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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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HEATHER MARIE EWING; MARK LEE
EWING; KATELYN JOYNER EWING-
MUNNERLYN, a minor by and
through her father MARK LEE
EWING; RACHEL MARIE EWING, a
minor by and through her parents
HEATHER MARIE EWING and MARK LEE
EWING; and SAVANNAH JAILYN
EWING, a minor by and through
her parents HEATHER MARIE EWING
and MARK LEE EWING,

Plaintiffs,

v.

CITY OF STOCKTON; DISTRICT
ATTORNEY JOHN D. PHILLIPS;
DEPUTY DISTRICT ATTORNEY LESTER
F. FLEMING; OFFICER WILLIAM
JEROME HUTTO, individually and
in his capacity as a City of
Stockton Police Officer; OFFICER
STEVEN McCARTHY, individually
and in his capacity as a City of
Stockton Police Officer; and
OFFICER JOHN J. REYES,
individually and in his capacity
as a City of Stockton Police
Officer,

Defendants.

NO. CIV. 2:05-2270 WBS GGH

MEMORANDUM AND ORDER RE:
SETTLEMENT OF MINORS' CLAIMS

1
2 Plaintiffs Heather Marie Ewing and Mark Lee Ewing
3 ("Ewing Parents") and their minor children Katelyn Joyner
4 Ewing-Munnerlyn, Rachel Marie Ewing, and Savannah Jaily Ewing
5 ("Ewing Children") initiated this action under 42 U.S.C. § 1983
6 against defendants City of Stockton and police officers William
7 Jerome Hutto, Steven McCarthy, and John J. Reyes ("City
8 Defendants") and district attorneys John D. Phillips and Lester
9 F. Fleming. Plaintiffs allege that defendants violated their
10 constitutional rights throughout a series of events culminating
11 in the arrest of the Ewing Parents on murder charges that were
12 ultimately dropped. The Ewing Children allege that they were
13 subjected to negligent treatment and excessive force by the SWAT
14 Team during the November 8, 2004, raid and search of their home.
15

16 Although the court has not yet addressed the merits of
17 the Ewing Children's claims, the court has addressed the merits
18 of the Ewing Parents' claims in two prior orders, Ewing v. City
19 of Stockton, No. Civ. 2:05-2270, 2008 WL 366156 (E.D. Cal. Feb.
20 8, 2009), rev'd in part, Ewing v. City of Stockton, 588 F.3d 1218
21 (9th Cir. 2009); Ewing v. City of Stockton, No. Civ. 2:05-2270,
22 2010 WL 3516351 (E.D. Cal. Sept. 2, 2010). Now, the Ewing
23 Parents and Children have reached a settlement with the City
24 Defendants and seek the court's approval of the settlement as to
25 the Ewing Children.

26 The settlement reached with the City Defendants is in
27 the amount of \$550,000 and the proposed distribution and amounts
28 attributable to the Ewing Children's claims and representation is

1 as follows:

- 2 • Payment of \$26,000.00 to each of the Ewing Children, to
3 be placed in a separate trust account designated for
4 each child, as part of the total of \$197,473.00 paid to
5 plaintiffs under the settlement;
- 6 • Payment of \$88,000.00 in attorneys' fees to plaintiffs'
7 counsel Gross Belsky Alonso LLP ("GBA"), as part of the
8 total of \$220,000.00 in attorney's fees GBA will
9 receive from the settlement;
- 10 • Reimbursement of \$39,000.00 to GBA for costs incurred
11 in prosecuting this matter on behalf of the Ewing
12 Children, as part of the total of \$97,527.00 in costs
13 GBA will receive from the settlement;
- 14 • Payment of \$14,000.00 to GBA, as part of the total of
15 \$35,000.00 GBA will receive from the settlement, to be
16 held in reserve against future costs associated with
17 GBA's continued representation of plaintiffs in their
18 ongoing action against Fleming, with the understanding
19 that any money remaining after resolution of
20 plaintiffs' claims against Fleming and payment of
21 outstanding expenses incurred by GBA will be returned
22 to the Ewing Children in the amount of their percentage
23 share, or 13.3 percent each.

24 "It has long been established that the court in which a
25 minor's claims are being litigated has a duty to protect the
26 minor's interests." Salmeron v. United States, 724 F.2d 1357,
27 1363 (9th Cir. 1983). "In the context of proposed settlements in
28 suits involving minor plaintiffs, this special duty requires a

1 district court to conduct its own inquiry to determine whether
2 the settlement serves the best interests of the minor." Robidoux
3 v. Rosengren, --- F.3d ----, ----, 2011 WL 1136241, at *3 (9th
4 Cir. 2011) (internal quotation marks omitted); see also E.D.
5 Local R. 202(b) ("No claim by or against a minor or incompetent
6 person may be settled or compromised absent an order by the Court
7 approving the settlement or compromise."). In reviewing a
8 proposed settlement, district courts can consider "whether the
9 net amount distributed to each minor plaintiff in the settlement
10 is fair and reasonable, in light of the facts of the case, the
11 minor's specific claim, and recovery in similar cases."
12 Robidoux, 2011 WL 1136241, at *3.

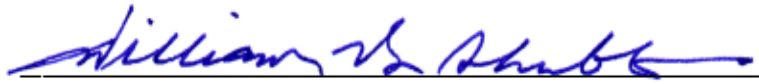
13 Having reviewed the proposed settlement and the
14 psychological evaluations of the Ewing Children from 2007
15 assessing the psychological injuries the children suffered as a
16 result of the raid of their home and separation from their
17 parents, the court concludes that the proposed settlement is fair
18 and reasonable. In addition to the \$26,000.00 that will placed
19 in existing trusts for each child, Mark Ewing has represented
20 that the \$119,473.00 that will remain in the Ewing Parents'
21 control will be used to "pay outstanding family bills and fund
22 psychological treatment for the children." As the 2007
23 psychological evaluations indicate the need for the Ewing
24 Children to receive treatment and express concern that they did
25 not receive consistent treatment after the incident occurred in
26 2004, the court recognizes the importance of the children
27 receiving proper treatment, albeit over seven years late.

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IT IS THEREFORE ORDERED that the petition to approve
settlement of the Ewing Children's claims against the City
Defendants be, and the same hereby is, GRANTED.

DATED: May 11, 2011



WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE