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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

C.B., a minor,

1:09-cv-00285-OWW-SMS

Plaintiff,

**FINDINGS AND RECOMMENDATIONS
RE: PETITION FOR APPROVAL OF
MINOR'S COMPROMISE WITH SONORA
SCHOOL DISTRICT**
(Doc. 48)

vs.

SONORA SCHOOL DISTRICT;
KAREN SINCLAIR; CITY OF
SONORA; CHIEF OF POLICE
MACE MCINTOSH; OFFICER
HAL PROCK, et al.,

Defendants.

Plaintiff is 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 302 and 303.

Pending before the Court is the petition of Matthew Banks,
the father and guardian ad litem for the minor Plaintiff, C.B.,
for approval of the compromise of the minor's claim, which came
on regularly for hearing on January 22, 2010 at 9:30 a.m. in
Courtroom No. 7 before the Honorable Sandra M. Snyder, United
States Magistrate Judge. The guardian, as the person
compromising the claim on behalf of the minor, attended the

1 hearing. Christine Hopkins, Esq., of the Law Offices of John F.
2 Martin appeared as counsel on behalf of Petitioner. Jason
3 Sherman, Esq., of Johnson, Schacter & Lewis appeared on behalf of
4 Defendants, Sonora School District and Karen Sinclair.¹

5 The Court has reviewed the relevant portions of the file and
6 the petition for compromise which, pursuant to Local Rule
7 202(b)(2), should include the age and gender of the minor or
8 incompetent; the nature of the claims to be settled or
9 compromised; the facts and circumstances out of which the claims
10 arose, including the time, place, and persons involved; the
11 manner in which the compromise amount or other consideration was
12 determined; and, additional information as required to enable the
13 Court to determine the fairness of the settlement, such as the
14 nature, extent, and permanence of the injury in a personal injury
15 case, all of which the petition adequately sets forth.

16 Further, the Court has considered the minor's counsel's
17 disclosure of interest and the terms of counsel's compensation,
18 which have been disclosed as required by Local Rule 202(c).

19 At the hearing, the guardian was sworn and questioned by
20 counsel and by the Court to ensure that the guardian understood
21 each and every term of the settlement agreement, was satisfied
22 that the settlement was fair to the child, and that the
23 settlement was being entered without any reservations whatsoever.
24 The guardian was also questioned concerning his understanding
25 concerning the balance of \$12,437.84, sought to be deposited in
26

27 ¹This settlement of claims relates to Defendants, Sonora School District
28 and Karen Sinclair only. This lawsuit proceeds as to Defendants, Chief of
Police Mace McIntosh and Officer Hal Prock.

1 an insured account subject to Petitioner's withdrawal for the use
2 and benefit of the minor C.B. until February 8, 2015, at which
3 time C.B. shall reach the age of eighteen (18) years, and the
4 balance shall become his property. Petitioner confirmed that the
5 plan is to reimburse Amy and Matthew Banks \$1,562.16 for
6 litigation costs advanced on behalf of their son; \$1,000.00
7 advanced for medical expenses; and, \$5,000.00 advanced for
8 attorneys fees, which represents 25% of the total settlement and
9 less than one third of the total amount of fees paid to the Law
10 Offices of John F. Martin; and, \$12,437.84 to be deposited in an
11 FDIC insured blocked account on behalf of their son, not to be
12 withdrawn without a court order or until February 8, 2015, when
13 he reaches the age of majority.

14 The minor was not present in court as he is developmentally
15 disabled, and the guardian explained that the experience of
16 coming to court would have been too traumatic.

17 A district court has the power to make such orders as it
18 deems proper for the protection of an infant or incompetent.
19 Fed. R. Civ. P. 17(c). A claim by or against a minor or
20 incompetent may not be settled or compromised without a court
21 order by the assigned judge who approves the settlement or
22 compromise. Local Rule 202. Federal Courts generally require
23 that claims by minors and incompetents be settled in accordance
24 with applicable state law. William W. Schwarzer, A. Wallace
25 Tashima & James M. Wagstaffe, California Practice Guide: Federal
26 Civil Procedure Before Trial § 15:138 (2009).

