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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

IRINA ENGERT, ANNE ENGERT, and  
RON ENGERT, Individually and as  
Successors-in-Interest to Glendon Engert

Plaintiffs,

v.

STANISLAUS COUNTY; SHERIFF  
ADAM CHRISTIANSON; ROBERT LEE  
PARIS, SR. and ELIZABETH JANE  
PARIS, PERSONAL REPRESENTATIVES  
TO THE ESTATE OF DEPUTY SHERIFF  
ROBERT LEE PARIS, JR.; DEPUTY  
MICHAEL GLINSKAS; SERGEANT  
MANUEL MARTINEZ; LIEUTENANT  
CLIFF HARPER; RT FINANCIAL, INC.;  
RONI ROBERTS; and DOES ONE through  
TWENTY-FIVE, inclusive  
Defendants,

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Case No. 1:13-cv-126-LJO-BAM

**FINDINGS AND RECOMMENDATIONS  
APPROVING SETTLEMENT  
AGREEMENT WITH RONI ROBERTS**

**(Doc. 89)**

**INTRODUCTION**

Defendant Roni Roberts (“Defendant”) moves for an order determining that he has entered into a “good faith” settlement agreement with Plaintiffs pursuant to California Code of Civil Procedure sections 877 and 877.6. On May 1, 2015, Defendants County of Stanislaus, Lieutenant Cliff Harper, Sergeant Manuel Martinez, Deputy Michael Glinkas and the Estate of Deputy Robert Lee Paris, Jr. (“remaining Defendants”) filed a statement of non-opposition to Roberts’ motion.<sup>1</sup> Defendant RT Financial has not submitted any filings concerning this motion and did not oppose this motion. On

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<sup>1</sup> All federal and state claims against Sheriff Adam Christianson were dismissed with prejudice on February 24, 2015. (Doc. 99).

1 May 8, 2015, the Court deemed the matter suitable for decision without oral argument pursuant to  
2 Local Rule 230(g), and vacated the hearing scheduled for May 15, 2015. (Doc. 198). Having  
3 considered the merits of the motion, the statement of non-opposition, and the lack of opposition by any  
4 other party, this Court recommends the Motion for Good Faith Settlement Determination be  
5 GRANTED.

### 6 **BACKGROUND**

7 This action arises out of the death of Glendon Engert, a locksmith assisting with an eviction  
8 being carried out by the Stanislaus County Sheriff's Department on August 12, 2012 in Modesto,  
9 California. The property had been purchased by Defendant RT Financial and RT Financial President,  
10 Defendant Roni Roberts, prior to the shooting. Second Amended Compl. ¶ 23, Doc. 37. Plaintiffs  
11 Irina Engert, the decedent's wife, and Ron and Anne Engert, the decedent's parents ("Plaintiffs"),  
12 assert the County, the police officer defendants, Roni Roberts, and RT Financial knowingly placed Mr.  
13 Engert in danger by failing to protect him from the shooting. Defendants deny all liability.

### 14 **LEGAL STANDARD**

15 A motion for good faith settlement is governed by California Code of Civil Procedure §§ 877  
16 and 877.6, both which apply to federal court proceedings and authorize the Court to determine  
17 whether a settlement agreement was entered into in good faith. *See Slottow v. Am. Cas. Co. of*  
18 *Reading, Penn.*, 10 F.3d 1355 (9th Cir. 1993) (en banc). A court has discretion to determine that a  
19 settlement is in good faith pursuant to California Code of Civil Procedure Section 877. *Mason &*  
20 *Dixon Intermodal, Inc. v. Lapmaster Int'l LLC*, 632 F.3d 1056, 1064 (9th Cir. 2011). The good faith  
21 provision of section 877 mandates that the courts review agreements purportedly made under its aegis  
22 to insure that such settlements appropriately balance the contribution statute's dual objectives. *Tech-*  
23 *Bilt, Inc. v. Woodward-Clyde & Assocs.*, 38 Cal. 3d 488 (Cal. 1985). The good faith provision further  
24 provides that when a settlement is determined by a court to have been made in good faith, the  
25 settlement "bar[s] any other joint tortfeasor or co-obligor from any further claims against the settling  
26 tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity,  
27 based on comparative negligence or comparative fault." Cal. Civ. Proc. Code § 877.6(C). The party  
28 applying for a good faith settlement determination is required to give notice of its application to all

1 other parties and to the court. Cal. Civ. Proc. Code § 877.6(a). “A settling tortfeasor’s section 877.6,  
2 subdivision (c) good faith settlement determination discharges indemnity claims by other tortfeasors,  
3 whether or not named as parties, so long as the other tortfeasors were given notice and an opportunity  
4 to be heard.” *Gackstetter v. Frawley*, 135 Cal. App. 4th 1257, 1273 (Cal. App. 2d Dist. 2006).

5 To determine whether a settlement was entered into in good faith, Courts consider the *Tech-*  
6 *Bilt* factors which include:(1) a rough approximation of plaintiff’s total recovery and the settler’s  
7 proportionate liability; (2) the amount paid in settlement; (3) a recognition that a settler should pay less  
8 in settlement than if found liable after trial; (4) the allocation of the settlement proceeds; (5) the  
9 settling party’s financial condition and the availability of insurance; and (6) evidence of any collusion,  
10 fraud or tortious conduct between the settler and the plaintiff aimed at requiring the non-settling  
11 parties to pay more than their fair share. *Tech-Bilt, Inc.*, 38 Cal.3d at 499. “Once there is a showing  
12 made by the settlor of the settlement, the burden of proof on the issue of good faith shifts to the  
13 nonsettlor who asserts that the settlement was not made in good faith.” *City of Grand Terrace v.*  
14 *Superior Court*, 192 Cal. App. 3d 1251, 1261 (1987). A party opposing the settlement agreement  
15 “must demonstrate . . . that the settlement is so far ‘out of the ballpark’ in relation to these factors as to  
16 be inconsistent with the equitable objectives of the statute.” *Tech-Bilt, Inc.*, 38 Cal.3d at 499-500.

