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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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BRANDON OLIVERA and STEVEN
ORTMANN,

NO. CIV. 2:10-1747 WBS GGH

Plaintiffs,

ORDER DETERMINING GOOD FAITH
SETTLEMENT

v.

BRIAN VIZZUSI; MARK SIEMENS;
CITY OF LINCOLN; CITY OF
ROCKLIN; LINCOLN POLICE
DEPARTMENT; and ROCKLIN POLICE
DEPARTMENT,

Defendants.

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Plaintiffs Brandon Olivera and Steven Ortmann filed
this action against Brian Vizzusi, City of Lincoln, Lincoln
Police Department (collectively "Lincoln defendants"), Mark
Siemens, City of Rocklin, and Rocklin Police Department
(collectively "Rocklin defendants") arising from the alleged
disclosure of plaintiffs' personnel records. The Lincoln
defendants move for a determination that the \$12,000 settlement

1 reached between plaintiffs and the Lincoln defendants was made in
2 good faith pursuant to California Civil Code section 877.6.
3 (Docket No. 22.) Plaintiffs have not settled with the Rocklin
4 defendants. The Rocklin defendants have filed a statement of
5 non-opposition to the instant motion. (Docket No. 33.)

6 A settling party may seek a determination that a
7 settlement was made in good faith under California Code of Civil
8 Procedure section 877.6 in federal court. Fed. Sav. & Loan Ins.
9 Corp. v. Butler, 904 F.2d 505, 511 (9th Cir. 1990) (holding that
10 while the "section 877.6 procedures do not govern a federal
11 action . . . the substantive provisions . . . are applicable");
12 Jette v. Orange Cnty., Fin., Inc., No. 2:08-cv-01767 GEB KJM,
13 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
15 *1 (E.D. Cal. June 1, 2010) (stating that "federal courts may
16 enter . . . determinations" under section 877.6); Sunterra Corp.
17 v. Perini Bldg. Co., No. 2:04-cv-00784 MCE EFB, 2009 WL 2136108,
18 at *1 (E.D. Cal. July 15, 2009) (stating that "[a] district court
19 may properly consult the provisions of § 877.6 in determining
20 whether an early settlement meets the requisite good faith
21 scrutiny"). Section 877.6 provides:

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

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

(b) The issue of the good faith of a settlement may be
determined by the court on the basis of affidavits served
with the notice of hearing, and any counteraffidavits

1 filed in response, or the court may, in its discretion,
2 receive other evidence at the hearing.

3 (c) A determination by the court that the settlement was
4 made in good faith shall bar any other joint tortfeasor
5 . . . from any further claims against the settling
6 tortfeasor . . . for equitable comparative contribution,
7 or partial or comparative indemnity, based on comparative
8 negligence or comparative fault.

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

11 Cal. Civ. Proc. Code § 877.6.

12 Here, the motion is unopposed by the Rocklin defendants
13 and the court finds that the settlement was made in good faith
14 based on the factors announced in Tech-Bilt, Inc. v.

15 Woodward-Clyde & Associates, 38 Cal.3d 488, 500-01 (1985)

16 (holding that a court should consider, inter alia, the rough
17 approximation of plaintiff's total recovery and the settling
18 party's proportionate liability, the amount of the settlement,
19 and the existence of collusion, fraud or tortious conduct aimed
20 to injure the nonsettling party's interests).

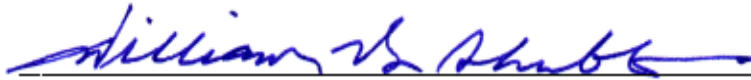
21 The Lincoln defendants' counsel states that when she
22 learned through her negotiations that plaintiffs would accept a
23 global settlement of \$20,000, she contacted the Rocklin
24 defendants' counsel, but the Rocklin defendants were not
25 interested in settling at that time. (Sarno Decl. in Supp. of
26 Mot. for Good Faith Settlement Approval ¶¶ 4-5 (Docket No. 23).)
27 The Lincoln defendants then settled with plaintiffs for \$12,000,
28 to be divided equally between the two plaintiffs, and Vizzusi has
agreed to be available as a witness for the remainder of the
litigation. (Id. ¶¶ 6-8.)

The court has no reason to doubt that the proposed
global settlement of \$20,000 reflects a reasonable estimate of

1 plaintiffs' total recovery for alleged emotional harm and
2 constitutional violations. Nothing suggests that the Lincoln
3 defendants' fault exceeds sixty percent when both the Lincoln
4 defendants and the Rocklin defendants allegedly participated in
5 the disclosure of plaintiffs' personnel records. Moreover, no
6 evidence suggests that the settlement is the result of collusion,
7 fraud, or tortious conduct. To the contrary, the Lincoln
8 defendants' counsel informed the Rocklin defendants' counsel of
9 the proposed global settlement.

10 IT IS THEREFORE ORDERED that the Lincoln defendants'
11 motion for a good faith settlement determination be, and the same
12 hereby is, GRANTED. IT IS FURTHER ORDERED that the settlement
13 bars ANY claims for contribution or indemnity by the Rocklin
14 defendants against the Lincoln defendants.

15 DATED: December 7, 2010

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18 WILLIAM B. SHUBB
19 UNITED STATES DISTRICT JUDGE
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