

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

MICHELLE ROMERO, as Sister and
Next Friend of Alejandro Romero, Jr.,

Plaintiff,

vs.

No. CIV 15-0389 JB/SMV

BOARD OF COUNTY COMMISSIONERS
FOR THE COUNTY OF CURRY; GERRY
BILLY; TORI SANDOVAL and ECIPIO
LUCERO,

Defendants.

**MEMORANDUM OPINION AND ORDER ADOPTING MAGISTRATE
JUDGE'S PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

THIS MATTER comes before the Court on the Magistrate Judge's Proposed Findings and Recommended Disposition, filed March 15, 2017 (Doc. 142)("PFRD"), which recommends that the Court find that the two proposed settlement agreements are fair and reasonable, and therefore approve the agreements. The parties have waived their right to file objections to expedite the Court's approval of the proposed agreements. See PFRD at 6-7. Upon review of the record, the Court concurs with the Honorable Gregory B. Wormuth, United States Magistrate Judge for the United States District Court for the District of New Mexico's findings and recommendations.

Where no party objects to the Magistrate Judge's proposed findings and recommended disposition, the Court has, as a matter of course in the past and in the interests of justice, reviewed the Magistrate Judge's recommendations. In Pablo v. Soc. Sec. Admin., No. CIV 11-0132 JB/ACT, 2013 WL 1010401 (D.N.M. Feb. 27, 2013)(Browning, J.), the plaintiff failed to

respond to the Magistrate Judge's proposed findings and recommended disposition, and thus waived his right to appeal the recommendations, but the Court nevertheless conducted a review. The Court generally does not, however, "review the PF&RD de novo, because the parties had not objected thereto, but rather review[s] the recommendations to determine whether they clearly erroneous, arbitrary, obviously contrary to law, or an abuse of discretion." Pablo v. Soc. Sec. Admin., 2013 WL 1010401, at *4. The Court, thus, does not determine independently what it would do if the issues had come before the Court first, but rather adopts the proposed findings and recommended disposition where "[t]he Court cannot say that the Magistrate Judge's recommendation . . . is clearly erroneous, arbitrary, obviously contrary to law, or an abuse of discretion." Pablo v. Soc. Sec. Admin., 2013 WL 1010401, at *4. See Alexandre v. Astrue, No. CIV 11-0384 JB/SMV, 2013 WL 1010439, at *4 (D.N.M. Feb. 27, 2013)(Browning, J.)("The Court rather reviewed the findings and recommendations of the Honorable Stephan M. Vidmar, United States Magistrate Judge, to determine if they are clearly erroneous, arbitrary, obviously contrary to law, or an abuse of discretion. The Court determines that they are not, and will therefore adopt the PFRD."); Trujillo v. Soc. Sec. Admin., No. CIV 12-1125 JB/KBM, 2013 WL 1009050, at *5 (D.N.M. Feb. 28, 2013)(Browning, J.)(adopting the proposed findings and conclusions, noting: "The Court did not review the ARD de novo, because Trujillo has not objected to it, but rather reviewed the . . . findings and recommendations to determine if they are clearly erroneous, arbitrary, obviously contrary to law, or an abuse of discretion, which they are not."). This review, which is deferential to the Magistrate Judge's work when there is no objection, nonetheless provides some review in the interest of justice, and seems more consistent with the waiver rule's intent than no review at all or a full-fledged review. Accordingly, the Court considers this standard of review appropriate. See Thomas v. Arn, 474 U.S. at 151

(“There is nothing in those Reports, however, that demonstrates an intent to require the district court to give any more consideration to the magistrate’s report than the court considers appropriate.”). The Court is reluctant to have no review at all if its name is going at the bottom of the order adopting the Magistrate Judge’s proposed findings and recommendations.

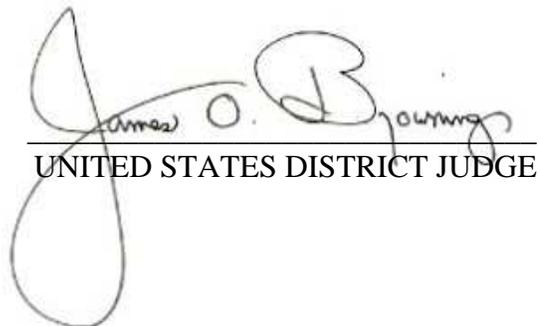
The parties have waived their right to file objections to expedite the Court’s approval of the two proposed settlement agreements. See PFRD at 6-7. The Court, thus, does not determine independently what it would do if the issues had come before the Court first, but rather adopts the proposed findings and recommended disposition where “[t]he Court cannot say that the Magistrate Judge’s recommendation . . . is clearly erroneous, arbitrary, obviously contrary to law, or an abuse of discretion.” Pablo v. Soc. Sec. Admin., 2013 WL 1010401, at *4. The Court has reviewed the findings and recommendations of the Honorable Gregory B. Wormuth, and has determined that they are not clearly erroneous, arbitrary, obviously contrary to law, or an abuse of discretion. The Court therefore adopts the PFRD.

IT IS ORDERED that: (i) the Magistrate Judge’s Proposed Findings and Recommended Disposition, filed March 15, 2017 (Doc. 142) is adopted; (ii) the Joint Motion to Approve Settlement, filed February 2, 2017 (Doc. 136) is granted; and (iii) the parties’ proposed settlements are approved.

Counsel:

Matthew Coyte
Coyte Law, P.C.
Albuquerque, New Mexico

Attorneys for the Plaintiff



UNITED STATES DISTRICT JUDGE

Brandon Huss
Dennis K. Wallin
Wallin, Huss and Mendez, LLC
Moriarty, New Mexico

*Attorneys for the Defendant Board of County Commissioners for the County of Curry,
Defendant Tori Sandoval, and Defendant Ecipio Lucero*

Luis E. Robles
Nicholas S. Autio
Robles, Rael & Anaya, P.C.
Albuquerque, New Mexico

Attorneys for the Defendant Gerry Billy