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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CALPINE OPERATING SERVICES )  
COMPANY, INC., a Delaware )  
Corporation; CALPINE GILROY )  
COGEN, LP, a Delaware )  
Corporation, )  
Plaintiffs, )

2:09-cv-01495-GEB-DAD

ORDER GRANTING MOTION FOR  
DETERMINATION OF GOOD FAITH  
SETTLEMENT\*

v.

ELECTRICAL MAINTENANCE )  
CONSULTANTS, INC., a California )  
Corporation, )  
Defendant. )

\_\_\_\_\_  
ELECTRICAL MAINTENANCE )  
CONSULTANTS, INC., a California )  
Corporation, )  
Third Party )  
Plaintiff, )

v.

E & M Electric and Machinery, )  
Inc., )  
Third Party )  
Defendant. )

\_\_\_\_\_  
AND RELATED COUNTERCLAIM )  
\_\_\_\_\_ )

\* This matter is deemed suitable for decision without oral argument. E.D. Cal. R. 230(g).

1 Third Party Defendant, E & M Electric and Machinery, Inc.  
2 ("E&M") moves for a determination that its settlement with Plaintiffs  
3 was made in "good faith" under sections 877 and 877.6 of the California  
4 Code of Civil Procedure. E&M further requests that "all cross-  
5 complaints for indemnity and contribution against [it] be dismissed."  
6 (E&M's Mot. 2:7-8.) Defendant/Third Party Plaintiff Electrical  
7 Maintenance Consultants, Inc. ("EMC") filed a "Non-Opposition" to E&M's  
8 motion. (ECF No. 41.)

### 9 I. BACKGROUND

10 Plaintiffs Calpine Operating Services Company, Inc. ("COSCI")  
11 and Calpine Gilroy Cogen, LP ("CGC") (collectively referred to as  
12 "Plaintiffs") filed this action against EMC on June 1, 2009. (Compl.,  
13 ECF No. 2.) The Complaint alleges breach of contract and express  
14 indemnity claims, "arising out of the catastrophic failure of a  
15 brushless exciter owned and operated by [Plaintiffs]." (Compl.; E&M's  
16 Mot. 3:3:7-12.)

17 Plaintiffs allege "COSCI and EMC entered into a Continuing  
18 Services Agreement," in which "EMC agreed to perform services . . .  
19 required for COSCI to perform its responsibilities for operating one or  
20 more of its power generating facilities." (Compl. ¶¶ 12-13) (internal  
21 quotation marks omitted). Plaintiffs also allege that under the  
22 Continuing Services Agreement ("Agreement"), a purchase order was issued  
23 to EMC to repair a steam turbine generator at CGC's Gilroy plant. Id.  
24 ¶ 21. Plaintiffs further allege that EMC performed two separate repairs  
25 to the generator, which ultimately resulted in "a catastrophic failure,"  
26 requiring repair by another entity. Id. ¶¶ 24-33.

1 Following Plaintiffs' suit against EMC, EMC filed a third-  
2 party complaint against E&M, alleging indemnity and contribution claims.  
3 (Am. Third-Party Compl., ECF No. 9.) EMC subcontracted with E&M to  
4 perform work on the second of the referenced two repairs and alleges  
5 "all claims in Plaintiffs' Complaint were caused in whole or in part by  
6 E&M." Id., ¶ 8.

7 E&M filed a counter-claim for equitable indemnity or  
8 contribution against EMC, alleging "the work it performed on the  
9 [generator] was appropriate based upon the information it received from  
10 EMC." (E&M's Counter-Claim, ¶ 21, ECF No. 14.)

11 Plaintiffs' counsel declares that "[Plaintiffs] ha[ve] agreed  
12 to settle [their] claims with E&M for \$325,000." (Decl. of Robin Cleary,  
13 ¶ 4.) E&M seeks a "judicial determination" that this settlement was  
14 made in "good faith" under California Code of Civil Procedure sections  
15 877 and 877.6.

## 16 II. DISCUSSION

17 A settling party may seek a determination that a settlement  
18 was made in "good faith" under California Code of Civil Procedure  
19 section 877.6 ("section 877.6") in federal court. Fed. Sav. & Loan Ins.  
20 Corp. v. Butler, 904 F.2d 505, 511 (9th Cir. 1990) (holding that while  
21 the "section 877.6 procedures do not govern a federal action . . . the  
22 substantive provisions . . . are applicable"); see also Sunterra Corp.  
23 v. Perini Bldg. Co., No. 2:04-cv-00784-MCE-EFB, 2009 WL 2136108, at \*1  
24 (E.D. Cal. July 15, 2009) (stating "[a] district court may properly  
25 consult the provisions of § 877.6 in determining whether an early  
26 settlement meets the requisite good faith scrutiny"). Section 877.6  
27 provides in pertinent part:

28

1           (a) (1) Any party to an action in which it is  
2 alleged that two or more parties are joint  
3 tortfeasors . . . shall be entitled to a hearing on  
4 the issue of the good faith of a settlement entered  
5 into by the plaintiff . . . and one or more alleged  
6 tortfeasors . . . .

7 . . . .

8           (c) A determination by the court that the  
9 settlement was made in good faith shall bar any  
10 other joint tortfeasor . . . from any further  
11 claims against the settling tortfeasor . . . for  
12 equitable comparative contribution, or partial  
13 comparative indemnity, based on comparative  
14 negligence or comparative fault.

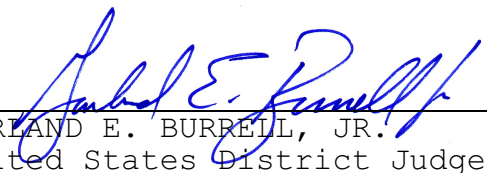
15           (d) The party asserting the lack of good  
16 faith shall have the burden of proof on that issue.

17           In determining if a settlement is in "good faith" under  
18 California law, the court should "take[] into account" a number of  
19 factors, including: "a rough approximation of plaintiffs' total recovery  
20 and the settlor's proportionate liability, the amount paid in  
21 settlement, the allocation of settlement proceeds among plaintiffs, and  
22 a recognition that a settlor should pay less in settlement than he would  
23 if he were found liable after a trial." Tech-Bilt, Inc. v. Woodward-  
24 Clyde & Assoc., 38 Cal. 3d 488, 499 (1985). "Other relevant  
25 considerations include the financial conditions and insurance policy  
26 limits of settling defendants, as well as the existence of collusion,  
27 fraud, or tortious conduct aimed to injure the interests of nonsettling  
28 defendants." Id.

          Since EMC filed a Non-Opposition to E&M's motion, and nothing  
in the record indicates that the settlement was not made in "good faith"  
under California Code of Civil Procedure sections 877 and 877.6, E & M  
Electric Machinery, Inc.'s motion for determination of good faith  
settlement is granted. Therefore, any claims for indemnification or  
contribution by Electrical Maintenance Consultants, Inc. against E & M

1 Electric Machinery, Inc. are dismissed and barred by this good faith  
2 settlement determination.

3 Dated: March 1, 2011

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6 GARLAND E. BURRELL, JR.  
United States District Judge

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