### 17 ANALYSIS

18 Plaintiffs and Roni Roberts entered into a settlement agreement whereby Roberts agreed to pay  
19 Plaintiffs \$230,000.000, in exchange for a full and final settlement and release by Plaintiffs of any  
20 claims against Defendant Roberts arising out of the accident. (Doc. 89 at 4). The settlement  
21 agreement is contingent upon a finding of “good faith” under California Code of Civil Procedure  
22 sections 877 and 877.6.<sup>2</sup> Section 877 prescribes, “[w]here a release, dismissal with or without  
23 prejudice, or a covenant not to sue or not to enforce judgment is given in good faith . . . [i]t shall  
24 reduce the claims against . . . others in the amount stipulated by the release [and] [i]t shall discharge  
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27 <sup>2</sup> “The Ninth Circuit has held that . . . section 877 amounts to substantive law” and since state substantive law  
28 generally applies to state causes of action in federal court, section 877 is applicable here. *Slaven v. BP Am., Inc.*, 958 F.  
Supp. 1472, 1479 (C.D. Cal. 1997) (citing *Fed. Sav. & Loan Ins. Corp. v. Butler*, 904 F.2d 505, 511 (9th Cir. 1990)).

1 the party to whom it is given from all liability for any contribution to any other parties.” Cal. Civ.  
2 Proc. Code § 877.

3 The California Supreme Court has established specific factors a court should consider when  
4 determining whether a settlement agreement is in “good faith.” These include “a rough approximation  
5 of plaintiffs’ total recovery and the settlor’s proportionate liability, the amount paid in settlement, . . .  
6 and a recognition that a settlor should pay less in settlement than he would if he were found liable after  
7 trial.” *Tech-Bilt, Inc. v. Woodward-Clyde & Assocs.*, 38 Cal. 3d 488, 499 (1985). “Other relevant  
8 considerations include . . . the existence of collusion, fraud, or tortious conduct aimed to injure the  
9 interests of non-settling defendants [and that] the evaluation be made on the basis of information  
10 available at the time of settlement.” *Id.*

11 Under the *Tech-Bilt* factors, the settlement amount is proportionate to Roberts’ alleged liability  
12 “based on the information available at the time of the settlement.” (Doc. 89 at 4). Plaintiffs initially  
13 demanded the insurance policy limits of \$500,000.00 from Defendant Roberts for a settlement. (Doc.  
14 89 at 2). Counsel for Defendant Roberts and Plaintiffs met multiple times to discuss possible  
15 settlement and as a result of arms-length negotiations between counsel for Plaintiffs and Defendant,  
16 they agreed that an appropriate amount to be paid by Roni Roberts is \$230,000.00. In light of the fact  
17 that there is minimal evidence of any failure to warn by Roberts, the settlement reached between  
18 Defendant Roberts and Plaintiffs is a rough approximation of Defendant Roberts’ alleged potential  
19 liability. (Doc. 89 at 4). The settlement amount also appropriately reflects “that a settlor should pay  
20 less in settlement than he would if he were found liable after trial.” *Tech-Bilt*, 38 Cal. 3d at 499.  
21 Furthermore, no defendant has objected to the settlement agreement. There is also no evidence of  
22 “collusion, fraud or tortious conduct.” (Doc. 197).

23 Accordingly, the Court has reviewed Defendant Roni Roberts’ motion for good faith  
24 settlement, the *Tech-Bilt* factors, and the lack of opposition. The Court finds that the settlement  
25 between Plaintiffs and Defendant Roberts was reached in good faith under California Code of Civil  
26 Procedure section 877.6. Therefore, Defendant Roberts’ motion should be GRANTED.

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1 **CONCLUSION AND RECOMMENDATIONS**

2 For the reasons discussed above, this Court **RECOMMENDS**, that

- 3
- 4 1. Defendant Roni Roberts’ Motion for Good Faith Settlement Determination should be
- 5 **GRANTED** as entered into in good faith within the meaning of California Code of
- 6 Civil Procedure section 877.6 and therefore any and all parties are barred from pursuing
- 7 any cross-complaints for contribution against Defendant Roberts for any cause related
- 8 to the instant action pursuant to California Code of Civil Procedure §877.6 (c). (Doc.
- 9 89);
- 10 2. Counsel for Defendant Roni Roberts is **DIRECTED** to serve a copy of this Order on
- 11 all named defendants.

12 These Findings and Recommendations are submitted to the United States District Judge

13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local

14 Rules of Practice for the United States District Court, Eastern District of California. Within fifteen

15 (15) days after being served with these Findings and Recommendations, any party may file written

16 objections with the court and serve a copy on all parties. Such a document should be captioned

17 “Objections to Magistrate Judge’s Findings and Recommendations.” The district judge will review

18 the magistrate judge’s findings and recommendations pursuant to Title 28 of the United States Code

19 section 636(b)(1)(C). The parties are advised that failure to file objections within the specified time

20 may waive the right to appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.

21 1991).

22 IT IS SO ORDERED.

23 Dated: May 13, 2015

24 /s/ Barbara A. McAuliffe  
25 UNITED STATES MAGISTRATE JUDGE