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 14 M.C.F and K.S.F.

15 UNITED STATES DISTRICT COURT  
 16 EASTERN DISTRICT OF CALIFORNIA  
 17 SACRAMENTO DIVISION

18 L.F., et al.,  
 19 Plaintiffs,  
 20 vs.  
 21 CITY OF STOCKTON, et al.,  
 22 Defendants.

23 Consolidated Case No.: 2:17-cv-01648-KJM-DB  
 24 PETITION TO APPROVE COMPROMISE OF  
 25 MINOR’S M.C.F.’S CLAIMS WITH  
 26 PROPOSED REPLACEMENT SCHEDULE  
 27 AND REVISED ANNUITY RATE; ORDER  
 28 GRANTING PETITION  
 No Hearing Date Set  
 Honorable Kimberly J. Mueller

29 M.C.F., et al.,  
 30 Plaintiffs,  
 31 vs.  
 32 CITY OF STOCKTON, et al.,  
 33 Defendants.

34 Pursuant to the Court's minute order of February 22, 2021, Doc. No. 97, petitioner hereby  
 35 submits the revised petition for the compromise of M.C.F.’s claims:

- 36 1. Petitioner ELIZABETH BAUTISTA is the mother of minor plaintiff M.C.F.

1           2. BAUTISTA was appointed as Guardian ad Litem to minor Plaintiff M.C.F. by this Court  
2 on February 19, 2021 [Docket No. 97.] At the time of said appointment, the Court generally approved  
3 the periodic annuity payments for each minor, but permitted Plaintiffs' counsel to propose a  
4 replacement schedule with a better annuity rate to the benefit of the minor Plaintiffs. **Berkshire**  
5 **Hathaway Life Insurance Company of Nebraska** (A.M. Best Rating A++/XV) was able to  
6 enhance M.C.F.'s last lump sum payment at age 35 from \$94,129.30 to \$165,000. As such, Petitioner  
7 outlines the proposed replacement schedule below.

8           3. Minor M.C.F. was born on December of 2013 and is presently 7 years old.

9           4. Minor M.C.F. has a cause of action for the wrongful death of his father, Decedent Colby  
10 Friday, negligence, in addition to causes of action for violations of the Fourth and Fourteenth  
11 Amendments of the U.S. Constitution, and California Civil Code § 52.1, against the named  
12 defendants herein on which a lawsuit was brought in this court. Co-Plaintiffs K.S.F., L.F., and K.F.  
13 also share in Minor M.C.F.'s wrongful death, negligence, violations Fourth and Fourteenth  
14 Amendments of the U.S. Constitution, and California Civil Code § 52.1 causes of action. All  
15 Plaintiffs share in the Fourteenth Amendment cause of action for the loss of familial relationship.

16           5. Plaintiffs' causes of action arise out of the incident that occurred on August 16, 2016 in  
17 which Decedent Colby Friday died after being shot by Defendant DAVID WELLS.

18           6. The parties in this case have reached settlement in this matter with the approval of the City  
19 of Stockton Board of Supervisors. The total settlement of the case is in the amount of \$3,250,000.00,  
20 including all costs and attorneys' fees. The parties have agreed on apportionment of the settlement.  
21 Of the total gross settlement amount, Minor Plaintiff M.C.F.'s gross settlement shall be \$812,500.00  
22 (25% of the total settlement).

23           a. Attorney fees for Minor Plaintiff M.C.F. shall be at 25% each of her total gross  
24 recovery, in the amount of \$203,125.00, pursuant to the contingency fee agreement in this case.

25           b. Proportionate with Minor Plaintiff M.C.F.'s share of the \$3,250,000.00 recovery,  
26 Minor Plaintiff shall bear 50% of the total \$16,482.75 in litigation costs incurred by her counsel in  
27 this action: \$8,246.37  
28

1 c. Proportionate with Minor Plaintiff M.C.F.'s share of the \$3,250,000.00 recovery,  
2 Minor Plaintiff shall bear 50% of the total \$16,482.75 in litigation costs incurred by his counsel in  
3 this action: \$8,246.37

4 d. Minor Plaintiff M.C.F.'s net settlement is in the amount of \$601,128.63

5 e. Of the \$601,128.63 net settlement, \$25,000.00, shall be placed in an FDIC insured  
6 court-blocked account. No withdrawals of principal or interest shall be made from the blocked  
7 account without a written order under this case name and number, signed by a judge, and bearing the  
8 seal of this court, until the Minor attains the age of 18 years. When the Minor attains the age of 18  
9 years, the depository, without further order of this Court, is authorized and directed to pay by check  
10 or draft directly to the former minor, upon proper demand, all moneys including interest deposited  
11 under this order. The money on deposit is not subject to escheat.

12 f. Defendant(s) shall arrange for the purchase of a tax-free structured settlement  
13 annuity policy from **Berkshire Hathaway Life Insurance Company of Nebraska**, through Horacio  
14 Lleverino of Settlement Planners, Inc. in the sum of \$ 576,128.63

15 g. **Defendant(s)** shall execute a Settlement Agreement and Release and execute a  
16 "Qualified Assignment" of its obligation to make periodic payments pursuant thereto  
17 in compliance with IRC Section 104(a)(2) and Section 130(c) of the Internal Revenue  
18 Code of 1986, as amended. Said assignment shall be made to **BHG Structured**  
19 **Settlements, Inc.** ("Assignee"). Assignee shall purchase a structured settlement  
20 annuity for **\$576,128.63** through **Berkshire Hathaway Life Insurance Company of**  
21 **Nebraska** which is rated **A++ (Superior) Financial Size XV** through A.M. Best. Said  
22 annuity shall provide the following guaranteed Periodic Payments (as attached in  
23 **Exhibit A)**:

24  
25 Payee: **M.C.F.**

- 26  
27 a) \$50,000.00 payable annually, guaranteed for 4 years, beginning on 8/1/2032, with the last  
28 guaranteed payment on 8/1/2035

1  
2 b) \$2,500.00 payable monthly, guaranteed for 12 years beginning on 8/1/2032 with the last  
3 guaranteed payment on 7/1/2044

4 c) Guaranteed Lump Sum Payment of \$40,000 on 12/10/2035 (Age 22)

5 d) Guaranteed Lump Sum Payment of \$60,000 on 12/10/2038 (Age 25)

6 e) Guaranteed Lump Sum Payment of \$80,000 on 12/10/2043 (Age 30)

f) Guaranteed Lump Sum Payment of \$165,000 on 12/10/2048 (Age 35)

7 7. This petition was prepared by the Law Offices of John L. Burris, the lead counsel  
8 representing plaintiffs in this action. Ben Nisenbaum and Kenneth Chike Odiwe of the Law Offices  
9 of John L. Burris also represents plaintiffs and is in agreement with the terms of this Petition. John L.  
10 Burris, Esq., Ben Nisenbaum, Esq., and Kenneth Chike Odiwe hereby represent to the Court that they  
11 became involved in this case at the request of plaintiffs, and have not received, and do not expect to  
12 receive any compensation for their services in connection with this action from any person other than  
13 the parties whom they represent in this action.

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

21 9. Petitioner recommends this compromise settlement to the Court as being fair, reasonable,  
22 and in the best interests of said minor plaintiff.

23 10. I declare under penalty of perjury that the foregoing is true and correct.

24 **Law Offices of John L. Burris**

25  
26 Dated: February 23, 2021

/s/ Kenneth Chike Odiwe

27 John L. Burris  
28 Ben Nisenbaum  
Kenneth Chike Odiwe  
Attorneys for Plaintiffs

M.C.F. and K.S.F.

Dated: February 23, 2021

By: \*/s/ Elizabeth Bautista

Petitioner/ Proposed Guardian ad Litem

\*The Law Office of John L. Burris has on file all holographic signatures corresponding to any signatures indicated by a conformed signature within this e-filed document.

**ORDER**

The Court hereby approves the minor's compromise according to the terms set forth below to approve the minor's compromise:

Of the \$601,128.63 net settlement, \$25,000.00, shall be placed in an FDIC insured court-blocked account. No withdrawals of principal or interest shall be made from the blocked account without a written order under this case name and number, signed by a judge, and bearing the seal of this court, until the Minor attains the age of 18 years. When the Minor attains the age of 18 years, the depository, without further order of this Court, is authorized and directed to pay by check or draft directly to the former minor, upon proper demand, all moneys including interest deposited under this order. The money on deposit is not subject to escheat.

Payment by **Defendant(s)** in the sum of \$ **576,128.63** to **BHG Structured Settlements, Inc.** to provide for the tax-free structured settlement set forth below ("Periodic Payments"):

Payee: **M.C.F.**

- a) \$50,000.00 payable annually, guaranteed for 4 years, beginning on 8/1/2032, with the last guaranteed payment on 8/1/2035.
- b) \$2,500.00 payable monthly, guaranteed for 12 years beginning on 8/1/2032 with the last guaranteed payment on 7/1/2044.
- c) Guaranteed Lump Sum Payment of \$40,000 on 12/10/2035 (Age 22).

1 d) Guaranteed Lump Sum Payment of \$60,000 on 12/10/2038 (Age 25).

2  
3 e) Guaranteed Lump Sum Payment of \$80,000 on 12/10/2043 (Age 30).

4 f) Guaranteed Lump Sum Payment of \$165,000 on 12/10/2048 (Age 35).

5  
6 The sum of \$ **576,128.63** is to be used by **Defendant(s)** to arrange for the purchase of a tax-  
7 free structured settlement annuity policy from **Berkshire Hathaway Life Insurance Company of**  
8 **Nebraska**, through Horacio Lleverino of Settlement Planners, Inc.

9 **Defendant(s)** s execute a Settlement Agreement and Release and execute a “Qualified  
10 Assignment” of its obligation to make periodic payments pursuant thereto in compliance with IRC  
11 Section 104(a)(2) and Section 130(c) of the Internal Revenue Code of 1986, as amended. Said  
12 assignment shall be made to **BHG Structured Settlements, Inc.** (“Assignee”). Upon doing so,  
13 **Defendant(s)** will no longer be obligated to make the future periodic payments and the Assignee will  
14 be the Plaintiff’s sole obligor with respect to the future periodic payments, and **Defendant(s)** will  
15 have no further obligations whatsoever to the Plaintiff. The Assignee shall purchase a structured  
16 settlement annuity for **\$576,128.63** through **Berkshire Hathaway Life Insurance Company of**  
17 **Nebraska** which is rated **A++ (Superior) Financial Size XV** through A.M. Best.

18 No part of said **\$576,128.63** may be paid to the **Petitioner**, this Court having determined that  
19 a tax-free structured settlement is in the best interest of the minor. **Petitioner** is authorized to settle  
20 this claim on behalf of M.C.F. and receive and negotiate funds on behalf of the minor. No bond shall  
21 be required of **Petitioner**. Receipt for purchase of annuity is to be filed with the Court within 60  
22 days.

23 Exhibit A, ECF No. 101, is provisionally sealed pending further order of the court. This order  
24 resolves ECF No. 93 and ECF No. 98.

25 **IT IS SO ORDERED.**

26 Dated: March 1, 2021

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28   
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CHIEF UNITED STATES DISTRICT JUDGE