

1 to the life insurance policy. In exchange, defendant Protective has paid one-third of the policy
2 proceeds, in the amount of \$89,354.92, to Jessica Bullman and her attorney. (Doc. No. 27 at 3.)
3 Upon court approval, defendant Protective agrees to pay one-third shares of the policy proceeds
4 to each of the minor children, S.D.C. and S.N.C. (*Id.*)¹

5 APPOINTMENT OF GUARDIAN AD LITEM

6 “District courts have a special duty, derived from Federal Rule of Civil Procedure 17(c),
7 to safeguard the interests of litigants who are minors.” *Robidoux v. Rosengren*, 638 F.3d 1177,
8 1181 (9th Cir. 2011). Rule 17 provides that “[t]he court must appoint a guardian ad litem — or
9 issue another appropriate order — to protect a minor or incompetent person who is unrepresented
10 in an action.” Fed. R. Civ. P. 17(c)(2). Local Rule 202(a) of this court further states, in pertinent
11 part:

12 Upon commencement of an action or upon initial appearance in
13 defense of an action by or on behalf of a minor . . . the attorney
14 representing the minor or incompetent person shall present . . . a
15 motion for the appointment of a guardian *ad litem* by the Court, or
16 . . . a showing satisfactory to the Court that no such appointment is
17 necessary to ensure adequate representation of the minor or
18 incompetent person. *See* Fed. R. Civ. P. 17(c).

19 The decision to appoint a guardian ad litem “must normally be left to the sound discretion of the
20 trial court.” *United States v. 30.64 Acres of Land*, 795 F.2d 796, 804 (9th Cir. 1986).

21 Plaintiff Leslie Chance petitions the court to appoint her as guardian ad litem to each of
22 her minor children, S.D.C. and S.N.C. (Doc. Nos. 25–26.) Petitioner contends that because she
23 no longer has an interest in the life insurance policy for Todd Chance, pursuant to the settlement
24 agreement in which she disclaimed any and all interest in or rights to the life insurance policy, she
25 is qualified to act as guardian ad litem. (*Id.*) Following the hearing during which the court
26 questioned both plaintiff Leslie Chance and her minor children and finding good cause and no
27 actual or potential conflicts of interest, the court appoints Leslie Chance as guardian ad litem of
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¹ After the hearing, defendant Protective informed the court that the minor children are each to be paid a sum of \$89,724.72, in accordance with the terms of the settlement agreement. This amount reflects a one-third portion of the face amount of the life insurance policy (\$83,333.33), plus a premium refund (\$26.36), plus interest accrued from the date of the death through March 8, 2016 (\$6,365.03).

1 each of her minor children, S.D.C. and S.N.C.

2 APPROVAL OF MINORS' COMPROMISE

3 This court has a duty to protect the interests of minors participating in litigation before it.
4 *Salmeron v. United States*, 724 F.2d 1357, 1363 (9th Cir. 1983). To carry out this duty, the court
5 must “conduct its own inquiry to determine whether the settlement serves the best interests of the
6 minor.” *Robidoux*, 638 F.3d at 1181 (quoting *Dacanay v. Mendoza*, 573 F.2d 1075, 1080 (9th
7 Cir. 1978)); *see also Salmeron*, 724 F.2d at 1363 (“[A] court must independently investigate and
8 evaluate any compromise or settlement of a minor’s claims to assure itself that the minor’s
9 interests are protected, even if the settlement has been recommended or negotiated by the minor’s
10 parent or guardian ad litem.”) (citation omitted). In considering the fairness of a settlement of a
11 minor’s claim, federal courts sitting in diversity generally are guided by state law.² *See* Tashima
12 & Wagstaffe, California Practice Guide: Federal Civil Procedure Before Trial ¶ 15:138 (Cal. &
13 9th Cir. Eds. 2015) (“Federal courts generally require that claims by minors . . . be settled in
14 accordance with applicable state law. California law requires court approval of the fairness and
15 terms of the settlement.”). A settlement for a minor and attorney’s fees to represent a minor must
16 be approved by the court. Cal. Prob. Code § 3601; Cal. Fam. Code § 6602. Reasonable expenses
17 and court costs to be paid out of the settlement also must be approved by the court. Cal. Prob.
18 Code § 3601. In addition, the Local Rules of this court require disclosures regarding the minors
19 involved, the nature of the controversy, the manner in which the compromise was determined,
20 and whether a conflict of interest may exist between the minor and her attorney. *See* Local Rules
21 202(b)–(c).

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24 ² In *Robidoux*, the Ninth Circuit held that a district court’s inquiry into a proposed settlement
25 should focus solely on “whether the net amount distributed to each minor plaintiff in the
26 settlement is fair and reasonable, in light of the facts of the case, the minor’s specific claim, and
27 recovery in similar cases.” 638 F.3d at 1182. In *Robidoux*, however, the court expressly limited
28 its holding to cases involving settlement of a minor’s federal claims and declined to “express a
view on the proper approach for a federal court to use when sitting in diversity and approving the
settlement of a minor’s state law claims,” as is the case here. *Id.* at 1179 n.2. Accordingly, while
mindful of the decision in *Robidoux*, this court will place more weight on state law considerations
in evaluating the proposed settlement here.

1 Here, the proposed settlement agreement provides that defendant Protective will pay each
2 of Todd Chance's surviving children a one-third share of the death benefits under the life
3 insurance policy at issue. Thus, each minor will receive an amount similar to that to which she
4 would likely be entitled as a contingent beneficiary under the plan. Having carefully reviewed
5 the parties' submissions, the court finds that the proposed settlement is fair and reasonable.

6 In addition, the instant petition seeks an order awarding attorney's fees amounting to 25%
7 of the total recovery for each minor. It has been the practice in the Eastern District of California
8 to consider 25% of the recovery as the benchmark for attorney's fees in contingency cases
9 involving minors. *See, e.g., Mitchell v. Riverstone Residential Grp.*, No. 2:11-cv-02202-LKK-
10 CKD, 2013 WL 1680641, at *2 (E.D. Cal. Apr. 17, 2013); *McCue v. South Fork Union Sch. Dist.*,
11 NO. 1:10-cv-00233-LJO-MJS, 2012 WL 2995666, at *2 (E.D. Cal. Jul. 23, 2012); *Welch v. Cty.*
12 *of Sacramento*, No. 2:07-cv-00794-GEB-EFB, 2008 WL 3285412, at *1 (E.D. Cal. Aug. 5,
13 2008); *Red v. Merced Cty.*, No. 1:06-cv-01003-GSA, 2008 WL 1849796, at *2 (E.D. Cal. Apr.
14 23, 2008); *Schwall v. Meadow Wood Apartments*, No. 2:07-cv-00014-LKK, 2008 WL 552432, at
15 *1, (E.D. Cal. Feb. 27, 2008); *Walden v. Moffett*, No. 1:04-cv-06680-LJO-DLB, 2007 WL
16 2859790, at *3 (E.D. Cal. Sept. 20, 2007). The court finds the award of attorney's fees sought by
17 the petition before the court to be reasonable under the circumstances.

18 ORDER

19 Accordingly, for the reasons stated above,

- 20 1. The court GRANTS the applications for appointment of guardian ad litem (Doc. Nos.
21 25–26);
- 22 2. The court APPOINTS Leslie Chance guardian ad litem of S.D.C. and S.N.C., minors
23 and cross-defendants to this action; and
- 24 3. The court GRANTS the petition for minors' compromise (Doc. No. 27), and further
25 orders that the proceeds are to be paid and distributed as follows:
 - 26 a. Defendant Protective shall electronically wire or otherwise deposit to Chase
27 Bank, 5277 Gosford Road, Bakersfield, CA 93313, the settlement proceeds
28 (after deduction of attorney's fees and costs) in the net amount of \$67,110.54.

1 These proceeds shall be deposited and held in a blocked account with the
2 highest available yield, as determined by the guardian ad litem for the benefit
3 of minor S.D.C., and may only be withdrawn by minor S.D.C., upon an order
4 of this court or when she reaches the age of 18, on June 25, 2016.

5 b. Attorney Craig A. Edmonston shall be paid the sum of \$22,431.18 in
6 attorney's fees, plus \$183.00 for costs incurred in the representation of minor
7 S.D.C.

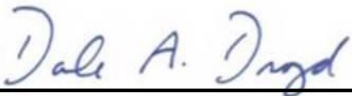
8 c. Defendant Protective shall electronically wire or otherwise deposit to Chase
9 Bank, 5277 Gosford Road, Bakersfield, CA 93313, the settlement proceeds
10 (after deduction of attorney's fees and costs) in the net amount of \$67,110.54.
11 These proceeds shall be deposited and held in a blocked account with the
12 highest available yield, as determined by the guardian ad litem for the benefit
13 of minor S.N.C., and may only be withdrawn by minor S.N.C., upon an order
14 of this court or when she reaches the age of 18, on July 12, 2018.

15 d. Attorney Craig A. Edmonston shall be paid the sum of \$22,431.18 in
16 attorney's fees, plus \$183.00 for costs incurred in the representation of minor
17 S.N.C.

18 Finally, in light of the parties' joint notice of settlement (Doc. No. 22) and the resolution
19 of the minors' compromise, the court further directs the parties to file a stipulation and proposed
20 order dismissing this action no later than May 6, 2016. A failure to comply with this directive
21 may result in the dismissal of this action by the court pursuant to its own authority.

22 IT IS SO ORDERED.

23 Dated: March 9, 2016

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26 UNITED STATES DISTRICT JUDGE
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