

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

**RAMAH NAVAJO CHAPTER,
OGLALA SIOUX TRIBE, and
PUEBLO OF ZUNI**, for themselves,
and on behalf of a Class of others
similarly situated,

Plaintiffs

v.

SALLY JEWELL, Secretary of the
Interior, *et al.*,

Defendants.

No. 90-cv-957-JAP/KBM

**JOINT MOTION TO MODIFY CLAIM FORM AND
CLARIFY FINAL SETTLEMENT AGREEMENT**

I. INTRODUCTION

Pursuant to § XVII of the Final Settlement Agreement (“FSA”), *see* ECF No. 1601-1, Sept. 16, 2015, the parties move to modify the Court-approved Claim Form and to clarify application of FSA §§ VIII.C.1, IX.A, and IX.D. In support of this Motion, the parties state as follows.

II. BACKGROUND

1. This Court’s September 30, 2015, Order approved, among other things, the Claim Form that the Settlement Administrator will send to each Class Member and that each Class Member, in turn, must sign and return to receive payment for its share of the

Net Settlement Amount. *See* Order Granting Prelim. Approval; Directing Notice be Sent to Class; Setting Fairness Hrg., ECF No. 1314, Sept. 30, 2015. *See also* Claim Form, ECF No. 1306-4, Sept 16, 2015.

2. This Court's February 23, 2016, Order granting final approval to the FSA, *see* Findings of Fact & Conclusions of Law Approving FSA & Awarding Attys.' Fees & Costs, ECF No. 1346, Feb. 23, 2016, *as amended*, ECF No. 1350, Mar. 2, 2016, approved, among other things, the parties' agreement in the FSA that:

- a. payments to each of the 699 Class Members from the Judgment Fund are subject to United States Department of the Treasury Debt Collection Authorities, *see* FSA §§ II.U (citing 26 U.S.C. § 6331(h) & 31 U.S.C. § 3716);
- b. the Bureau of Fiscal Service will offset and/or levy any delinquent debt of a Class Member from that Class Member's share of the Settlement Amount, *see* FSA §§ II.U, VII.B.1;
- c. the Reserve Account may be subject to offset and/or levy should the debt of a Class Member to the United States exceed that Class Member's share of the Net Settlement Amount, *see* FSA § VIII.C.1; and
- d. Attorneys' Fees and Litigation Costs may be subject to offset and/or levy should the debt of a Class Member to the United States exceed that Class Member's share of the Net Settlement Amount. *See* FSA § IX.A.

3. The United States Department of the Treasury, Bureau of the Fiscal Service paid the Settlement Amount pursuant to FSA § VII.B in separate deposits from June 16 to

July 11, 2016. Pursuant to its Debt Collection Authorities, the Treasury Department's payments offset federal debts and/or tax liens of 10 Class Members against their respective shares of the Settlement Amount. For three of those Class Members, the Treasury Department's offsets exceeded the Class Member's respective share of the Settlement Amount.

III. MODIFICATION OF CLAIM FORM

1. The parties propose and agree on two changes to the Claim Form provided to every Class Member:

a. For the Claim Form to

- i. change an incorrect reference from FSA § VI.B to FSA § IV.B;
- ii. update the reference to FSA Appendix 2 by adding a reference to its revision by the Court's Order of December 17, 2015 (ECF No. 1329); and
- iii. contain a second page allowing the Class Member at its option to receive payment by check or by wire transfer by providing its: (i) bank routing number; (ii) bank account number; (iii) financial institution name; (iv) bank account names; and (v) name of person submitting the claim on behalf of the Class Member.

A sample of the revised Claim Form is attached as Exhibit A.

- b. For the Settlement Administrator to provide two versions of a cover letter for the Claim Form. Both versions would explain that the Class Member may receive payment by check or by wire transfer.

- i. One version would be sent to Class Members not affected by Treasury Department offsets. (A sample of this letter is attached as Exhibit B.)
- ii. The second version would be sent to the 10 Class Members for whom the Treasury Department has offset their shares of the Settlement Amount. That version would contain the following additional statements:
 1. The United States Department of the Treasury, Bureau of the Fiscal Service has identified the Class Member as having a federal debt and/or tax lien;
 2. The Treasury Department should have provided the Class Member with notice of this federal debt and/or tax lien;
 3. Pursuant to the Treasury Department's Debt Collection Authorities, 26 U.S.C. § 6331(h) and 31 U.S.C. § 3716, the Class Member's payment will reflect the Treasury Department's offset of the Class Member's federal debt and/or tax lien; and
 4. The Class Member should contact the Treasury Department directly pursuant to the instructions provided in the notice it received from Treasury with any questions about or challenges to the Treasury Department's federal debt and/or tax lien.

A sample of this letter is attached as Exhibit C.

IV. CLARIFICATION OF FINAL SETTLEMENT AGREEMENT CONCERNING CLASS MEMBERS WITH OFFSETS

1. For each of the 7 Class Members that has offsets that do not exceed its respective share of the Settlement Amount, the parties propose and agree that:

- a. The Class Member will contribute the full amount of its respective share of Settlement Amount necessary to fund the Reserve Account, *see* FSA § VIII.C.1;
- b. The Class Member will contribute the full amount of its respective share of Attorneys' Fees and Litigation Costs, *see id.* § IX.A; and
- c. If the Class Member signs and returns the Claim Form, the Class Member will receive payment for its respective share of the Net Settlement Amount *less* the full amount of its offset.

2. For each of the three Class Members that has offsets that exceed its respective share of the Settlement Amount, the parties propose and agree that:

- a. Funding of the Reserve Account will be reduced by each Class Member's respective share of the Settlement Amount that would otherwise be used to fund its share of the Reserve Account, *see* FSA § VIII.C.1; and
- b. Payment of Class Counsel's Attorneys' Fees and Litigation Costs will be reduced by the Class Member's respective share of the Settlement Amount that would otherwise be used to fund its share of Class Counsel's Attorney Fees and Costs. *See id.* § IX.A.

3. The parties' experts calculated the amounts by which the Reserve Account, the Attorneys' Fees, and the Litigation Costs will be reduced pursuant to the TOP offsets. Exhibit D shows the results of their calculations.¹

V. CONCLUSION

This Court should grant the parties' Joint Motion to Modify the Claim Form and to Clarify the FSA.

¹ Names of the Class Members' with offsets have been omitted, pursuant to the confidentiality requirements of the TOP.

Respectfully Submitted,

s/ Michael P. Gross

MICHAEL P. GROSS
M.P.GROSS LAW FIRM, P.C.
460 St. Michaels Drive, Suite 401
Santa Fe, NM 87505
mike@mpgrosslaw.com
Counsel for Plaintiffs Ramah Navajo
Chapter and Oglala Sioux Tribe and Lead
Class Counsel

s/ C. Bryant Rogers

C. BRYANT ROGERS
VANAMBERG, ROGERS, YEPA,
ABEITA, GOMEZ & WORK, LLP
PO Box 1447
Santa Fe, NM 87504-1447
cbrogers@nmlawgroup.com
Counsel for Plaintiffs Ramah Navajo
Chapter and Oglala Sioux Tribe and Co-
Class Counsel

s/ Lloyd B. Miller

LLOYD B. MILLER
SONOSKY, CHAMBERS, SACHSE,
MILLER & MUNSON
900 West Fifth Ave, #700
Anchorage, AK 99501
lloyd@sonosky.net
Counsel for Pueblo of Zuni and Co-Class
Counsel

BENJAMIN C. MIZER

Principal Deputy Assistant Attorney
General

JOHN R. GRIFFITHS

Director, Federal Programs Branch

ERIC R. WOMACK

Assistant Director, Federal Programs
Branch

s/ James D. Todd, Jr.

JAMES D. TODD, JR.
RYAN B. PARKER
U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, N.W.
Washington, D.C. 20530
james.todd@usdoj.gov
Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY tha a true and correct copy of the parties “JOINT MOTION
TO MODIFY CLAIM FORM AND CLARIFY FINAL SETTLEMENT AGREEMENT”
was filed electronically pursuant to CM/ECF procedures for the District of New Mexico,

which caused the parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/Michael P. Gross_____