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1 In California, court approval is required before a
2 settlement or compromise of the claim of a minor or incompetent
3 is enforceable. Cal. Prob. Code §§ 2504, 3500, 3600-12; Cal.
4 Code Civ. Proc. § 372; see also Robert I. Weil & Ira A. Brown,
5 Jr., California Practice Guide: Civil Procedure Before Trial
6 § 12.572 (2009). A petition for approval of a compromise or
7 covenant not to sue under Cal. Code Civ. Proc. § 372 must comply
8 with Cal. Rules of Court, Rules 7.950, 7.951, and 7.952. Cal.
9 Rules of Court, Rule 3.1384(a).

10 Cal. Rules of Court, Rule 7.950 generally requires that the
11 petition disclose all information that has any bearing upon the
12 reasonableness of the compromise or covenant, and that the
13 petition be verified by the Petitioner. Here, Petitioner has
14 verified the petition.

15 The Court has reviewed the petition and finds that it
16 contains all the information required by Cal. Rules of Court,
17 Rule 7.950 concerning the minor, the circumstances of the action
18 and the settlement, the amounts of the settlement and the plan
19 for distribution thereof, and Petitioner's status with respect to
20 the action.²

21 The Court has reviewed the petition and finds that it
22 contains all the information required by Cal. Rules of Court,
23 Rule 7.951 concerning counsel for Petitioner and the terms of any
24 agreement between Petitioner and the attorney. Further, the

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26 ² If the minor or incompetent is represented by an appointed
27 representative pursuant to appropriate state law, the settlement shall first
28 be approved by the state court having jurisdiction over the personal
representative unless the action is one in which the United States courts have
exclusive jurisdiction. Local Rule 17-202 (b) (1). Here, there is no indication
that the minor is represented by an appointed representative pursuant to
appropriate state law.

1 guardian was questioned concerning the fees and costs, and he
2 expressly confirmed his approval of the fees and costs without
3 reservation.

4 Defendants, Sonora School District and Karen Sinclair, have
5 offered Plaintiff C.B. \$20,000.00 in consideration of a full and
6 final release and discharge of and from all claims of Plaintiff
7 arising from the incidents in question and against these
8 defendants. Considering all the circumstances, the Court
9 concludes that this sum is reasonable, fair, and in the best
10 interests of the minor.

11 In California, attorney's fees, reasonable expenses, and
12 court costs to be paid out of settlement proceeds must be
13 approved by the court. Cal. Fam. Code § 6602; Cal. Prob. Code
14 § 3601. The court generally employs a reasonable fee standard,
15 and may approve and allow fees under a contingency fee agreement
16 made in accordance with law, provided that the amount of fees is
17 reasonable under all the facts and circumstances. Cal. Rules of
18 Court, Rule 7.955.

19 Here, the amount of attorney's fees sought is 25% plus
20 costs. Twenty-five percent of the full settlement amount is
21 \$5,000.00. The costs of \$1,562.16 appear in the petition (Doc.
22 48). Total fees and expenses amount to \$6,562.16. Based on the
23 itemization and the guardian's testimony, the provision for costs
24 is reasonable and fair.

25 When money or property is recovered on behalf of a minor or
26 incompetent, the money or property will be (1) disbursed to the
27 representative pursuant to state law upon a showing that he is
28 the duly qualified representative under state law, (2) disbursed

1 otherwise pursuant to state law, or (3) disbursed pursuant to
2 such other order as the Court deems proper for the protection of
3 the minor or incompetent. Local Rule 202(e). In California,
4 settlement proceeds not exceeding \$5,000.00 may be ordered to be
5 paid to the custodial parent to be held in trust until the minor
6 reaches the age of majority. Cal. Prob. Code §§ 3611(e), 3401.
7 Settlements of less than \$20,000.00 may be ordered held on
8 conditions as the court determines in its discretion to be in the
9 best interest of the minor or incompetent. Cal. Prob. Code
10 § 3611(d). In all other circumstances, the proceeds must be paid
11 to the guardian or conservator of the estate or be deposited in a
12 banking institution with withdrawals to be approved by the court.
13 Cal. Prob. Code §§ 3611, 3413.

14 Accordingly, the Court will direct that \$12,437.84 be placed
15 in a blocked account at Mother Lode Bank, 13769-C Mono Way,
16 Sonora, CA, 95370, until the minor's eighteenth birthday.

17 All applications for orders authorizing interim
18 disbursements shall be heard by the appropriate state court judge
19 or by the assigned Magistrate Judge. If a state court hearing is
20 held regarding interim disbursements, a copy of the order shall
21 be filed with this court, and a copy provided to the Magistrate
22 Judge, and shall be reviewed by the Magistrate Judge in
23 accordance with Local Rule 202(b)(1). Local Rule 202(f).

24 After the money or other property is paid or delivered to a
25 settling parent, the parent may execute a full release and
26 satisfaction or a covenant not to sue or enforce judgment. Cal.
27 Probate Code § 3500.

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1 Recommendations

2 Because the Court finds the settlement to be reasonable,
3 fair to the parties, and in the best interests of the minor, the
4 following is recommended:

5 1. The terms of the settlement as stated above, including
6 costs and attorney's fees, be APPROVED by the district judge
7 assigned to the action.

8 2. Defendants, Sonora School District and Karen Sinclair,
9 and the insurer, pay the sum of \$20,000.00 ("settlement money")
10 on behalf of Defendants in consideration of a full and final
11 release and discharge of and from all claims, charges, and
12 demands of Plaintiff, C.B., arising from this action, thereby
13 authorizing Petitioner to execute and deliver to Defendants a
14 full, complete, and final release and discharge of and from any
15 and all claims and demands of himself and Plaintiff, C.B., by
16 reason of the incident described herein and resulting injuries,
17 upon receipt of the settlement money.

18 3. From the settlement money, the sum of \$6,562.16 shall
19 immediately be reimbursed directly to Amy and Matthew Banks for
20 fees and costs advanced in connection with the prosecution of
21 this action.

22 4. From the settlement money, the sum of \$1,000.00 shall
23 immediately be reimbursed directly to Amy and Matthew Banks for
24 medical treatment and services rendered to their son.

25 5. The remaining balance of the settlement money,
26 amounting to \$12,437.84, be placed in an insured, blocked account
27 in the name of Matthew Banks, the father, and C.B., the minor
28 son, at Mother Lode Bank, 13769-C Mono Way, Sonora, CA, 95370,

1 until the minor's eighteenth birthday, which shall occur on
2 February 8, 2015, at which time the remaining balance in the
3 account shall become the property of C.B.

4 These findings and recommendations are submitted to the
5 United States District Judge assigned to the case, pursuant to
6 the provisions of 28 U.S.C. § 636 (b) (1) (B) and Rule 304 of the
7 Local Rules of Practice for the United States District Court,
8 Eastern District of California. Within ten (10) court days after
9 being served with a copy, any party may file written objections
10 with the Court and serve a copy on all parties. Such a document
11 should be captioned "Objections to Magistrate Judge's Findings
12 and Recommendations." Replies to the objections shall be served
13 and filed within ten (10) court days (plus three days if served
14 by mail) after service of the objections. The Court will then
15 review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636
16 (b) (1) (C). The parties are advised that failure to file
17 objections within the specified time may waive the right to
18 appeal the District Court's order. Martinez v. Ylst, 951 F.2d
19 1153 (9th Cir. 1991).

20 IT IS SO ORDERED.

21 **Dated: February 24, 2010**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE