

1 Bradley J. Swingle, SBN 171535
 Amanda J. Heitlinger, SBN 271469
 2 **ARATA, SWINGLE, VAN EGMOND & HEITLINGER**
A Professional Law Corporation
 3 1207 I Street
 Post Office Box 3287
 4 Modesto, California 95354
 Telephone: (209) 522-2211
 5 Facsimile: (209) 522-2980

6 Attorneys for Defendants
 CITY OF CERES and DEREK PERRY

8 UNITED STATES DISTRICT COURT
 9 EASTERN DISTRICT OF CALIFORNIA

11 WALTER W. WELLS and SCOTT
 12 MCFARLANE,

Case No: 1:20-CV-00770-TLN-BAM

Honorable Troy L. Nunley

13 Plaintiffs,

14 vs.

**STIPULATION RE DETERMINATION OF
 GOOD FAITH SETTLEMENT OF
 DEFENDANTS CITY OF CERES AND
 DEREK PERRY WITH PLAINTIFFS**

15 COUNTY OF STANISLAUS; CITY OF
 16 MODESTO; CITY OF CERES;
 STANISLAUS COUNTY OFFICE OF THE
 17 DISTRICT ATTORNEY; KIRK BUNCH;
 JON EVERS; DALE LINGERFELT; STEVE
 18 JACOBSON; BIRGIT FLADAGER; COREY
 BROWN; and DEREK PERRY,

19 Defendants.

20 _____ /
 21 IT IS HEREBY STIPULATED by and between plaintiffs, WALTER W. WELLS and SCOTT
 22 MCFARLANE (hereafter "PLAINTIFFS" when referred to collectively), defendants COUNTY OF
 23 STANISLAUS, STANISLAUS COUNTY OFFICE OF THE DISTRICT ATTORNEY, KIRK
 24 BUNCH, DALE LINGERFELT, STEVE JACOBSON, BIRGIT FLADAGER, and COREY
 25 BROWN (hereafter "COUNTY"), defendant CITY OF MODESTO (hereafter "MODESTO"), and
 26 defendant CITY OF CERES and DEREK PERRY (hereafter "CERES"), as follows:

- 27 1. CERES is a defendant in this action.
 28

1 2. CERES has reached an agreement with PLAINTIFFS to pay to them the total sum of
2 \$10,000.00, with WALTER W. WELLS receiving \$5,000.00 and SCOTT MCFARLANE receiving
3 \$5,000.00, in exchange for a dismissal of PLAINTIFFS' Claims against CERES.

4 3. PLAINTIFFS, COUNTY, MODESTO, and CERES all hereby agree and stipulate that
5 the settlement between PLAINTIFFS and CERES is in good faith pursuant to California Code of
6 Civil Procedure sections 877 and 877.6.

7 4. California Code of Civil Procedure section 877 et. seq. governs the determination of
8 whether the settlement entered into by and between PLAINTIFFS and CERES is in good faith. A
9 settling party may seek a determination that a settlement was made in good faith under California
10 Code of Civil Procedure section 877.6 in federal court. *Fed. Sav. & Loan Ins. Corp. v. Butler*, 904
11 F.2d 505, 511 (9th Cir. 1990) (holding that while the “section 877.6 procedures do not govern a
12 federal action . . . the substantive provisions. . . are applicable”); *Jette v. Orange Cnty., Fin., Inc.*, No.
13 2:08-cv-01767 GEB KJM, 2010 WL 3341561, at *2 (E.D. Cal. Aug. 23, 2010); *Maxwell v.*
14 *MortgageIT, Inc.*, No. 1:08-CV-01329 OWW SKO, 2010 WL 2219190, at *1 (E.D. Cal. June 1,
15 2010) (stating that “federal courts may enter . . . determinations” under section 877.6); *Sunterra Corp.*
16 *v. Perini Bldg. Co.*, No. 2:04-cv-00784 MCE EFB, 2009 WL 2136108, at *1 (E.D. Cal. July 15,
17 2009) (stating that “[a] district court may properly consult the provisions of §877.6 in determining
18 whether an early settlement meets the requisite good faith scrutiny”).

19 Section 877.6 provides:

20 (a)(1) Any party to an action in which it is alleged that two or more parties are joint
21 tortfeasors . . . shall be entitled to a hearing on the issue of the good faith of a
22 settlement entered into by the plaintiff or other claimant and one or more alleged
23 tortfeasors . . . , upon giving notice

24 (2) In the alternative, a settling party may give notice of settlement to all parties and
25 to the court, together with an application for determination of good faith settlement
26 and a proposed order. . . .

27 (b) The issue of the good faith of a settlement may be determined by the court on the
28 basis of affidavits served with the notice of hearing, and any counteraffidavits filed in
response, or the court may, in its discretion, receive other evidence at the hearing.

 (c) A determination by the court that the settlement was made in good faith shall bar
any other joint tortfeasor . . . from any further claims against the settling tortfeasor . . .

1 for equitable comparative contribution, or partial or comparative indemnity, based on
2 comparative negligence or comparative fault.

3 (d) The party asserting the lack of good faith shall have the burden of proof on that
4 issue.

5 California Code of Civil Procedure section 877.6.

6 Here, this application is unopposed and is stipulated to by all of the parties in this litigation.

7 5. Pursuant to California Code of Civil Procedure sections 877 and 877.6, all further
8 Claims against CERES for equitable comparative contribution, or partial or comparative indemnity,
9 shall be barred.

10 DATED: March 17, 2022

ARATA, SWINGLE, VAN EGMOND & HEITLINGER
A Professional Law Corporation

11 By: /s/ Bradley J. Swingle
12 Bradley J. Swingle
13 Attorneys for Defendants
CITY OF CERES and DEREK PERRY

14 DATED: March 17, 2022

MORRISON & FOERSTER LLP

15 By: /s/ Arturo J. Gonzalez (authorized per email)
16 Arturo J. Gonzalez
17 Attorneys for Plaintiffs
WALTER W. WELLS and SCOTT MCFARLANE

18 DATED: March 17, 2022

ALLEN, GLAESSNER, HAZELWOOD & WERTH

19 By /s/ Patrick D. Moriarty (authorized per email)
20 Patrick D. Moriarty
21 Attorneys for Defendants
CITY OF MODESTO, CHIEF GALEN
22 CARROLL and DETECTIVE JON EVERS

23 DATED: March 17, 2022

PORTER SCOTT, APC

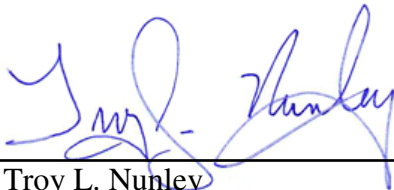
24 By /s/ John R. Whitefleet (authorized per email)
25 John R. Whitefleet
26 Attorneys for Defendants
COUNTY OF STANISLAUS, STANISLAUS OFFICE
27 OF THE DISTRICT ATTORNEY, KIRK BUNCH,
DALE LINGERFELT, STEVE JACOBSON and
28 BIRGIT FLADAGER

ORDER

GOOD CAUSE HAVING BEEN SHOWN AND THE PARTIES HAVING STIPULATED TO THE SAME, the Court finds that the above-stated Stipulation is and shall be the Order of the Court. The settlement between plaintiffs WALTER J. WELLS, SCOTT MCFARLANE, and CERES is hereby deemed to be a good faith settlement within the meaning and effect of California Code of Civil Procedure sections 877 and 877.6. Any further claims of any joint tortfeasors or co-obligors relating to the subject matter of this lawsuit against CERES for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault are hereby forever barred and dismissed with prejudice pursuant to California Code of Civil Procedure section 877.6, subdivision (c).

IT IS SO ORDERED.

DATED: March 17, 2022



Troy L. Nunley
United States District Judge