

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MIGUEL GONZALEZ, JR., a minor, by and
through his guardian ad litem, Maria
Gonzalez, MARIA GONZALEZ and
MIGUEL GONZALEZ,

Plaintiffs,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

CASE NO. 1:09-cv-00509-LJO-SKO

**ORDER GRANTING PETITION FOR
COMPROMISE OF THE CLAIM OF
MINOR MIGUEL GONZALEZ, JR.**

(Docs. 64, 73)

On January 13, 2012, the Magistrate Judge issued Amended Findings and Recommendations that the Petition for Compromise of the Claim of Minor Miguel Gonzales, Jr., be granted.¹ (Doc. 73.) The Amended Findings and Recommendations were served on all parties appearing in the action and contained notice that any objections were to be filed within 5 days after service of the order. No objections were filed.

¹ On January 6, 2012, the Magistrate Judge issued Findings and Recommendations that the Petition for Compromise of the Claim of Minor Miguel Gonzales, Jr., be granted. (Doc. 72.) The parties were provided ten (10) days to file objections. On January 13, 2012, the Magistrate Judge issued Amended Findings and Recommendations; the Amended Findings and Recommendations removed the words "United States of America" located at page 12, line 12, ¶ 5(d) and replaced them with the words "JMW Settlements, Inc." (See Doc. 72, 12:12.) A renewed 5-day objection period followed the issuance of the Amended Findings and Recommendations.

1 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this Court has conducted a
2 *de novo* review of the case. Having carefully reviewed the entire file, the Court concludes that the
3 Magistrate Judge's Amended Findings and Recommendations are supported by the record and proper
4 analysis.

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. The Amended Findings and Recommendations issued on January 13, 2012, are
7 ADOPTED IN FULL;
- 8 2. The proposed settlement between minor Miguel Gonzalez, Jr., and the United States,
9 as set forth in the "Stipulation For Compromise Settlement And Release of Federal
10 Tort Claims Act Claims Pursuant to 28 U.S.C. § 2677," is APPROVED as fair and
11 reasonable;
- 12 3. The "Petition for Compromise of the Claim of Minor Miguel Gonzalez, Jr." is
13 GRANTED;
- 14 4. The United States of America, subject to the approval of the Attorney General of the
15 United States, is REQUIRED to disburse the proceeds of the settlement by wire
16 transfer to JMW Settlements, Inc. Client Funds Account in the amount of one million
17 seven hundred fifty thousand dollars (\$1,750,000.00);
- 18 5. JMW Settlements, Inc. will disburse the sum of one million two hundred fifty
19 thousand dollars (\$1,250,000.00) ("Upfront Cash") from the Client Funds Account
20 to Miguel Gonzalez, Jr., a minor by and through his guardian ad litem, Maria Belen
21 Gonzalez, Miguel Gonzalez, Sr., and Donahue & Horrow, LLP, their attorneys of
22 record;
- 23 6. Donahue & Horrow, LLP shall distribute the Upfront Cash as follows:
 - 24 a. \$140,000.00, less attorney's fees in the amount of \$46,666.67, payable to
25 Plaintiffs Miguel Gonzalez, Sr. and Maria Gonzalez as settlement of their
26 claims;

- 1 b. Attorney's fees in the amount of \$261,384.72 drawn and payable to the order
2 of Plaintiffs' attorney, Donahue & Horrow, LLP;
- 3 c. Reimbursement for costs and expenses and cost reserves in the amount of
4 \$200,000.00 payable to Donahue & Horrow, LLP;
- 5 d. Payment of the Medi-Cal lien in the amount of \$145,213.00;
- 6 e. The balance of the Upfront Cash, \$503,402.28, shall be deposited into a
7 special needs trust established on behalf of Minor Miguel Gonzalez, Jr.; and
- 8 7. JMW Settlements, Inc. will pay the sum of five hundred thousand dollars
9 (\$500,000.00) to an annuity company rated A or A+ by A.M. Best and Co. to
10 purchase a single premium annuity contract on behalf of Plaintiff Miguel Gonzalez,
11 Jr., which by its terms provides Miguel the right to receive periodic monthly
12 payments for his life or 30 years certain, whichever is longer;
- 13 8. The proposed special needs trust is ESTABLISHED as follows:
- 14 a. The terms of the special needs trust are APPROVED and the trust is
15 ESTABLISHED as set forth in the proposed trust document filed at docket
16 no. 70-8, p. 2-11;
- 17 b. The trust shall be funded with:
- 18 (i) Upfront Cash in the amount of \$503,402.28;
- 19 (ii) Periodic monthly annuity payments;
- 20 c. Wells Fargo Bank is appointed as trustee of the special needs trust;
- 21 d. The trustee is permitted to invest in mutual funds, including proprietary
22 mutual funds, pursuant to Probate Code § 2574 and Financial Code § 1561.1;
23 and
- 24 e. The special needs trust shall be subject to the continuing jurisdiction of the
25 Superior Court of Kern County;
- 26
27
28

1 9. The Court shall retain jurisdiction over the special needs trust until funding is
2 complete and jurisdiction is transferred to the Kern County Superior Court subject
3 to the following:

4 a. Petitioner is REQUIRED to file a status report every 45 days regarding the
5 status of disbursement of the settlement funds;

6 b. Petitioner is REQUIRED to petition Kern County Superior Court to accept
7 transfer jurisdiction over the special needs trust when disbursement of the
8 settlement proceeds is complete;

9 c. Petitioner is REQUIRED to file with this Court proof of Kern County
10 Superior Court's acceptance of transfer of jurisdiction;

11 10. Petitioner Maria Gonzalez is AUTHORIZED and DIRECTED to execute any and all
12 documents reasonably necessary to carry out the terms of the settlement;

13 11. Petitioner Maria Gonzalez shall be RESPONSIBLE for maintaining a current address
14 on behalf of Miguel Gonzalez, Jr., with the annuity company and the United States
15 of America, until such time as the above payment schedule is completed;

16 12. Petitioner Maria Gonzalez is REQUIRED to submit proof of funding of the annuity
17 when it is completed; and

18 13. All scheduling deadlines in this case are VACATED and will be reset as necessary
19 upon completion of the settlement between Plaintiffs and the United States.

20 IT IS SO ORDERED.

21 **Dated:** January 24, 2012

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