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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GLEN BEATY,
Plaintiff,
vs.
CITY OF FRESNO, et al.,
Defendants.

Case No. 1:09-cv-01684 LJO JLT

FINDINGS AND RECOMMENDATIONS
RECOMMENDING THAT THE PETITION
FOR THE APPROVAL OF A COMPROMISE
OF A CLAIM BE GRANTED IN PART AND
DENIED IN PART

(Doc. 62)

_____ /

Pending before the Court is Plaintiff’s petition, by and through his guardian ad litem, for the approval of a compromise of a claim. The matter was referred to the undersigned magistrate judge pursuant to 28 U.S.C. § 636(b) and Local Rules 302 and 303. For the reasons set forth below, the undersigned recommends that the petition be granted in part and denied in part.

I. BACKGROUND

This civil action is brought against Defendants seeking damages for violations of 42 U.S.C. § 1983; Article I, Sections 7 and 13 of the California Constitution; California Civil Code Section 52.1; and California tort law. (Doc. 2, Compl., at 2, 6-10.) Plaintiff is currently receiving psychiatric care at Metropolitan State Hospital in Norwalk, California, following a commitment order issued by the Fresno County Superior Court. (Doc. 46 at 2.) Thus, by order filed March 5, 2010, U.S. Magistrate Judge Gary S. Austin appointed Brian K. Cuttone, Esq., as guardian ad litem to represent the interests of Plaintiff in this action. (Id. at 4.) Plaintiff is also represented by counsel.

1 On August, 24, 2010, Plaintiff, by and through his guardian ad litem, petitioned the Court for the
2 approval of a compromise of a claim. (Doc. 62.) Under the proposed compromise, Defendants deny
3 all liability for the claims asserted by Plaintiff in his amended complaint. (Id. at 4.) In exchange,
4 Defendants agree to pay Plaintiff the sum of \$75,000. (Id.) Of this, \$25,000 will be used to pay
5 attorneys fees; \$564.39 will cover costs; and \$2,120 will pay for past and future fees of the guardian ad
6 litem. (Id. at 5-7.) Plaintiff will receive the remaining balance of \$47,315.61. (Id. at 7.) However, the
7 proposed compromise is silent as to what medical expenses, claims, or liens Plaintiff has or will incur.

8 **II. LEGAL STANDARD**

9 The court has a general duty to protect the interests of incompetents in cases before the court.
10 Garrick v. Weaver, 888 F.2d 687, 693 (10th Cir. 1989). A claim by or against an incompetent person
11 may not be settled or compromised without a court order by the assigned judge who approves the
12 settlement or compromise. Local Rule 17-202(b). The party moving for approval of the compromise
13 must provide the court “such . . . information as may be required to enable the Court to determine the
14 fairness of the settlement or compromise” Local Rule 17-202(b)(2) & (c).

15 In considering the fairness of a compromise of an incompetent person’s claims, federal courts
16 are generally guided by state law. See Schwarzer, Tashima & Wagstaffe, California Practice Guide:
17 *Federal Civil Procedure Before Trial* § 15:138 (2009). In California, court approval is required before
18 a settlement or compromise of the claim of an incompetent person is enforceable. See Cal. Prob. Code
19 §§ 2504, 3600-12; Cal. Code Civ. Proc. § 372. Any petition for the approval of a compromise under
20 California Code of Civil Procedure section 372 must also comply with the requirements of California
21 Rules of Court 7.950, 7.951, and 7.952. Cal. Rules of Court, Rule 3.1384(a).

22 **III. ANALYSIS**

23 The petition in this case adequately sets forth the information required under Local Rule 17-
24 202(b)-(c) and California Rules of Court 7.950, 7.951, and 7.952. According to the petition: Plaintiff
25 is a 54-year-old male suing Defendants for personal injuries arising from his arrest on February 9, 2009
26 at Blackstone Avenue and Bullard Avenue in the City of Fresno; Plaintiff suffered superficial blows to
27 the body and bruising to his face; and none of these injuries required extensive or permanent medical
28 treatment. (Doc. 62 at 2-4.) The petition also identifies: the attorneys and the guardian ad litem

1 representing Plaintiff by name, address, and bar number; the terms of the retainer agreement between
2 Plaintiff and his attorneys; and whether the attorneys are employed by another party or have received any
3 compensation outside of that requested in the petition. (Id. at 1, 7; Doc. 62-1, Ex. A.) Finally, the
4 petition is verified by the petitioner. (Doc. 62 at 8.)

