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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANGELINA NUNES, et al.,

 Plaintiffs,

 v.

COUNTY OF STANISLAUS, et al.,

 Defendants.

Case No. 1:19-cv-00204-DAD-SAB

FINDINGS AND RECOMMENDATIONS
RECOMMENDING GRANTING PLAINTIFFS’
PETITION FOR MINOR’S COMPROMISE

(ECF Nos. 78, 81, 86, 87)

I.
INTRODUCTION

Currently before the Court is Plaintiffs Angelina Nunes, Emanuel Alves, and minors D.X. and L.X.’s (collectively “Plaintiffs”) unopposed petition for minor’s compromise, filed by and through counsel, and minor Plaintiffs D.X. and L.X.’s guardian ad litem, Angelina Nunes. (ECF No. 78.)¹ The matter was referred to the Magistrate Judge for the issuance of findings and

¹ The Court notes a substantially identical petition was filed in the matter of Nunes v. County of Stanislaus (Nunes I), No. 17-cv-00633-DAD-SAB, the same day as the instant petition. Both petitions indicate a settlement amount was agreed to in exchange for a global dismissal of both the instant case and Nunes I. The only differences between the two petitions (and their attached exhibits) exist in the first paragraph on page one of each petition, which sets out the distinct factual allegations specific to each case, and the case citations wherein Nunes I and this case refer to each other to indicate the global nature of the proposed settlement. (See Pls.’ Ex-Parte Pet. for Minor’s Compromise, Nunes I, ECF No. 91.) Consequently, the District Judge related the two Nunes cases and assigned both petitions to

1 recommendations pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. The Court, having
2 reviewed the unopposed petition, the supplemental briefing, and the Court's record, shall
3 recommend the petition for minor's compromise be granted.

4 II.

5 BACKGROUND

6 Plaintiffs initiated the instant litigation against Defendants Arata, Swingle, Van Egmond
7 & Goodwin (PLC) and the County of Stanislaus² on February 12, 2019. (ECF No. 1.) This case
8 stems from the allegedly unauthorized and unconstitutional access and distribution of Plaintiffs'
9 confidential juvenile casefile records by Defendants. The operative second amended complaint
10 asserts one cause of action for multiple Monell claims. (ECF No. 65.)

11 On June 21, 2021, Defendants filed two motions to dismiss. (ECF Nos. 66, 67.) On
12 August 31, 2021, the Court administratively denied Defendants' motions to dismiss and stayed
13 the action pending resolution of the related Ninth Circuit case A.C. v. Cortez, No. 19-55895,
14 which expressly includes the issue of whether a Monell claim is viable in light of an alleged
15 Fourth Amendment violation based on the improper disclosure of juvenile records. (ECF No.
16 74.) The parties were directed to file a joint notice of decision within ten days of resolution of the
17 Ninth Circuit case.

18 Though litigation remained stayed, Plaintiffs filed a petition for minor's compromise on
19 March 21, 2022. (ECF No. 78.) The petition seeks to globally dismiss both the instant action and
20 Plaintiffs' related case, No. 17-cv-00633-DAD-SAB (Nunes I) (filed May 5, 2017), under the
21 proposed settlement terms. Plaintiffs did not set the petition for hearing in this matter.

22 On April 13, 2022, finding the actions related pursuant to Local Rule 123(a), District
23 Judge Dale A. Drozd issued an order relating this action to Nunes I and reassigning the action to
24 himself and Magistrate Judge Stanley A. Boone. (ECF No. 79.) Thereafter, the Court set a
25 hearing on the petition for June 1, 2022, and set a briefing schedule in order to provide

26 this Court for issuance of findings and recommendations. (ECF No. 79.) Importantly, while related, the cases are not
27 consolidated. Accordingly, the instant order pertains to Plaintiffs' petition in this case, Nunes II, whereas the order
filed concurrently in Nunes I shall address the petition filed in that matter.

28 ² Former Defendants Carrie Stephens, Brad Swinger, and Amanda Heitlinger have been dismissed from that action.

1 Defendants an opportunity to file a response to Plaintiffs’ petition. (ECF No. 80.)

2 On May 11, 2022, Plaintiffs filed an ex parte request to submit supplemental briefing on
3 their petition for minor’s compromise. (ECF No. 81.) The Court issued an order permitting a
4 shortened-time briefing schedule to file any opposition to Plaintiffs’ proposed supplemental
5 briefing. No opposition was filed.

