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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

SARA ALVARADO, individually
and as Guardian ad Litem for MARTIN
ALVARADO, et al.,

CASE NO. CV F 09-0243 LJO SMS

**ORDER ON PETITION FOR MINORS’
COMPROMISE APPROVAL**
(Doc. 61.)

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

_____ /

INTRODUCTION

Plaintiff Sara Alvarado (“Ms. Alvarado”) seeks this Court’s approval for her four minor children of a \$7,500 settlement of claims against defendant United States of America (“Government”) under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b), 2671-2680, arising from the diving death of Martin Alvarado (“Mr. Alvarado”), Ms. Alvarado’s husband and her children’s father. There is no opposition to the settlement. For the reasons discussed below, this Court GRANTS Ms. Alvarado’s petition for minors’ compromise approval.

BACKGROUND

Ms. Alvarado and Cornwell & Sample, LLP (“Cornwell”) entered into a July 16, 2007 Contingency Fee Agreement (“agreement”) by which Cornwell agreed to pursue wrongful death claims for Ms. Alvarado and her minor children Martin Alvarado, Vivian Alvarado, Fabian Alvarado and Angel

1 Alvarado (collectively the “minor plaintiffs”). The agreement provides that “the fee charged for the
2 recovery by every one and each child under the age of eighteen at the time of the settlement shall be
3 twenty-five (25%) of such greater amount as the court shall allow calculated on the gross settlement
4 allocated to each child.” The agreement further provides that “court costs and costs of investigation and
5 expense will be repaid to the party advancing the same from the proceeds of any judgment or settlement
6 after the calculation of fee.”

7 In October 2010 with the Government’s motion to dismiss pending, the Government and
8 Cornwell reached a \$7,500 settlement of Ms. Alvarado and the minor plaintiffs’ claims. Ms. Alvarado
9 and Cornwell seek approval to distribute \$2,500 to Cornwell for fees and costs and to split the remaining
10 \$5,000 equally among the minor plaintiffs with each receiving \$1,250. Cornwell states in his declaration
11 that the “\$2,500 payment does not even cover all my costs in this litigation, which amount to \$2,640.78”
12 and that “settlement is in the best interests of Plaintiff and her minor children who thereby avoid the
13 possibility of an adverse verdict with a cost bill awarded against them.” In her declaration, Ms. Alvarado
14 acknowledges the 25-percent contingency fee for the minor plaintiffs’ claims and notes that “Cornwell
15 and I have reached an agreement that \$2,500 of the settlement amount will be paid to Plaintiff’s counsel
16 in full payment of all fees and expenses and the balance will be paid to me for my children.”

17 **DISCUSSION**

18 This Court’s Local Rule 202 addresses settlements for minors and provides in pertinent part:

19 (b) **Settlement.** No claim by . . . a minor . . . may be settled or compromised
20 absent an order by the Court approving the settlement or compromise.

21 (c) **Disclosure of Attorney's Interest.** When the minor . . . is represented by an
22 attorney, it shall be disclosed to the Court by whom and the terms under which the
23 attorney was employed . . . and whether the attorney has received or expects to receive
24 any compensation, from whom, and the amount.

25 . . .

26 (e) **Payment of Judgment.** Whenever money . . . is recovered on behalf of a
27 minor . . . , the money . . . will be (1) disbursed to the representative pursuant to state law
28 upon a showing that the representative is duly qualified under state law, (2) disbursed
otherwise pursuant to state law, or (3) disbursed pursuant to such other order as the Court
deems proper for the protection of the minor . . . (Bold in original.)

F.R.Civ.P. 17(c) empowers a district court to make such “order as it deems proper for the
protection” of a minor. “Federal courts generally require that claims by minors . . . be settled in

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costs; and

3. ORDERS that the minor plaintiffs' shares of \$1,250 each be deposited into federally insured blocked accounts and not withdrawn without a court order until the respective minor plaintiff reaches the age of majority.

IT IS SO ORDERED.

Dated: December 23, 2010

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE