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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,

NO. CIV. 2:05-2270 WBS GGH

MEMORANDUM AND ORDER RE:
SETTLEMENT OF MINORS' CLAIMS
WITH COUNTY DEFENDANTS

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.

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

17 Although the court has not yet addressed the merits of
18 the Ewing Children's claims, the court has addressed the merits
19 of the Ewing Parents' claims in two prior summary judgment
20 orders, Ewing v. City of Stockton, No. Civ. 2:05-2270, 2008 WL
21 366156 (E.D. Cal. Feb. 8, 2009), rev'd in part, Ewing v. City of
22 Stockton, 588 F.3d 1218 (9th Cir. 2009); Ewing v. City of
23 Stockton, No. Civ. 2:05-2270, 2010 WL 3516351 (E.D. Cal. Sept. 2,
24 2010). Plaintiffs previously settled their claims against the
25 City Defendants for a total of \$550,000.00, with \$26,000.00
26 placed in trusts for each of the Ewing Children. The court
27 previously approved that settlement as to the Ewing Children.
28 (May 12, 2011 Order (Docket No. 149).)

1 With respect to the County Defendants, the court
2 granted San Joaquin County's motion to dismiss, and San Joaquin
3 County was dismissed from this case on March 24, 2006. (Mar. 24,
4 2006 Order at 10-11 (Docket No. 24).) The Ninth Circuit
5 subsequently dismissed plaintiffs' claims against Phillips.
6 Ewing, 588 F.3d at 1235-36. Thus, of the County Defendants,
7 plaintiffs only have remaining claims against Fleming.¹ After
8 engaging in mediation with a Ninth Circuit mediator and
9 conducting continuing negotiations thereafter, the Ewing Parents
10 and Children reached a settlement with the County Defendants and
11 now seek the court's approval of the settlement as to the Ewing
12 Children.

13 The settlement reached with the County Defendants is in
14 the amount of \$450,000.00 and the proposed distribution and
15 amounts attributable to the Ewing Children's claims and
16 representation is as follows:

- 17 • Payment of \$10,000.00 to each of the Ewing Children, to
18 be placed in the separate trust account designated for
19 each child, as part of the total of \$246,305.00 paid to
20 plaintiffs under the settlement;
- 21 • Payment of \$24,300.00 in attorneys' fees to plaintiffs'
22 counsel Gross Belsky Alonso LLP ("GBA"), as part of the
23 total of \$202,500 in attorneys' fees GBA will receive
24 from the settlement; and
- 25 • Reimbursement of \$143.40 to GBA for costs incurred in

26
27 ¹ Although plaintiffs only have remaining claims against
28 Fleming, the settlement was reached with all of the County
Defendants.

1 prosecuting this matter on behalf of the Ewing
2 Children, as part of the total of \$1,195.00 in costs
3 GBA will receive from the settlement.

4 "It has long been established that the court in which a
5 minor's claims are being litigated has a duty to protect the
6 minor's interests." Salmeron v. United States, 724 F.2d 1357,
7 1363 (9th Cir. 1983). "In the context of proposed settlements in
8 suits involving minor plaintiffs, this special duty requires a
9 district court to conduct its own inquiry to determine whether
10 the settlement serves the best interests of the minor." Robidoux
11 v. Rosengren, --- F.3d ----, ----, 2011 WL 1136241, at *3 (9th
12 Cir. 2011) (internal quotation marks omitted); see also E.D.
13 Local R. 202(b) ("No claim by or against a minor or incompetent
14 person may be settled or compromised absent an order by the Court
15 approving the settlement or compromise."). In reviewing a
16 proposed settlement, district courts can consider "whether the
17 net amount distributed to each minor plaintiff in the settlement
18 is fair and reasonable, in light of the facts of the case, the
19 minor's specific claim, and recovery in similar cases."
20 Robidoux, 2011 WL 1136241, at *3.

21 Having reviewed the proposed settlement, the
22 circumstances giving rise to each of the plaintiff's claims, and
23 the psychological evaluations of the Ewing Children from 2007
24 assessing the psychological injuries the children suffered as a
25 result of the raid of their home and separation from their
26 parents, the court concludes that the proposed settlement is fair
27 and reasonable. In addition to the \$10,000.00 that will be
28 placed in the existing trusts for each child, Mark Ewing has

1 represented that the \$246,305.00 that will remain in the Ewing
2 Parents' control will be used to fund psychological treatment for
3 the children and purchase a new family home so that the family
4 can move out of the home where the incidents giving rise to this
5 lawsuit occurred. As the court has previously noted, the 2007
6 psychological evaluations indicate the need for the Ewing
7 Children to receive treatment and express concern that they did
8 not receive consistent treatment after the incident occurred in
9 2004. The court continues to believe that it is of paramount
10 importance that the children receive proper treatment.

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

14 DATED: September 23, 2011

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16 WILLIAM B. SHUBB
17 UNITED STATES DISTRICT JUDGE
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