6 Meanwhile, on May 18, 2022, Defendants unilaterally filed a notice of decision, alerting
7 the Court of the resolution of the Ninth Circuit case, A.C. v. Cortez. (ECF No. 83.) On May 20,
8 2022, the District Judge, noting the parties were previously ordered to file a *joint* notice of
9 decision, ordered the parties to meet and confer regarding the status of the case in light of the
10 Ninth Circuit’s decision and discuss proposed dates for the filing of supplemental briefing on the
11 impact of the decision on Defendants’ prior motions to dismiss. (ECF No. 84.) The parties were
12 directed to file a joint status report on this matter no later than June 13, 2022. In light of the
13 status report filing deadline being set to occur after the hearing on Plaintiffs’ petition for minor’s
14 compromise, this Court indicated it would proceed on the petition unless the parties filed a notice
15 with the Court that they intended to withdraw, continue, or otherwise alter the petition in light of
16 the Ninth Circuit’s decision.

17 On May 24, 2022, Defendants filed statements of non-opposition to the petition, its
18 supplemental briefing, and the Court’s intention to proceed on the petition set for hearing on June
19 1, 2022. (ECF Nos. 86, 87.) On May 27, 2022, the Court vacated the June 1, 2022 hearing,
20 finding that the motion was suitable for decision without oral argument. (ECF No. 88.)

21 III.

22 LEGAL STANDARD

23 “District courts have a special duty, derived from Federal Rule of Civil Procedure 17(c),
24 to safeguard the interests of litigants who are minors.” Robidoux v. Rosengren, 638 F.3d 1177,
25 1181 (9th Cir. 2011). “In the context of proposed settlements in suits involving minor plaintiffs,
26 this special duty requires a district court to ‘conduct its own inquiry to determine whether the
27 settlement serves the best interests of the minor.’ ” Id. (quoting Dacanay v. Mendoza, 573 F.2d
28 1075, 1080 (9th Cir. 1978)).

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

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

18 E.D. Cal. L.R. 202(b)(2).

19 “When the minor or incompetent is represented by an attorney, it shall be disclosed to the
20 Court by whom and the terms under which the attorney was employed; whether the attorney
21 became involved in the application at the instance of the party against whom the causes of action
22 are asserted, directly or indirectly; whether the attorney stands in any relationship to that party;
23 and whether the attorney has received or expects to receive any compensation, from whom, and
24 the amount.” L.R. 202(c). “Upon the hearing of the application, the representative compromising
25 the claim on behalf of the minor or incompetent, and the minor or incompetent shall be in
26 attendance unless, for good cause shown, the Court excuses their personal attendance.” E.D. Cal.
27 L.R. 202(d).

28 In Robidoux, the Ninth Circuit cautioned that the typical practice of applying state law

1 and local rules governing the award of attorneys’ fees “places undue emphasis on the amount of
2 attorney’s fees provided for in settlement, instead of focusing on the net recovery of the minor
3 plaintiffs under the proposed agreement.” Robidoux, 638 F.3d at 1181. District courts should
4 thus “limit the scope of their review to the question [of] whether the net amount distributed to
5 each minor plaintiff in the settlement is fair and reasonable, in light of the facts of the case, the
6 minor’s specific claim, and recovery in similar cases.” Id. at 1181–82. “Most importantly, the
7 district court should evaluate the fairness of each minor plaintiff’s net recovery without regard to
8 the proportion of the total settlement value designated for adult co-plaintiffs or plaintiffs’ counsel
9 — whose interests the district court has no special duty to safeguard.” Id.; but see A.G.A. v.
10 Cnty. of Riverside, No. EDCV 19-00077-VAP (SPx), 2019 WL 2871160, at *2 (C.D. Cal. Apr.
11 26, 2019) (“Some courts have read Robidoux to suggest it is improper to evaluate the
12 reasonableness of attorneys’ fees provisions in proposed settlement agreements of minors’ claims
13 . . . The Court declines to adopt this approach.”).³

14 The holding of Robidoux was expressly “limited to cases involving the settlement of a
15 minor’s federal claims,” and the Circuit did “not express a view on the proper approach for a
16 federal court to use when sitting in diversity and approving the settlement of a minor’s state law
17 claims.” 638 F.3d at 1179 n.2. Some district courts have extended the application to state law
18 claims. See Calderon v. United States, No. 1:17-cv-00040-BAM, 2020 WL 3293066, at *3 (E.D.
19 Cal. Jun. 18, 2020) (noting that although Robidoux “expressly limited its holding to cases
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21 ³ 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 as
23 a material term that plaintiffs’ counsel would recover approximately 56% of the settlement amount as attorneys’ fees
24 . . . The Ninth Circuit found the district court abused its discretion in denying in part the motion based on the amount
25 of attorneys’ fees alone because it placed ‘undue emphasis on the amount of attorneys’ fees provided for in [the]
26 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 involving settlement of a minor’s federal claims . . . district courts also have applied this rule in
2 the context of a minor’s state law claims.”) (citations omitted); A.G.A., 2019 WL 2871160, at *2
3 n.1 (“The Ninth Circuit did not express a view on the proper approach for a federal court to use
4 when sitting in diversity and approving the settlement of a minor’s state law claims . . . however,
5 the Court has federal question jurisdiction and is exercising supplemental jurisdiction over
6 Plaintiffs’ state law claims . . . as the case ‘involves’ the settlement of Plaintiffs’ federal claims,
7 the Court applies the Robidoux standard to the entire settlement.”).

8 IV.

9 DISCUSSION

10 Plaintiffs D.X. and L.X. are bringing federal claims (under Monell). Thus, the Court will
11 apply the Robidoux standard when reviewing the settlement. See A.G.A., 2019 WL 2871160, at
12 *2 n.1; Lobaton v. City of San Diego, No. 15-cv-1416 GPC (DHB), 2017 WL 2298474, at *2
13 (S.D. Cal. May 26, 2017).

14 Here, the information required under the Local Rules was discerned from the motion and
15 the operative second amended complaint (ECF No. 65), which is incorporated into the petition
16 and this Court’s order by reference.⁴ At the times relevant to this action (July 2016), Plaintiffs
17 Emanuel Alves and Angelina Nunes’s biological son, minor Plaintiff L.X., was not yet one year
18 old. (See ECF No. 65 at 5; Pet. Ex. A, ECF No. 78-1 at 9 (showing L.X.’s birthdate was in
19 2016); see also first am. Compl., Nunes I, ECF No. 37 ¶ 6 (identifying age and gender of minor
20 Plaintiffs).) Minor plaintiff D.X., Ms. Nunes’s biological daughter from a prior relationship, was
21 approximately seven years old. (See ECF No. 65 at 5; Pet. Ex. B, ECF No. 78-1 at 11 (showing

22 ⁴ The Court was required to reference multiple documents in this casefile, as well as the operative complaint in the
23 related litigation Nunes I, in order to make reasonable inferences regarding the minor Plaintiffs’ ages and sex because
24 Plaintiffs failed to comply with the procedural requirements set forth under Local Rule 202 by expressly identifying
25 each of the requirements listed there, such as “the age and sex of the minor or incompetent, the nature of the causes
26 of action to be settled or compromised, [and] the facts and circumstances out of which the causes of action arose,
27 including the time, place and persons involved” E.D. Cal. L.R. 202(b)(2). In light of Plaintiffs’ counsel’s
28 purported 23 years of experience specializing in this niche area of law that, whenever settlement is involved, requires
the filing of a petition for minor’s compromise, the fact that the petition on file fails to comply with basic procedural
requirements set forth in the Local Rules is not well taken. In furtherance of the Court’s interest in managing its
docket, the Court shall construe the instant petition as substantially compliant and proceed to evaluating the
remainder of the proposed settlement on its merits. However, counsel is advised that future petitions for minor’s
compromise that may come before this Court bearing the same procedural defects may be promptly denied without
prejudice to the refile of a procedurally compliant petition.

1 D.X.'s birthdate was in 2008); see also first am. Compl., Nunes I, ECF No. 37 ¶ 6 (identifying
2 age and gender of minor Plaintiffs.)

3 As set forth in the operative second amended complaint, Plaintiffs' claims arise from the
4 allegedly unauthorized and unconstitutional access and distribution of the minor Plaintiffs'
5 confidential juvenile casefile records by Defendants during an investigation conducted by child
6 protective services related to the temporary removal of the minor Plaintiffs from their parents'
7 custody. (See ECF No. 65 at 4–13; see also Nunes I, ECF No. 37 at 7–73.) As previously set
8 forth in the Background section of this order, Plaintiffs assert a cause of action pursuant to Monell
9 liability. As a result of Defendants' actions, Plaintiffs suffered extreme emotional distress and
10 related physical manifestations of pain and seek damages accordingly.

11 As previously ordered by the Court, Angelina Nunes, as appointed guardian ad litem for
12 minor Plaintiffs D.X. and L.X. in this matter, is fully competent to understand and protect the
13 rights of the minor Plaintiffs. (See ECF Nos. 12, 14; see also Pet. 2.) The petition states that
14 Plaintiffs have reached a global settlement of this matter with Defendants in the amount of
15 \$500,000.00 total. (Pet. 1.) This settlement amount pertains to all claims with all Plaintiffs,
16 which includes appeal rights of Plaintiffs and attorney fee claims, as to both Nunes I and the
17 instant action. (Id. at 1–2.) The settlement, after payment of attorney's fees and reimbursement
18 of costs advanced by counsel (in the total amount of \$13,602.28), shall be apportioned as follows:
19 minor Plaintiffs D.X. and L.X. will each receive \$50,000, and adult Plaintiffs Angelina Nunes
20 and Emanuel Alves each receive \$68,198.86. (Id. at 2.) Plaintiffs approved the apportionment of
21 the settlement and agreed that attorneys' fees in the amount of fifty percent (50%) shall be taken
22 out of the entire settlement amount. (Id. at 3.)

23 Counsel proffers the reasons the adult Plaintiffs receive slightly higher settlement amounts
24 than the minor Plaintiffs include: (1) if the minor Plaintiffs should require any further therapy or
25 treatment as a result of the damages suffered as a result of the conduct complained of in the
26 complaints, the adult Plaintiffs will be responsible for that treatment without any claim of
27 reimbursement from the minor Plaintiffs' proceeds; (2) giving the adult Plaintiffs, who are the
28 sole legal custodians of the minor Plaintiffs, a greater amount of funds serves the minor's bests

1 interests because the adults will continue to provide support for their children, both of whom are
2 still very young and dependent upon their parents; and (3) the adult Plaintiffs will have to pay
3 more taxes on their disbursement, whereas “the tax hit [of the minor Plaintiffs] will be
4 inconsequential as compared to the parents.” (Powell Decl. ¶¶ 6, 18, 33, 34.) Further, Plaintiffs
5 contend the settlement is fair and reasonable, particularly given the results obtained, which spared
6 the minor Plaintiffs from being subjected to depositions and other discovery that would have been
7 emotionally challenging and memory invoking. (Powell Decl. ¶ 11.)

8 As to the settlement proceeds allocated to minor Plaintiffs D.X. and L.X., the minors’
9 proceeds will be placed into a structured settlement annuity, to be held until at least the minors’
10 achieving the age of eighteen. (Pet. 2, 3; Exs. A, B.) Periodic payments to L.X. (referred to by
11 his legal initials “L.A.” in the annuity document attached to the petition (Ex. A)) will be made
12 payable beginning when L.X. turns 18, 21, and 25 years old. (Pet. 2; Powell Decl. ¶¶ 3, 4, 6, 9;
13 Ex. A.) Periodic payments will similarly be made to D.X. (referred to in the annuity document
14 attached to the petition (Ex. B) by her legal initials, “D.N.H.”) when she reaches the ages of 18,
15 21, and 25. (Pet. 2; Powell Decl. ¶¶ 3, 4, 6, 10; Ex. B.) These settlement apportionment details
16 were approved amongst all Plaintiffs and Defendants, and in consultation with Marjorie Smith of
17 Sage Settlement Consulting of San Diego, California, a certified financial planner and structured
18 settlement consultant. (Pet. 2; Powell Decl. ¶ 3.)

19 The petition was prepared by lead counsel for Plaintiffs, Robert R. Powell, of Powell &
20 Associates. (See Pet. 8.) In compliance with the California Rules of Court, Rule 7.951, counsel
21 represents his firm was not hired by any Defendant or insurance carrier and does not represent
22 any; Plaintiffs Angelina Nunes and Emanuel Alves entered into an arm’s length retainer
23 agreement with Powell & Associates; and the firm has not received any fees or other
24 compensation for services provided in connection with this action, other than those anticipated to
25 be paid by the named Defendants pursuant to the aforementioned settlement. (Powell Decl. ¶¶
26 23–28.)

