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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

KRISTINE LIVINGSTON, et al.

Case No. 1:12-cv-01427-LJO-SKO

Plaintiffs,

v.

**ORDER GRANTING THE APPLICATION  
FOR MINOR’S COMPROMISE OF IZAAK  
MARK LIVINGSTON, A MINOR**

KEMPERSPORTS MANAGEMENT, INC.,

Defendant.

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**I. INTRODUCTION**

On May 6, 2014, a Settlement Conference was held in this case before the undersigned, and the case settled. (Docs. 59-67.) On August 13, 2014, Plaintiff/Petitioner Kristine Livingston (“Livingston”) filed an Application of Petitioner Kristine Livingston, Guardian Ad Litem, for Approval of Minor’s Compromise for Izaak Mark Livingston, a Minor (“Minor’s Petition”). (Doc. 69.) Livingston is the mother and the court-appointed guardian *ad litem* of Minor Plaintiff Izaak Mark Livingston (“Minor Plaintiff”).

The Court has reviewed the Minor’s Petition and supporting documents and determined that this matter is suitable for decision without oral argument pursuant to the Local Rules of the United States District Court, Eastern District of California, Rule 230(g). For the reasons set forth

1 below, the Minor’s Petition is APPROVED and GRANTED.

2 **II. BACKGROUND**

3 Kristine Livingston, individually and on behalf of Izaak Livingston (a minor), Jason Alan  
4 Livingston, and Wesley Alexander Livingston (collectively "Plaintiffs") filed the Complaint  
5 against Defendant Kempersports Management, Inc. (“Defendant”) on March 14, 2012, in the Tulare  
6 County Superior Court. (Doc. 2.) On April 30, 2012, the Tulare County Superior Court appointed  
7 Kristine Livingston as the guardian *ad litem* for her son Izaak Livingston. On August 30, 2012,  
8 Defendant removed the action to this Court based on diversity. (Doc. 2.)

9 Plaintiffs’ complaint asserted claims stemming from the death of Mark Livingston, Kristine  
10 Livingston’s deceased husband and the father of Minor Plaintiff and adult sons Jason Livingston and  
11 Wesley Livingston. (Doc. 2, 12.) In May 2007, Mark Livingston was hired as the Golf Course  
12 Superintendent for Ridge Creek Dinuba Golf Club in the County of Tulare, California. (Doc. 2, 13.)  
13 In 2009, Defendant suspended Mark Livingston because other employees under his supervision were  
14 engaging in timecard fraud. Defendant ultimately terminated Mark Livingston’s employment on  
15 March 15, 2010. Shortly thereafter, Mark Livingston suffered a heart attack and died on March 23,  
16 2010. (Doc. 2, 13.) Defendant later promoted the same employees who allegedly committed timecard  
17 fraud to assume many of his duties, at lower pay rates than Mark’s salary. (Doc. 2, 13.)

18 Plaintiffs alleged that Defendant discriminated against Mark Livingston, who was 55, in order  
19 to replace him with younger and less expensive employees. Plaintiffs asserted claims against  
20 Defendant under California’s Fair Employment and Housing Act (“FEHA”) for age discrimination,  
21 gender discrimination, several types of disability discrimination, and retaliation. Plaintiffs alleged that  
22 as a result of Mark Livingston’s wrongful termination, he died of cardiac arrest. Plaintiffs sought  
23 damages for loss of economic support, loss of payment of medical bills, payment of funeral expenses,  
24 general damages, attorney’s fees, costs of suit, prejudgment interest, and other relief as the court  
25 sought proper. (Doc. 2, 18-31.)

26 The parties participated in a voluntary settlement conference before Magistrate Judge Sheila K.  
27 Oberto on May 6, 2014. At the settlement conference, the parties agreed that Petitioner would waive  
28 all of her claims in this action against Defendant, and dismiss her claims with prejudice in exchange

1 for a waiver of costs and fees. The parties also agreed that plaintiffs Wesley Livingston and Jason  
2 Livingston would dismiss their claims against Defendant with prejudice in exchange for a waiver of  
3 costs and fees. (Doc. 65.) As a result, the Minor Plaintiff's claim is the sole subject of the settlement.

4 At the settlement conference, Petitioner also agreed to resolve Izaak's claim against Defendant  
5 in exchange for a full release of all claims. (Doc. 69, 3.) The parties agreed that Defendant will pay a  
6 total of \$57,500.00, structured as follows:

- 7 1) Defendant will fund a structured settlement on behalf of the Minor Plaintiff with a  
8 present value of \$25,000;
- 9 2) Defendant will pay to Plaintiffs' attorney, Dean B. Gordon, \$20,000 as reimbursement  
10 for his reasonable costs expended; and
- 11 3) Defendant will pay to Plaintiffs' attorney, Dean B. Gordon, \$12,550 as attorney fees.

12 On May 9, 2014, Defendant filed a Joint Notice of Settlement indicating the parties had  
13 settled the action and Plaintiffs would file a Stipulation for Dismissal with Prejudice within 30  
14 days. (Doc. 63.) On June 10, 2014, Plaintiffs filed a Stipulation and Proposed Order dismissing  
15 all claims other than those of the Minor Plaintiff with prejudice, and the Court issued an order  
16 dismissing the claims of Kristine Livingston, Jason Livingston, and Wesley Livingston on June  
17 13, 2014. (Docs. 65, 67.) On July 29, 2014, the Court issued a minute order reminding Plaintiffs  
18 that pursuant to the Order, an application for approval to compromise the claim of the Minor  
19 Plaintiff Izaak Mark Livingston was to be filed within two weeks by Plaintiffs' counsel. (Doc. 68.)  
20 The Court ordered that Plaintiff Izaak Mark Livingston, through his guardian *ad litem* Kristine  
21 Livingston, file a Minor's Petition by no later than August 15, 2014. Petitioner Kristine  
22 Livingston filed the Minor's Petition currently before the Court on August 13, 2014.

### 23 III. DISCUSSION

#### 24 A. Legal Standard for Compromise of Minor's Claim

25 As a derivative of Federal Rule of Civil Procedure 17(c), district courts have a special duty  
26 to safeguard the interests of litigants who are minors. Rule 17(c) provides, in pertinent part, that a  
27 district court "must appoint a guardian *ad litem* – or issue another appropriate order – to protect a  
28 minor or incompetent person who is unrepresented in an action." Fed. R. Civ. P. 17(c). In the

1 context of proposed settlements in suits involving minor plaintiffs, the district court's special duty  
2 requires it to "conduct its own inquiry to determine whether the settlement serves the best interests  
3 of the minor." *Robidoux v. Rosengren*, 638 F.3d 1177, 1181 (9th Cir. 2011) (quoting *Dacanay v.*  
4 *Mendoza*, 573 F.2d 1075, 1080 (9th Cir. 1978) (internal citation marks omitted)).

5         In *Robidoux*, the United States Court of Appeals for the Ninth Circuit provided specific  
6 guidance "on how to conduct this independent inquiry." *Robidoux*, 638 F.3d at 1181. While the  
7 Ninth Circuit noted that district courts have typically applied state law and the local rules  
8 governing the award of attorney's fees to make the reasonableness and fairness determination, the  
9 court held that "this approach places an undue emphasis on the amount of attorney's fees provided  
10 for in a settlement, instead of focusing on the net recovery of the minor plaintiffs under the  
11 proposed agreement." *Id.* The Ninth Circuit held that, instead, district courts should "limit the  
12 scope of their review to the question whether the net amount distributed to each minor plaintiff in  
13 the settlement is fair and reasonable, in light of the facts of the case, the minor's specific claim,  
14 and recovery in similar cases." *Id.* at 1181-82. Further, the fairness of each minor plaintiff's net  
15 recovery should be evaluated "without regard to the proportion of the total settlement value  
16 designated for adult co-plaintiffs or plaintiffs' counsel – whose interests the district court has no  
17 special duty to safeguard." *Id.* at 1182 (citing *Dacanay*, 573 F.2d at 1078).

