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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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LEDELLDRA BROOKS, and A.J., a
minor, by and through her
guardian ad litem LEDELLDRA
BROOKS,

 Plaintiffs,

 v.

FRESNO UNIFIED SCHOOL
DISTRICT, THERESA MONPERE,
CHRISTIE YANG and RON
BOHIGIAN, and DOES 1-30,

 Defendants.

CIV. NO. 1:15-00673 WBS BAM

MEMORANDUM AND ORDER RE:
SETTLEMENT OF MINOR'S CLAIMS

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 Plaintiffs LeDelldra Brooks and her minor daughter A.J.
brought this civil rights action against defendant Fresno Unified
School District based on the treatment of A.J. at Viking
Elementary. Plaintiffs allege that A.J.'s special-needs teacher,
defendant Theresa Monpere, placed A.J. in a cage-like enclosure
for extended periods without justification. The Complaint also
names the Principal at Viking Elementary, defendant Christie

1 Yang, and the former Principal of the school, defendant Ron
2 Bohigian. In their Complaint, plaintiffs assert the following
3 claims: (1) violation of A.J.'s Fourth Amendment rights under 42
4 U.S.C. § 1983; (2) violation of the Americans with Disabilities
5 Act, 42 U.S.C. § 12101, et seq.; (3) violation of the
6 Rehabilitation Act, 29 U.S.C. §§ 794, et seq.; (4) false
7 imprisonment; (5) intentional infliction of emotional distress;
8 (6) violation of the Unruh Civil Rights Act, Cal. Civ. Code § 51,
9 et seq.; and (7) violation of section 220 of the California
10 Education Code.

11 On August 25, 2015, the parties participated in a
12 settlement conference with Magistrate Judge Thurston, but were
13 unable to reach a settlement. (Docket No. 20.) After the
14 conference, however, the parties reached a settlement of all
15 claims for a total of \$500,000. The settlement provides that
16 plaintiffs' counsel will receive 25% of the total settlement.
17 The settlement further provides that costs will be deducted in
18 the amount of \$9,002.51, with a total of \$7,407.40 allocated as
19 A.J.'s share of the costs and the rest allocated as Brooks'
20 share. Of the total settlement, A.J. will receive a net recovery
21 of \$300,000 after the deduction of attorney's fees and costs,
22 including \$3,000 in attorney's fees for the drafting of the
23 special needs trust. A.J.'s share of the recovery will be placed
24 in a special needs trust pursuant to California Probate Code
25 section 3604 and 42 U.S.C. § 1396p(d)(4)(A).

26 "[T]he district court has a special duty to safeguard
27 the interests of minor plaintiffs" that requires it to "determine
28 whether the net amount distributed to each minor plaintiff in the

1 proposed settlement is fair and reasonable.” Robidoux v.
2 Rosengren, 638 F.3d 1177, 1179 (9th Cir. 2011) (emphasis
3 omitted); see also E.D. Cal. Local R. 202(b) (requiring approval
4 of the settlement of a minor’s claims). The Ninth Circuit has
5 specifically instructed district courts to “limit the scope of
6 their review to the question whether the net amount distributed
7 to each minor plaintiff in the settlement is fair and reasonable,
8 in light of the facts of the case, the minor’s specific claim,
9 and recovery in similar cases.” Robidoux, 638 F.3d at 1181-82.
10 The court must “evaluate the fairness of each minor plaintiff’s
11 net recovery without regard to the proportion of the total
12 settlement value designated for adult co-plaintiffs or
13 plaintiffs’ counsel--whose interests the district court has no
14 special duty to safeguard.” Id. at 1182. “So long as the net
15 recovery to each minor plaintiff is fair and reasonable in light
16 of their claims and average recovery in similar cases, the
17 district court should approve the settlement as proposed by the
18 parties.” Id.¹

19 The court has reviewed the allegations in this case,
20 including defendants’ denial as to the extent the cage-like

21 ¹ In Robidoux, the Ninth Circuit indicated that its
22 “holding is limited to cases involving the settlement of a
23 minor’s federal claims” and the court declined to “express a view
24 on the proper approach for a federal court to use when sitting in
25 diversity and approving the settlement of a minor’s state law
26 claims.” Robidoux, 638 F.3d at 1179 n.2. Here, the court
27 exercises supplemental, not diversity, jurisdiction over
28 plaintiff’s state law claims, which the court in Robidoux did not
appear to exclude from its holding. The court will thus apply
the same standard under Robidoux to plaintiff’s supplemental
state law claims. Accord Colbey T. v. Mt. Diablo Unified Sch.
Dist., Civ. No. 11-03108 LB, 2012 WL 1595046, at *1-2 (N.D. Cal.
May 4, 2012).

1 structure was used. The settlement is for a substantial sum and
2 the court is not certain that even that amount could be achieved
3 if the case proceeded to trial, especially given concerns over
4 A.J.'s ability to testify.

5 The court has also reviewed the confidential report by
6 the child psychologist plaintiffs' counsel retained. The
7 psychologist diagnosed A.J. with post-traumatic stress disorder
8 and estimated that two to five years of therapy would be
9 necessary for A.J. to recover from the psychological trauma
10 defendants allegedly caused. (Docket No. 39.) Especially given
11 the establishment of the special needs trust to ensure that A.J.
12 continues to receive the public assistance she now does, the
13 court finds that the net recovery under the settlement should be
14 more than sufficient to provide A.J. with the necessary therapy.

15 The court also finds that the settlement is in line
16 with the "average recovery" in factually similar cases: it falls
17 between settlements that are significantly lower in the Eastern
18 District and others that are significantly higher in the Northern
19 District. Compare, e.g., Guerrero v. Brentwood Union Sch. Dist.,
20 Civ. No. 13-03873 LB, 2014 WL 1351208, at *1, *3 (N.D. Cal. Apr.
21 4, 2014) (approving net settlement payments ranging from \$562,500
22 to \$743,849.54 per child based on claims that the "children's
23 pre-kindergarten teacher, subjected the children to regular acts
24 of child abuse or neglect and observed acts of child abuse or
25 neglect being inflicted on other special needs children in their
26 classroom, including, but not limited to, yelling, swearing and
27 inappropriately aggressive physical contact"); Phelan v.
28 Brentwood Union Sch. Dist., Civ. No. 12-00465 LB, 2013 WL 323435,

1 at *1, *3 (N.D. Cal. Jan. 28, 2013) (approving settlement with
2 net recovery of "\$570,000, minus the amount of money charged for
3 drafting the trust" when minor's "prekindergarten teacher[]
4 battered J.P. during class[and] J.P. suffered physical and
5 emotional injuries as a result"); D.C. ex rel. T.C. v. Oakdale
6 Joint Unified Sch. Dist., Civ. No. 1:11-01112 SAB, 2013 WL
7 275271, at *1 (E.D. Cal. Jan. 23, 2013) (approving net settlement
8 payment of \$30,000 based on allegations that the school "failed
9 to provide proper programs, services and activities" to a child
10 with a disability and "used restraints and other punishments on"
11 the child); D.K. ex rel. G.M. v. Solano Cnty. Office of Educ.,
12 Civ. No. 2:08-00534 MCE DAD, Docket Nos. 69, 141 (E.D. Cal. Dec.
13 21, 2011) (approving net settlement payments of \$200,000 based on
14 numerous allegations of physical abuse); T.B. v. Chico Unified
15 Sch. Dist., Civ. No. 2:07-00926 GEB CMK, 2010 WL 1032669, at *2
16 (E.D. Cal. Mar. 19, 2010) (approving net settlement payment of
17 \$16,500 based on allegations that the minor was "subjected to
18 unnecessary force" at school).

19 Based on all of these considerations, the court finds
20 that the settlement is fair and reasonable and in the best
21 interest of the minor child. Accordingly, the court will approve
22 the settlement of A.J.'s claims and the use of the special needs
23 trust submitted to and reviewed by the court.

24 IT IS THEREFORE ORDERED that plaintiffs' motion to
25 approve the settlement of the minor's claims be, and the same
26 hereby is, GRANTED.

27 IT IS FURTHER ORDERED that (1) the special needs trust
28 for A.J. as presented to this court is hereby approved, and

1 LeDelldra Brooks as guardian ad litem is directed to execute the
2 special needs trusts for the minor; (2) the amount of \$303,000.00
3 is directed to be paid to the A.J. Special Needs Trust, and those
4 funds shall be held in a blocked account and shall only be made
5 available to the Trustees upon further order of the Fresno County
6 Superior Court; (3) insomuch as the funds of the Trust are to be
7 held exclusively in a blocked account, bond and periodic accounts
8 by the Trustee are hereby waived; (4) the proper jurisdiction and
9 venue for on-going oversight of the special needs trust shall lie
10 with the Fresno County Superior Court; and (5) attorney's fees in
11 the amount of \$3,000 shall be paid from the special needs trust
12 to the Dale Law Firm for preparation and set-up of the special
13 needs trust.

14 Dated: December 21, 2015



WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

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