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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

STEPHANIE WARCHOL AND J.M., by  
and through his Guardian ad Litem  
STEPHANIE WARCHOL,

Plaintiffs,

v.

KINGS COUNTY OFFICE OF  
EDUCATION, JOYCE BINGHAM,  
DAMIEN PHILLIPS, and DOES 1-30,

Defendants.

No. 1:17-cv-00106-DAD-MJS

ORDER GRANTING PLAINTIFFS’ MOTION  
TO APPROVE SETTLEMENT

(Doc. No. 33)

This matter is before the court on plaintiffs’ motion to approve the parties’ settlement. On March 6, 2018, this motion came before the court for hearing. Attorney Todd Boley appeared on behalf of plaintiffs Stephanie Warchol and J.M. Attorney Gregory Lee Myers appeared on behalf of defendants Kings County Office of Education, Joyce Bingham, and Damien Phillips. After reviewing the petition and terms of the written settlement agreement, and having heard from counsel, the court finds that the proposed settlement agreement is fair and reasonable. The court therefore will grant plaintiffs’ motion to approve the settlement.

**BACKGROUND**

In the complaint, plaintiffs allege as follows. Plaintiff J.M., a minor who resides in Kings County, has previously been diagnosed with autism and is non-verbal. (Doc. No. 1 at ¶¶ 1, 12.)

1 During the 2015–2016 school year, J.M. attended Shelly Baird School’s Day Classroom, a school  
2 within the Kings County Office of Education (“KCOE”) dedicated to students who have complex  
3 and intensive education needs. (*Id.* at ¶ 13.) During all relevant time periods, defendant Phillips  
4 was principal of Shelly Baird School, while defendant Bingham was a special education  
5 substitute teacher employed by KCOE. (*Id.* at ¶¶ 4, 5.) Plaintiff alleges that over the course of  
6 the 2015–2016 school year, plaintiff J.M. was subjected to ongoing verbal and physical abuse by  
7 defendant Bingham. (*Id.* at ¶ 16.) This included an incident on September 10, 2015, in which  
8 defendant Bingham repeatedly kicked J.M. while he was in the prone position on the floor. (*Id.*)  
9 Plaintiffs allege that defendant Phillips and KCOE staff possessed knowledge of such abuse, and  
10 that KCOE’s training of its employees was inadequate. (*Id.* at ¶¶ 14, 15, 17, 18.)

11 Plaintiffs’ complaint alleges claims under 42 U.S.C. § 1983, the Americans with  
12 Disabilities Act, and the Rehabilitation Act of 1973. On February 5, 2018, plaintiffs filed the  
13 instant motion. (Doc. No. 33.) Defendants have not filed an opposition.

#### 14 **LEGAL STANDARD**

15 As a derivative of Federal Rule of Civil Procedure 17(c), district courts have a special  
16 duty “to safeguard the interests of litigants who are minors.” *Robidoux v. Rosengren*, 638 F.3d  
17 1177, 1181 (9th Cir. 2011). Rule 17(c) provides, in pertinent part, that a district court “must  
18 appoint a guardian ad litem—or issue another appropriate order—to protect a minor or  
19 incompetent person who is unrepresented in an action.” Fed. R. Civ. P. 17(c). In the context of  
20 proposed settlements in suits involving minor plaintiffs, the district court’s special duty requires it  
21 to “conduct its own inquiry to determine whether the settlement serves the best interests of the  
22 minor.” *Robidoux*, 638 F.3d at 1181.

23 In *Robidoux*, the Ninth Circuit provided specific guidance “on how to conduct this  
24 independent inquiry.” *Id.* While the Ninth Circuit noted that district courts have typically applied  
25 state law and the local rules governing the award of attorney’s fees to make the reasonableness  
26 and fairness determination, the court held that “this approach places an undue emphasis on the  
27 amount of attorney’s fees provided for in a settlement, instead of focusing on the net recovery of  
28 the minor plaintiffs under the proposed agreement.” *Id.* The Ninth Circuit held that, district

1 courts should “limit the scope of their review to the question whether the net amount distributed  
2 to each minor plaintiff in the settlement is fair and reasonable, in light of the facts of the case, the  
3 minor’s specific claim, and recovery in similar cases.” *Id.* at 1181–82. Further, the fairness of  
4 each minor plaintiff’s net recovery should be evaluated “without regard to the proportion of the  
5 total settlement value designated for adult co-plaintiffs or plaintiffs’ counsel—whose interests the  
6 district court has no special duty to safeguard.” *Id.* at 1182 (citing *Dacanay v. Mendoza*, 573 F.2d  
7 1075, 1078 (9th Cir. 1978)).

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

12 shall disclose, among other things, the age and sex of the minor or  
13 incompetent, the nature of the causes of action to be settled or  
14 compromised, the facts and circumstances out of which the causes  
15 of action arose, including the time, place and persons involved, the  
16 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 . . .

## 17 DISCUSSION

### 18 A. Terms of the Settlement

19 The parties have agreed to settle the claims of J.M. and his guardian for the total sum of  
20 \$100,000. (Doc. No. 33 at ¶ 17.) Of that amount, \$20,000 is to be allocated to plaintiff Stephanie  
21 Warchol, with the remaining \$80,000 to be allocated to plaintiff J.M. (*Id.*)

22 Plaintiffs incurred litigation costs in the amount of \$4,389.60. (*Id.* at ¶ 18.) Applying the  
23 80/20 distribution above, the settlement subtracts 80% of the litigation costs from plaintiff J.M.’s  
24 gross recovery, and 20% from plaintiff Stephanie Warchol’s gross recovery. (*Id.*) This provides  
25 plaintiff J.M. with \$76,488.32, and provides plaintiff Stephanie Warchol with \$19,122.08.

26 Plaintiffs retained the Law Offices of Peter Alfert, PC, and the Law Offices of Todd Boley  
27 to represent them in this action. (*Id.* at ¶ 19.) Plaintiffs and their attorneys had initially agreed to  
28 an award of 25% of the gross recovery achieved before trial on behalf of plaintiff J.M., and 33

1 1/3% of the gross recovery achieved before trial on behalf of plaintiff Stephanie Warchol. (*Id.*)  
2 However, counsel have agreed to reduce plaintiff Stephanie Warchol’s fee to 25% of the gross  
3 recovery. (*Id.*)

4 In sum, plaintiff J.M.’s gross recovery of \$80,000 will be reduced by \$3,511.68 to account  
5 for litigation costs, and by a further \$20,000 to account for attorneys’ fees. (*Id.* at ¶ 20.) Plaintiff  
6 J.M. will therefore receive a net recovery of \$56,488.32. (*Id.*) Plaintiff Stephanie Warchol’s  
7 gross recovery of \$20,000 will be reduced by \$877.92 to account for litigation costs, and by a  
8 further \$5,000 to account for attorneys’ fees. (*Id.* at ¶ 21.) Plaintiff Stephanie Warchol will  
9 therefore receive a net recovery of \$14,122.08. (*Id.*)

10 Plaintiffs request that the net settlement proceeds for J.M. be placed into an account  
11 established pursuant to the Stephen Beck Jr., Achieving a Better Life Experience Act of 2014 (the  
12 “ABLE Act”). (*Id.* at ¶ 22.) The ABLE Act limits eligibility to individuals with significant  
13 disabilities with an age of onset of disability before turning 26 years of age. (*Id.*) No more than  
14 \$15,000 may be deposited into an ABLE Act account each calendar year. (*Id.* at ¶ 23.)

15 Accordingly, plaintiffs propose the following deposit schedule:

- 16 1. \$14,950 within 30 days of approval of this motion;
- 17 2. \$15,000 on March 1, 2019;
- 18 3. \$15,000 on March 1, 2020;
- 19 4. \$11,538.32 on March 1, 2021.

## 20 **B. Reasonableness of Settlement**

21 As stated above, district courts reviewing proposed settlement agreements are instructed  
22 to “limit the scope of their review to the question whether the net amount distributed to each  
23 minor plaintiff in the settlement is fair and reasonable, in light of the facts of the case, the minor’s  
24 specific claim, and recovery in similar cases.” *Robidoux*, 638 F.3d at 1181–82. The court will  
25 therefore assess whether plaintiff J.M.’s net recovery of \$56,488.32 is fair and reasonable under  
26 these guidelines.

27 This action has been pending before this court for over a year, during which time the case  
28 have been fully investigated. Plaintiffs’ attorney has submitted a sworn declaration averring that

1 defendants would likely have contested liability and damages at trial, and would also have argued  
2 that plaintiff J.M. did not suffer any lasting injuries as a result of defendants' alleged conduct.  
3 (*Id.* at ¶ 27.) Moreover, plaintiff J.M. never sought any treatment for these injuries, nor did the  
4 Kings County District Attorney elect to file charges against any of the defendants for their alleged  
5 conduct. (*Id.* at ¶ 28.) The court concludes on the basis of these facts that plaintiffs' eventual  
6 monetary recovery at trial was far from certain.

7 The court has also examined cases brought in the Eastern District of California with  
8 similar factual allegations, and finds that the net recovery in this case is in line with other net  
9 recoveries in this district. *See Brooks v. Fresno Unified Sch. Dist.*, No. 1:15-cv-00673-WBS-  
10 BAM, 2015 WL 9304862, at \*2 (E.D. Cal. Dec. 22, 2015) (approving net settlement payment of  
11 \$300,000 to minor based on allegations that plaintiff's teacher placed plaintiff in a cage-like  
12 enclosure for extended periods without justification); *D.C. ex rel. T.C. v. Oakdale Joint Unified*  
13 *Sch. Dist.*, No. 1:11-cv-01112-SAB, 2013 WL 275271, at \*3 (E.D. Cal. Jan. 23, 2013) (approving  
14 net settlement payment of \$30,000 to minor based on allegations that plaintiff's teacher used  
15 restraints and other punishments on minor, resulting in a sprained ankle in one instance); *T.B. v.*  
16 *Chico Unified Sch. Dist.*, No. 2:07-cv-00926-GEB-CMK, 2010 WL 1032669, at \*2 (E.D. Cal.  
17 Mar. 19, 2010) (approving net settlement payment to minor of \$16,500 based on allegations that  
18 plaintiff was "subjected to unnecessary force").

19 Having reviewed all of the facts of this case, the court therefore finds the net recovery of  
20 plaintiff J.M. to be fair and reasonable.

## 21 CONCLUSION

22 For the reasons set forth above,

- 23 1. Plaintiffs' motion to approve of the settlement (Doc. No. 33) is granted;
- 24 2. Defendants are to make deposits into an Enable Savings Plan (ABLE), P.O. Box  
25 30275, Omaha, NE 68103-1375, account No. 907277628-01 for the benefit of J.M., as  
26 follows:
  - 27 a. \$14,950 within 30 days of approval of this motion;
  - 28 b. \$15,000 on March 1, 2019;

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c. \$15,000 on March 1, 2020; and

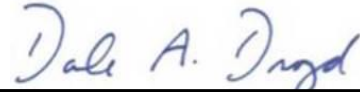
d. \$11,538.32 on March 1, 2021;

3. Defendants are to make a deposit in the Todd Boley Client Trust Account in the amount of \$43,511.68; and

4. The parties' final dismissal documents shall be filed with the court within thirty days of this order.

IT IS SO ORDERED.

Dated: March 6, 2018



UNITED STATES DISTRICT JUDGE