

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA

3
4 TEAM ENTERPRISES, LLC,

CASE NO. 1:08-cv-00872-LJO-SMS

5 Plaintiff,

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS RECOMMENDING
THE DETERMINATION OF GOOD FAITH
SETTLEMENT PURSUANT TO
CALIFORNIA CODE OF CIVIL
PROCEDURE § 877.6 AND ISSUANCE OF
AN ORDER BARRING CONTRIBUTION
PURSUANT TO 42 U.S.C. § 9613(f)
(CERCLA § 113(f)(2))**

6 v.
7

8 WESTERN INVESTMENT REAL
9 ESTATE TRUST, et al.,

10 Defendants.

(Doc. 385)

11
12 On or about October 7, 2011, three groups of parties to this litigation (the “Settling
13 Parties”) agreed to final settlement of this matter. The first group (“Team”) included Plaintiff
14 Team Enterprises, LLC; and Third-Party Defendants Team Enterprises, Inc.; Thomas Jones;
15 Frederic Jones; and Eric Jones. The second group (“MCI”) included Defendants Modesto Center
16 Investors, LP; MC II, LP; John A. Branagh; Lynette Branagh; Gaylon C. Patterson; and Marla J.
17 Patterson. The third group (“PK II”) included Defendants PK II Century Center LP; Kimco
18 Realty Company; Pan Pacific Retail Properties, LLC; Pan Pacific Realty Properties, Inc.; and
19 Prudential Real Estate Investors. The Settling Parties stipulated and moved the Court to
20 determine that their settlement agreement (1) was made in good faith pursuant to California Code
21 of Civil Procedure §§ 877 and 877.6; (2) satisfied the requirements for a contribution bar,
22 regardless of when or by whom such claims are asserted, including all claims for litigation costs
23 and attorneys’ fees, by any party to the lawsuit that is not a party to the settlement agreement (a
24 “Non-Settling Party”), pursuant to 42 U.S.C. § 9613(f) (CERCLA § 113(f)(2)); (3) is
25 encompassed by a settlement agreement that constitutes a judicially approved settlement for
26 purposes of 42 U.S.C. § 113(f)(2) (CERCLA § 113(f)(2)), and barred claims under any other
27 federal or state statute or common law.

28 The Magistrate Judge heard argument on the motion on December 6, 2011, and

1 recommended that the District Court grant the Settling Parties' motion and make certain findings
2 and determinations. The Findings and Recommendations provided fourteen days for the filing of
3 objections. The fourteen-day period has passed, and no party has objected.

4 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this Court has conducted
5 a *de novo* review of this case. Having carefully reviewed the entire file, the Court finds the
6 Findings and Recommendations to be supported by the record and proper analysis.

7 Accordingly, the Court hereby adopts the Findings and Recommendations and orders that
8 the Settling Parties' motion be granted. In addition, the Court

- 9 1. Finds that the Settling Parties entered into the settlement in good faith as
10 defined by California Code of Civil Procedure §§ 877 and 877.6;
- 11 2. Approves the Settlement as a good faith settlement;
- 12 3. Pursuant to 42 U.S.C. § 9613(f) (CERCLA § 113 (f)(2)) and California
13 Code of Civil Procedure § 877.6, bars all claims by any Non-Settling Party
14 for contribution or indemnity against the Settling Parties arising out of
15 facts alleged in Team's Third Amended Complaint (Doc. 211), and as
16 further identified and provided for in the settlement agreement, regardless
17 of when or by whom such claims are asserted. The barred claims include
18 any and all claims for litigation costs, attorneys' fees, or both, by any Non-
19 Settling party. The claims are barred whether they are brought pursuant to
20 CERCLA or pursuant to any other federal or state law;
- 21 4. Orders the Settling Parties to dismiss this action according to the process
22 outlined in paragraph 13 of the settlement agreement; and
- 23 5. Orders that the settlement constitutes a judicially approved settlement for
24 purposes of 42 U.S.C. § 9613 (f)(2) (CERCLA § 113(f)(2)).

25
26
27 IT IS SO ORDERED.

28 **Dated: December 22, 2011**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE