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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LUPE GUERRA, an Individual; C.T.,)
a minor, by and through her)
GUARDIAN AD LITEM, LUPE)
GUERRA; M.T., a minor, by and)
through his GUARDIAN AD LITEM)
LUPE GUERRA; J.T., a minor, by)
and through his GUARDIAN AD)
LITEM LUPE GUERRA,)

Plaintiffs,

v.

MADERA MANAGEMENT)
COMPANY, INC., a California)
Corporation; ANNAMARIE)
BROWN AS TRUSTEE OF THE)
RAMONA BRON SURVIVOR'S)
TRUST created by Trust Agreement)
dated September 30, 1981; and)
DOES 1 -10, Inclusive,)

Defendants.

No. 1:11-cv-01488-LJO-BAM

**FINDINGS AND RECOMMENDATIONS
GRANTING THE PETITION TO
APPROVE THE COMPROMISES OF
MINORS' CLAIMS**

1 **I. INTRODUCTION**

2 On August 10, 2012, Lupe Guerra (“Petitioner”), as the court-appointed guardian ad litem of
3 the named minor plaintiffs in this case, Clarissa Tavarez¹, J.T. and M.T. (J.T. and M.T. are collectively
4 referred to as the “Minors”; the Petitioner, Ms. Tavarez and the Minors are collectively referred to as
5 the “Plaintiffs”), filed a petition to approve the proposed settlement between Ms. Tavarez, the Minors
6 and Madera Management Company, Inc., and Anna Marie Brown, as trustee of the Ramona Bron
7 Survivor’s Trust (collectively, the “Defendants”). (Doc. 44.) On September 5, 2012, Defendants filed a
8 response to the Petition. (Doc. 48.) The matter was heard on September 14, 2012. (Doc. 50.) Counsel
9 Craig Fagan appeared telephonically on behalf of the Petitioner, Ms. Tavarez, and the Minors. Counsel
10 Thomas Gelini appeared in person on behalf of the Defendants. (Doc. 50.) Having considered the
11 Petition, the terms of the settlement, arguments presented at the September 14, 2012 hearing, as well as
12 the Court’s file, the Court finds that the proposed settlement agreement is fair and reasonable. For the
13 reasons that follow, the Court RECOMMENDS that the Petition to Confirm Minors’ Compromises BE
14 APPROVED and GRANTED.

15 **II. FACTUAL BACKGROUND**

16 Plaintiffs’ Complaint was filed on September 6, 2011. (Doc. 1.) Plaintiffs filed a Second
17 Amended Complaint (“SAC”) on May 2, 2012. (Doc. 38.) Plaintiffs’ SAC brings claims against
18 Defendants under the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* (“FHA”) and related federal and state
19 laws. Plaintiff’s claims relate to two primary allegations: (1) Defendant’s resident manager, Jose Rios,
20 sexually harassed Ms. Tavarez; and (2) Defendants treated children and families with children
21 differently from families without children in the enforcement of rules and regulations at the El
22 Descanso Apartments complex. (SAC, ¶¶ 15-22.)

23 On July 26, 2012, the parties attended a private mediation and agreed to settle all of Plaintiffs’
24 claims. Plaintiffs filed a Petition to compromise the minors’ claims on August 10, 2012. (Doc. 44.)
25 Defendants filed a response to the Petition which did not oppose the terms of the settlement, however,
26 expressed concern over Plaintiffs’ failure to address outstanding Medi-Cal lien issues with respect to

27 _____
28 ¹ Clarissa Tavarez has been referred to throughout these proceedings as “C.T.,” a minor. However, as of
September 9, 2012, Ms. Tavarez became of majority age, and is no longer a minor. *See*, Declaration of Lupe
Guerra, Doc. 44, Attach. 2, ¶ 3. Accordingly, the Court refers to Ms. Tavarez by her full name in this Order and
does not address the Petition as to her.

