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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

J.D., a minor, by and through her  
Guardian Ad Litem, Emine Demire;  
and ALI DEMIR

Plaintiffs,

v.

COSTCO WHOLESALE  
CORPORATION; and DOES 1-30,

Defendants.

Case No.: 22-cv-1124-RBM-BLM

**REPORT AND RECOMMENDATION  
FOR ORDER GRANTING  
EX PARTE MOTION TO CONFIRM  
MINOR’S COMPROMISE**

**[Dkt. Nos. 11, 13]**

Before the Court is Plaintiffs’ *Ex Parte* Motion to Confirm Minor’s  
Compromise (the “*Ex Parte* Motion”). Dkt. No. 11. At the Court’s request, the  
parties supplemented the *Ex Parte* Motion (the “Supplemental Submission”). See  
Dkt. No. 13. The undersigned hereby submits this Report and Recommendation  
to United States District Judge Ruth Bermudez Montenegro pursuant to 28 U.S.C.  
§ 636(b) and Civil Local Rules 17.1 and 72.1. Having reviewed the *Ex Parte*  
Motion, the Supplemental Submission, the supporting declarations, and the  
pleadings on file, and for the reasons stated below, the undersigned  
**RECOMMENDS** that the District Court **GRANT** Plaintiffs’ *Ex Parte* Motion.

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1 I.

2 **BACKGROUND**

3 On May 14, 2020, after completing his shopping at Defendant's store on  
4 Morena Boulevard in San Diego, Plaintiff Ali Demir ("Demir") exited the store with  
5 his daughter J.D., who was then four years old and was riding in the child seat of  
6 the shopping cart. See Dkt. No. 1-2 at 6, 8. The two began to "descend a steep  
7 ramp to the parking lot," at which time the shopping cart "flipped and fell down  
8 forcefully to the ground." *Id.* J.D.'s left femur was fractured during the incident.  
9 *Id.* On April 22, 2022, Demir and J.D., through her guardian *ad litem*, sued  
10 Defendant, stating causes of action for negligence, premises liability, and products  
11 liability. See *generally id.*

12 On August 1, 2022, Defendant removed the action to this Court. Dkt. No. 1.  
13 On September 15, 2022, Defendant answered the Complaint, denying all material  
14 allegations and asserting 23 affirmative defenses. See Dkt. No. 4. Defendants'  
15 defenses included allegations of Plaintiffs' comparative fault, their failure to  
16 mitigate their damages, and that the alleged dangerous condition was open and  
17 obvious. See *generally id.*

18 On October 27, 2022, the parties and their counsel participated in an Early  
19 Neutral Evaluation before Magistrate Judge Barbara L. Major and reached an  
20 agreement to settle the case. See Dkt. No. 7. This *Ex Parte* Motion followed.

21 II.

22 **LEGAL STANDARDS**

23 District Courts have a duty to safeguard the interests of minors in litigation.  
24 *Salmeron v. United States*, 724 F.2d 1357, 1363 (9th Cir. 1983). When parties  
25 settle an action involving a minor litigant, the Court must "conduct its own inquiry  
26 to determine whether the settlement serves the best interests of the minor."  
27 *Robidoux v. Rosengren*, 638 F.3d 1177, 1181 (9th Cir. 2011) (citation omitted);  
28 see also CivLR 17.1(a) (providing that "[n]o action by or on behalf of a minor or

1 incompetent will be settled, compromised, voluntarily discontinued, dismissed or  
2 terminated without court order or judgment.”). The Court must conduct this inquiry  
3 “even if the settlement has been recommended or negotiated by the minor’s parent  
4 or guardian *ad litem*.” *Salmeron*, 724 F.2d at 1363.

