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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

GARY COPPOLA, et al.,
Plaintiffs

v.

GREGORY SMITH, et al.,
Defendants

CASE NO. 1:11-CV-1257 AWI BAM

**ORDER VACATING NOVEMBER 13,
2017 HEARING DATE AND ORDER
GRANTING DEFENDANT RICHARD
LASTER’S MOTION TO APPROVE
SETTLEMENT**

(Doc. No. 487)

AND RELATED CLAIMS

This is an environmental law case that arises from the chemical contamination of property surrounding a dry cleaning business in Visalia, California. Defendant Richard Laster has filed a motion to approve settlement and for the Court to hold that the settlement is in “good faith” under California Code of Civil Procedure §§ 877 and 877.6 (hereinafter “§ 877” and “§ 877.6”). See Doc. No. 487. On October 4, 2017, the Court ordered all remaining parties to file either a notice of non-opposition or a notice of intent to oppose Laster’s motion. On October 10 and October 11, 2017, all remaining parties filed notices of non-opposition. See Doc. Nos. 494 to 503. For the reasons that follow, Laster’s motion will be granted.

1 **BACKGROUND**

2 As explained in prior orders,¹ Plaintiffs own the real property and a dry cleaning business
3 located at 717 W. Main St., Visalia, California. Laster is the former owner of Paragon Cleaners, a
4 dry cleaning operation that is located at 119 S. Willis St., Visalia, California. 119 S. Willis is
5 within 0.1 miles of 717 W. Main.

6 On October 28, 2009, the California Department of Toxic Substances Control (“DTSC”)
7 informed Plaintiffs that it was investigating the occurrence of PCE in the soil and groundwater at
8 717 W. Main. It was later determined that the soil and groundwater both at and near 717 W. Main
9 was contaminated with PCE.

10 In June 2011, Plaintiffs and the DTSC entered into a Consent Order that *inter alia* required
11 Plaintiffs to conduct studies and clean-up efforts regarding the PCE plume at and near 717 W.
12 Main.

13 Plaintiffs brought this lawsuit in 2011, and currently alleges in the Eighth Amended
14 Complaint that releases of PCE and other chemicals occurred from 119 S. Willis at a time when
15 Laster owned and controlled 119 S. Willis. Plaintiffs allege that the Laster was in sufficient
16 control of 119 S. Willis to know about the use of PCE and prevent releases of PCE into the
17 environment. Plaintiffs seek damages, contribution, and indemnification from Laster associated
18 with the PCE soil and groundwater contamination and cleanup.

19 Plaintiffs bring claims against Laster under 42 U.S.C. §§ 9607(a) and 9613(f) of the
20 Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), and for
21 declaratory relief, trespass, and nuisance. Laster has counterclaims against Plaintiffs and cross-
22 claims against the Nash Parties, and is a cross-defendant to claims brought by the Nash Parties.

23
24 **DEFENDANTS’ MOTION**

25 *Defendant’s Argument*

26 Laster explains that the remaining parties participated in extensive mediation efforts that
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28 ¹ A more detailed description of the facts in this case may be found in Coppola v. Smith, 19 F.Supp.3d 960 (E.D. Cal. 2014) and Coppola v. Smith, 935 F.Supp.2d 993 (E.D. Cal. 2013).

1 resulted in a global settlement. As part of that settlement, Laster agreed to contribute \$275,000 to
2 the remediation of 119 S. Willis.² The \$275,000 is currently held in trust by his counsel, but will
3 be transferred to a remediation fund for 119 S. Willis. The remediation fund will be administered
4 by the Nash Parties' counsel, and will be used to conduct remediation, execute contracts, and pay
5 necessary DTSC oversight costs. The Nash Parties will also contribute \$610,000 to the
6 remediation of 119 S. Willis. Laster explains that he has already expended about \$1.3 million on
7 investigative and monitoring costs for 119 S. Willis, including a 90-day soil vapor extraction pilot
8 study that demonstrated successful clean-up of PCE. That study shows that soil-vapor-extraction
9 is the appropriate remediation technique to utilize at 119 S. Willis. However, payment of the
10 \$275,000 is contingent upon approval of the good faith motion. Laster argues that the settlement
11 is fair and equitable, was negotiated with experienced counsel, was not collusive, and should be
12 deemed a good faith settlement under § 877.

13 Other Parties' Positions

14 As stated above, all remaining parties have filed notices of non-opposition to the Laster's
15 motion.

16 Relevant Terms of Settlement

17 According to counsel, the global settlement agreement provides that 119 S. Willis will be
18 remediated with funds provided by Laster and the Nash Parties. Laster will provide \$275,000 in
19 funding, and the "Nash Parties" will contribute \$610,000.00. The "Nash Parties" are also
20 responsible for funding approximately \$30,000 in future DTSC oversight costs and a portion of
21 \$175,000 past oversight costs related to both 119 S. Willis and 717 W. Main, as determined by
22 DTSC.³ See Doc. No. 487.

23 Discussion

24 1. Method of Review

25 "When a district court . . . hears state law claims based on supplemental jurisdiction, the
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27 ² The parties refer to 119 S. Willis and the relevant area as "the Paragon Cleaners Site." The Court will simply refer
to that area by the street address, 119 S. Willis.

28 ³ With respect to 717 W. Main, counsel represents that the global settlement provides for Plaintiffs and the City of
Visalia to fund the remediation efforts for this site.

1 court applies state substantive law *to the state law claims.*” Mason and Dixon Intermodal, Inc. v.
2 Lapmaster Int'l LLC, 632 F.3d 1056, 1060 (9th Cir. 2011) (emphasis added). Section 877⁴ is a
3 substantive law (§ 877.6 is the procedural mechanism for implementing § 877), which the Court
4 can apply. See id.; Federal Sav. & Loan Ins. Corp. v. Butler, 904 F.2d 505, 511 (9th Cir. 1990).
5 Therefore, § 877 will be applied to the state law claims at issue between Martin and Plaintiffs. See
6 Mason and Dixon, 632 F.3d at 1060.

7 As for the CERCLA claims, one of CERCLA’s “core principles” is to “foster settlement
8 through its system of incentives and without unnecessarily further complicating already
9 complicated litigation.” AmeriPride Servs. v. Texas Eastern Overseas, Inc., 782 F.3d 474, 486
10 (9th Cir. 2015); Chubb Custom Ins. Co. v. Space Sys./Loral, Inc., 710 F.3d 946, 971 (9th Cir.
11 2013). Therefore, courts review settlements and generally enter contribution and indemnity bar
12 orders in CERCLA cases if the settlement is fair, reasonable, and adequate. See Coppola v. Smith,
13 2016 U.S. Dist. LEXIS 86277, *16-*24 (E.D. Cal. July 1, 2016); City of San Diego v. National
14 Steel & Shipbuilding Co., 2015 U.S. Dist. LEXIS 53078, *33-*36 (S.D. Cal. Apr. 21, 2015);
15 Lewis v. Russell, 2012 U.S. Dist. LEXIS 161343, *11-*19 (E.D. Cal. Nov. 9, 2012); AmeriPride
16 Servs., Inc. v. Valley Indus. Servs., Inc., 2007 U.S. Dist. LEXIS 51364, *6-*7 (E.D. Cal. July 2,
17 2007); Patterson Env'tl. Response Trust v. Autocare 2000, Inc., 2002 U.S. Dist. LEXIS 28323,
18 *13-*25 (E.D. Cal. July 8, 2002).

19 The methodology used by federal courts in California to assess partial settlements and
20 contribution bars is not always uniform. Cf., e.g., National Steel, 2015 U.S. Dist. LEXIS 53078 at
21 *34-*40 (separate analysis between state law and federal law) with Whitehurst v. Heintl, 2015 U.S.
22 Dist. LEXIS 49147, *8-*15 (N.D. Cal. Apr. 14, 2015) (simply applying § 877 and § 877.6 to
23 CERCLA claims without discussion of federal common law). However, a number of courts
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25 ⁴ Sec. 877 reads in relevant part: “Where a release, dismissal with or without prejudice, or a covenant not to sue or
26 not to enforce judgment is given in good faith before verdict or judgment to one or more of a number of tortfeasors
27 claimed to be liable for the same tort, or to one or more other co-obligors mutually subject to contribution rights, it
28 shall have the following effect: (a) It shall not discharge any other such party from liability unless its terms so
provide, but it shall reduce the claims against the others in the amount stipulated by the release, the dismissal or the
covenant, or in the amount of the consideration paid for it, whichever is the greater. (b) It shall discharge the party to
whom it is given from all liability for any contribution to any other parties. . . .”

1 consult § 877 and § 877.6, and either § 6 of the Uniform Comparative Fault Act (“UCFA”)⁵ or § 4
2 of the Uniform Contribution Among Tortfeasors Act (“UCATA”)⁶ in analyzing settlement
3 agreements in CERCLA cases. E.g. Coppola, 2016 U.S. Dist. LEXIS 86277 at *16-*25; Heim v.
4 Estate of Heim, 2014 U.S. Dist. LEXIS 46297, *12-*26 (N.D. Cal. Apr. 2, 2014); Tyco Thermal
5 Controls LLC v. Redwood Industrial, 2010 U.S. Dist. LEXIS 91842, *11-*35, *41-*46 (N.D. Cal.
6 Aug. 12, 2010); Valley Indus., 2007 U.S. Dist. LEXIS 51364 at *6-*12. The UCFA and the
7 UCATA are “model acts . . . that advocate competing methods of accounting for a settling party’s
8 share when determining the amount of a nonsettling defendant’s liability.” AmeriPride, 782 F.3d
9 at 483. The UCFA and UCATA are consulted when allocating funds because CERCLA is silent
10 on how to allocate settlement proceeds when the settlement is between private parties, i.e. not a
11 settlement involving the United States or an individual State. See id.; American Cyanamid Co. v.
12 Capuano, 381 F.3d 6, 20 (1st Cir. 2004).

13 Courts consult § 877 and § 877.6 because litigants in California often expressly request
14 such a finding, and if the finding is made, a contribution and indemnity bar is imposed by
15 operation of law. See Cal. Code Civ. P. § 877.6(c). In other words, these statutes are the state law
16 analog to the federal common law for approving settlements and imposing contribution bars.
17 However, there is another reasons to consult § 877 and § 877.6. Under these statutes, a settlement
18 is in “good faith” if it is “within the reasonable range of the settling tortfeasor’s proportional share
19 of comparative liability for the plaintiff’s injuries.” Tech-Bilt, Inc. v. Woodward-Clyde &
20 Assoc’s, 38 Cal.3d 488, 499 (1985). The factors generally considered in determining whether a
21 settlement is in “good faith” under § 877 and § 877.6 are similar to the facts highlighted by courts
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23 ⁵ UCFA § 6 reads: “A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable
24 discharges that person from all liability for contribution, but it does not discharge any other persons liable upon the
25 same claim unless it so provides. However, the claim of the releasing person against other persons is reduced by the
amount of the released person's equitable share of the obligation, determined in accordance with the provisions of
Section 2.” See AmeriPride, 782 F.3d at 483 n.5.

26 ⁶ UCATA § 4 reads: “When a release or a covenant not to sue or not to enforce judgment is given in good faith to one
27 of two or more persons liable in tort for the same injury or the same wrongful death: (a) It does not discharge any of
the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim
28 against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the
consideration paid for it, whichever is the greater; and (b) It discharges the tortfeasor to whom it is given from all
liability for contribution to any other tortfeasor.” See AmeriPride, 782 F.3d at 484 n.6.