18         Local Rule 202(b) sets forth that "[n]o claim by or against a minor or incompetent person  
19 may be settled or compromised absent an order by the Court approving the settlement or  
20 compromise." Local Rule 202(b)(2) further provides in pertinent part that an application for  
21 approval of a settlement of a minor:

22         shall disclose, among other things, the age and sex of the minor or incompetent, the  
23 nature of the causes of action to be settled or compromised, the facts and  
24 circumstances out of which the causes of action arose, including the time, place and  
25 persons involved, the manner in which the compromise amount or other  
consideration was determined, including such additional information as may be  
required to enable the Court to determine the fairness of the settlement or  
compromise . . .

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1 **B. Terms of the Compromise Settlement**

2 The Minor's Petition sets forth that Minor Plaintiff Izaak was born on July 29, 2010, four  
3 and a half months after his father Mark Livingston passed away. (Doc. 69, ¶ 1.) The Minor's  
4 Petition presents the facts and circumstance of the case and indicates the manner in which a  
5 settlement was reached. (Doc. 69, ¶¶ 6-25.)

6 The Minor's Petition establishes that, out of the total global settlement amount of \$57,500,  
7 Plaintiffs' counsel will receive \$20,000 in costs and \$12,500 in attorney's fees, which represents  
8 33.3% of the settlement amount after costs. (Doc. 69, ¶ 21.) Minor Plaintiff Izaak will receive the  
9 net settlement amount of \$25,000. (Doc. 69, ¶ 18; Doc. 69-1, 11.) The proposed Structured  
10 Settlement has a present value of \$25,000 and will fund an annuity, which including interest will  
11 pay \$8,777.16 per annum for five years to Minor Plaintiff Izaak when he attains majority. With  
12 interest, the total guaranteed amount is \$43,885.80. (Doc. 69-1, ¶¶ 18-19; Exh. B.) The Court  
13 must thus determine whether the amount allocated for the Minor Plaintiff is reasonable and fair.

14 **C. The Reasonableness and Fairness of the Settlement Amount**

15 In *Robidoux*, the Ninth Circuit directed district courts considering the compromise of a  
16 minor's claim to examine the fairness and reasonableness of the net settlement amount in view of  
17 the facts of the case, the minor's specific claim, and the recovery in similar cases. *Robidoux*, 638  
18 F.3d at 1181-82. Here, the settlement agreement was reached following an all-day settlement  
19 conference before the undersigned. As such, the Court is familiar with the facts of this case and  
20 the representations made by the parties concerning the Minor Plaintiff Izaak's injuries and  
21 damages.

22 The Court notes that the Minor Plaintiff was not yet born during the incidents leading to  
23 Plaintiffs' suit, and therefore does not have memory of the events on which this suit is predicated.  
24 (Doc. 69, ¶ 1.) The Minor Plaintiff does not seek any out-of-pocket medical expenses as a result  
25 of Defendant's purported actions. (Doc. 69, ¶ 20.) While the Minor Plaintiff will suffer the loss  
26 of his father, he did not know his father. The Minor's Petition states that it is in Minor Plaintiff's  
27 best interest to resolve the case pursuant to the terms of the settlement and that the settlement is  
28 fair and reasonable to the Minor Plaintiff under the circumstances of this case. (Doc. 69, ¶ 25.)

1 Plaintiffs filed this action in 2012, and the facts of the case were thoroughly investigated  
2 and developed over the course of litigation. The parties concluded discovery prior to the  
3 settlement conference in May 2014. The Court notes that Defendant had filed a motion for  
4 summary judgment, which was pending at the time of settlement, and Plaintiffs acknowledged  
5 there was always risk and uncertainty regarding the outcome of that motion as well as at trial.  
6 (*See Docs. 55, 69-1 at ¶ 14.*) A settlement, however, ensures that the Minor Plaintiff receives  
7 compensation for his claims.

8 After reviewing the facts of this case, including that the Minor Plaintiff Izaak was not yet  
9 born at the time of the events, as well as considering additional representations made by the parties  
10 during the settlement conference and recognizing the uncertainty of further litigating the claims,  
11 the Court finds the settlement amount allotted to Minor Plaintiff Izaak of \$25,000 to be fair and  
12 reasonable.

13 The Declaration of Dean B. Gordon establishes that the amount payable to the Minor  
14 Plaintiff has a present value of \$25,000, and will fund an annuity which will pay \$8,777.16 per  
15 annum for five years to the Minor Plaintiff when he attains majority. However, neither the  
16 Minor's Petition nor Mr. Gordon's Declaration specify a financial institution at which the funds  
17 will be deposited. The Court will require that the proposed net settlement amounts be deposited in  
18 blocked accounts by the Minor Plaintiff's guardian *ad litem* at federally insured financial  
19 institutions to be held there until the Minor Plaintiff reaches the age of majority.

20 Within 72 hours of receipt of a check payable to the order of the Petitioner as Trustee for  
21 the Minor Plaintiff, the Minor Plaintiff's settlement amount shall be placed into a blocked account  
22 for the benefit of the Minor Plaintiff, and shall be transferred to the Minor Plaintiff's custody when  
23 he reaches the age of 18. No withdrawals of principal or interest may be made from the blocked  
24 account without a written order under this case name and number, signed by a judge, and bearing  
25 the seal of this court, until the Minor Plaintiff attains the age of 18 years. *See Local Rule 202(f).*  
26 When the Minor Plaintiff attains the age of 18 years, the depository, without further order of this  
27 Court, is authorized and directed to pay by check or draft directly to the former Minor Plaintiff,  
28 upon proper demand, all monies including interest deposited under this order. The money on

1 deposit is not subject to escheat. Plaintiffs' attorney and the guardian *ad litem* shall deliver to the  
2 depository a copy of this order at the time of deposit.

3 **IV. CONCLUSION AND ORDER**

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. The proposed settlement between Minor Plaintiff Izaak Mark Livingston and  
6 Defendant is APPROVED as fair and reasonable;
- 7 2. The Application of Petitioner Kristine Livingston, Guardian Ad Litem, for  
8 Approval of Minor's Compromise for Izaak Mark Livingston, a Minor, is  
9 GRANTED;
- 10 3. Minor Plaintiff Izaak Livingston shall receive \$25,000 by way of settlement;
- 11 4. Within 72 hours of receipt of a check payable to the order of Petitioner as the  
12 Trustee for the Minor Plaintiff, the Petitioner shall deposit the check in a blocked  
13 account at a federally insured bank or credit union;
- 14 5. The respective settlement amounts shall be transferrable to the Minor Plaintiff's  
15 custody at the rate of \$8,777.16 per annum beginning when the Minor Plaintiff  
16 reaches the age of 18;
- 17 6. Petitioner and Minor Plaintiff's attorney shall deliver to the depository a copy of  
18 this order at the time of deposit;
- 19 7. No withdrawals of principal or interest may be made from the blocked accounts  
20 without a written order under this case name and number, signed by a judge, and  
21 bearing the seal of this court, until the Minor Plaintiff attains the age of 18 years.  
22 When the Minor Plaintiff attains the age of 18 years, the depository, without further  
23 order of this Court, is authorized and directed to pay by check or draft directly to  
24 the former Minor Plaintiff, upon proper demand, all monies including interest  
25 deposited under this order. The money on deposit is not subject to escheat; and

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8. The parties' final dismissal documents shall be filed no later than September 22, 2014.

IT IS SO ORDERED.

Dated: August 28, 2014

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE