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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ESTATE OF DONALD MALIIK
LEIVINGSTON, TRACI MORALES,
individually and as successor in interest to
the Estate of Donald Maliik Levingston,
ELIJAH LEIVINGSTON, by and through
his guardian ad litem Traci Morales,
ELIZABETH LEIVINGSTON, by and
through her guardian ad litem Traci
Morales, ELISHA LEIVINGSTON, and
D'ANDRE GONZALEZ LEIVINGSTON,

Plaintiffs,

v.

COUNTY OF KERN, HALL
AMBULANCE SERVICE, INC.,
BRENDA ROBINSON, and DAVID
MANRIQUEZ,

Defendants.

No. 1:16-cv-00188-DAD-JLT

ORDER GRANTING PETITION FOR
MINOR'S COMPROMISE

(Doc. No. 54)

On October 19, 2017, plaintiffs Elijah and Elizabeth Levingston, both minors represented by their guardian ad litem Traci Morales, filed a petition for approval of a compromise of their claims against defendants here. (Doc. No. 54.) The court held a hearing with respect to the petition on November 21, 2017. (Doc. No. 60.) Attorney Nichelle Jones appeared on behalf of plaintiffs; attorney Andrew C. Thomson appeared on behalf of defendants County of Kern and Manriquez, and attorney Christina Meissner appeared on behalf of Hall Ambulance Service, Inc.

1 and Brenda Robinson. Following the hearing and at the court's direction, plaintiffs submitted a
2 supplement in support of the petition on November 28, 2017. (Doc. No. 61.) On December 12,
3 2017, the court issued another order requiring further supplementation, which plaintiffs submitted
4 on December 14, 2017. (Doc. Nos. 66, 67.) Considering the information now presented by the
5 parties, the court will grant the petition.

6 BACKGROUND

7 This case stems from the death of Donald Levingston, the father of Elijah and Elizabeth,
8 following a traffic stop and arrest in 2015. Deputy Manriquez, who arrested the decedent, noticed
9 the decedent acting erratically while being transported to the Kern County Jail. Deputy
10 Manriquez suspected plaintiff of having ingested methamphetamines. Instead of transporting the
11 decedent directly to a hospital, Deputy Manriquez made several stops, including one at which
12 defendant Robinson, an employee of Hall Ambulance, was called. The decedent denied ingesting
13 methamphetamines and refused a full medical assessment by Robinson. Deputy Manriquez
14 transported decedent to the Kern County Jail, which refused to accept decedent without having
15 him medically cleared at the local hospital. The decedent was then taken to Kern Medical Center
16 at 10:09 p.m., at which point he was incoherent and possibly unconscious. He was pronounced
17 dead at 12:13 a.m., approximately six hours after he was arrested and five hours after he was first
18 suspected of having ingested methamphetamines.

19 Plaintiffs seek to settle only their wrongful death claims brought against defendants Hall
20 Ambulance Services, Inc. and Robinson. (Doc. No. 54 at ¶ 32.) The total settlement amount
21 contemplated will be \$132,500. (*Id.* at ¶ 33.) The settlement is to be divided into two separate
22 annuities for the minor children, each established with \$12,205.38 of the settlement. (*Id.*) Elijah
23 Levingston will receive payments of \$3,850.63 annually for each of the four years between 2026
24 and 2029, for a total payment of \$15,402.52, while Elizabeth Levingston will receive payments of
25 \$4,068.54 annually from 2028 through 2031, comprising a total of \$16,274.16. (*Id.* at ¶¶ 33(A)–

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1 (B.) The three adult plaintiffs – Morales, and D’Andre and Elisha Levingston¹ – will also
2 receive \$12,205.38 each. (*Id.* at ¶ 48.) Plaintiffs’ counsel seeks reimbursement for costs and
3 expenses of \$27,308.10 and attorney’s fees of \$44,165. (*Id.* at ¶ 47.)

4 LEGAL STANDARD

5 As this court has previously noted, it has a duty to protect the interests of minors
6 participating in litigation before it. *Salmeron v. United States*, 724 F.2d 1357, 1363 (9th Cir.
7 1983). To carry out this duty, the court must “conduct its own inquiry to determine whether the
8 settlement serves the best interests of the minor.” *Robidoux v. Rosengren*, 638 F.3d 1177, 1181
9 (9th Cir. 2011) (quoting *Dacanay v. Mendoza*, 573 F.2d 1075, 1080 (9th Cir. 1978)); *see also*
10 *Salmeron*, 724 F.2d at 1363 (“[A] court must independently investigate and evaluate any
11 compromise or settlement of a minor’s claims to assure itself that the minor’s interests are
12 protected, even if the settlement has been recommended or negotiated by the minor’s parent or
13 guardian ad litem.” (citation omitted)).

14 In examining the fairness of a settlement of a minor’s federal claims, the Ninth Circuit has
15 held that a district court’s inquiry should focus solely on “whether the net amount distributed to
16 each minor plaintiff in the settlement is fair and reasonable, in light of the facts of the case, the
17 minor’s specific claim, and recovery in similar cases.” *Robidoux*, 638 F.3d at 1181–82; *see also*
18 *id.* at 1179 n.2 (limiting the court’s holding to cases involving federal claims only). Where a
19 settlement involves state law claims, federal courts generally are guided by state law. *See*
20 *Tashima & Wagstaffe, California Practice Guide: Federal Civil Procedure Before Trial* ¶ 15:138
21 (Cal. & 9th Cir. Eds. 2015) (“Federal courts generally require that claims by minors . . . be settled

22 ¹ As discussed at the hearing on the pending petition, it was initially unclear whether D’Andre
23 and Elisha Levingston were appearing as plaintiffs in this matter. A review of the docket,
24 however, reflects that earlier this year the parties stipulated to an amendment to permit plaintiffs
25 to add certain “omitted heirs” as plaintiffs to this suit. (Doc. No. 26.) The court surmises these
26 heirs were D’Andre and Elisha Levingston. An order granting this stipulated amendment was
27 issued on March 14, 2017. (Doc. No. 28.) Plaintiff filed their first amended complaint on March
28 16, 2017, naming D’Andre and Elisha Levingston in the text of the complaint, but not in its
caption. (Doc. No. 31.) Subsequent filings failed to include Elisha and D’Andre Levingston
listed among the plaintiffs. (*See* Doc. No. 49 at 2; Doc. No. 51.) The Clerk of the Court will be
directed to add Elisha and D’Andre Levingston as plaintiffs to the case’s caption. Plaintiffs
should adjust any future filings to accurately reflect the actual plaintiffs in this action.

1 in accordance with applicable state law. California law requires court approval of the fairness
2 and terms of the settlement.”). A settlement for a minor and attorney’s fees to represent a minor
3 must be approved by the court. Cal. Prob. Code § 3601; Cal. Fam. Code § 6602. Reasonable
4 expenses and court costs to be paid out of the settlement also must be approved by the court. Cal.
5 Prob. Code § 3601. Finally, the Local Rules of this court require the parties to make disclosures
6 regarding the minors involved, the nature of the controversy, the manner in which the
7 compromise was determined, and whether a conflict of interest may exist between the minor and
8 her attorney. *See* Local Rules 202(b)–(c).

9 ANALYSIS

10 As explained in its prior order requiring supplementation, the court concludes the
11 maximum possible recovery for the wrongful death claim being settled here is \$250,000. (Doc.
12 No. 66 at 3.) The proposed settlement amount is \$132,500, representing 53 percent of the
13 maximum possible recovery. Plaintiffs’ counsel explains that settlement was reached
14 “subsequent to the court ordered exchange of settlement positions and lengthy telephonic
15 negotiations between counsel for Plaintiffs and counsel for the Hall Defendants.” (Doc. No. 67 at
16 ¶ 3.) According to counsel for plaintiffs, they are responsible for this petition, and did not
17 become involved in the case at the insistence of any party against whom claims are levied or any
18 party’s insurance carrier. (*Id.* at ¶ 6.) Plaintiffs’ counsel also do not represent, are not employed
19 by, and do not receive compensation for services from any party against whom claims are levied
20 or any party’s insurance carrier. (*Id.* at ¶¶ 7–8.) The court is satisfied that there is no apparent
21 conflict of interests between the minor children and plaintiffs’ counsel.

22 The court has already pointed out that, based on its own research, this case is relatively
23 comparable with several others in which recovery is limited by California’s Medical Injury
24 Compensation Reform Act (“MICRA”). (*See* Doc. No. 66 at 5 n.1) (citing *Estate of Lopez v.*
25 *Fresno Comm. Hosp.*, No. 1:07cv0752 AWIDL, 2010 WL 502704, at *1–2 (E.D. Cal. Feb. 8,
26 2010) and *Everett v. Dry Creek Joint Elementary Sch. Dist.*, No. 2:13-cv-00889-MCE-EFB, 2016
27 WL 301272, at *3–4 (E.D. Cal. Jan. 25, 2016)). Plaintiff’s most recent supplementation adds no
28 additional comparable cases for the court’s consideration in assessing the fairness of the proposed

1 settlement to the minors and states only that this case is similar to the ones the court noted
2 because counsel here considered the risk of receiving an adverse judgment and the expenditure of
3 additional litigation costs on expert witnesses. (Doc. No. 67 at ¶ 12.) Finally, counsel advises the
4 court that the settlement here is reasonable for two additional reasons: (1) it allowed certain
5 recovery, whereas trial could render a potential adverse judgment; and (2) it allowed plaintiffs to
6 substantially reduce their litigation costs, because they were not required to retain an expert, or
7 defend against expert witnesses, in order to support their claims against Robinson and Hall
8 Ambulance Services. (*Id.* at ¶¶ 13–14.)

9 The court is satisfied that the settlement in this case is fair, reasonable, and in the best
10 interests of the minor children. The settlement for approximately half of the potential value of the
11 claim allows the children to secure some recovery while the case proceeds against the remaining
12 defendants. It also allows them to reduce the costs of litigation by eschewing the need to involve
13 testimony of additional experts from both the plaintiffs’ and defendants’ side. This is particularly
14 important, since only an additional \$117,500 in damages was recoverable in this case under the
15 limit presumably imposed by MICRA. The cost of additional experts could amount to a
16 significant portion of any additional potential recovery. Moreover, this additional recovery
17 assumes plaintiffs would be able to proceed to trial and prevail on their claims, which are mere
18 possibilities and not eventualities. Therefore, the court concludes that the settlement here is fair,
19 reasonable, similar to other settlements in similar cases, and in the best interest of the minor
20 children. Additionally, there are no apparent conflicts of interest between plaintiffs’ counsel and
21 the minor children.

22 CONCLUSION

23 For the reasons set forth above:

- 24 1. The petition for approval of the minors’ compromise (Doc. No. 54) is granted;
- 25 2. Defendants Hall Ambulance Services, Inc. and Robinson are directed to pay the following
26 amount:
 - 27 a. \$12,205.38 to Atlas Settlement Group, Inc. for the establishment of an annuity for
28 Elijah Levingston, which will pay \$3,850.63 annually for four years commencing

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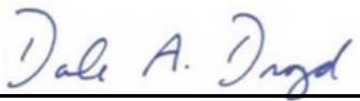
on November 12, 2026 and ending on November 12, 2029;

- b. \$12,205.38 to Atlas Settlement Group, Inc. for the establishment of an annuity for Elizabeth Levingston, which will pay \$4,068.54 annually for four years commencing on June 1, 2028 and ending on June 1, 2031; and
- c. \$108,089.24 to Michael J. Curls Client Trust Account, with funds to be distributed to the adult plaintiffs as follows:
 - i. \$12,205.38 to D'Andre Levingston;
 - ii. \$12,205.38 to Elisha Levingston;
 - iii. \$12,205.38 to Traci Morales;
 - iv. \$44,165 to be paid as attorneys' fees to the Law Office of Michael J. Curls; and
 - v. \$27,308.10 to be paid as reimbursement of costs and expenses to the Law Office of Michael J. Curls;

- 3. The amounts paid to Atlas Settlement Group, Inc. shall not be withdrawn from the annuity until disbursed in accordance with the parties' agreed-upon schedule, and may not be used for the minors' necessities of life while they are minors, unless this court orders otherwise;
- 4. The Clerk of the Court is direct to amend the caption of this action to reflect the addition of plaintiffs Elisha Levingston and D'Andre Gonzalez Levingston; and
- 5. The Clerk of the Court is directed to terminate Hall Ambulance Services, Inc. and Brenda Robinson as defendants.

IT IS SO ORDERED.

Dated: December 20, 2017


UNITED STATES DISTRICT JUDGE