

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

----oo0oo----

HARRY VELEZ; MARIA LOZADA; ANDRE  
O'HARA; Z.J; R.C.; F.M; H.V.J;  
and L.E.,  
  
  Plaintiffs,  
  
  v.  
  
ROBERT BAKKEN; DUSTIN MARIA; and  
the COUNTY OF TEHAMA,  
  
  Defendants.

No. 2:17-cv-960 WBS KJN

MEMORANDUM AND ORDER RE:  
PETITION FOR APPROVAL OF  
MINORS' COMPROMISE AND FOR  
ORDER FOR APPOINTMENT OF  
GUARDIAN AD LITEM

----oo0oo----

Plaintiffs brought this survival action, alleging that defendants Bakken and Maria used excessive force while arresting Velez, causing his death. The court summarized many of the relevant factual allegations in its order denying defendants' motion to dismiss. (See Mem. and Order Re: Mot. to Dismiss at 1-4 (Docket No. 21).) At a settlement conference held before Magistrate Judge Newman, plaintiffs and defendants reached an agreement as to all remaining claims. (Docket No. 37.)

1 Plaintiffs now move for the appointment of guardians ad litem for  
2 the minor plaintiffs. (Docket No. 42.) Plaintiffs also move for  
3 a determination that the proposed compromise of the disputed  
4 claims of minor plaintiffs was proper under applicable law.<sup>1</sup>

5 (Id.)

6 I. Appointment of Guardians Ad Litem

7 Plaintiffs request that Timothy Zimmerman be appointed  
8 guardian ad litem for minor Z.J., Christy Ulloa be appointed  
9 guardian ad litem for minor R.C., Natasha Finck be appointed  
10 guardian ad litem for minors F.M. and H.V.J., and Kristin  
11 Stillman-Gendron be appointed guardian ad litem for minor L.E.  
12 No objections to these appointments have been raised.

13 Furthermore, plaintiffs' motion demonstrates that:

14 1. Petitioners are minor children ranging from 3 to  
15 17 years old.

16 2. No general guardian has been appointed for any of  
17 the minor plaintiffs and no previous petition for guardian ad  
18 litem has been filed in this matter.

19 3. Each guardian is a competent and reasonable  
20 person, qualified to become the guardian ad litem of said minors,  
21 and consents to act in such a capacity. Each guardian ad litem  
22 is either the biological parent or the legal guardian of their  
23 respective minor(s).

24 Accordingly, the court will grant plaintiffs' motion to  
25

---

26 <sup>1</sup> Since the parties request that the court drop the  
27 motion from the calendar and "immediately rule on the  
28 application," the court decides the matter now without oral  
argument or further briefing. (See [Proposed] Order Granting Ex  
Parte Relief (Docket No. 45-1).)

1 appoint guardians ad litem.

2 II. Minors' Compromise

3 Under this court's Local Rules, the court must approve  
4 the settlement of the claims of a minor. E.D. Cal. Local R.  
5 202(b). The party moving for approval of the settlement must  
6 provide the court "such . . . information as may be required to  
7 enable the Court to determine the fairness of the settlement or  
8 compromise." Id. at 202(b)(2); see also Robidoux v. Rosengren,  
9 638 F.3d 1177, 1179 (9th Cir. 2011) (district court has a duty  
10 "to safeguard the interests of minor plaintiffs" that requires it  
11 to "determine whether the net amount distributed to each minor  
12 plaintiff in the proposed settlement is fair and reasonable").

13 In Robidoux, the Ninth Circuit specifically instructed  
14 district courts to "limit the scope of their review to the  
15 question whether the net amount distributed to [a] minor  
16 plaintiff in the settlement is fair and reasonable, in light of  
17 the facts of the case, the minor's specific claim, and recovery  
18 in similar cases." 638 F.3d at 1181. Although the Robidoux  
19 court expressly limited its holding to a minor's federal claims,  
20 638 F.3d at 1179 n.2, district courts have also applied this rule  
21 in the context of a minor's state law claims. See, e.g., Sykes  
22 v. Shea, No. CV 2:16-2851 WBS GGH, 2018 WL 2335774, at \*1 (E.D.  
23 Cal. May 23, 2018); Frery v. County of Marin, Civ. No. 12-3928-  
24 MEJ, 2015 WL 575818, at \*2 (N.D. Cal. Feb. 10, 2015).

25 The settlement will result in a total payment to  
26 plaintiffs of \$150,000. Minor Z.J. will receive \$10,000, minor  
27 R.C. will receive \$10,000, minor F.M. will receive \$20,000, minor  
28 H.V.J. will receive \$5,000, and minor L.E. will receive \$10,000.

1 All money due to the minors would be paid to their respective  
2 guardian ad litem to be held in trust for the minor.<sup>2</sup> Adult  
3 plaintiffs Maria Lozada and Andre O'Hara will receive \$6,390 and  
4 \$20,000, respectively. Plaintiffs' attorneys will receive \$8,610  
5 in costs and \$60,000 in fees.<sup>3</sup>

6 Proceeding to trial would necessitate more expense on  
7 behalf of the parties given the relative complexity of the case,  
8 further investigation and research, and the need to hire various  
9 experts. (See Decl. of J. David Nick in Supp. of Pet. for  
10 Minors' Compromise ¶ 13 (Docket No. 42-1).) The relative  
11 complexity of the case also means that there is no guarantee that  
12 plaintiffs would succeed on the merits of their claims if the  
13 action proceeds further. Separately, plaintiffs' counsel  
14 maintains that expeditious disbursement of the settlement funds  
15 is necessary to cover costs related to some of the minors'  
16 medical needs. (See Decl. of J. David Nick in Supp. of Ex Parte  
17 Relief ¶ 2 (Docket No. 45).) Finally, the parties reached their  
18 agreement during a settlement conference supervised by a  
19 magistrate judge of this court. The parties carefully considered  
20 the opinion of a neutral party in evaluating the strengths and  
21 weaknesses of their positions. Given these circumstances, the  
22 court finds that the proposed settlement is a fair and reasonable  
23 compromise of the minors' claims.

---

24  
25 <sup>2</sup> Under California Probate Code § 3611, the court may  
26 order that the balance of money due to the minor be paid to the  
court appointed guardian of the minor's estate.

27 <sup>3</sup> Pursuant to an agreement between the attorneys,  
28 attorney Steve Whitworth would receive \$44,610 and attorney J.  
David Nick would receive \$24,000.

1           Ordinarily, it "has been the practice in the Eastern  
2 District of California to consider 25% of the recovery as the  
3 benchmark for attorney's fees in contingency cases involving  
4 minors." See Chance v. Prudential Ins. Co. of Am., No. 1:15-cv-  
5 1889 DAD JLT, 2016 WL 3538345, at \*3 (E.D. Cal. June 29, 2016)  
6 (compiling cases). Here, plaintiffs' contingency fee with  
7 counsel states that "the attorney is to receive 40% of the net  
8 recovery and the plaintiffs 60%." (See Decl. of Steve Whitworth  
9 in Supp. of Pet. for Minors' Compromise ¶ 12 (Docket No. 42-2).)  
10 Including fees, plaintiffs' counsel would recover a total of 46%  
11 of the settlement. Even though it is higher than the benchmark,  
12 this amount is not excessive because of counsel's experience with  
13 similar cases, the amount of time counsel spent investigating the  
14 claims, and the risk counsel took in pursuing this action on a  
15 contingency basis. Additionally, the Ninth Circuit has  
16 emphasized that the fairness of each minor plaintiff's net  
17 recovery should be evaluated "without regard to the proportion of  
18 the total settlement value designated for . . . plaintiffs'  
19 counsel."<sup>4</sup> See Robidoux 638 F.3d at 1182. As explained above,  
20 each minor plaintiff's recovery is more than adequate.

21       III. Conclusion

22           IT IS THEREFORE ORDERED that plaintiff's Motion to  
23

---

24       <sup>4</sup> It would be error for this court to reduce the  
25 attorney's fees simply because the court believed 46% of the  
26 total settlement was excessive. In Robidoux, the Ninth Circuit  
27 reversed Judge Karlton for rejecting a settlement on the basis  
28 that the provision of the total settlement value for attorneys'  
fees was excessive. Under relevant law, the fairness  
determination is an independent, not comparative inquiry.  
Therefore, courts cannot focus on the large proportion of  
attorneys' fees alone.

1 Appoint Timothy Zimmerman as guardian ad litem for plaintiff  
2 Z.J., Christy Ulloa as guardian ad litem for plaintiff R.C.,  
3 Natasha Finck as guardian ad litem for plaintiffs F.M. and  
4 H.V.J., and Kristin Stillman-Gendron as guardian ad litem for  
5 plaintiff L.E. (Docket No. 42) be, and the same hereby is  
6 GRANTED.

7 IT IS FURTHER ORDERED that plaintiff's Motion to  
8 Approve Minors' Compromise (Docket No. 42) be, and the same  
9 hereby is, GRANTED.

10 IT IS FURTHER ORDERED that:

11 (1) The gross amount or value of the settlement or  
12 judgment in favor of plaintiff Z.J. is \$10,000. Defendants shall  
13 pay this sum to Z.J.'s guardian ad litem Timothy Zimmerman to be  
14 held in trust for the minor.

15 (2) The gross amount or value of the settlement or  
16 judgment in favor of plaintiff R.C. is \$10,000. Defendants shall  
17 pay this sum to R.C.'s guardian ad litem Christy Ulloa to be held  
18 in trust for the minor.

19 (3) The gross amount or value of the settlement or  
20 judgment in favor of plaintiff F.M. is \$20,000. Defendants shall  
21 pay this sum to F.M.'s guardian ad litem Natasha Finck to be held  
22 in trust for the minor.

23 (4) The gross amount or value of the settlement or  
24 judgment in favor of plaintiff H.V.J. is \$5,000. Defendants  
25 shall pay this sum to H.V.J.'s guardian ad litem Natasha Finck to  
26 be held in trust for the minor.

27 (5) The gross amount or value of the settlement or  
28 judgment in favor of plaintiff L.E. is \$10,000. Defendants shall

1 pay this sum to L.E.'s guardian ad litem Kristin Stillman-Gendron  
2 to be held in trust for the minor.<sup>5</sup>

3 (6) Defendants shall pay attorney Steve Whitworth  
4 \$44,610 for attorney's fees and litigation costs.

5 (7) Defendants shall pay attorney J. David Nick  
6 \$24,000 for attorney's fees and under the fee-splitting agreement  
7 with attorney Steven Whitworth.

8 Dated: January 29, 2019

9 

10 WILLIAM B. SHUBB  
11 UNITED STATES DISTRICT JUDGE  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

27 \_\_\_\_\_  
28 <sup>5</sup> The court does not address the appropriateness of the  
settlement as to the adult plaintiffs.