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2 Attorneys for Plaintiffs

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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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13 SHAWNA BROWN, individually and as
14 successor-in-interest for Decedent LUTHER
15 BROWN; S.S.J., a minor, by and through her
16 guardian ad litem, SHAWNA BROWN; D.P., a
17 minor, by and through her guardian ad litem,
18 RITA ALMENDAREZ; S.S.J., a minor, by and
19 through her guardian ad litem, RITA
20 ALMENDAREZ; D.P., a minor, by and through
21 his guardian ad litem, RITA ALMENDAREZ;
22 S.S.J., a minor, by and through her guardian ad
23 litem, GAYLE JOHNSON; and QUEEN E.
24 BROWN, individually.

25 Plaintiffs,

26 v.

27 CITY OF STOCKTON, a municipal corporation;
28 WESLEY GRINDER, individually; RYAN
TAIRIOL individually; LOREEN GAMBOA,
individually; 'FNU' SCOTT, individually; and
DOES 1-50, inclusive, individually,

Defendants.

Case No. 2-13-CV-01007-KJM-KJN

**PETITION APPOINTING GUARDIAN AD
LITEM AND APPROVING MINOR'S
COMPROMISE FOR MINOR PLAINTIFF
S.S.J. AND ORDER (AMENDED)**

No hearing date set

Hon. Kendall J. Newman
United States Magistrate Judge

1 Petitioner GAYLE JOHNSON respectfully represents:

2 1. Petitioner GAYLE JOHNSON is the natural mother of Minor Plaintiff S.S.J. Minor
3 Plaintiff S.S.J. was born in 2010 and is presently nine years old.

4 2. Minor Plaintiff S.S.J. has a Fourteenth Amendment substantive due process cause of
5 action for interference with familial relationship is a co-successor-in-interest on the Fourth
6 Amendment claim. Due to the CITY's bankruptcy, there are not state law claims. All Plaintiffs have
7 the same Fourteenth Amendment claim, while Plaintiffs SHAWNA BROWN (Decedent's wife) and
8 all Minor Plaintiffs have claims under the Fourth Amendment as co-successors-in-interest to
9 Decedent.

10 3. Plaintiffs' causes of action arise out an incident that occurred on April 6, 2012, in
11 which Decedent LUTHER BROWN died after being shot numerous times by Defendants GRINDER
12 and TAIRIOL.

13 4. The Court previously granted a petition for the minor, but in the intervening time the
14 parties have identified a better-yielding structured settlement plan (attached). Plaintiffs and counsel
15 respectfully request the Court grant the instant amended petition in the best interests of the minor
16 plaintiff.

17 5. Petitioner is willing to serve as the minor's Guardian Ad Litem. Petitioner is fully
18 competent to understand and protect the rights of the minor, and has no interest adverse to that of the
19 minor.

20 6. Petitioner requests that she be appointed Guardian Ad Litem for her daughter, as
21 denoted above, to prosecute the above-described causes of action on behalf of her daughter, as
22 denoted above, and for such other relief as the Court may deem just and proper.

23 7. The parties in this case have reached settlement in this matter. The total settlement of
24 the case is in the amount of \$550,000.00, including all costs and attorneys' fees. The parties have
25 agreed on apportionment of the settlement. Of the total gross settlement amount, Minor Plaintiff
26 S.S.J.'s gross settlement shall be \$71,500.00 (13% of the total settlement).

27 a. Attorney fees for Minor Plaintiff S.S.J. shall be at 25% of her total gross
28 recovery, in the amount of \$17,875.00, pursuant to the contingency fee agreement in this case.

1 b. Proportionate with Minor Plaintiff S.S.J.'s share of the \$550,000.00 recovery,
2 Minor Plaintiff shall bear 13% of the total \$13,280.17 in litigation costs incurred by her
3 counsel in this action: \$1,726.42.

4 c. Minor Plaintiff S.S.J.'s net settlement is in the amount of \$51,898.58.

5 d. Of Minor Plaintiff S.S.J.'s net settlement, \$10,000.00 shall be place in an
6 FDIC insured court-blocked account, with distributions made by Court order, and as follows:
7 on each of Minor Plaintiff S.S.J.'s birthdays until she reaches age 17 (June 2, 2027), Minor
8 Plaintiff shall receive disbursement from the court-blocked account in the amount of \$500.
9 All funds remaining in this FDIC insured court-blocked account, if any, shall be made
10 available to Minor Plaintiff on her 18th birthday in 2028.

11 8. The structured settlement will be executed as follows:

12 9. **Defendant(s)** shall arrange for the purchase of a tax-free structured settlement
13 annuity policy from **United of Omaha Life Insurance Company**, through Horacio Lleverino of
14 Settlement Planners, Inc. in the sum of **\$41,898.58** (includes \$100 assignment fee for each child).

15 10. **Defendant(s)** shall execute a Settlement Agreement and Release and execute a
16 "Qualified Assignment" of its obligation to make periodic payments pursuant thereto in compliance
17 with IRC Section 104(a)(2) and Section 130(c) of the Internal Revenue Code of 1986, as amended.
18 Said assignment shall be made to **Mutual of Omaha Structured Settlement Company**
19 (**"MOSSCO"**) ("Assignee"). Assignee shall purchase a structured settlement annuity for
20 **\$41,898.58** through **United of Omaha Life Insurance Company** which is rated **A+ (Superior)**
21 **Financial Size XV** through A.M. Best. Said annuity shall provide the following guaranteed Periodic
22 Payments:

23 a. The following periodic payments will be made by **United of Omaha Life Insurance**
24 **Company**, payable to S.S.J.

25 b. Guaranteed lump sum payment of \$25,000.00 payable at age 25 (in 2035);

26 c. Guaranteed lump sum payment of \$50,040.61 payable at age 30 (in 2040).

27 11. This petition was prepared by the Law Offices of John L. Burris, the lead counsel
28 representing plaintiff in this action. Benjamin Nisenbaum, Esq. and James Cook, Esq. of the Law
Offices of John L. Burris also represents plaintiff and is in agreement with the terms of this Petition.
John L. Burris, Esq., Benjamin Nisenbaum, Esq., James Cook, Esq. hereby represent to the Court that

1 they became involved in this case at the request of plaintiffs, and have not received, and do not
2 expect to receive any compensation for their services in connection with this action from any person
3 other than the parties whom they represent in this action.

4 12. Petitioner and her counsel have made a careful and diligent inquiry and investigation
5 to ascertain the facts relating to the subject incidents, the responsibility therefore, and the nature and
6 extent of injury to the Minor Plaintiff, and fully understand that if the compromise herein proposed is
7 approved by the Court and is consummated, said Minor Plaintiff will be forever barred and prevented
8 from seeking any further recovery of compensation as against all Defendants in this action, even if
9 said minor's losses and injuries might in the future prove to be more serious than they are now
10 thought to be.

11 13. Petitioner recommends this compromise settlement to the Court as being fair,
12 reasonable, and in the best interests of said Minor Plaintiff.

13
14 I declare under penalty of perjury that the foregoing is true and correct.

15
16 Dated: July 29, 2019

/s/ Benjamin Nisenbaum

Ben Nisenbaum
Attorney for Plaintiffs

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10 **UNITED STATES DISTRICT COURT**
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13 SHAWNA BROWN, individually and as
14 successor-in-interest for Decedent LUTHER
15 BROWN; A.B., a minor, by and through her
16 guardian ad litem, SHAWNA BROWN; D.P., a
17 minor, by and through her guardian ad litem,
18 RITA ALMENDAREZ; A.B., a minor, by and
19 through her guardian ad litem, RITA
20 ALMENDAREZ; D.P., a minor, by and through
21 his guardian ad litem, RITA ALMENDAREZ;
22 S.S.J., a minor, by and through her guardian ad
23 litem, GAYLE JOHNSON; and QUEEN E.
24 BROWN, individually.

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27 CITY OF STOCKTON, a municipal corporation;
28 WESLEY GRINDER, individually; RYAN
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individually; 'FNU' SCOTT, individually; and
DOES 1-50, inclusive, individually,

Defendants.

Case No. 2-13-CV-01007-KJM-KJN

**ORDER APPROVING MINOR S.S.J.'s
AMENDED COMPROMISE**

Hon. Kendall J. Newman
United States Magistrate Judge

1 **ORDER**

2 The Court hereby approves the Amended Petition to Compromise Minor S.S.J., and orders as
3 follows:

4 1. Payment of Fees and Expenses on Behalf of Minor, S.S.J.

5 Attorney’s fees payable to the Law Offices of John L. Burris: \$17,875.00

6 2. Balance

7 From the net recovery \$41,898.58 will be placed in a structured settlement account. (See
8 attached as Exhibit A). The remaining \$10,000.00 shall be place in an FDIC insured court-blocked
9 account, with distributions made by Court order, and as follows: on each of Minor Plaintiff S.S.J.’s
10 birthdays until she reaches age 17 (in 2027), Minor Plaintiff shall receive disbursement from the
11 court-blocked account in the amount of \$500. All funds remaining in this FDIC insured court-blocked
12 account, if any, shall be made available to Minor Plaintiff on her 18th birthday.

13 3. Structured Settlement

14 Payment by **Defendant(s)** in the sum of **\$41,898.58** (includes \$100 assignment fee for each
15 child) to **Mutual of Omaha Structured Settlement Company (“MOSSCO”)** to provide for the tax-
16 free structured settlement set forth below (“Periodic Payments”) and attached as Exhibit A.

17 The sum of **\$41,898.58** is to be used by **Defendant(s)** to arrange for the purchase of a tax-free
18 structured settlement annuity policy from **United of Omaha Life Insurance Company**, through Horacio
19 Lleverino of Settlement Planners, Inc.

20 **Defendant(s)** shall execute a Settlement Agreement and Release and execute a “Qualified
21 Assignment” of its obligation to make periodic payments pursuant thereto in compliance with IRC Section
22 104(a)(2) and Section 130(c) of the Internal Revenue Code of 1986, as amended. Said assignment shall be
23 made to **Mutual of Omaha Structured Settlement Company (“MOSSCO”)** (“Assignee”). Upon doing so,
24 **Defendant(s)** will no longer be obligated to make the future periodic payments and the Assignee will be the
25 Plaintiff’s sole obligor with respect to the future periodic payments, and **Defendant(s)** will have no further
26 obligations whatsoever to the Plaintiff. The Assignee shall purchase a structured settlement annuity for
27
28

1 **\$41,898.58** through **United of Omaha Life Insurance Company** which is rated **A+ (Superior) Financial**
2 **Size XV** through A.M. Best.

3 No part of said **\$41,898.58** may be paid to the **Petitioner**, this Court having determined that a
4 tax-free structured settlement is in the best interest of the minor. **Petitioner** is authorized to settle this
5 claim on behalf of her daughter and receive and negotiate funds on behalf of the minor. No bond
6 shall be required of **Petitioner**. Receipt for purchase of annuity is to be filed with the Court within
7 60 days.

8 Periodic Payments

9 The following periodic payments will be made by **United of Omaha Life Insurance**
10 **Company**, payable to:

11 **S.S.J.**

12 Guaranteed lump sum payment of \$25,000.00 payable at age 25 (in 2035);

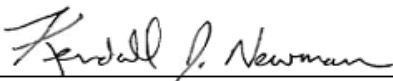
13 Guaranteed lump sum payment of \$50,040.61 payable at age 30 (in 2040).

14 Authorization to Execute Settlement Documents:

15 On receipt of the full amount of the settlement sum here approved, **Petitioner** is authorized and
16 directed to execute and deliver to **Defendant(s)** a complete Settlement Agreement and Release (which shall
17 provide for a “Qualified Assignment” in compliance with Section 130(c) of the Internal Revenue Code of
18 1986, as amended) and discharge of any and all claims of A.B. arising from the facts set forth in the Petition,
19 and a properly executed dismissal with prejudice.

20
21 **IT IS SO ORDERED.**

22 Dated: July 30, 2019

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25 KENDALL J. NEWMAN
26 UNITED STATES MAGISTRATE JUDGE

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