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6
 7 **UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA
 8 **AT SAN FRANCISCO**

9 BERNAVE ALCARAZ AND MARIA
 10 VICTORIA ALCARAZ, A MARRIED
 11 COUPLE, AND E.V.A., C.A., AND
 12 S.A., THEIR MINOR CHILDREN, BY
 THEIR GUARDIAN AD LITEM,
 BERNAVE ALCARAZ

13 PLAINTIFFS,

14 v.

15 THE UNITED STATES, AND

16 DOES 1 -- 100
 17 Defendants.

CASE NO: C 13-00511 MMC

Agency Number: A 076 690 036

**VERIFIED PETITION TO APPROVE
 COMPROMISE AND [~~PROPOSED~~]
 ORDER APPROVING SETTLEMENT
 OF PENDING ACTION BY MINORS:
 E.V.A, C.A. AND S.A.**

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 20 **SUMMARY OF PETITION**

21 The original complaint in this action alleged that the minor children in this action
 22 suffered emotional distress on account of their mother, MARIA, having been wrongfully
 23 removed from the United States. The causes of action related to MARIA's alleged wrongful
 24 removal have been dismissed. In sum, nine causes of action were originally pled and only two
 25 survived. The surviving causes of action related solely to injuries suffered by MARIA in
 26 connection with (i) how she was treated by immigration officers while in custody in San
 27 Diego, and (ii) her physical transport from San Diego to Mexico. The remaining causes of
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1 action did not relate to injuries allegedly suffered by the minor plaintiffs [hereinafter
2 “MINORS”] in this case. Nevertheless, the children plaintiffs have a pending action despite
3 the fact that the government’s motion to dismiss was granted because the court’s order on that
4 motion was not a final judgment.

5 **PETITION FOR APPROVAL OF COMPROMISE OF PENDING ACTION**

6 1. PETITIONER, Bernave Alcaraz [hereinafter “Bernave”], is the husband of
7 Maria Alcaraz [hereinafter, “MARIA”] and is the father of three U.S. citizen children who
8 are the children plaintiffs in this case known as E.V.A, C.A. AND S.A (or collectively,
9 “MINORS”).

10 2. Claimants/Minor Children:

Name	Birthdate	Sex
[REDACTED]	[REDACTED]	F
[REDACTED]	[REDACTED]	F
[REDACTED]	[REDACTED]	F

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16 3. Relationship: E.V.A., C.A. and S.A. are the minor children of MARIA
17 and BERNAVE. The children reside with their parents in Sonoma County, California.
18 BERNAVE has petitioned the court and has been named their guardian ad litem.

19 4. Nature of Claim: This claim originally consisted of nine causes of action
20 alleging, among other things, injuries suffered by the minor children on account of their
21 mother having been wrongfully removed from the United States. All of the causes of actions
22 related to injuries suffered by the minor children have been dismissed, but a final judgment
23 has not been entered on the dismissal. The United States has offered to settle this action in
24 the amount of Ten Thousand Dollars (\$10,000.00) (“Settlement Amount), including the
25 claims of the minor plaintiffs, based on the terms and conditions set forth in the Stipulation
26 for Compromise Settlement and Release (“Stipulation”) attached hereto as Exhibit A, subject
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1 to court approval on behalf of the minor plaintiffs and approval by the Attorney General of
2 the United States or his designee. PETITIONER seeks an Order approving the settlement on
3 behalf of minors E.V.A, C.A., and S.A. and authorizing him to sign the Stipulation on behalf
4 of minors E.V.A, C.A., and S.A.

5 5. Petitioner has made a careful and diligent inquiry and investigation to
6 ascertain the facts relating to the incident which the claimants were injured; the responsibility
7 for the incident; and the nature, extent, and seriousness of the claimants' injuries. Petitioner
8 fully understands that if the compromise proposed in this petition is approved by the court
9 and is consummated, the claimants will be forever barred from seeking any further recovery
10 of compensation from the settling defendants named in this complaint even though the
11 claimants' injuries may in the future appear to be more serious than they are now thought to
12 be.

13 6. The MINORS' medical expenses, including medical expenses paid by
14 petitioner and insurers, to be reimbursed from the proceeds of settlement: \$1,500 will be
15 paid by the parents of the minor plaintiffs for therapist visits. There are no liens. The minor
16 plaintiffs visited therapists on three occasions.

17 7. The attorney's fees owed by MINORS, which are limited to not more than
18 25% of the Settlement Amount pursuant to 28 U.S.C. § 2678, and all other expenses (except
19 medical expenses), including expenses advanced by MINORS' attorney or paid or incurred
20 by petitioner to be reimbursed from proceeds of settlement or judgment.

21 8. Reimbursement of expenses paid by petitioner: Petitioner owes \$1,500 for
22 therapy treatments received by the MINORS.

23 9. Net Balance of Proceeds for the MINORS: \$0.00.

24 10. Summary:

25 a. *Gross Amount of Proceeds for all Plaintiffs:* \$10,000.00

26 b. *Medical expenses to be paid from proceeds:* \$0.00

27 c. *Attorney Fees from Claimants' proceeds (not to exceed*
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d. 25% of the Settlement Amount):	\$2,500.00
e. Expenses:	\$2,123.37
f. Balance to Plaintiffs:	\$5,376.63

Dated: July 2, 2014

Respectfully submitted,



H. Nelson Meeks, Esq.
Attorney for PLAINTIFFS

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[PROPOSED] ORDER

The Court has reviewed the Stipulation, ~~taken testimony, if necessary,~~ and heard arguments in favor of this settlement. The Court is fully informed of the specifics of the full and final terms and conditions of the settlement, including the necessity of the approval by the Attorney General of the United States. The Court finds that the terms and conditions of this settlement, as set forth in the Stipulation, are fair, reasonable, and in the best interests of the minor plaintiffs, E.V.A, C.A., and S.A.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the settlement is hereby approved.

IT IS FURTHER ORDERED that Petitioner is hereby authorized and required to sign the Stipulation and any other documents that are necessary to consummate this settlement on behalf of the minor plaintiffs, E.V.A, C.A., and S.A.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the cash settlement amount of \$10,000.00 (hereinafter "Settlement Amount") shall be distributed according to the terms and conditions of the Stipulation.

The Court finds that the amount of \$ 2500.00 constitutes fair and reasonable attorney's fees in this action and does not exceed the statutory maximum of twenty-five percent allowed under the Federal Tort Claims Act (28 U.S.C. § 2678). The Court further finds that the costs and expenses associated with the litigation are \$ 2123.37, and that such costs and expenses are fair, reasonable, and necessary. Accordingly, IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that such attorney's fees, costs, and expenses are approved and are to be paid as provided in the Stipulation.

The Court finds that Plaintiffs are responsible for paying or resolving any liens or claims for payment or reimbursement, including any liens or claims for payment or reimbursement by

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Medicaid, Medicare, or healthcare providers. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that after the payment of the attorney’s fees, costs, and expenses approved herein, and after paying or resolving any currently known liens or claims for payment or reimbursement, the balance of the Settlement Amount shall be paid to Plaintiffs.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiffs, upon final execution of the Stipulation and upon receipt of the Settlement Amount shall cause their counsel to file with this Court within two (2) business days of receiving said Settlement Amount a dismissal of this action in its entirety with prejudice, with each party bearing its own costs, expenses, and fees.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Court shall not retain jurisdiction over the action against the United States or the settlement.

DATE: July 11, 2014


Marjorie M. Chesney
United States District Judge