5 Where a federal court exercises diversity jurisdiction over the minor plaintiff’s  
6 state-law claims, the settlement should be evaluated with reference to applicable  
7 state law. See *DeRuyver v. Omni La Costa Resort & Spa, LLC*, Case No. 3:17-cv-  
8 0516-H-AGS, 2020 WL 563551, at \*2 (S.D. Cal. Feb. 4, 2020) (citation omitted).  
9 Under California law, a minor’s claims may only be compromised “with the  
10 approval of the court in which the action is proceeding or pending.” Cal. Civ. Pro.  
11 § 372. Recognizing that the Court “generally assumes . . . a role to assure that  
12 whatever is done is in the minor’s best interests,” the Court’s “primary concern” in  
13 evaluating the compromise of a minor’s claims “is whether the compromise is  
14 sufficient to provide for the minor’s injuries, care and treatment.” *Goldberg v.*  
15 *Super. Ct.*, 23 Cal. App. 4th 1378, 1382 (1994). The Ninth Circuit directs that the  
16 court should approve a minor’s compromise if the minor’s net recovery “is fair and  
17 reasonable in light of their claims and average recovery in similar cases.”  
18 *Robidoux*, 638 F.3d at 1182. Although *Robidoux* applies to settlement of federal  
19 claims, the Court nevertheless finds its guidance instructive.

### 20 III.

### 21 DISCUSSION

#### 22 A. The Settlement Is Reasonable and in J.D.’s Best Interests

23 As stated in the *Ex Parte* Motion, Plaintiffs have agreed to settle their claims  
24 for gross consideration of \$5,000, payable in its entirety to J.D. Dkt. No. 11 at 2;  
25 Dkt. No. 13 at 2. J.D.’s mother and guardian *ad litem*, Emine Demir, has agreed  
26 to the settlement and its terms on J.D.’s behalf, believing it to be in J.D.’s best  
27 interests. *Id.* at 2; Dkt. No. 13-1 at 2. The parties propose that the money be held

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1 in a blocked account in J.D.'s name, from which no principal or interest can be  
2 withdrawn, until J.D. reaches 18 years of age. Dkt. No. 13 at 3.

3 As alleged in the Complaint and reiterated in the Supplemental Submission,  
4 J.D. was injured when a shopping cart pushed by Demir and in which she was  
5 riding "flipped and fell down hard," "trapp[ing]" her between the ground and the cart  
6 and breaking her leg. See Dkt. No. 13 at 2. Plaintiffs report that J.D.'s past medical  
7 expenses total \$2,971.50 and that she "wear[s] special shoes to accommodate the  
8 discrepancy in length" between her right and left legs.<sup>1</sup> *Id.* Whether J.D. will  
9 require ongoing care or treatment is unknown. *Id.* Demir, the other plaintiff in the  
10 action, has forgone any monetary recovery for his "bystander injuries," choosing  
11 instead to allocate the entire settlement to J.D. *Id.* at 3.

12 The Court's research demonstrates that a \$5,000 recovery is within the  
13 accepted range of settlements for similar claims and injuries in federal and state  
14 courts within this Circuit, particularly where, as here, the minor's past medical  
15 expenses are amply covered by the settlement funds and the need for ongoing  
16 treatment is not established.<sup>2</sup> Indeed, the Court found several cases in which the

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19 <sup>1</sup> Before the matter was removed to this District, Plaintiffs represented that J.D.'s medical  
20 expenses were approximately \$40,000. See Dkt. No. 1-5 at 2. However, during the November  
21 21, 2022 hearing on the *Ex Parte Motion*, plaintiffs' counsel explained that the \$40,000 was a  
22 "billed" amount and that plaintiffs had since negotiated with the hospital to pay \$2,971.50 in  
satisfaction of that amount. Plaintiffs' counsel also represented that none of J.D.'s care providers  
has asserted a lien against the settlement funds.

23 <sup>2</sup> See, e.g., *M.W. v. Safeway, Inc.*, 2019 WL 4511927 (W.D. Wash. Sept. 19, 2019) (approving  
24 \$12,000 settlement for minor who suffered headaches after being struck in the head by a  
25 shopping cart); *N.M.S. pro ami Silveira v. Cty. of Los Angeles et al.*, JVR No. 1501120026 (Cal.  
26 Sup. Ct. Mar. 21, 2013) (\$11,000 gross settlement for minor who suffered facial laceration on a  
27 carnival ride); *C.S. pro ami Randall v. Kroger West d/b/a Ralphs Grocery Stores*, JVR No.  
28 1502180034 (Cal. Sup. Ct. Feb. 18, 2013) (\$9,000 gross settlement for minor whose finger was  
broken due to faulty bathroom stall door); *Pineda vs. Target Corporation*, 18 Trials Digest 15th  
18 (N.D. Cal. Aug. 25, 2011) (\$4,600 settlement for minor who tripped and was injured when he  
hit his head on an unattended shopping cart); *Harvey v. Home Depot*, 47 Trials Digest 13th 18  
(Cal. Sup. Ct. Aug. 6, 2010) (\$4,000 gross settlement for minor who was injured when his father

1 injured minor recovered nothing at all for similar injuries, particularly where  
2 questions of causation and comparative fault were prominent.<sup>3</sup> Accordingly, the  
3 Court finds that a \$5,000 gross settlement for J.D. is reasonable and adequate to  
4 compensate her for the care and treatment of her injuries.

5 The Court also finds that the proposed settlement is in J.D.'s best interests.  
6 Although the settlement was reached relatively early in the case, it was negotiated  
7 in a court-mediated settlement proceeding in which all parties were represented  
8 by counsel, who undoubtedly were well-informed as to the strengths and  
9 weaknesses of their respective positions. Further, the settlement obviates the cost  
10 and time needed to complete discovery, retain experts, and defend the case  
11 against a motion for summary judgment. As demonstrated by the foregoing review  
12 of jury verdicts, even if the case proceeded to trial, there is no way of knowing  
13 whether the outcome would have been favorable to plaintiffs. These risks are well  
14 illustrated in the *Garcia* case referenced above, which resulted in no recovery for  
15 the minor plaintiff after seven years of litigation in the trial and appellate courts.  
16 See *Garcia v. Rehrig Int'l, Inc.*, 99 Cal.App.4th 869, 879 (Cal. Ct. App. 2002)  
17 (reversing trial court's order for a new trial and affirming the jury's verdict for  
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20 fell while pushing a shopping cart in which the minor was riding, causing him to fall to the floor);  
21 *Velazquez v. K-Mart Corp.*, 10 Id. Verd. Stmnt. Rpts. 45 (Id. Dist. Ct. Jan. 4, 2010) (\$2,455 for  
22 minor plaintiff who suffered hand injury when his finger was caught in a step stool left in the aisle  
at defendant's store).

23 <sup>3</sup> See, e.g., *L.D.H. pro ami v. Smith's Food & Drug Centers, Inc.*, JVR No. 2108110025 (Nev.  
Dist. Ct. Mar. 12, 2021) (verdict for defendant grocery store in case involving alleged head injury  
24 and trauma to 17-month-old who fell out of grocery cart when it "tipped over"); *Wiest v Toys R  
Us-Delaware*, 2011 WL 3420491 (Wash. Sup. Ct. Feb. 2, 2011) (verdict for the defense in  
25 personal injury case involving minor who "grabbed the side of [a] shopping cart," causing it to  
fall on top of her and thereby injuring her finger and leg); *Thorpe pro ami Calzada v. Sav-On  
26 Drug Stores Inc. d/b/a American Drug Stores*, JVR No. 501827 (Cal. Sup. Ct. Feb. 1, 2005)  
(defense verdict where minor plaintiff suffered seizures and headaches after falling out of a  
27 grocery cart); *Garcia pro ami Trezza v. Rehrig Int'l Inc.*, JVR No. 403254 (Cal. Sup. Ct. Oct. 1,  
28 2000) (verdict for the defendant shopping cart manufacturer where child fell out of the basket  
section of a shopping cart and sustained multiple injuries).