27 Finally, the Court notes the retainer agreement provides for a contingency fee of 50% and
28 Plaintiffs’ attorneys have advanced all costs in connection with these two actions. This includes

1 filing fees, mileage fees, parking fees, copying and reproduction fees, and deposition costs from
2 both Nunes I and the instant case. (Id. at ¶¶ 29–30.) The hours worked also contemplates both
3 litigations, the first of which was initiated in 2017, multiple interlocutory appeals, and extensive
4 settlement negotiations and collaborations with the Sage Consulting Group to structure the minor
5 Plaintiffs’ annuities. (Id. at ¶¶ 31–32.) Counsel proffers the instant cases involve a “very
6 specialized niche of civil rights law” for which only a small number of attorneys within California
7 are qualified to handle. In this niche practice, a contingency fee of 50% is customary. (Id. at ¶
8 17.) Moreover, it is associated with significant risk, such as the risk a law firm will not be paid
9 on a case due to the “elusive, shifting, and case-specific nature of immunity analysis and a myriad
10 of other potential pitfalls such as client illness, infirmity, or even death,” the possibility of having
11 a case dismissed after thousands of dollars and many attorney hours are expended on experts and
12 discovery, and even the possibility that the plaintiffs prevail at trial but only for nominal damages,
13 or they refuse to accept a settlement. (Id. at ¶¶ 11–14.)

14 Having considered the unopposed petition, the Court finds that the total settlement amount
15 of \$500,000 and the distribution of \$50,000 to each minor Plaintiff and \$68,198.86 to each adult
16 Plaintiff to be fair and reasonable in light of the facts of the case, the specific claims, and
17 recoveries in similar cases. (Supp. Brief, ECF No. 81 (providing settlement details for following
18 cases)); Mann v. Cnty. of San Diego, 907 F.3d 1154 (9th Cir. 2018) (in § 1983 Monell claims
19 alleging county’s custom and practice of subjecting children to invasive medical examinations
20 after removing them from family home under suspicion of child abuse, case settled after 9 years,
21 with over 1,000 hours of attorney work and 22 depositions for \$1.8 million, which included
22 \$50,000 for each of four minor plaintiffs, placed in structured annuities); Swartwood v. Cnty. of
23 San Diego, 84 F. Supp. 3d 1093 (S.D. Cal. 2015) (§ 1983 claims that child protective services
24 removed children without warrant, failed to release them, and abused the children during medical
25 exams resulted — after multiple sets of written discovery, third party subpoenas, 16 depositions
26 and 2 motions for summary judgment — in an approved minor’s compromise of \$81,000 for the
27 child subject to abuse allegations and \$68,000 for the younger sibling, to be placed in annuities);
28 N.L. by and through Arce v. Child.’s Hosp. L.A., No. 2:15-cv-7200-AB-SK (C.D. Cal. 2009)

1 (claims that children underwent invasive physical exams without parents' knowledge or consent
2 settled after 6 years with approved minor's compromise of \$50,000 for minor plaintiff, which was
3 placed in a blocked account); Rodoni v. Cnty. of Santa Clara, No. 5:18-cv-04325-BLF (N.D.
4 Cal.) (claims that children were wrongfully removed without a warrant on allegations of physical
5 abuse, later wholly refuted, resulted in approved minor's compromise of \$15,000 for each child as
6 against defendant county, and \$10,000 for each child as to defendant city).

7 Accordingly, the Court finds the instant petition sufficiently complies with the procedural
8 requirements set forth under the Local Rules. Further, the Court finds the proposed net amounts
9 of \$50,000 to be distributed to each minor Plaintiff to be fair and reasonable, and will therefore
10 recommend approval of the petition for minor's compromise. See Robidoux, 638 F.3d at 1181–
11 82.

12 V.

13 FINDINGS AND RECOMMENDATIONS

14 Based on the foregoing, IT IS HEREBY RECOMMENDED that the petition for minor's
15 compromise as to Plaintiffs D.X. and L.X.'s claims (ECF No. 78) be GRANTED and the
16 settlement be APPROVED.

17 These findings and recommendations 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**
19 **(14) days** of service of this recommendation, any party may file written objections to these
20 findings and recommendations with the Court and serve a copy on all parties. Such a document
21 should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The
22 district judge will review the magistrate judge's findings and recommendations pursuant to 28
23 U.S.C. § 636(b)(1)(C).

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The parties are advised that failure to file objections within the specified time may result in the waiver of the “right to challenge the magistrate’s factual findings” 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 SO ORDERED.

Dated: May 31, 2022


UNITED STATES MAGISTRATE JUDGE