</p>

- Your options are explained in this notice. To ask to be excluded, you must act before **February 25, 2016.**
- Any questions? Read on and visit [www.NMSU-FMLALawsuit.com](http://www.NMSU-FMLALawsuit.com).

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## **BASIC INFORMATION**

### **1. Why did I get this notice?**

The Court has reviewed the Settlement and has preliminarily approved it as being fair, adequate and reasonable. Before deciding whether to give the Settlement final approval, the Court wishes to inform you of the general terms of the Settlement and of your right to comment on the Settlement, if you so desire, as well as your right to opt-out, i.e., be excluded, from participating in the monetary portion of the Settlement.

### **2. What is this lawsuit about?**

This lawsuit is about whether NMSU gave up to 12 weeks of leave to 9-month faculty members (men and women) who had a baby, adopted a child or had a child placed with them for foster care. These events are considered “FMLA-qualifying parental leaves.” The lawsuit also complains that NMSU interfered with faculty members’ FMLA rights by failing to post FMLA information in buildings and written policies, failing to inform employees of their FMLA rights and responsibilities when NMSU became aware that an employee might have qualifying FMLA event, and taking other actions that deterred faculty members from seeking or taking parental leave. More information about the FMLA can be found at the website of the U.S. Department of Labor, [www.dol.gov](http://www.dol.gov).

You can read all of the plaintiffs’ claims in the Plaintiffs’ Complaint, which can be found at [www.NMSU-FMLALawsuit.com](http://www.NMSU-FMLALawsuit.com).

NMSU denies any wrongdoing. The Court has not made and will not make any determination regarding whether or not NMSU violated the FMLA. Because the Class Representative and NMSU together came to the Court to ask that the Court approve the Settlement that the two sides agreed to, the Court will simply examine the terms to determine whether or not they are fair, adequate and reasonable. The Settlement resolves the FMLA claims in the lawsuit and also individual, non-class claims that the Class Representative made in the lawsuit.

### **3. What is a class action and who is involved?**

In a class action lawsuit, one or more people called “Class Representatives” (in this case Dulcinea Lara, Ph.D.) sue on behalf of other people who have similar claims. The people together are a “Class” or “Class Members”. The faculty member who sued and all the Class Members like her, are called the Plaintiffs. NMSU is called the Defendant.

### **4. Class Definition—You May be Part of the Class**

You are a member of the **Class** affected by the Settlement if you fit within this definition:

All regular current or former 9-month faculty members who had an FMLA-qualifying parental leave at any time between April 29, 2011 and December 14, 2015 and who had been employed by NMSU for at least one year and worked at least 1250 hours in the year preceding the FMLA-qualifying parental leave.

- If you fit the above definition, then you are a Class Member and you are eligible to receive a payment from the Settlement Fund even if you did not notify NMSU of your

FMLA-qualifying event, add a dependent to your benefits, request FMLA-leave or take any time off.

- If you received this Notice in a mailing addressed to you, then NMSU's records show that you are a current or former 9-month faculty member at some time between April 29, 2011 and December 14, 2015 and you added a new baby or minor child to your NMSU health benefits during this time period.

## **SUMMARY OF SETTLEMENT TERMS**

### **1. What Are the Terms of the Settlement?**

The Settlement requires NMSU to establish a Settlement Fund, to provide faculty with paid leave benefits for FMLA-qualifying events, and implement changes to its policies and practices. The Programmatic portions of the Settlement will last for three years.

### **2. The Settlement Fund**

Under the Settlement, NMSU will pay \$460,730.77 into a Settlement Fund to pay Class Members. Class Members who comply with the claim procedures will receive an equal share of the Claims Fund if there are more than 53 Eligible Claimants. If there are 53 or fewer Eligible Claimants each Eligible Claimant will receive the equivalent of a minimum of six (6) weeks, up to a maximum of twelve (12) weeks, of pay at their current pay rate as of December 14, 2015, or as of their last date of employment if they are a former employee. In addition, NMSU will pay Class Counsel's fees and costs awarded by the Court, not to exceed \$250,000.00, into the Settlement Fund. NMSU will also pay for a third party (Settlement Services, Inc. or "SSI") to confidentially process the Claim Forms and administer the Settlement.

