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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMES W. MOORE, JR., et al.,)	1:05-cv-01115-AWI-SMS
)	
Plaintiff,)	Consolidated with:
v.)	1:06-cv-0120-OWW-SMS
)	
COUNTY OF KERN, et al.,)	ORDER ADOPTING FINDINGS AND
)	RECOMMENDATIONS RE: AMENDED
Defendants.)	PETITION FOR COMPROMISE OF CLAIM
)	OF MINOR PLAINTIFF JAMES W.
)	MOORE, JR. (DocS. 216, 227)
AND RELATED CONSOLIDATED CASE)	
AND CROSS-CLAIMS	_____)	

Plaintiffs are proceeding with a civil action in this Court. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Rules 72-302 and 72-303.

Pending before the Court is the petition of Alicia Moore Whitaker, the mother of and guardian ad litem for the minor Plaintiff James W. Moore, Jr. (JWM), for approval of the compromise of the minor's claim. On October 30, 2009, the Magistrate Judge filed findings and recommendations concerning the petition, which were served on all parties on the same date. The findings and recommendations provided that objections could be filed within ten court days. No party has filed objections.

In accordance with the provisions of 28 U.S.C. § 636

1 (b) (1) (C) and Britt v. Simi Valley United School Dist., 708 F.2d
2 452, 454 (9th Cir. 1983), this Court has conducted a de novo
3 review of the case. Having carefully reviewed the entire file,
4 the Court finds that the report and recommendation are supported
5 by the record and proper analysis.

6 Accordingly, IT IS HEREBY ORDERED that:

7 1. The findings and recommendation filed October 30, 2009,
8 are ADOPTED IN FULL; and

9 2. The terms of the settlement stated in the findings and
10 recommendations, including costs and attorney's fees, ARE
11 APPROVED; and

12 3. It IS ORDERED that Defendant, COUNTY OF KERN, and its
13 insurer, shall pay the sum of \$3,025,000.00 (hereinafter
14 "settlement money") on behalf of all Defendants COUNTY OF KERN,
15 KERN COUNTY SHERIFF'S DEPARTMENT, former SHERIFF MACK WIMBISH,
16 KERN COUNTY DETENTION OFFICERS GREG COSSEL, MOSES ADAME, MARK
17 JIMENEZ, CLINTON MINOR, GREGORY MORGAN, SHANNON HAUINGS, LARRY
18 JOHNSON, JULIAN TREVINO, LISA ROMERO, ANGEL BRAVO, ROXANNE
19 FOWLER, RALPH CONTRERAS and DANIEL LINDINI, SENIOR DETENTION
20 OFFICER JAIME TELLEZ, DETENTION SERGEANT RANDAL HOLTZ, and KERN
21 COUNTY SHERIFF DEPUTIES JEFF COLBERT and MARCUS HUDGINS, in
22 consideration of a full and final release and discharge of and
23 from all claims, charges, and demands of plaintiff, JWM, arising
24 from this action. Petitioner is hereby authorized and directed to
25 execute and deliver to Defendants a full, complete, and final
26 release and discharge of and from any and all claims and demands
27 of herself and Plaintiff, JWM, by reason of the incident
28 described herein and resulting injuries, upon receipt of the

1 settlement money; and

2 4. It is ORDERED that from the above stated settlement
3 money, the Defendants shall pay \$2,000,000.00 for the purchase of
4 a tax-free structured settlement annuity policy on behalf of
5 Plaintiff, JWM, with a guaranteed benefit of \$3,505,547.75 and an
6 expected benefit of \$9,317,496.40, from New York Life Insurance
7 Company and Pacific Life and Annuity Company through Bryan Milner
8 of Millennium Settlements. The Defendants shall execute a
9 Settlement Agreement and Release and execute a "Qualified
10 Assignment" of their obligation to make periodic payments
11 pursuant thereto in compliance with I.R.C. Section 104(a)(2) and
12 Section 130(c) of the Internal Revenue Code of 1986, as amended.
13 Said assignment shall be made to New York Life Insurance Company
14 and Pacific Life and Annuity Company ("Assignees"). Upon doing
15 so, the Defendants shall no longer be obligated to make further
16 periodic payments and the Assignees will be the Plaintiff's sole
17 obligors with respect to the future periodic payments. Assignees
18 shall purchase a structured settlement annuity for \$2,000,000.00
19 through New York Life Insurance Company, an "A++, XV" rated life
20 carrier by A. M. Best Insurance Ratings Service and Pacific Life
21 and Annuity Company, an "A+, XV" rated life carrier by A. M. Best
22 Insurance Ratings Service. Said annuities shall provide
23 guaranteed periodic payments (subject to annuity rates in effect
24 at the time of purchase) made according to the schedule found in
25 the Chosen Settlement Proposal attached to the findings and
26 recommendations as Exhibit "A."

27 No part of the said \$2,000,000.00 may be paid to the
28 petitioner, Alicia Moore Whitaker. This Court has determined that

1 a tax-free structured settlement is in the best interest of the
2 minor. WJM, by and through his guardian ad litem, Alicia Moore
3 Whitaker, is authorized to settle this claim on behalf of WJM and
4 receive and negotiate funds on behalf of the minor. No bond shall
5 be required of WJM, by and through his guardian ad litem, Alicia
6 Moore Whitaker. Receipt of purchase of annuity is to be filed
7 with the Court within sixty (60) days; and

8 5. It IS ORDERED that from the settlement money, the sum of
9 \$911,543.34 shall immediately be paid to CHAIN | COHN | STILES
10 for the payment of attorney fees, costs, and reasonable expenses
11 incurred in connection with the prosecution of this action; and

12 6. It IS ORDERED that from the settlement money, the sum of
13 \$550.00 BE PAID immediately to David Atkins, MS, JFT, 2012 E.
14 Street, Bakersfield, California, for medical treatment and
15 services rendered to the minor, JWM; and

16 7. It IS ORDERED that from the remaining balance of the
17 settlement money not previously allocated to purchase of an
18 annuity, or to fees, costs, and expenses, the amount of
19 \$40,000.00 shall be placed in an unsecured account in the name of
20 Alicia Moore Whitaker, mother, and James W. Moore, Jr., minor
21 son, at Wells Fargo Bank, Downtown Branch, located at 1300 22nd
22 Street, Bakersfield, California, subject to withdrawal by
23 Petitioner Alicia Moore Whitaker, solely for the use and benefit
24 of the minor, James W. Moore, Jr., and for the purpose of
25 purchasing, insuring, and maintaining a motor vehicle in the
26 minor's name until his eighteenth birthday, which shall occur on
27 October 15, 2010, at which time any remaining balance in the
28 account shall become the property of James W. Moore, Jr.; and

1 8. It IS ORDERED that the remaining balance of the
2 settlement money not allocated to purchase of an annuity, payment
3 of fees and costs, or to segregation in an account for vehicular
4 expenses, amounting to approximately \$82,906.66, BE PLACED in an
5 insured, blocked account in the name of Alicia Moore Whitaker,
6 mother, and James W. Moore, minor son, at Wells Fargo Bank,
7 Downtown Branch, located at 1300 22nd Street, Bakersfield,
8 California, until the minor's eighteenth birthday, which shall
9 occur on October 15, 2010, at which time the remaining balance in
10 the account shall become the property of James W. Moore, Jr.

11

12 IT IS SO ORDERED.

13 Dated: November 17, 2009

/s/ Anthony W. Ishii
CHIEF UNITED STATES DISTRICT JUDGE

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