

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  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

CRUZ HERNANDEZ, a Minor, by and  
through his Guardian ad Litem, ALICIA  
TELLES-HERNANDEZ,

Plaintiff,

v.

SUTTER MEDICAL CENTER OF  
SANTA ROSA, *et al.*,

Defendants.

---

No. C 06-03350 SBA

**ORDER**

[Docket No. 173]

**INTRODUCTION**

Before the Court is a Second Motion for Good Faith Settlement on Behalf of Defendant Natasha Kahl, M.D. (the “Motion”) [Docket No. 173] filed by defendant Natasha Kahl, M.D., a Declaration of Stanton T. Mathews in Support of the Motion (“Plaintiff’s Declaration”) [Docket No. 175] filed by plaintiff Cruz Hernandez, by and through his Guardian ad Litem, Alicia Telles-Hernandez (“Plaintiff”), and a Statement of No Opposition [Docket No. 178] filed by defendant United States. The Court finds this matter appropriate for resolution without a hearing under Federal Rule of Civil Procedure 78(b), and for the reasons discussed below GRANTS the Motion as unopposed.

**BACKGROUND**

Plaintiff sued defendants Sutter Medical Center of Santa Rosa (“SMC”), Kahl, and Don Carlos Steele, M.D. for medical malpractice under California law, under the Federal Tort Claims Act (the “FTCA”). *See* Docket No. 1. Subsequently, the United States substituted in for Steele. *See* Docket No. 36. Plaintiff alleges defendants’ negligence at his delivery legally caused him to become a spastic quadriplegic with severe mental retardation. *See* Docket No. 1.

In May and June of this year, Plaintiff, SMC, and Kahl filed pleadings requesting the Court to approve a settlement agreement whereby SMC and Kahl would each pay \$29,999 (\$59,998 total)

1 to settle this matter.<sup>1</sup> See Docket Nos. 65, 118. Plaintiff also filed a request to approve a minor's  
2 compromise, whereby all but about \$5,800 would be applied to litigation costs. See Docket No. 70.  
3 The United States objected in part to the minor's compromise. See Docket No. 71.

4 In response, the Court advised the parties that because this matter arises in California under  
5 the FTCA, California law determines liability. Docket No. 120 at 2 (citing 28 U.S.C. §§ 1346, 2674;  
6 *Taylor v. U.S.*, 821 F.2d 1428, 1430 (9th Cir. 1987)). As such, under sections 1431 and 1431.2 of  
7 the California Code of Civil Procedure, general liability would apply to any economic damages, but  
8 several liability would apply to any non-economic damages. Docket No. 120 at 2 (citing *In re Air*  
9 *Crash Disaster Near Cerritos, Cal., On Aug. 31, 1986*, 982 F.2d 1271, 1275 n.4 (9th Cir. 1992)).  
10 The Court also advised the parties that under *Slottow v. American Casualty Co. of Reading,*  
11 *Pennsylvania*, 10 F.3d 1355 (9th Cir. 1993), any settlement by less than all the parties must proceed  
12 under section 877.6 of the California Code of Civil Procedure and *Tech-Bilt, Inc. v. Woodward-*  
13 *Clyde & Assocs.*, 38 Cal.3d 488, 499, 213 Cal.Rptr. 256, 698 P.2d 159 (1985). Docket No. 120 at 2.  
14 Finally, the Court advised the parties that the Court must approve any minor's compromise. *Id.*  
15 (citing *Salmeron v. U.S.*, 724 F.2d 1357, 1363 (9th Cir. 1983)). The Court then denied the May and  
16 June motions, as the parties had not performed a *Tech-Bilt* analysis, and because it could not  
17 consider a minor's compromise without a global settlement or disposition on the merits. Docket  
18 No. 120 at 2-3.

19 In July and August 2008, SMC and Kahl again filed motions requesting the Court to approve  
20 a settlement agreement whereby SMC and Kahl would each pay \$29,999 (\$59,998 total) to settle  
21 this matter. See Docket Nos. 65, 118. Plaintiff did not file any pleadings. In their motions, SMC  
22 and Kahl assert under *Tech-Bilt*, that based on their experts' assessments they bear no liability, that  
23 the settlement was reached through a lengthy private mediation, and that it is for a reasonable figure  
24 which avoids the expense of trial. See Docket Nos. 65, 118. They also deny any collusion or bad  
25 faith. See *id.* The government did not oppose settlement. Docket No. 144

26 The Court denied SMC's and Kahl's motions because they failed to address the *Tech-Bilt*

27 \_\_\_\_\_  
28 <sup>1</sup> In California, a medical malpractice settlement exceeding \$30,000 must be reported to the  
California Medical Board. Cal. Bus. & Prof. Code § 801.01(a).

