Acuna v. United St	tates of America	Doc. 42
1		
2		
3		
4		
5		
6		
7		
8	IN THE UNITED STA	TES DISTRICT COURT
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
10		
11	I.A., by and through his guardian ad litem, ADRIANA ACUNA,) Case No.: 1:11-cv-00406-LJO-JLT
12		ORDER ADOPTING THE AMENDED
13	Plaintiff, v.) FINDINGS AND RECOMMENDATIONS) GRANTING IN PART PLAINTIFF'S MOTION
14	LINUTED CTATES OF AMEDICA) FOR APPROVAL OF SETTLEMENT
15	UNITED STATES OF AMERICA,	
16	Defendant.)
17	Plaintiff I.A. is a minor appearing in this proceeding by and through his guardian ad litem,	
18	Adriana Acuna, who seeks approval of the settlement of Plaintiff' claims. (Doc. 32). On December	
19	7, 2012, the Magistrate Judge recommended approval be granted in part. (Doc. 39).	
20	Specifically, the Magistrate Judge found the proposed settlement amount of \$4,550,000.00	
21	was "fair, reasonable, and in the best interests of the child," and recommended approval of the	
22	proposed settlement total. (Doc. 39 at 4). In addition, the Magistrate Judge found the requested fee	
23	award of \$730,213.67 was reasonable, and recommended the amount be awarded to Plaintiff's	
24	counsel. <u>Id.</u>	
25	Although the parties requested to hold \$10	00,000.00 in a client trust account for costs, the
26	Magistrate Judge determined this was not reasonable. (Doc. 39 at 5). Further, the Magistrate Judge	
27	found Plaintiff's counsel was not entitled to recover costs related to claims against the County. <u>Id.</u>	
28	Therefore, the Magistrate Judge recommended costs in the amount of \$83,534.30 be granted.	
	1	
		Dockets Justia com

In addition, the Magistrate Judge recommended payment in the amount of \$61,213.52 to the Department of Health Care Services to refund costs of medical services advanced by Medi-Cal. (Doc. 39 at 6). Although Plaintiff's counsel requested twenty-five percent of the original lien amount be paid as attorney fees and costs, the Magistrate Judge determined "counsel has failed to demonstrate the child is not paying twice for the same legal effort, or that the costs awarded above do not include costs related to recovery the amount due on the Medi-Cal lien." <u>Id.</u> (citing <u>Diamond v. John Martin Co.</u>, 753 F.2d 1465, 1467 (9th Cir. 1985) ("[T]he burden of proof is on the party seeking the attorney fee award.")). Therefore, the Magistrate Judge recommended the additional award for attorney fees and costs from the Medi-Cal lien be denied.

The parties were granted fourteen days from the date of service to file objections to the Magistrate's Amended Findings and Recommendations. (Doc. 39 at 7). On December 11, 2012, Plaintiff and Defendant filed a "Notices of Non-Objection" to the Findings and Recommendations. (Docs. 40-41).

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C) and *Britt v. Simi Valley United School Dist.*, 708 F.2d 452, 454 (9th Cir. 1983), this Court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, the Court finds that the findings and recommendation are supported by the record and by proper analysis.

Accordingly, IT IS HEREBY ORDERED:

- 1. The Amended Findings and Recommendations issued December 7, 2012, are **ADOPTED IN FULL**;
- 2. The settlement of \$4,550,000.00 for the claims of I.A. is **APPROVED**;
- 3. The motion to approve attorney fees is **GRANTED** in the amount of \$730,213.67;
- 4. The motion to approve costs is **GRANTED** in the amount of \$83,534.30;
- 5. Payment to the Department of Health Care Services is **ORDERED** in the amount of \$61,213.52;
- 6. The balance of the initial payment amount attributable to the child (\$1,750,000 of \$4,550,000) after the lien, fees and costs are paid—which equals \$875,038.51—is **ORDERED** deposited in the "I[]. A[]. Special Needs Trust;" and

1	7. The remainder of the settlement proceeds, \$2,800,000, is ORDERED to be used to		
2	purchase installment refund annuity contracts which pay at least \$4,535.65 monthly		
3	and increase at least by 3 percent compounded annually, after the first year of		
4	payments.		
5	This Court VACATES all pending matters and dates, including the January 16, 2013 pretrial		
6	conference and February 25, 2013 trial, and FURTHER ORDERS the parties, no later than January		
7	18, 2013, to file papers to dismiss this action in its entirety or to show good cause why this action has		
8	8 not been dismissed.		
9			
10			
11			
12	IT IS SO ORDERED.		
13			
14	Dated: December 11, 2012 /s/ Lawrence J. O'Neill		
15	UNITED STATES DISTRICT JUDGE		
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			