



1 scheduled hearing set for October 14, 2020, will be vacated and the parties will not be required  
2 to appear at that time. For the reasons discussed herein, the undersigned recommends Plaintiffs’  
3 motion for approval of settlement of minors’ claims be granted.

4 **II.**

5 **BACKGROUND**

6 Plaintiffs are the children of decedent Luis Patino, who died of valley fever at the Merced  
7 County Main Jail on September 27, 2017. Plaintiffs filed this action on October 24, 2018,  
8 bringing claims against Defendants County of Merced, Vernon Warnke, Greg Sullivan, Corey  
9 Gibson, Aaron Rosenburg, California Forensic Medical Group, Inc. (“CFMG”), Jessica Aguilar,  
10 Brandon Boggs, and Amber Nunes (collectively “Defendants”), relating to the death of the  
11 decedent. (ECF No. 1.)

12 On October 26, 2018, the Court ordered Plaintiffs to file a petition for the appointment of  
13 a guardian ad litem. (ECF No. 4.) On November 5, 2018, the Court granted petitions appointing  
14 Julia Villanueva as guardian ad litem for her minor daughter Plaintiff Elenor Skye Villanueva  
15 Patino, and appointing Adrianna Lucas Andrade as guardian ad litem for her minor daughter  
16 Plaintiff Lillyanna Amelia Patino. (ECF Nos. 5, 6, 7, 8.)

17 Following a stipulation for leave to amend, Plaintiffs filed a first amended complaint on  
18 May 1, 2019. (ECF No. 21.) On March 3, 2020, the District Judge granted a motion to dismiss  
19 as to one of Plaintiffs’ claims. (ECF No. 39.) On March 17, 2020, Plaintiffs filed a second  
20 amended complaint, the operative pleading in this action. (ECF No. 40.) The second amended  
21 complaint brings claims against all Defendants for: (1) violation of civil rights under 42 U.S.C. §  
22 1983; (2) violation of California Government Code § 845.6; (3) wrongful death; and (4) survival.  
23 (Id.)

24 On March 31, 2020, some of the parties filed a stipulation for dismissal of Plaintiffs’  
25 second cause of action as to Defendants CFMG, Jessica Aguilar, Brandon Boggs, and Amber  
26 Nunes. (ECF No. 42.) On April 6, 2020, the District Judge denied the stipulation as  
27 procedurally improper. (ECF No. 44.) On April 7, 2020, the parties filed a second stipulation  
28 for dismissal of the second cause of action against these defendants, and on April 17, 2020, the

1 District Judge again rejected the stipulation as procedurally improper. (ECF Nos. 45, 48.)

2 On July 2, 2020, pursuant to a stipulated request by the parties, the Court scheduled a  
3 settlement conference to be held before Magistrate Judge Kendall J. Newman. (ECF Nos. 50.)

4 On August 13, 2020, the parties attended a settlement conference via video conference before  
5 Magistrate Judge Newman. (ECF No. 55.) The parties settled this action at the settlement  
6 conference, with the terms of the settlement placed on the record. (Id.)

7 On August 18, 2020, the parties filed a stipulation of dismissal pursuant to Federal Rule  
8 of Civil Procedure 41. (ECF No. 56.) On August 19, 2020, the Court required the parties to  
9 instead file a motion for approval of the minors' settlement pursuant to Local Rule 202. (ECF  
10 No. 57.)

11 On September 9, 2020, Plaintiffs filed a motion to seal documents pursuant to Local Rule  
12 141. (ECF No. 58.) On September 11, 2020, the Court denied Plaintiff's motion to seal without  
13 prejudice and ordered Plaintiffs to either file a renewed motion to seal or to file the motion for  
14 approval of the minors' settlement. (ECF No. 60.)

15 On September 15, 2020, Plaintiffs filed the motion for approval of settlement of minors'  
16 claims that is the subject of this findings and recommendations. (Pls.' Mot. Approval  
17 Settlement Minors' Claims ("Mot."), ECF No. 61.) On September 15, 2020, Defendants County  
18 of Merced, Vernon Warnke, Greg Sullivan, Corey Gibson, and Aaron Rosenburg, filed a  
19 statement of non-opposition to Plaintiffs' motion for approval of settlement of minors' claims.  
20 (ECF No. 62.) On September 16, 2020, Defendants CFMG, Jessica Aguilar, Brandon Boggs,  
21 and Amber Nunes, also filed a statement of non-opposition to Plaintiffs' motion for approval of  
22 settlement of minors' claims. (ECF No. 63.)

### 23 III.

#### 24 LEGAL STANDARD

25 "District courts have a special duty, derived from Federal Rule of Civil Procedure 17(c),  
26 to safeguard the interests of litigants who are minors." Robidoux v. Rosengren, 638 F.3d 1177,  
27 1181 (9th Cir. 2011). "In the context of proposed settlements in suits involving minor plaintiffs,  
28 this special duty requires a district court to 'conduct its own inquiry to determine whether the

1 settlement serves the best interests of the minor.’ ” Id. (quoting Dacanay v. Mendoza, 573 F.2d  
2 1075, 1080 (9th Cir.1978)).

3 The Local Rules for this district provide that “[n]o claim by or against a minor or  
4 incompetent person may be settled or compromised absent an order by the Court approving the  
5 settlement or compromise.” L.R. 202(b). “In actions in which the minor or incompetent is  
6 represented by an appointed representative pursuant to appropriate state law, excepting only  
7 those actions in which the United States courts have exclusive jurisdiction, the settlement or  
8 compromise shall first be approved by the state court having jurisdiction over the personal  
9 representative.” L.R. 202(b)(1).<sup>1</sup> In all other actions, the motion for approval of a proposed  
10 settlement shall be filed pursuant to Local Rule 230, and must disclose, among other things, the  
11 following:

12 the age and sex of the minor or incompetent, the nature of the causes of action to  
13 be settled or compromised, the facts and circumstances out of which the causes of  
14 action arose, including the time, place and persons involved, the manner in which  
15 the compromise amount or other consideration was determined, including such  
16 additional information as may be required to enable the Court to determine the  
17 fairness of the settlement or compromise, and, if a personal injury claim, the nature  
18 and extent of the injury with sufficient particularity to inform the Court whether  
19 the injury is temporary or permanent. If reports of physicians or other similar  
20 experts have been prepared, such reports shall be provided to the Court. The  
21 Court may also require the filing of experts’ reports when none have previously  
22 been prepared or additional experts’ reports if appropriate under the  
23 circumstances. Reports protected by an evidentiary privilege may be submitted in  
24 a sealed condition to be reviewed only by the Court in camera, with notice of such  
25 submission to all parties.

26 L.R. 202(b)(2).

27 “When the minor or incompetent is represented by an attorney, it shall be disclosed to the  
28 Court by whom and the terms under which the attorney was employed; whether the attorney  
became involved in the application at the instance of the party against whom the causes of action  
are asserted, directly or indirectly; whether the attorney stands in any relationship to that party;  
and whether the attorney has received or expects to receive any compensation, from whom, and  
the amount.” L.R. 202(c). “Upon the hearing of the application, the representative

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<sup>1</sup> The Plaintiffs are represented by guardians ad litem appointed in this action, and as indicated in the applications to  
appoint, Plaintiffs had no general guardian or previous application for appointment of a guardian ad litem. (ECF  
Nos. 5, 6, 7, 8.)

1 compromising the claim on behalf of the minor or incompetent, and the minor or incompetent  
2 shall be in attendance unless, for good cause shown, the Court excuses their personal  
3 attendance.” L.R. 202(d).

4 In Robidoux, the Ninth Circuit cautioned that the typical practice of applying state law  
5 and local rules governing the award of attorneys’ fees “places undue emphasis on the amount of  
6 attorney’s fees provided for in settlement, instead of focusing on the net recovery of the minor  
7 plaintiffs under the proposed agreement.” 638 F.3d at 1181. District courts should thus “limit  
8 the scope of their review to the question [of] whether the net amount distributed to each minor  
9 plaintiff in the settlement is fair and reasonable, in light of the facts of the case, the minor’s  
10 specific claim, and recovery in similar cases.” Id. at 1181-82. “Most importantly, the district  
11 court should evaluate the fairness of each minor plaintiff’s net recovery without regard to the  
12 proportion of the total settlement value designated for adult co-plaintiffs or plaintiffs’ counsel—  
13 whose interests the district court has no special duty to safeguard.” Id.; but see A.G.A. v. Cty. of  
14 Riverside, No. EDCV1900077VAPSPX, 2019 WL 2871160, at \*2 (C.D. Cal. Apr. 26, 2019)  
15 (“Some courts have read Robidoux to suggest it is improper to evaluate the reasonableness of  
16 attorneys’ fees provisions in proposed settlement agreements of minors’ claims . . . The Court  
17 declines to adopt this approach.”).<sup>2</sup>

18 The holding of Robidoux was expressly “limited to cases involving the settlement of a  
19 minor’s federal claims,” and the Circuit did “not express a view on the proper approach for a  
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21 <sup>2</sup> In A.G.A., the court noted the action had “a key distinguishing feature from the facts presented in Robidoux  
22 [where] the district court had denied in part the parties’ motion to approve the proposed settlement, which included  
23 as a material term that plaintiffs’ counsel would recover approximately 56% of the settlement amount as attorneys’  
24 fees . . . The Ninth Circuit found the district court abused its discretion in denying in part the motion based on the  
25 amount of attorneys’ fees alone because it placed ‘undue emphasis on the amount of attorneys’ fees provided for in  
26 [the] settlement.’ ” 2019 WL 2871160, at \*3 (quoting Robidoux, 638 F.3d at 1181). The A.G.A. court found that in  
27 contrast, the attorneys’ fees at issue were not a material term of the settlement agreement, there was no express  
28 provision for attorneys’ fees, and in approving the settlement, the court thus only considered whether the net amount  
distributed to each plaintiff was fair and reasonable in light of the facts of the case, the minors’ specific claims, and  
recover in similar cases, as required by Robidoux. 2019 WL 2871160, at \*3. The court found the “amount of  
attorneys’ fees at issue here is an independent matter, the obligation arising from the retainer agreements between  
Plaintiffs and their counsel,” and would evaluate the request in light of the special duty to safeguard the interests of  
the minor litigants, as well as the local rule requiring the court to fix the amount of attorneys’ fees in an action  
involving a minor. Id. The court applied California law to evaluate the request for attorneys’ fees pursuant to the  
local rule, and in line with other district courts throughout California. Id. (citations omitted). The court reduced the  
attorneys’ fees from 33% to 25% of the settlement fund. Id. at \*4.

1 federal court to use when sitting in diversity and approving the settlement of a minor’s state law  
2 claims.” 638 F.3d at 1179 n.2. Some district courts have extended the application to state law  
3 claims. See Calderon v. United States, No. 1:17-CV-00040-BAM, 2020 WL 3293066, at \*3  
4 (E.D. Cal. June 18, 2020) (noting that although Robidoux “expressly limited its holding to cases  
5 involving settlement of a minor’s federal claims . . . district courts also have applied this rule in  
6 the context of a minor’s state law claims.”) (citations omitted); A.G.A., 2019 WL 2871160, at \*2  
7 n.1 (“The Ninth Circuit did not express a view on the proper approach for a federal court to use  
8 when sitting in diversity and approving the settlement of a minor’s state law claims . . . however,  
9 the Court has federal question jurisdiction and is exercising supplemental jurisdiction over  
10 Plaintiffs’ state law claims . . . as the case ‘involves’ the settlement of Plaintiffs’ federal claims,  
11 the Court applies the Robidoux standard to the entire settlement.”).

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14 **IV.**  
**DISCUSSION**

15 Plaintiffs proffer that in considering the fairness of a settlement of the minors’ claims,  
16 “federal courts are generally guided by state law,” Mitchell v. Riverstone Residential Grp., No.  
17 CIV. S-11-2202 LKK, 2013 WL 1680641, at \*2 (E.D. Cal. Apr. 17, 2013). (Mot. 4.) Plaintiffs  
18 submit that pursuant to California Code of Civil Procedure § 372(b)(3) and California Rule of  
19 Court 3.1384, Judicial Council of California Form MC-350 is mandated for approval of the  
20 compromise of the minors’ pending action. (Mot. 4.) Accordingly, Plaintiffs have incorporated  
21 the following documents into their motion: (A) an MC-350 petition to approve compromise of  
22 pending action for Plaintiff Elenor Skye Villanueva (Ex. A, ECF No. 61 at 7); (B) an MC-350  
23 petition to approve compromise of pending action for Plaintiff Lillyanna Amelia Patino (Ex. B,  
24 ECF No. 61 at 40); and (C) a declaration of counsel in support of the motion for approval of  
25 minors’ settlement (Decl. Robert J. Schwartz Supp. Mot. Approval Settlement Minors’ Claims  
26 (“Schwartz Decl.”), Ex. C, ECF No. 61 at 73). (Mot. 4.)

27 The Court finds Plaintiffs’ motion and attached documentation sufficiently sets forth the  
28 information required under Local Rule 202. Further, for the reasons explained below, the Court  
finds the “net amount distributed to each minor plaintiff in the settlement is fair and reasonable,

1 in light of the facts of the case, the minor’s specific claim, and recovery in similar cases.”  
2 Robidoux, 638 F.3d at 1181-82.

3 On August 13, 2020, with the assistance of Magistrate Judge Kendall J. Newman, the  
4 parties reached a settlement in the amount of \$150,000.00. (Mot. 3.) The settlement, attorneys’  
5 fees in the amount of twenty-five percent (25%), and costs, are to be apportioned equally  
6 between the two minor Plaintiffs, with the balance used to purchase tax free structured annuities  
7 for each Plaintiff payable monthly for ten (10) years beginning at the time each Plaintiff reaches  
8 the age of eighteen (18). (Mot. 5; Ex. A-C.) Specifically, the settlement funds will be  
9 distributed as follows: (1) \$47,513.67 to Plaintiff Elenor; (2) \$47,513.67 to Plaintiff Lillyanna;  
10 (3) \$37,500.00 to Plaintiffs’ counsel for attorneys’ fees (25%); and (4) \$17,472.66 to Plaintiffs’  
11 counsel as reimbursement for costs. (Id.)

12 Plaintiffs argue the \$150,000.00 settlement is fair and reasonable in light of the facts of  
13 the case, the specific claims, and the recoveries in similar cases. (Mot. 5.) Plaintiffs cite Hagan  
14 v. California Forensic Med. Grp., No. CIV. S-07-1095 LKK, 2012 WL 5397989, at \*1 (E.D. Cal.  
15 Nov. 2, 2012). In Hagan, a minor child and surviving widow brought an action alleging the  
16 decedent was “incarcerated at the Butte County Jail, where he was denied medication  
17 (Prednisone) needed to treat his asthma; was later transferred to the High Desert State Prison,  
18 where he was inadequately treated by incompetent staff; and was eventually flown—much too  
19 late—to a hospital, where he died.” Id. Although the opinion cited by Plaintiffs does not contain  
20 the actual settlement amount, it appears the minor ultimately received two annuities approved in  
21 two different motions, with \$35,000.00 paid by defendant CFMG, and \$15,000 by another  
22 defendant, for a total of \$50,000.00 for the minor plaintiff, after deduction of attorneys’ fees.  
23 Hagan v. California Forensic Med. Grp., No. 2:07-CV-1095 LKK AC, 2013 WL 461501, at \*1  
24 (E.D. Cal. Feb. 5, 2013), report and recommendation adopted, No. 2:07-CV-1095 LKK AC,  
25 2013 WL 552386 (E.D. Cal. Feb. 12, 2013); Hagan v. California Forensic Med. Grp., 2012 WL  
26 5397989, at \*1; see also ECF No. 159 filed therein.

27 In Estate of Gautier v. Hickman, et al., No. 2:07-CV-00390-GGH, 2008 LEXIS 49794,  
28 2008 WL 2849095, (E.D. Cal. June 27, 2008), the court approved a settlement with a net

1 recovery of \$75,000.00 for the minor plaintiff where the parent decedent suffered multiple  
2 diabetic seizures and swung in and out of a hypoglycemic coma in prison for several months in  
3 2005 and into 2006 before he died. See Castro v. California, No. 218CV02115KJMEFB, 2020  
4 WL 68580, at \*4 (E.D. Cal. Jan. 7, 2020) (discussing Gautier); Hagan, 2012 WL 5397989  
5 (same). The Hagan court also noted in “an arguably comparable case alleging wrongful death  
6 (suicide) following medical malpractice, decedent prisoner’s family was awarded a verdict of  
7 \$75,000,” Estate of Turner v. County of San Diego, 6-cv-247-MLH (S.D. Cal. November 15,  
8 2007), and other “comparable cases resulted in large verdicts, and others in zero verdicts,”  
9 Macon v. City & County of San Francisco, 6-cv-4904-SI (N.D. Cal. August 17, 2007)  
10 (\$225,000 verdict for decedent prisoner’s family, for Section 1983, wrongful death and medical  
11 malpractice claim); Van Horn v. Heinrich, 8-cv-1622-LJO (E.D. Cal. July 9, 2010) (\$0 for  
12 prisoner mother for death of her child during child-birth, alleging Section 1983, medical  
13 malpractice and wrongful death). Hagan, 2012 WL 5397989, at \*1 n.4.

14 In approving the later portion of the settlement in Hagan, the court also cited the  
15 following cases as a basis for approving the settlement: Doe ex rel. Scott v. Gill, No. C 11-4759  
16 CW, 2012 WL 1939612, at \*2 (N.D. Cal. May 29, 2012) (approving minor’s compromise in the  
17 net amount of \$7,188.85 in a § 1983 case involving the shooting and killing of plaintiff’s mother  
18 by police officers); Swayzer v. City of San Jose, No. C10-03119 HRL, 2011 WL 3471217 (N.D.  
19 Cal. Aug. 5, 2011) (approving minor’s compromise for net amount of \$2,054.17 in a § 1983 case  
20 involving the alleged wrongful death of plaintiff’s father during his arrest); Estate of Lopez v.  
21 Fresno Community Hosp., No. 1:07cv0752 AWI DLB, 2010 WL 502704 (E.D. Cal. Feb.8, 2010)  
22 (approving minor’s compromise for net amount of \$16,601.92 for each minor plaintiff in case  
23 involving death of mother at hospital during labor); De Aguilar v. Northern Railroad Passenger  
24 Corp. (“Amtrak”), No. 1:02-cv-6527 LJO GSA, 2009 WL 1035221 (E.D.Cal. Apr.17, 2009)  
25 (approving minor's compromise for net amount of \$10,618.23 in case involving death of minor  
26 plaintiff's step-father). Hagan, 2013 WL 461501, at \*1.

27 Plaintiffs’ counsel summarizes the Plaintiffs’ position of the facts and merits underlying  
28 the case as follows:

1 On June 24, 2017, decedent Luis Patino was incarcerated at the Merced County  
2 Main Jail, where he would remain until his death approximately three months  
3 later. Defendant California Forensic Medical Group, Inc. contracts with  
4 defendant County of Merced to administer medical care and medication at its  
5 correctional facilities. During his confinement at the Main Jail, Mr. Patino  
6 developed a medical condition requiring treatment: valley fever  
7 (coccidioidomycosis), a fungal infection caused by coccidioides. Valley fever is  
8 easily diagnosed and treated. In the weeks before his death, Mr. Patino, his  
9 family, and cell mates repeatedly complained that he was having chest pain and  
10 difficulty breathing. Plaintiffs contend that Defendants were deliberately  
11 indifferent, as, inter alia, they failed to diagnose or treat Mr. Patino's illness,  
12 instead simply prescribing pain and cold medications. On September 27, 2017,  
13 Mr. Patino died of disseminated coccidioidomycosis, the most serious form of  
14 valley fever. He was 29 years old.

15 (Schwartz Decl. ¶ 5.) Counsel proffers that the settlement reached at the conference “was a  
16 compromise, as Defendants contended that Plaintiffs’ deliberate indifference claim failed  
17 because there were no other cases of valley fever at the Merced County Main Jail . . . Defendants  
18 provided extensive care to decedent Luis Patino [and] Defendants . . . attacked Plaintiffs’  
19 economic damages [arguing] that noneconomic losses were capped at \$250,000.00[], pursuant to  
20 California Civil Code section 3333.2.” (Schwartz Decl. ¶ 10.)

21 The Court finds these facts demonstrate the legitimate and fair compromise of a dispute,  
22 and while the undersigned did not conduct the settlement conference, the fact that the settlement  
23 was reached with the assistance of a magistrate judge of this Court adds support to the finding  
24 that the proposed settlement is a fair and reasonable resolution of the claims at issue based on the  
25 strengths and weaknesses of the case at hand. See Hagan, 2013 WL 461501, at \*1 (“The  
26 undersigned, having presided over the settlement conference in question and being familiar with  
27 the factual allegations of this actions, finds that the net amount of the proposed settlement to be  
28 distributed to the minor”). Additionally, all Defendants have signified they hold no opposition to  
the granting of Plaintiffs’ motion and no opposition to approving the proposed settlement  
agreement. (ECF Nos. 62, 63.)

Attorneys’ fees in the amount of twenty-five percent (25%) are the typical benchmark in  
contingency cases for minors. McCue v. S. Fork Union Sch. Dist., No. 1:10-CV-00233-LJO,  
2012 WL 2995666, at \*2 (E.D. Cal. July 23, 2012) (“It has been the practice in the Eastern  
District of California to consider 25% of the recovery as the benchmark for attorney fees in

1 contingency cases for minors, subject to a showing of good cause to exceed that rate.”). While  
2 the amount of attorneys’ fees is a consideration independent of whether the settlement amount is  
3 fair and reasonable, Robidoux, 638 F.3d at 1181-82, the Court notes the original retainer  
4 agreement specified fees in the amount of thirty-three percent (33%), and counsel has reduced  
5 the fees to twenty five percent (25%), separate from the costs incurred in the action, which are  
6 independently taken out of each of Plaintiffs’ net settlement amount. (Schwartz Decl. ¶ 8.)

7         Based on the recovery in the similar cases cited above, the facts of this case, and the  
8 minors’ specific claims, the Court finds the net amount of \$47,513.67 to be distributed to each  
9 Plaintiff to be fair and reasonable, and shall recommend granting Plaintiff’s motion for approval  
10 of the settlement. See Robidoux, 638 F.3d at 1181-82.

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V.

**RECOMMENDATIONS**

Based on the foregoing, IT IS HEREBY RECOMMENDED that Plaintiffs' motion for approval of settlement of minors' claims (ECF No. 61) be GRANTED and the settlement be APPROVED.

This findings and recommendations is submitted to the district judge assigned to this action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within fourteen (14) days of service of this recommendation, any party may file written objections to this findings and recommendations with the Court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The district judge will review the magistrate judge's findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS FURTHER ORDERED that the hearing set before the undersigned on October 14, 2020, is HEREBY VACATED.

IT IS SO ORDERED.

Dated: October 13, 2020

  
UNITED STATES MAGISTRATE JUDGE