1 defendant). In short, the settlement allows J.D. and her parents to avoid the costs,  
2 risks, and time commitment of pursuing the case through discovery and trial, while  
3 providing fair and prompt compensation for her injuries. *See Goldberg*, 23 Cal.  
4 App. 4th at 1382.

5 For the above reasons, the Court finds that the settlement is fair, adequate  
6 to compensate J.D. for her injuries, and in J.D.'s best interests.

7 **B. Attorneys' Fees and Litigation Costs**

8 In evaluating the proposed settlement, the Court "is empowered to approve  
9 and allow payment of reasonable expenses, costs, and attorney fees." *Curtis v.*  
10 *Fagan*, 82 Cal. App. 4th 270, 277 (2000) (citing Cal. Prob. Code. § 3601). Here,  
11 the attorneys representing Plaintiffs have waived their fees, see Dkt. No. 13-2 at  
12 2, so the Court need not consider whether counsel's fees are reasonable. As to  
13 costs, counsel seeks reimbursement of \$699.59 in litigation expenses from the  
14 settlement funds. Dkt. No. 13 at 5. Counsel represents that this amount is  
15 attributable to process server fees, filing fees, and assorted postage and copying  
16 costs. *Id.* The Court finds the costs incurred by counsel were reasonable and  
17 necessary and should be repaid from the settlement funds.

18 **IV.**

19 **CONCLUSION AND RECOMMENDATION**

20 For the reasons stated above, the Court finds the proposed settlement is  
21 reasonable and in J.D.'s best interests, and further that the proposed handling of  
22 the settlement funds on J.D.'s behalf is also reasonable. The Court also finds that  
23 Plaintiffs' counsel's request for reimbursement of \$699.59 for necessary litigation  
24 costs is fair and reasonable.

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1           Accordingly, the Court **RECOMMENDS** that the District Court **GRANT** the  
2 *Ex Parte* Motion to Approve Minor’s Compromise [Doc. No. 42] and further order  
3 that:

- 4           1. Plaintiffs shall open an interest-bearing, federally insured blocked  
5           account in J.D.’s legal name (the “Blocked Account”);
- 6           2. Not later than 30 days after the date of the District Court’s Order  
7           granting the *Ex Parte* Motion, Defendant shall issue a check for  
8           \$5,000.00 (the “Settlement Funds”) payable to the “Gomez Trial  
9           Attorneys Trust Account” and shall deliver the Settlement Funds to  
10          Plaintiffs’ counsel in person or by certified mail;
- 11          3. Plaintiffs must voluntarily dismiss the Action within 14 days of  
12          receiving the Settlement Funds from Defendant;
- 13          4. Promptly upon receipt of the Settlement Funds, Plaintiffs’ counsel  
14          shall issue a check to Plaintiffs for \$4,300.41 to be deposited in the  
15          Blocked Account;
- 16          5. No withdrawal of principal or interest may be made from the Blocked  
17          Account without a written order of this Court or another Court of  
18          competent jurisdiction, until J.D. reaches 18 years of age (i.e., on  
19          June 16, 2033); and
- 20          6. Once J.D. reaches 18 years of age, without further order from this  
21          Court or any other Court of competent jurisdiction, the depository  
22          shall pay by check or draft to J.D. all funds, including interest, in the  
23          Blocked Account.

24           This Report and Recommendation is respectfully submitted to the Honorable  
25 Ruth Bermudez Montenegro, United States District Judge, pursuant to 28 U.S.C.  
26 § 636(b) and Civil Local Rules 17.1 and 72.1.

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1           **IT IS HEREBY ORDERED** that any objection to this Report and  
2 Recommendation must be filed with the Court and served on all parties by  
3 **December 2, 2022**. Failure to timely object may result in a waiver of the right to  
4 raise those objections on appeal of the Court's order. *See Turner v. Duncan*, 158  
5 F.3d 449, 455 (9th Cir. 1998).

6 Dated: November 21, 2022

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9 Hon. David D. Leshner  
10 United States Magistrate Judge  
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