1 in finding a CERCLA settlement to be fair, reasonable, and adequate. Cf. National Steel, 2015
2 U.S. Dist. LEXIS 53078 at *33-*36, Lewis, 2012 U.S. Dist. LEXIS 161343 at *12-*21,⁷ and
3 Patterson Envntl., 2002 U.S. Dist. LEXIS 28323 at *13-*17 with Tech-Bilt, 38 Cal.3d at 499;
4 Cahill v. San Diego Gas & Elec. Co., 194 Cal.App.4th 939, 959 (2011). Both sets of
5 factors/considerations take into account the amount of the settlement, the settlor’s proportionate
6 share of liability, claims and defenses, financial conditions, and the recognition that there is a
7 benefit to settling by saving resources and litigation expenses. See National Steel, 2015 U.S. Dist.
8 LEXIS 53078 at *33-*36, Lewis, 2012 U.S. Dist. LEXIS 161343 at *12-*21, Patterson Envntl.,
9 2002 U.S. Dist. LEXIS 28323 at *13-*17; Tech-Bilt, 38 Cal.3d at 499. Given the similarities, it is
10 difficult to envision a settlement that is in “good faith” but not fair, reasonable, and adequate, or
11 *vice versa*. As such, the Court will examine and make findings regarding “good faith” under
12 § 877 and § 877.6 as part its determination of whether the settlement of the CERCLA claims is
13 fair, adequate, and reasonable. See Coppola, 2016 U.S. Dist. LEXIS 86277 at *20; Heim, 2014
14 U.S. Dist. LEXIS 46297 at *12-*26; Valley Indus., 2007 U.S. Dist. Lexis 51364 at *6-*12.

15 2. Application

16 a. Tech-Bilt Factors

17 Courts review the following nonexclusive factors from *Tech-Bilt* in order to determine if a
18 settlement is within a “reasonable range” and thus, in “good faith” under § 877 and § 877.6: (1) a
19 rough approximation of the plaintiffs’ total recovery and the settlor’s proportionate liability; (2)
20 the amount to be paid in settlement; (3) the allocation of settlement proceeds among the plaintiffs;
21 (4) a recognition that a settlor should pay less in settlement than he would if he were found liable
22 after a trial; (5) the financial conditions and insurance policy limits of the settling defendants; and
23 (6) the existence of collusion, fraud, or tortious conduct aimed to injure the interests of non-
24 settling defendants. See Mason and Dixon, 632 F.3d at 1064; Bay Development, Ltd. v. Superior
25 Ct., 50 Cal.3d 1012, 1027-28 (1990); Tech-Bilt, 38 Cal.3d at 499; Cahill, 194 Cal.App.4th at 959.
26 A party opposing a motion for good faith settlement has the burden of demonstrating the lack of
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28 ⁷ The Court notes that *Lewis*’s analysis with respect to federal claims, although in a separate section, is very similar to its analysis of “good faith” with respect to state law claims. See Lewis, 2012 U.S. Dist. LEXIS 161434 at *18-*21.

1 good faith. Tech-Bilt, 38 Cal.3d at 499–500; PacifiCare of California v. Bright Medical
2 Associates, Inc., 198 Cal.App.4th 1451, 1465 (2011). If a settlement is “in good faith,” then
3 § 877.6 bars claims for contribution and indemnity against the settling tortfeasor by the nonsettling
4 tortfeasors. See Cal. Code Civ. P. § 877.6(c); In re Heritage Bond Litig., 546 F.3d 667, 680-81
5 (9th Cir. 2008); Gackstetter v. Frawley, 135 Cal.App.4th 1257, 1274 (2006).

6 Here, with respect to Factors 1 and 2, the global settlement agreement appears to place the
7 responsibility for remediating 119 S. Willis on Laster and the Nash Parties. Between these two
8 parties, \$885,000 has been pledged. The declarations of counsel Laster and counsel for the Nash
9 Parties both indicate that this sum should be “more than sufficient” to remediate 119 S. Willis.
10 See Gualco Dec. ¶ 8; Williams Dec. ¶ 7. Although the Nash Parties are contributing \$335,000
11 more than Laster, Laster has already spent \$1.3 million related to monitoring and investigation of
12 119 S. Willis. Further, the Nash Parties have agreed to pay significant sums of past and future
13 DTSC oversight costs related to both 119 S. Willis and 717 W. Main. Finally, the respective
14 counsels for Laster and the Nash Parties both declare that, under the facts of this case and in light
15 of their decades of combined experience, the funds pledged represent a reasonable share of the
16 parties’ proportionate share of liability. See Gualco Dec. ¶ 9; Williams Dec. ¶ 8. Considering the
17 funds pledged by Lester, the funds from Laster that have already been expended, that a
18 remediation of the property will be obtained, and the experience of counsel and their knowledge of
19 this case, Factors 1 and 2 favor approving the settlement.

20 With respect to Factor 3, there are three Plaintiffs in this case: two trusts and one natural
21 person (who is also the trustee of both trusts). The Plaintiffs are represented by the same counsel,
22 appear to have family connections, own 717 W. Main, and paid environmental clean-up costs. See
23 Doc. No. 402. Given the apparent close association and same legal representation of Plaintiffs,
24 there does not appear to be a significant risk of improper allocation of funds. Therefore, this
25 factor is neutral.

26 As to Factor 4, settlement generally results in a partial saving of litigation costs, and saves
27 courts and juries time and other valuable resources. This factor favors approving the settlement.

28 With respect to Factor 5, Laster is not required to present evidence of his financial

1 condition or insurance status. See Cahill, 194 Cal.App.4th at 968. To the Court’s understanding,
2 Laster has never contended that his financial status should justify a lower settlement amount, and
3 no party has suggested that any insurance companies associated with Laster should contribute
4 larger sums to the settlement. Cf. Long Beach Memorial Med. Ctr. v. Superior Ct., 172
5 Cal.App.4th 865, 874-75 (2010) (noting that being insolvent or underinsured or uninsured may
6 support a lower settlement amount, these considerations did not apply where the settlement was
7 10% of available policy limits and the defendant was solvent). This factor is neutral.

8 Finally, as to Factor 6, no collusion is apparent. All remaining parties are represented by
9 experienced and competent counsel. All remaining parties engaged in extensive and lengthy
10 mediations involving a neutral mediator. There is no reason to believe that the settlement was not
11 vigorously negotiated at arm’s-length. More importantly, no party has objected to or opposed
12 Laster’s motion in any way, rather all other parties expressly do not oppose his motion. The
13 absence of an opposition or objection from any other party is highly telling and is clearly
14 indicative of reasonableness and good faith. This factor strongly favors approval of the settlement.

15 In sum, *Tech-Bilt* factors 1, 2, 4, and 6 weigh in favor of a finding of reasonableness and
16 good faith, while *Tech-Bilt* factors 3 and 5 are neutral. The *Tech-Bilt* factors demonstrate that
17 Laster’s \$275,000 settlement is “within the reasonable range of [his] proportional share of
18 comparative liability for the [Plaintiffs’ and the Nash Parties’] injuries.” There is nothing before
19 the Court to suggest that the settlement is anything other than fair, reasonable, and adequate.
20 Therefore, the Court concludes that the settlement is fair, adequate, and reasonable, and was made
21 in good faith for purposes of § 877 and § 877.6. See Coppola, 2016 U.S. Dist. LEXIS 86277 at
22 *20-*25; Heim, 2014 U.S. Dist. LEXIS 46297 at *12-*26; Valley Indus., 2007 U.S. Dist. Lexis
23 51364 at *6-*12; cf. Lewis, 2012 U.S. Dist. LEXIS 161434 at *11-*21 (conducting similar but
24 separate analyses of federal law and state law claims to approve settlement); Patterson Envntl.,
25 2002 U.S. Dist. LEXIS 28323 at *18-*26 (same). The Court will approve the settlement and enter
26 a contribution and indemnity bar order. See National Steel, 2015 U.S. Dist. LEXIS 53078 at *33-
27 *36; Heim, 2014 U.S. Dist. LEXIS 46297 at *16-*26; Lewis, 2012 U.S. Dist. LEXIS 161343 at
28 *11-*21; Valley Indus., 2007 U.S. Dist. LEXIS 51364 at *6-*12; Patterson Envntl., 2002 U.S. Dist.

1 LEXIS 28323 at *13-*26.

2 b. Allocation of Settlement Funds

3 When a settlement is reached in a CERCLA contribution case such as this one, courts have
4 the discretion under 42 U.S.C. § 9613(f)(1) to determine the most equitable method of accounting
5 for settlements between private parties. AmeriPride, 782 F.3d at 487. Districts courts may utilize
6 either the “proportionate share approach” of § 6 of the UCFA or the “pro tanto approach” of § 4 of
7 the UCATA. See id. at 483-87.

8 In this case, the Court has previously approved good faith settlements for former
9 defendants Cal Water, Martin & Martin Properties, and the Visalia Unified School District. See
10 Doc. Nos. 424, 425, 426. In each of those orders, the Court determined that all settlements would
11 be credited to the non-settling parties through the pro tanto method. See Coppola, 2016 U.S. Dist.
12 LEXIS 80087 at *23-*26. The pro tanto method is the method of § 877 and § 4 of UCATA. See
13 Federal Sav. & Loan Ins. Corp. v. Butler, 904 F.2d 505, 511 (9th Cir. 1990); Coppola v. Smith,
14 2016 U.S. Dist. LEXIS 80087, *24 (E.D. Cal. June 20, 2016). Once a court determines the
15 method by which a settlement is accounted for between the non-settling defendants, that approach
16 should be utilized throughout the litigation. See AmeriPride, 782 F.3d at 488. Therefore,
17 consistent with *AmeriPride* and the reasoning and conclusion of the Court’s order on the motions
18 of Cal Water, Martin & Martin Properties, and the Visalia Unified School District, the proceeds of
19 this settlement shall be credited to the non-settling parties through the pro tanto approach. See id.;
20 Coppola, 2016 U.S. Dist. LEXIS 82667 at *25.

21
22 **ORDER**

23 Accordingly, IT IS HEREBY ORDERED that:

- 24 1. The November 13, 2017 hearing date is VACATED;
- 25 2. Richard Laster’s motion for good faith approval of the settlement agreement (Doc. No.
26 487) is GRANTED;
- 27 3. Under California Code of Civil Procedure §§ 877 and 877.6, and § 4 of the UCATA (for
28 purposes of 42 U.S.C. § 9613(f)(1)), the settlement agreement reached by Laster with

1 Plaintiffs, Paragon Cleaners, Inc., and the Nash Parties is in “good faith” and is a fair,
2 adequate, and reasonable settlement;

3 4. Once Richard Laster has paid \$275,000 to the Paragon Cleaners Reimbursement Fund, no
4 contribution or indemnity claims against Richard Laster arising out of the Plaintiffs’
5 Eighth Amended Complaint or any related cross-claims or counterclaims will be allowed;

6 5. Within fifteen (15) days of service of this order:

7 a. Plaintiffs shall file a voluntary dismissal with prejudice of Richard Laster from this
8 case;

9 b. Richard Laster shall file a voluntary dismissal with prejudice of his counter-claims
10 against Plaintiffs;

11 c. Richard Laster shall file a voluntary dismissal with prejudice of his cross-claims
12 against the Nash Parties;⁸

13 d. The Nash Parties shall file a voluntary dismissal with prejudice of their cross-
14 claims against Richard Laster; and

15 6. The proceeds of this settlement will be accounted for in relation to non-settling parties
16 through the pro tanto approach of UCATA.

17 IT IS SO ORDERED.

18 Dated: October 13, 2017

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20 SENIOR DISTRICT JUDGE

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28 ⁸ The “Nash Parties” are Nash Properties, LLC and David H. Nash and Richard P. Nash as the successor co-trustees of the Jan Higgins Nash Trust. See Doc. No. 489.