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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

9 CHRISTINA ROMAR, a minor  
10 suing through her mother and legal  
representative, CORA ROMAR,

11 Plaintiff,

12 v.

13 FRESNO COMMUNITY HOSPITAL  
14 AND MEDICAL CENTER;  
DR. THOMAS MANSFIELD,

15 Defendants.

CASE NO. 1:03-cv-06668-AWI-SMS

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING APPROVAL OF THE  
PROPOSED SPECIAL NEEDS TRUST  
SUBJECT TO CERTAIN AMENDMENTS  
AND ADDITIONS, INCLUDING CONTINUED  
COURT SUPERVISION UNDER THE  
CALIFORNIA PROBATE CODE

(Doc. 195)

16  
17 Minor Plaintiff Christina Romar, by her mother and legal representative Cora Romar, has  
18 moved for an order approving the creation and funding of a special needs trust for the settlement  
19 proceeds in this case. This matter has been referred to the magistrate judge pursuant to 28 U.S.C.  
20 § 636(b) and Local Rules 72-302 and 72-304. Following its review of the extensive briefing and  
21 argument regarding the form and implementation of Plaintiff's special needs trust, this Court  
22 recommends approval of the trust form conditioned on certain amendments including a provision  
23 for continued court supervision under the California Probate Code.

24 **I. Factual and Procedural Background**

25 On November 24, 2003, Plaintiff filed a complaint seeking damages under the Emergency  
26 Medical Center and Active Labor Act, 42 U.S.C. § 1395dd *et seq.* ("EMTALA"). Plaintiff  
27 alleged that, on three occasions when Christina was seen in the emergency room for a virulent  
28 infection, Defendants Fresno Community Hospital and Medical Center, and Dr. Thomas

1 Mansfield failed to provide an appropriate screening examination and stabilizing emergency  
2 medical treatment comparable to that provided to similarly situated patients, resulting in  
3 Christina’s experiencing a serious systemic infection and significant respiratory and  
4 cardiorespiratory complications. Christina was left with chronic infections and other resulting  
5 chronic diseases, and is permanently disabled.

6 For the most part, details of the intervening procedural history are not relevant to this  
7 motion. On March 21, 2007, the Court granted summary judgment in favor of Dr. Mansfield  
8 (Doc. 136). On December 4, 2008, Plaintiff and Defendant Fresno Community Hospital agreed  
9 to a settlement (Doc. 178).

10 Plaintiff proposes to deposit the settlement funds to which Christina is entitled into a  
11 special needs trust (Doc. 183-2). On March 11, 2010, Plaintiff filed a petition for an order  
12 approving the creation and funding of a special needs trust (Doc. 195). This Court heard the  
13 motion on April 2, 2010: Kevin G. Little appeared on behalf of Plaintiff, and Jacqueline Yates,  
14 Stammer, McKnight, Barnum & Bailey, LLP, appeared on behalf of Defendant Fresno  
15 Community Hospital and Medical Center. The Court twice requested supplemental briefing,  
16 which the parties provided along with an amended form of the trust dated May \_\_, 2010 [*sic*]  
17 (Docs. 197-204).

18 **II. Compliance With Court Rule 7.903(c)**

19 The principal matter of concern at the April 2, 2010 motion hearing was the trust’s  
20 omission of certain of the so-called “override provisions” set forth in California Rule of Court  
21 7.903(c). In pertinent part, the rule provides as follows:

22 Except as provided in (d) [governing only trusts with total assets of less  
23 than \$20,000], unless the court otherwise orders for good cause shown,  
trust instruments for trusts funded by court order must:

24 \* \* \* \* \*

- 25 (4) Prohibit investments by the trustee other than those permitted  
26 under Probate Code section 2574;
- 27 (5) Require persons identified in (3) [trustee or other person with  
28 authority to direct trustee to make disbursements] to post bond in  
the amount required under Probate Code section 2320 et  
seq.[setting forth calculation];

- 1 (6) Require the trustee to file accounts and reports for court approval  
2 in the manner and frequency required by Probate Code sections  
3 1060 et seq. and 2620 et seq. [chapters governing format and  
4 contents of accounting and reports];
- 5 (7) Require court approval of any changes in trustee and a court order  
6 appointing any successor trustee;
- 7 (8) Require compensation of the trustee, the members of any advisory  
8 committee, or the attorney for the trustee, to be in just and  
9 reasonable amounts that must be fixed and allowed by the court.  
10 The instrument may provide for periodic payments of  
11 compensation on account, subject to the requirements of Probate  
12 Code section 2643 and rule 7.755.

13 Although Plaintiff's subsequent amendment of the trust addresses certain of these  
14 concerns, the Court remains concerned about the implementation of the trust for Christina's  
15 benefit and the satisfaction of all of the override provisions.

16 **A. California Rule of Court 7.903(c)(4)**

17 The Christina Romar Beneficiary Trust Agreement Dated February 24, 2010, did not  
18 explicitly refer to Section 2574 but included investment provisions so broad as to allow highly  
19 speculative investments without requiring even the downside protections of diversification. *See*  
20 ¶ IV E. The May 2010 amendment added ¶ IV N, which, in part, explicitly subjected the Trustee  
21 to Section 2574's investment limitations.

22 This Court finds the first sentence of ¶ IV N sufficient to satisfy Rule 7.903(c)(4).  
23 Nonetheless, separating the condition expressed in ¶ IV N from the broad investment provision  
24 set forth in ¶ IV E increases the possibility that a trustee could overlook the protective  
25 restrictions, exposing the trust corpus to impermissible risk. Accordingly, this Court  
26 recommends that approval of the trust form be conditioned on the incorporation into ¶ IV E of  
27 the language from ¶ IV N: "Notwithstanding any of the specifically enumerated powers above, in  
28 managing the trust, the Trustee shall be subject to the investment limitations of California  
Probate Code § 2574."

**B. California Rule of Court 7.903(c)(5)**

Although Rule 7.903(c)(5) requires a trustee to post bond in the amount required under  
Probate Code section 2320 *et seq.*, the trust proposed in February required neither the trustee nor

1 any successor trustee to provide a bond or security of any kind. Plaintiff maintained that the  
2 excessive expense of a bonding requirement would rapidly deplete the trust corpus. Because  
3 California Probate Code § 15602 (e) provides that “[a] trust company may not be required to give  
4 a bond, notwithstanding a contrary provision in a trust instrument,” this Court finds that ¶ IV I, as  
5 amended in the May 2010 proposed trust to require reconsideration of the bonding requirement  
6 in the event of the replacement of another person or entity as trustee in lieu of the Good Shepherd  
7 Fund, adequately addresses this subsection of Rule 7.903(c)(5).

8 **C. California Rule of Court 7.903(c)(6)**

9 Rule 7.903(c)(6) requires the trustee to file accounts and reports for court approval in the  
10 manner and frequency required by Probate Code sections 1060 *et seq.* and 2620 *et seq.* As  
11 proposed in February 2010, the trust included no requirement for financial reports. By adding ¶  
12 IV N, in part, the May 2010 revised trust requires the provision of financial disclosures and tax  
13 returns to “the Trustor,” Cora Romar.

14 As Plaintiff emphasizes in her responsive brief, Cora Romar has acted with singular love  
15 and responsibility in caring for, and defending the rights of, Christina and her other children.  
16 Nonetheless, this Court shares the concern, voiced by defense counsel, that in view of Cora  
17 Romar’s limited experience with sophisticated financial transactions, Christina’s best interest is  
18 not served by her mother’s being the sole responsible party for monitoring the trust company’s  
19 investment and management of Christina’s settlement funds. This Court is also reluctant to  
20 place Cora Romar, who has limited financial resources, in the position of having to expend her  
21 personal funds to secure the services of tax or accounting professionals to assist her in overseeing  
22 Christina’s trust. Accordingly, this Court recommends continued court supervision under the  
23 probate code and the addition of a requirement that financial reports generated in the ordinary  
24 course of the trust company’s business and well as the trust tax returns and K-1 statements also  
25 be provided annually to the California Superior Court.

26 To effectuate this recommendation, the Court recommends approval of the May 2010  
27 amended trust subject to further amendment of ¶ IV N to read: “To ensure compliance with  
28 relevant provisions of law, the Trustee shall provide for court approval accounts and reports in

1 the manner and frequency required by Probate Code §§ 1060 *et seq.* and 2620 *et seq.* The  
2 trustee shall provide copies of any financial disclosures made in the ordinary course of its  
3 business, including but not limited to the annual audit of the Good Shepherd Fund, and copies of  
4 all trust tax returns, including any pertinent forms K-1, to both the Trustor and the California  
5 State Superior Court, either of which may initiate appropriate legal action to secure a formal  
6 accounting.”

7 **D. California Rule of Court 7.903(c)(7)**

8 Rule 7.903(c)(6) requires court approval of any changes in trustee and a court order  
9 appointing any successor trustee. Paragraph III (b) and Article VI of the May 2010 amended trust  
10 satisfy this requirement.

11 **E. California Rule of Court 7.903(c)(8)**

12 Rule 7.903(c)(8) requires compensation of the trustee, the members of any advisory  
13 committee, or the attorney for the trustee, to be in just and reasonable amounts that must be fixed  
14 and allowed by the court. The May 2010 amended trust provides, at ¶ IV H, for compensation as  
15 set forth in the fee schedule for the Good Shepherd Trust, which is to be attached as Exhibit A to  
16 the trust. The Court recommends that this compensation provision be found satisfactory, subject  
17 to the actual attachment of the fee schedule to the trust as Exhibit A.

18 **III. Continued Court Supervision**

19 California Court Rule 7.903 requires continuing court jurisdiction for a special needs  
20 trusts and authorizes the Court to order continued court supervision under the probate code. The  
21 California Superior Court has exclusive jurisdiction of all proceedings concerning the internal  
22 affairs of trusts. California Probate Code § 17000. As previous discussed, Christina’s best  
23 interest will be served by continued court supervision. Accordingly, this Court recommends that  
24 Plaintiff be ordered to petition the California Superior Court, Fresno County, to accept the  
25 transfer of jurisdiction and to provide for continuing supervision under the probate code of The  
26 Christina Romar Beneficiary Trust Agreement. The District Court should retain jurisdiction until  
27 Plaintiff provides documentation that the California Superior Court has accepted jurisdiction and  
28 supervision of the trust.