### **3. Programmatic Relief: What Has NMSU Agreed to Do Under the Settlement?**

If the Court grants final approval to the Settlement, the changes to be made to NMSU's policies and practices, known as "programmatic relief," will apply to all regular 9-month faculty members who are currently employed by NMSU. Some of the changes will benefit all employees. It is not possible to opt-out of the programmatic relief portion of the Settlement. As described more fully in the Settlement Agreement, NMSU has agreed to the following:

- A. Implement a new paid leave benefit for all regular 9-month faculty members to be used for any kind of FMLA-qualifying leave (not limited to parental leave). Eligible faculty will accrue 9 days of leave per year, up to a maximum of 800 hours. Upon approval of the Settlement NMSU will provide all faculty members with the paid leave balances based on their length of service up to 10 years. Eligible Claimants will receive a minimum of twelve (12) weeks of leave accrual regardless of their years of service. The estimated value of this paid FMLA leave benefit is \$16 million. The leave benefit has no cash value upon retirement or separation of employment. Additional information about this benefit is located in Policy #7.20.42 Faculty Care Leave;
- B. Provide initial mandatory FMLA training to Academic Administrators (College Deans, Associate Deans for Academics and Academic Department Heads), HR

Liaisons, and Supervisors. Thereafter the mandatory FMLA training will be provided annually to these categories of employees;

- C. Make an online FMLA-training module available to all employees;
- D. Provide new employees with FMLA training;
- E. Place FMLA posters in any main campus building where faculty offices are located and for community colleges, posters will be located in the Administration Buildings;
- F. Post an online notice of FMLA rights that is available to employees with internet access (a copy is enclosed with this notice for your information);
- G. Academic Administrators, HR Liaisons and Supervisors will promptly notify the Human Resources Department (“HR”) when any employee makes the supervisor aware of any situation which may constitute an FMLA-qualifying event, whether or not FMLA leave is requested or contemplated by the employee;
- H. HR will promptly review employee benefit documents to determine whether enrollment changes indicate an FMLA-qualifying event has occurred, and issue a notice of eligibility and notice of rights and responsibilities to any affected employee, even if the employee has not requested time off;
- I. Medical certification forms will not be required to substantiate parental leave – self-certification or other forms of verification will be allowed;
- J. Revise policy #7.20.75(A)(10) to allow paid sick leave to be used for pregnancy-related medical conditions in the same manner and amount as for any other short-term medical conditions, and allow use of sick leave for adoption or placement of children without any restriction based on the child’s age or proximity to the birth or placement;
- K. Provide data and records to Class Counsel to substantiate compliance with the terms of the Agreement.
- L. Pay liquidated damages of \$250.00 per person who has not attended the mandatory training as required.

#### **4. Settlement Hearing**

The Court will decide whether or not to give final approval to this Settlement after the **Settlement Hearing** to be held May 26, 2016 before the Honorable Paul J. Kelly at the United States District Court of the District of New Mexico, U.S. Courthouse, 333 Lomas NW, Albuquerque, NM 87102. At this hearing, the Court will determine whether the proposed Settlement is fair, reasonable, and adequate and whether it should be approved. The Court will also consider whether the motion of “Class Counsel,” for an award of attorneys’ fees and

expenses should be approved, and whether, in accordance with the Settlement, an order and judgment should be entered bringing the litigation to a conclusion.

The Court has the authority to change the date of the hearing. Information about any changes to the date of the hearing will be available at [www.NMSU-FMLALawsuit.com](http://www.NMSU-FMLALawsuit.com).

## **5. Do I Have To Come To The Settlement Hearing?**

You are not required to appear at the hearing. Attorneys representing the Class will appear at the hearing on behalf of all class members at no cost to you. However, if you would like to comment on or object to the Settlement, you may appear and be heard at the Settlement Hearing, either by yourself or, at your own expense, with an attorney of your choice. If the Court gives final approval to this Settlement, the Court's judgment will be final and binding on all Class Members who have not opted out.

### **HOW TO PROCEED: YOUR OPTIONS**

You have four options. You must decide whether you want to A) submit a Claim Form and receive a payment from the Settlement Fund; B) do nothing and give up your portion of the Settlement Fund and give up your rights; (C) opt-out and exclude yourself from a payment from the Settlement Fund and keep your rights; or D) object to the Settlement.

#### **Option A: Submit a Claim Form for a Payment from the Settlement Fund**

In order to be eligible to receive a share of the Settlement Fund, you must fill out the Claim Form attached to this Notice and return them to the Claims Administrator by no later than March 15, 2016. The Claim Form asks for information about your length of employment as a regular 9 month employee, date(s) of the birth, adoption or placement of a child, and the amount of leave you took, if any. The share of money that you will receive, if the Settlement is finalized, will be determined partly based on your answers to the questions on this Claim Form.

Each Class Member will be required to sign a "release" before receiving payment. This release will end any FMLA-parental-leave claims you have or could have brought against NMSU arising from an FMLA-qualifying parental leave during your employment with the NMSU through December 14, 2015. The Class Representative is required to release any and all claims she may have against NMSU in exchange for enhanced programmatic benefits.

Whether or not you submit a Claim Form, unless you opt out, all FMLA claims that you may have up through December 14, 2015, arising out of an FMLA-qualifying parental leave will be barred by this Settlement.

#### **Option B: Do Nothing and Give Up Your Rights**

If you take no action, you will remain a part of the Class. If you fail to submit a Claim Form or submit a request to opt-out of the Settlement, all FMLA claims that you may have up through December 14, 2015, arising out of an FMLA-qualifying parental leave will be barred by this Settlement.

**Option C: Opt-Out: How Do I Exclude Myself from the Settlement?**

You may request to opt-out, or be excluded, from this case. If you opt out, you will *not be eligible for any payment* as part of this Settlement. Any Class Member who wishes to opt out of the Settlement Class must mail a written, signed statement that he or she is opting out of the Settlement Class to both of the following addresses:

Whitney Warner  
Moody & Warner, P.C.  
4169 Montgomery Blvd. NE  
Albuquerque, NM 87109

Cody Rogers  
Miller Stratvert  
3800 East Lohman Ave. Ste H  
Las Cruces, NM 88011

To be effective as a request for exclusion, the letter must be received by the above counsel on or before **February 25, 2016**, and must contain each of the following:

- (a) your name, social security number, current address and telephone number; (email is requested but optional)
- (b) the name and number of this case (*Lara, et al. v. NMSU, et. al.*, No. 14-CV-0401 PJK/CG;
- (c) a statement that you wish to be excluded from the Class, including the following language, which must be contained in your request:

“I understand that, by this request to be excluded from the monetary settlement in this case, I am foregoing all monetary benefits from this Settlement and will receive no money from the NMSU Settlement Fund. I understand that I may bring a separate legal action seeking damages, but may receive nothing or less than what I would have received if I had filed a claim under the class monetary settlement procedure in this case. I also understand that I may not seek exclusion from the class for programmatic relief and that I am bound by the programmatic provisions of the settlement agreement.”

If you choose to opt-out, and submit the necessary information to do so, but later decide to re-join the Class, you may rescind your opt-out request. To be effective, such a rescission must be in writing and signed, and must be received on or before March 15, 2016 by any one of the following:

Whitney Warner Moody & Warner, P.C. 4169 Montgomery Blvd NE Albuquerque, NM 87109	Cody Rogers Miller Stratvert 3800 East Lohman Ave. Ste H Las Cruces, NM 88011	Settlement Services, Inc. PO Box 1307 Tallahassee, FL 32302-1307 Toll free # 855-272-2485
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Please note that Class Members who submit timely and valid requests for exclusion will have no right to object to the Settlement in court and will no longer be represented by Class Counsel.

**Option D: Object to the Settlement and/or Speak at the Hearing**

The Court must assess the overall fairness and reasonableness of the Settlement to the Class. Class Members who have not opted out of the monetary relief portion of the Settlement may object to the Settlement. However, in order to speak at the hearing, or have your objection to the

Settlement considered by the Court, you must submit a written objection to the Settlement prior to the Settlement Hearing. This statement must be signed, and must include the name and number of this case (*Lara, et al. v. NMSU, et al.*, No. 2:14-CV-0401 PJK/CG) and a detailed description of the basis for the objection. This statement must be received by Class Counsel on or before **February 25, 2016** at:

Whitney Warner or Repps Stanford  
RE: *Lara, et al. v. NMSU, et al.*, No. 14-CV-0401 PJK/CG  
Moody & Warner, P.C.  
4169 Montgomery Blvd NE  
Albuquerque, NM 87109

Class Counsel will file with the Court all objections received by March 15, 2016.

You need not appear at the Settlement Hearing for your written comments or objection to be considered by the Court, but you may appear if you so desire. If you plan to comment on or object to the Settlement in person at the Settlement Hearing, you must file a written notice of appearance identifying yourself and any attorney you may retain at your own expense with your objection, which, as noted above, must be signed, include a detailed description of the basis for the objection, and be received by Class Counsel on or before **February 25, 2016** at the above address.

Please note that no one may appear at the Settlement Hearing for the purpose of objecting to the Settlement without first having filed and served his/her objection(s) in writing within the time period described above.

#### **How Will My Payment Be Calculated?**

Each Class Member who files a timely Claim Form will have their claim confidentially reviewed by a third party Claims Administrator appointed by the Court. Class Members who submit a Claim Form will be eligible to share equally in the Claims Fund or receive an amount equivalent to six weeks of their pay, whichever is less. After this initial allocation, Class Members will share the remainder of the Settlement Fund on a pro rata basis, up to the equivalent of twelve weeks of pay based the date(s) of FMLA-qualifying parental leave events, and the amount of leave you actually took, if any, and whether any of the leave you took was unpaid, with the greater pro rata portions going to those employees who took the least amount of leave. The Claims Administrator will review and keep the Claim Forms confidentially. The Claim Forms will not be shared with NMSU.

The Claims Administrator will make all determinations regarding the allocation of the Settlement Fund and the payment to each Claimant based on the formula that has been approved by the Court. You will not have a right to challenge the allocation and distribution determined by the Claims Administrator.

The total amount of awards made to the Class Representative and the Eligible Claimants shall not exceed \$460,730.77, plus any interest accrued.

The Claims Administrator shall send a Notice of Award to each eligible Claimant disclosing his or her award payment, along with a Class Member Release. Within 30 days after receipt of an executed Class Member Release from a Class Member, the Claims Administrator shall send the Class Member his or her award payment. Any Class Member who does not execute and timely deliver an executed Class Member Release to the Claims Administrator within three (3) months of the date the Notice of Award was mailed shall be ineligible for, and forever barred from receiving, monetary relief under this Settlement Agreement, even if said Class Member has not opted out. Any undistributed funds that remain after three (3) months from the mailing of the Notice of Award due to uncashed checks shall be distributed to 501(c)(3) organizations which advance child care and/or family development as selected by NMSU and Class Counsel.

The Claims Administrator shall maintain the distribution plan and allocation list for a period of five (5) years. NMSU shall have access to individual allocation amounts only upon written notice to Class Counsel and a showing of good cause (*e.g.*, actual or threatened litigation by a Claimant). Any dispute as to whether good cause exists for such a requested disclosure shall be resolved through the Dispute Resolution process set forth in the Settlement Agreement.

The information provided on the Claim Form may be verified for accuracy against documents provided to the Claims Administrator by NMSU and/or Class Counsel. You will be contacted by the Claims Administrator to respond to any discrepancies which may exist.

#### **Are There Tax Consequences For Any Money I Might Get?**

Any award you receive from the Settlement Fund is made pursuant to 29 U.S.C. § 2617(a)(1)(A)(i)(II) and is not considered “wages”, however, it is considered income to you. No money will be withheld from your award for taxes and you will be responsible for the taxes which may be owed. The Claims Administrator will report the payment to you and the IRS on Form 1099-MISC. Class Counsel are not tax advisors and cannot give you advice on any tax matters. Class Counsel urge you to consult your tax advisor for answers to any questions you may have about the tax implications of any potential award.

#### **The Lawyers Representing You And The Class**

As a Class Member, you are represented in this litigation by Class Counsel, Whitney Warner and Repps Stanford of Moody & Warner, PC. Unless you elect to exclude yourself from the Settlement, you will continue to be represented by Class Counsel in connection with implementation and monitoring of the Settlement throughout the three-year duration of the terms of the Settlement at no cost to you. Although it is not necessary, you may, if you wish to do so, retain your own attorney at your own expense.

#### **How Will The Lawyers Be Paid?**

In connection with the Settlement, the Court will award Class Counsel reasonable attorneys’ fees and expenses, not to exceed \$250,000.00. If you receive a payment from the Settlement Fund, you will not owe any fees or expenses to the lawyers who have represented you as part of the Class. The attorneys’ fees and expenses of Class Counsel, as awarded by the Court, will be paid from the Settlement Fund and only if and after the Settlement has been approved by the Court.