1 factors of plaintiff's damages, plaintiff's potential recovery, defendants' proportional liability, or  
2 defendants' insurance. *See* Docket No. 149 at 4. Nor did plaintiff file any pleading with the Court  
3 regarding its position on the proposed settlement. *See id.*

4 On October 6, 2008, SMC filed a Second Notice of Motion and Motion for Determination of  
5 Good Faith Settlement (the "SMC Motion"). In it, SMC analyzes the *Tech-Bilt* factors it failed to  
6 analyze in its July motion. *See* SMC Mot. at 7-12. A month later, on November 6, 2008, Plaintiff's  
7 counsel declared that he had initially sued SMC as a matter of caution, but that after "exhaustive"  
8 discovery, his and SMC's experts agreed that any injuries due to managing plaintiff's mother's labor  
9 were not due to any act or omission by SMC's agents. Docket No. 161 ¶¶ 7-8, 12-13. As such,  
10 Plaintiff's counsel declared that the best course was to settle with SMC, in order to avoid further  
11 litigation costs. *Id.* ¶ 14. Plaintiff's counsel also provided an analysis by his experts of Plaintiffs'  
12 potential damages. *Id.* ¶¶ 11, 14-15. On November 25, 2008, the government filed a Statement of  
13 No Opposition to SMC's Motion. Docket No. 163. The Court granted the SMC Motion on  
14 December 12, 2008, as unopposed, approving a \$29,999 settlement. *See* Docket no. 152.

15 On December 3, 2008, Kahl filed the Second Motion for Good Faith Settlement on Behalf of  
16 Defendant Natasha Kahl, M.D. (the "Motion") before the Court. In it, Kahl analyzes the *Tech-Bilt*  
17 factors she failed to analyze in her August motion. *See* Mot. at 10-15. On December 18, 2008,  
18 plaintiff's counsel filed the Plaintiff's Declaration before the Court, making the same declarations  
19 regarding Kahl as he had previously made regarding SMC, in connection with SMC's motion. *See*  
20 Pl.'s Decl. & Docket Nos. 161, ¶¶ 7-8, 11-13. As he did with the SMC Motion, Plaintiff's counsel  
21 has again provided an analysis by his experts of Plaintiffs' potential damages. *Id.* ¶¶ 11, 14-15. On  
22 January 27, 2009, the government filed a Statement of No Opposition to Kahl's Motion. Docket No.  
23 178.

## 24 LEGAL STANDARD

25 Under section 877.6(a), "[a]ny party to an action wherein it is alleged that two or more  
26 parties are joint tortfeasors shall be entitled to a hearing on the issue of the good faith of a settlement  
27 entered into by the plaintiff or other claimant and one or more alleged tortfeasors . . . ." Civ. Proc.  
28 Code § 877.6(a); *Tech-Bilt*, 38 Cal.3d at 493. "A determination by the court that the settlement was

1 made in good faith shall bar any other joint tortfeasor from any further claims against the settling  
2 tortfeasor for equitable comparative contribution, or partial or comparative indemnity, based on  
3 comparative negligence or comparative fault.” Civ. Proc. Code § 877.6(c); *Tech-Bilt*, 38 Cal.3d  
4 at 493. A party asserting a partial settlement was not made in good faith has the burden of proof on  
5 this issue. Civ. Proc. Code § 877.6(d); *Tech-Bilt*, 38 Cal.3d at 493.

6 In *Tech-Bilt*, the California Supreme Court held that when determining whether a settlement  
7 is made in good faith:

8 the intent and policies underlying section 877.6 require that a number of factors be  
9 taken into account including a rough approximation of plaintiffs’ total recovery and  
10 the settlor’s proportionate liability, the amount paid in settlement, the allocation of  
11 settlement proceeds among plaintiffs, and a recognition that a settlor should pay less  
12 in settlement than he would if he were found liable after a trial. Other relevant  
13 considerations include the financial conditions and insurance policy limits of settling  
14 defendants, as well as the existence of collusion, fraud, or tortious conduct aimed to  
15 injure the interests of nonsettling defendants.

16 *Tech-Bilt*, 38 Cal.3d at 499.

17 “A party asserting a lack of good faith . . . [must] demonstrate, if he [or she] can, that the settlement  
18 is so far ‘out of the ballpark’ in relation to these factors as to be inconsistent with the equitable  
19 objectives of the statute.” *Id.* at 499-500. Where, however, all the parties have received timely and  
20 sufficient notice, and have not filed any oppositions to a proposed settlement, a court need not  
21 perform a *Tech-Bilt* analysis. *City of Grand Terrace v. Super. Ct.*, 192 Cal.App.3d 1251, 1261, 238  
22 Cal.Rptr. 119 (1987).

### 23 ANALYSIS

24 The Court has reviewed the Motion and its supporting declarations. The Court has also  
25 reviewed Plaintiff’s Declaration and its supporting exhibits. All parties, due to Kahl’s and  
26 Plaintiff’s timely briefing, have now had an adequate opportunity to perform a complete analysis of  
27 all the *Tech-Bilt* factors on their own. The government has expressly not objected. Under *City of*  
28 *Grand Terrace*, the Court need not perform an independent *Tech-Bilt* analysis, and thus GRANTS

1 Kahl's Motion as unopposed.<sup>2</sup>

2 **CONCLUSION**

3 The Court GRANTS Kahl's Second Motion for Good Faith Settlement on Behalf of  
4 Defendant Natasha Kahl, M.D. [Docket No. 173]

5  
6 IT IS SO ORDERED.

7 February 9, 2009

8   
9 Sandra Brown Armstrong  
10 United States District Judge

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

---

27 <sup>2</sup> Granting Kahl's unopposed Motion, however, does not obviate the remaining task for the  
28 Court of ruling on a minor's compromise, which the Court will perform when each party has settled  
or obtained a final disposition on the merits.