5 Turning to the terms of the proposed compromise, the undersigned finds that a settlement of
6 \$75,000, given the facts and circumstances of this case, is fair, reasonable, and in the best interests of
7 Plaintiff. Furthermore, the undersigned finds that the fees and costs to be paid out of the settlement
8 proceeds are reasonable. As indicated above, the amount of attorneys fees sought in this case is thirty-
9 three percent of the award (\$25,000) plus costs (\$564.39). (Doc. 62 at 6.) In addition, the fees sought
10 by the guardian ad litem for past and future services total \$2,120. (Id. at 6-8.) Based on the detailed
11 itemization provided by the attorneys in connection with this petition (Docs. 62-1, 62-2 & 68), the
12 undersigned concludes that the deduction of \$27,684.39 in fees and costs is both fair and reasonable.

13 See Cal. Prob. Code § 3601.

14 The final matter to be resolved is the disbursement of the settlement funds, particularly the
15 \$47,315.61 balance due to Plaintiff. It has come to the undersigned's attention that Plaintiff owes
16 \$32,000 in outstanding medical expenses to the Department of Behavior Health, Fresno County and will
17 likely incur additional, considerable expense as a result of his current stay at Metropolitan State Hospital.
18 The Court therefore has strongly encouraged Plaintiff's attorneys to seek appointment of a conservator
19 of Plaintiff's estate and, as appropriate, the creation of a special needs trust. Though the Court held three
20 hearings, primarily to address this topic, in the end, the Fresno County Public Guardian declined to
21 accept this role voluntarily.^{1,2}

22 Accordingly, the Court is unable to disburse the balance of the settlement funds (\$47,315.61) to
23 the Fresno County Public Guardian as requested in the petition. Rather, all the settlement funds,

25 ¹ On January 10, 2011, counsel for the Public Guardian of Fresno County appeared voluntarily before the Court.
26 She explained that the chief role the Public Guardian would play in these circumstances would be to pay Plaintiff's housing
27 expenses. However, according to counsel, Plaintiff's history of mental illness and perpetual homelessness obviates any
benefit from this service.

28 ² However, the Public Guardian indicated that in the event that a petition was filed in Fresno County Superior Court's
Probate Division, pursuant to California Probate Code § 2920(c) seeking its appointment as the conservator of Plaintiff's
estate, that agency would be unlikely to oppose appointment.

1 including those proceeds due to Plaintiff, will be disbursed in accordance with the terms of the
2 settlement agreement reached by the parties.

3 **IV. CONCLUSION**

4 In accordance with the above, it is **HEREBY RECOMMENDED** that the petition to approve
5 a compromise of a claim be **GRANTED IN PART** and **DENIED IN PART** as follows:

- 6 1. The disbursement of the balance of the settlement proceeds (\$47,315.61) to the Fresno
7 County Public Guardian on behalf of Plaintiff be **DISAPPROVED**;
- 8 2. The petition to approve a compromise of a claim be **APPROVED** in all other respects;
9 and,
- 10 3. The settlement funds be disbursed in accordance with the terms of the settlement
11 agreement reached by the parties.

12 These findings and recommendations are submitted to the United States District Judge assigned
13 to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of
14 Practice for the United States District Court, Eastern District of California. Within twenty-one days after
15 being served with these findings and recommendations, any party may file written objections with the
16 Court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate
17 Judge’s Findings and Recommendations.” The district judge will review these findings and
18 recommendations pursuant to 28 U.S.C. § 636(b)(1)(c). The parties are advised that failure to file
19 objections within the specified time may waive the right to appeal the district judge’s order. Martinez
20 v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21
22 IT IS SO ORDERED.

23 Dated: January 14, 2011

24 /s/ Jennifer L. Thurston
25 UNITED STATES MAGISTRATE JUDGE
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