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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

Case No. 1:17-cv-00906-ADA-SKO

COLEMAN PAYNE,

Plaintiff,

v.

COUNTY OF CALAVERAS, ET AL.,

Defendants.

FINDINGS AND RECOMMENDATION
RECOMMENDING APPROVAL OF
STIPULATION OF GOOD FAITH
SETTLEMENT BETWEEN CALAVERAS
COUNTY DEFENDANTS AND
PLAINTIFF

(Doc. 138)

14-DAY DEADLINE

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I. INTRODUCTION

On November 10, 2022, Plaintiff Coleman Payne, Defendants County of Calaveras, County of Calaveras Sheriff’s Department, Sergeant John Bailey, Captain Eddie Bailey, and Lieutenant Tim Strum (collectively referred to hereinafter as the “Calaveras County Defendants”) and Defendants California Forensic Medical Group, Doctor Marsha McKay, and Joy Lynch (collectively referred to hereinafter as the “CFMG Defendants”) filed a stipulation that Plaintiff’s settlement agreement with the Calaveras County Defendants was made in good faith under section 877.6 of the California Code of Civil Procedure (the “Stipulation”). The matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B). As discussed below, the undersigned recommends the Stipulation be approved.

II. DISCUSSION

California Code of Civil Procedure section 877.6 provides that any settling party in an action

1 in which it is alleged that there are two or more tortfeasors may seek a court's determination that
2 the settlement was made in good faith. *See Tech-Bilt, Inc. v. Woodward-Clyde & Assocs.*, 38 Cal.
3 3d 488, 494-95 (1985). To obtain a good faith determination,

4 a settling party may give notice of settlement to all parties and to the court, together
5 with an application for determination of good faith settlement and a proposed order.
6 The application shall indicate the settling parties, and the basis, terms, and amount
7 of the settlement. The notice, application, and proposed order shall be given by
8 certified mail, return receipt requested.

9 Cal. Civ. Proc. Code § 877.6(a)(2). A court's good faith determination "shall bar any other joint
10 tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for
11 equitable comparative contribution, or partial or comparative indemnity, based on comparative
12 negligence or comparative fault." *Id.* § 877.6(c). A party challenging a settlement's good faith has
13 the burden of proof on this issue. *Id.* § 877.6(d). When a district court hears state law claims based
14 on supplemental jurisdiction, as here, it may make a determination of good faith settlement under
15 sections 877 and 877.6. *Rodriguez v. Los Angeles Cty. Sheriff's Dep't*, No. SACV13681AGPLAX,
16 2014 WL 12709431, at *2 (C.D. Cal. June 16, 2014); *see also Mason & Dixon Intermodal, Inc. v.*
17 *Lapmaster Int'l LLC*, 632 F.3d 1056, 1060 (9th Cir. 2011) ("When a district court sits in diversity,
18 or hears state law claims based on supplemental jurisdiction, the court applies state substantive law
19 to the state law claims...[t]his court has held that California Code of Civil Procedure section 877
20 constitutes substantive law...[t]he district court correctly applied California law to resolve ITG's
21 motion to dismiss pursuant to good faith settlement.") (citations omitted).

22 When no party objects to the proposed settlement, the court enter a finding of good faith
23 when presented merely with a "barebones motion" that sets forth the ground of good faith. *City of*
24 *Grand Terrace v. Superior Court*, 192 Cal. App. 3d 1251, 1261 (1987) ("We are unaware of any
25 reported decision which has reversed an uncontested good faith determination and we, therefore,
26 conclude that only when the good faith nature of a settlement is disputed, it is incumbent upon the
27 trial court to consider and weigh the *Tech-Bilt* factors."); *Bonds v. Nicoletti Oil Inc.*, No. 07-cv-
28 1600-OWW-DLB, 2008 WL 4104272, at *5 (E.D. Cal. Sept. 3, 2008) ("Because no opposition to
the motion has been filed, pursuant to *City of Grand Terrace v. Superior Court*, the *Tech-Bilt* factors

1 are not considered or weighed.”); *PAG-Daly City, LLC v. Quality Auto Locators, Inc.*, 2014 WL
2 807415, at *2 (N.D. Cal.) (approving unopposed motion for good faith determination and finding it
3 “unnecessary to weigh the *Tech-Bilt* factors”).¹

4 Here, notice of the settlement agreement between Plaintiff and Calaveras County Defendants
5 and the settlement amount were provided to the attorney for the non-settling CFMG Defendants.
6 (See Doc. 138 at 2.) The CFMG Defendants represent that that they do not oppose the settlement
7 agreement and agree that it was made in good faith. (See *id.*) Thus, in light of the parties’ consensus
8 that the pending settlement agreement was made in good faith, the undersigned finds that the
9 settlement agreement satisfies section 877.6. See *City of Grand Terrace*, 192 Cal. App. 3d at 1261.
10 See also *Wendell v. Johnson & Johnson*, No. C 09-4124 CW, 2014 WL 12644224, at *2 (N.D. Cal.
11 June 10, 2014).

12 III. CONCLUSION AND RECOMMENDATION

13 For the reasons set forth above, the undersigned RECOMMENDS the Stipulation (Doc. 138)
14 be APPROVED, and the parties be DIRECTED to file a stipulation of voluntary dismissal
15 dismissing of all claims against the Calaveras County Defendants according to the terms set forth
16 in the settlement agreement.

17 These findings and recommendation are submitted to the district judge assigned to this
18 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 304. Within fourteen (14)
19 days of service of this recommendation, any party may file written objections to this findings and
20 recommendations with the Court and serve a copy on all parties. Such a document should be
21 captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The district judge
22 will review the magistrate judge’s findings and recommendations pursuant to 28 U.S.C. §
23 636(b)(1)(C). The parties are advised that failure to file objections within the specified time may
24 result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014)

26 ¹ In making a good faith settlement determination, courts consider the following factors: (1) “a rough approximation of
27 plaintiffs’ total recovery and the settlor’s proportionate liability”; (2) “the amount paid in settlement”; (3) “the allocation
28 of settlement proceeds among plaintiffs”; (4) “a recognition that a settlor should pay less in settlement than he would if
he were found liable after trial”; (5) “the financial conditions and insurance policy limits of settling defendants”; and
(6) “the existence of collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants.” *Tech-
Bilt Inc.*, 38 Cal.3d at 499 (the “*Tech-Bilt* factors”).

1 (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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3 IT IS SO ORDERED.

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5 Dated: November 22, 2022

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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