1 then minor Clarissa Tavaréz. (Doc. 48.) At the September 14, 2012 hearing, however, it was
2 acknowledged and agreed to by the parties that because Ms. Tavaréz was no longer a minor, her claims
3 were no longer subject to the Petition to Compromise Minor Claims. Thus, only the claims of Minors
4 J.T. and M.T. are discussed herein.

5 **A. Terms of the Settlement**

6 Defendants have offered consideration in the amount of \$140,000.00 in exchange for a release
7 of all Plaintiffs' claims. Under the terms of the settlement, \$23,700 will be paid to Petitioner,
8 \$66,850.00 will be paid to Clarissa Tavaréz, \$2,500.00 will be paid to Minor M.T., and \$2,500.00 will
9 be paid to Minor J.T. The remainder of the settlement - \$44,450.00 - will be paid to Plaintiffs' counsel as
10 attorneys' fees.

11 Regarding the Minors' settlements, the Settlement Agreement requires Petitioner to deposit the
12 checks in blocked accounts at a federally insured bank or credit union. No withdrawals of principal or
13 interest may be made from the blocked accounts without a written order under this case name and
14 number, signed by a judge, and bearing the seal of this court, until the respective minors attain the age
15 of 18 years. When the respective minor attains the age of 18 years, the depository, without further
16 order of this court, is authorized and directed to pay by check or draft directly to the former minor,
17 upon proper demand, all moneys including interest deposited under this order. The money on deposit
18 is not subject to escheat.

19 **III. DISCUSSION**

20 **A. Legal Standard For Compromise of Minors' Claims**

21 As a derivative of Federal Rule of Civil Procedure 17(c), district courts have a special duty to
22 safeguard the interests of litigants who are minors. Rule 17(c) provides, in pertinent part, that a district
23 court "must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or
24 incompetent person who is unrepresented in an action." Fed. R. Civ. P. 17(c). In the context of
25 proposed settlements in suits involving minor plaintiffs, the district court's special duty requires it to
26 "conduct its own inquiry to determine whether the settlement serves the best interests of the minor."
27 *Robidoux v. Rosengren*, 638 F.3d 1177, 1181 (9th Cir. 2011) (quoting *Dacanay v. Mendoza*, 573 F.2d
28 1075, 1080 (9th Cir.1978)). Local Rule 202(b) further states that "[n]o claim by or against a minor or

1 incompetent person may be settled or compromised absent an order by the Court approving the
2 settlement or compromise.

3 In *Robidoux*, the United States Court of Appeals for the Ninth Circuit provided specific
4 guidance “on how to conduct this independent inquiry.” *Robidoux*, 638 F.3d at 1181. While the Ninth
5 Circuit noted that district courts have typically applied state law and the local rules governing the
6 award of attorney's fees to make the reasonableness and fairness determination, the court held that “this
7 approach places an undue emphasis on the amount of attorney's fees provided for in a settlement,
8 instead of focusing on the net recovery of the minor plaintiffs under the proposed agreement.” *Id.* The
9 Ninth Circuit held that, instead, district courts should “limit the scope of their review to the question
10 whether the net amount distributed to each minor plaintiff in the settlement is fair and reasonable, in
11 light of the facts of the case, the minor's specific claim, and recovery in similar cases.” *Id.* at 1181–82.
12 Further, the fairness of each minor plaintiff's net recovery should be evaluated “without regard to the
13 proportion of the total settlement value designated for adult co-plaintiffs or plaintiffs' counsel—whose
14 interests the district court has no special duty to safeguard.” *Id.* at 1182 (citing *Dacanay*, 573 F.2d at
15 1078).

16 **B. The Reasonableness and Fairness of the Settlement Amount**

17 The parties agree that payment of \$2,500.00 to each Minor Plaintiff is reasonable. Having
18 reviewed settlement amounts approved similar cases, this Court agrees. In *Angstman v. Carlsbad*
19 *Seapointe Resort et al.*, No. 11-cv-00620-L-WMc (S.D. Cal., Aug. 30, 2011, Doc. 36), the United
20 States District Court for the Southern District of California approved of a compromise of \$750.00 to
21 each minor child in a case where children had been subjected to similar discriminatory rules at a
22 timeshare resort. In *Maria Gonzalez et al. V. Diversified Real Property Management*, No. 09-cv-
23 00718-PA-RNB (C.D. Cal., Mar. 29, 2010, Doc. 76), the United States District Court for the Central
24 District of California found that a settlement of \$2,500.00 to each minor plaintiff was reasonable when
25 the children were prohibited from using common areas at an apartment complex. In *Monroe v. Cowing*
26 *Litton*, No. 11-cv-0479-CJC-MLG (C.D. Cal., Dec. 5, 2011, Doc. 33) the United States District Court
27 for the Central District of California approved compromises of \$3,500 per minor where children were
28 prohibited from playing in the common area of an apartment complex.

1 Minor Plaintiffs M.T. and J.T. were not alleged to have been sexually harassed. The Minor
2 Plaintiffs are not alleged to have suffered any physical injury, nor are they alleged to have incurred any
3 out-of-pocket expenses as a result of the alleged FHA violation. The Minors' claims stemmed from an
4 allegation that the El Descanso Apartments complex manager prevented them from playing outside in
5 the common areas of the complex, in violation of the FHA. Having considered the circumstances of
6 the Minors' claims, and comparing those circumstances to the settlements approved in other similar
7 minor's compromise cases, the Court finds that payment of \$2,500 to each J.T. and M.T. is a
8 reasonable settlement.

9 **IV. CONCLUSION AND RECOMMENDATIONS**

10 Based on the foregoing, the Court RECOMMENDS as follows:

- 11 1. The PETITION TO COMPROMISE THE CLAIMS OF Minors M.T. and J.T. is approved.
12 The minor plaintiffs shall receive the following by way of settlement:
- 13 a. \$2,500 to M.T.
 - 14 b. \$2,500 to J.T.
- 15 2. Within 72 hours of receipt of a check payable to the order of the Petitioner as trustee for
16 the respective Claimants, Petitioner must deposit the checks in blocked accounts at a
17 federally insured bank or credit union.
- 18 3. Petitioner and Minors' attorney must deliver to each depository at the time of deposit a
19 copy of this order.
- 20 4. The blocked accounts belong to minors. As to the minors, they are as follows:
- 21 M.T.'s date of birth is 7-14-97
 - 22 J.T.'s date of birth is 4-8-02
- 23 5. No withdrawals of principal or interest may be made from the blocked accounts without
24 a written order under this case name and number, signed by a judge, and bearing the seal
25 of this court, until the respective minors attain the age of 18 years. When the respective
26 minor attains the age of 18 years, the depository, without further order of this court, is
27 authorized and directed to pay by check or draft directly to the former minor, upon
28 proper demand, all moneys including interest deposited under this order. The money on

1 deposit is not subject to escheat.

2 6. The Petitioner is authorized and directed to execute any and all documents reasonably
3 necessary to carry out the terms of the settlement.

4 7. Bond is waived.

5 These findings and recommendations are submitted to the district judge assigned to this action,
6 pursuant to Title 28 of the United States Code section 636(b)(1)(B) and this Court's Local Rule 304.
7 Within fifteen (15) days of service of this recommendation, any party may file written objections to
8 these findings and recommendations with the Court and serve a copy on all parties. Such a document
9 should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The district
10 judge will review the magistrate judge's findings and recommendations pursuant to Title 28 of the
11 United States Code section 636(b)(1)(C). Failure to file objections within the specified time may
12 waive the right to appeal the district judge's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

13 To expedite resolution of these Findings and Recommendations, if the Parties do not have any
14 objections, they should each file a "Notice of Non-Objection to Findings and Recommendations."

15 IT IS SO ORDERED.

16 **Dated: September 17, 2012**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE