

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

United States District Court
Southern District of Texas
FILED

NOV 04 2008

Michael N. Milby, Clerk

ARACELY ZAMORA-GARCIA, et al.,)
in their own name and right, and on)
behalf of all others similarly situated,)
Petitioners/Plaintiffs,)
v.)
MARC MOORE, DISTRICT)
DIRECTOR FOR INTERIOR)
ENFORCEMENT, DEPARTMENT OF)
HOMELAND SECURITY, et al.,)
Respondents/Defendants.)

C.A. No. M-05-331
JURY DEMAND

Settlement Terms Sheet

1. This is an agreement of settlement. "Defendants" is defined as all Defendants other than the Government in the above-captioned matter. "Plaintiffs" are Irma Sandoval, Petra Carranza de Salinas, Deanna Arevalo, Dominica Rodriguez and the classes they represent as defined by the Court's order.
2. Defendants will give a \$2 million debt reduction to the members of the Indemnitor Notice Class ("INC") as defined below whether ^{or not} they make a claim, to be applied pro-rata to the remaining debt owed by members of the INC.
3. Defendants will contribute \$1.575 million to a settlement fund for both of the certified classes, allocated \$1.45 million to the Indemnitor Notice

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Class (“the Indemnitor Notice Class Fund” or “INC Fund”) and \$125,000 to the Bonded Immigrant Class.

4. As to the Indemnitor Notice Class:
 - a. Members of the Indemnitor Notice Class will return a claims form declaring that they were an indemnitor and providing the name and other information (e.g. “A-number,” date of birth, or other sufficient information) as to the identity of the bonded immigrant whose bond they indemnified.
 - b. Members of the INC whose claim accrued on or after September 30, 2001, shall have a claim for 80% of the notice portion¹ of the up-front fee on the bond on which they were an indemnitor.
 - c. Members of the INC whose claim accrued before September 30, 2001, shall have a claim for 20% of the notice portion² of the up-front fee on the bond on which he or she was an indemnitor.
 - d. If approved INC Claims exceed the INC Fund, said claims will be paid pro-rata to the total amount of approved INC Claims so that the total amount paid in respect of the INC Claims does not exceed

¹ “Notice portion” as used in this term sheet refers to the line on the billing analysis in Vannerson’s bond files entitled “monitoring program including check-ins, court date notification, etc.” In the event there is no billing analysis sheet in a particular bond file, the parties will stipulate as to the amount as 41% of the upfront fee paid for that particular bond.

² “Notice portion” as used in this term sheet refers to the line on the billing analysis in Vannerson’s bond files entitled “monitoring program including check-ins, court date notification, etc.” In the event there is no billing analysis sheet in a particular bond file, the parties will stipulate as to the amount as 41% of the upfront fee paid for that particular bond.


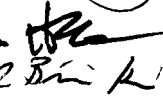

the amount remaining in the INC Fund after the payment of expenses from such fund for notice, claims administration, and service awards contemplated by this settlement.

- e. If approved INC Claims plus notice and claim expenses in excess of \$25,000, if any, plus any service awards are less than the \$1.45 million INC Fund, then the amount of \$200,000 or what remains in the INC Fund (if less than \$200,000) will be paid to an existing or to be established nonprofit organization(s) concerning immigrant rights to be selected by the Plaintiffs and approved by the Court (“the INC cy pres payment”). In no event will the total of approved INC Claims, the notice and claim expenses in excess of \$25,000, if any, the service awards, and the “INC cy pres payment” exceed \$1,450,000.
- f. Any amount remaining in the INC Fund after payment of the sum of the approved INC Claims plus “the INC cy pres payment” plus notice and claim process expenses plus the service awards contemplated in this settlement will revert to Fairmont.

5. As to the Bonded Immigrant Class:

- a. An agreed upon letter and form will be sent to the last known address via regular mail including a postage prepaid return envelope to immigrants who are part of the Bonded Immigrant Class as of November 3, 2008, asking the immigrant to elect

whether or not to have notice of an I-340 request for appearance for deportation sent to said immigrant by U.S. Mail. If the immigrant elects to have notice sent, Defendants will send such notice to the immigrant within 3 business days of receipt of the I-340 from the federal government. The form will ask for a current address for the immigrant, and the notice will be sent to that address or the most recent address provided to the Defendants by the immigrant or the indemnitor on the bond at the time the notice goes out. For those Bonded Immigrant Class members who do not respond, or who do not elect to have notice sent, Fairmont will proceed as it sees fit.

- b. The \$125,000 paid with respect to the Bonded Immigrant Class will be used to fund an existing or to be established nonprofit ~~cy~~  ~~pres~~ organization(s) concerning immigrant rights to be selected by the Plaintiffs and approved by the Court ("the Bonded Immigrant Class ~~cy~~  ~~pres~~ Payment"). 

6. Defendants will pay to Plaintiffs' Counsel, and neither Plaintiffs nor their Counsel will seek any greater amount from Defendants, for all Plaintiffs' attorneys' fees, costs, and expenses, the amount of \$1.7 million. This amount is in addition to the payments of \$1.575 million settlement funds for both classes, and the payment of up to \$25,000 for notice and claim administration expenses referred to in paragraph 7m. Attorneys' fees will

be payable upon the Court's order approving this settlement becoming final and non-appealable.

7. Claims process.

- a. All notices and letters will be in English and Spanish as agreed upon by the parties.
- b. The settlement is subject to Court approval, which class representatives, class counsel and defendants and their counsel will support.
- c. Once a preliminary approval of the settlement has been obtained from the Court, the Defendants will send out by regular mail an agreed upon notice to the entire class of the preliminary approval and that there is an opportunity to file objections as provided in such notice.
- d. The Parties will endeavor to have a final approval hearing in or around January of 2009.
- e. Class members seeking to object to the settlement must file their objection 21 days before the final approval hearing or such other time as the Court requires.
- f. Following the Court's order approving the settlement becoming final and non-appealable, the amounts provided for in Paragraph 3

will be funded into an escrow account to be held separately by Fairmont (unless otherwise ordered by the Court) and the claims process will take place.

- g. Notice for the claims process for the INC will be sent out by regular mail. It will include a claim form and a postage prepaid addressed return envelope. The parties will attempt in good faith to agree upon a single notice to be sent after preliminary court approval that includes the claim form and return envelope.
- h. The INC claims process will be open for 90 days, or such other time as the Court requires.
- i. INC Claim forms will be returned by INC claimants to a neutral party to be agreed upon by the parties or as may be determined by the Court (the "Claims Administrator") who will make the forms available to class counsel and defense counsel. Anyone filing a claim will provide some proof of identification acceptable to the Claims Administrator to verify they meet the criteria set forth in paragraph 8.
- j. Class counsel and Defense counsel will try to reach agreement on which claims should be approved.
- k. Parties will ask the Court to appoint a master to resolve any disputes on what claims should be approved.

- l. No party or lawyer will engage in any public communication to encourage or discourage the making of claims other than as set forth in the notice: provided however, notwithstanding anything to the contrary if the class counsel are contacted by the class members they are free to assist them in any way they feel appropriate.
 - m. Defendants will pay up to \$25,000 for notice and class administration expenses and the fees and expenses of the master. The remainder of any costs for the claim process or the master will come out of the INC fund.
 - n. All documents approved by the Court as part of the settlement and claims process will be posted on the website maintained for this case by Class Counsel.
8. Who is qualified to make a claim:
 - a. For the Indemnitor Notice Class:
 - i. If the person was an indemnitor; and
 - ii. On a file where the upfront fees were paid in full; and
 - iii. Where the Bonding Defendants' records indicate that on or after April 16, 1998 and on or before November 3, 2008 it received a "Notice to Obligor to Deliver Alien" (I-340)

indicating that the INS/DHS had scheduled an appearance for deportation for the Bonded Immigrant.

iv. There can be only one payment per bond.

9. Release

- a. A full and final release from both classes for all breach of contract claims brought and certified as part of the class action against Defendants, their agents, employees, etc (other than the government). Notwithstanding the foregoing, the release will not include a release of any claim for refund or a return of collateral, if any.
- b. The fulfillment of the settlement agreement and future contract obligations will not be released.
- c. Defendants do not release claims they have against any INC member for amounts owed after the reduction of debt provided for in paragraph 2 of this agreement.
- d. Defendants agree not to offset any payments to INC members pursuant to this settlement against any debt owed by any INC member.

10. The parties agree on a “service award” to the class representatives to be paid out of the INC class fund as awarded by the Court not to exceed

\$10,000 per class representative (including the intervenors, total of 4 people).

11. The parties agree that they are entering into this agreement based upon their own knowledge and assessment of its merits. Neither party is relying on any representations or assertions of the other in deciding to enter into this settlement.

12. This term sheet is binding upon the parties unless the court does not approve the settlement. The parties contemplate drafting more thorough and complete settlement documents before the preliminary approval hearing and will act in good faith to draft and finalize the settlement agreement and related documents.

13. The final order of the Court approving the settlement will include a provision dismissing all of the Plaintiffs' and Intervenors' live or certified claims against these Defendants with prejudice. Defendants will dismiss with prejudice their counterclaim against Irma Sandoval individually.

AGREED TO AND APPROVED:

Date: 4 Nov 2008 J. Benjamin King

Date: 4 Nov 2008 Lisa S. Brodyaga

Date: 4 Nov 08 Daniel K. Worthington

Date: Nov 4, 08 Howard L. Close