

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
SOUTHERN DISTRICT OF CALIFORNIA

T.P., a Minor, by and through)	Civil No. 10cv0295 AJB(RBB)
his Guardian Ad Litem, Gloria)	
Petrina,)	ORDER GRANTING PETITION TO
)	APPROVE MINOR'S SETTLEMENT AND
Plaintiff,)	DISPOSITION OF SETTLEMENT
)	FUNDS [ECF NO. 23]
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
_____)	

On April 13, 2011, the Court appointed Gloria Petrina the guardian ad litem for the Plaintiff, T.P., a minor [ECF No. 18]. At that time, T.P. was fourteen years old. (Order Granting Pet. Guardian Ad Litem, ECF No. 19.) Subsequently, on August 1, 2011, the guardian ad litem filed a Petition to Approve Disposition of Minor's Settlement [ECF No. 23]. On September 8, 2011, the guardian and counsel for Plaintiff filed a consent to magistrate judge jurisdiction. (Notice, Consent, & Reference, Sept. 8, 2011, ECF No. 26.) A second Notice, Consent, & Reference was filed on September 23, 2011, which included the consent of the only Defendant, the United States. (Notice, Consent, & Reference, Sept.

1 23, 2011, ECF No. 30.) The parties "consent[ed] to have a United
2 States magistrate judge conduct all proceedings in this case
3 related to the minor's compromise issues." (Id.) As a result,
4 United States District Judge Anthony J. Battaglia referred the case
5 to this Court "to conduct all proceedings related to the minor's
6 compromise issues in accordance with 28 U.S.C. § 636(c) and Fed. R.
7 Civ. P. 73." (Id.)

8 In the Petition to Approve Disposition of Minor's Settlement,
9 the guardian outlines the nature of the claim, the minor's
10 injuries, the cost of the resulting medical treatment, and the
11 minor's recovery and prognosis. (Pet. Approve Disposition Minor's
12 Settlement 1-2, ECF No. 23.) T.P., the minor, was involved in a
13 bicycle accident. He was riding his bicycle when he was struck by
14 a van being operated by an employee of the United States Federal
15 Bureau of Investigation. (Id. at 2.) "[P]laintiff sustained a
16 closed fracture of both the tibia and fibula of his left leg. He
17 was hospitalized from May 21 to May 23, 2009." (Id.) The
18 fractures were set and casted. (Id.) T.P. was given pain killers
19 and wore a cast for approximately seven weeks. (Id.) He returned
20 to Balboa Naval Hospital for follow-up care on three occasions but
21 continues to experience some weakness. (Id.) The Defendant agreed
22 to pay \$12,500.00, as a "full and final settlement in this matter
23 and the United States further agrees to satisfy the Naval lien in
24 this matter." (Id.) The lien amount totals \$6,789.68. (Id. at
25 3.)

26 The total value of the settlement is \$19,289.68. Counsel for
27 the minor has agreed to accept twenty-five percent of the net cash
28 recovery of \$12,500.00 as his attorney's fees. (Id.) The costs

1 incurred total \$661.24. (Id.) Thus, the net proceeds of the
2 settlement are \$8,713.76. (Id.)

3 The minor was deposed, and the parties subsequently
4 participated in a court-ordered settlement conference. (See Joint
5 Mot. Extend Time 1, ECF No. 20; Mins. May 11, 2011, ECF No. 22.)
6 Since the deposition and the last settlement conference, the
7 parties reached a settlement and now ask the Court to approve the
8 compromise of the minor's claim. Counsel for the minor recommends
9 approval of the settlement and disposition of the proceeds as
10 outlined in the Petition to Approve. (Id.) In counsel's opinion,
11 the settlement is "fair, reasonable, and in the best interests of
12 the claimant" (Id.)

13 Applicable Standards

14 Local Rule 17.1(a) provides that "[n]o action by or on behalf
15 of a minor or incompetent will be settled, compromised, voluntarily
16 discontinued, dismissed or terminated without court order or
17 judgment. All settlements and compromises must be reviewed by a
18 magistrate judge before any order or approval will issue." S.D.
19 Cal. Civ. R. 17.1(a). "[A] court must independently investigate
20 and evaluate any compromise or settlement of a minor's claims to
21 assure itself that the minor's interests are protected, even if the
22 settlement has been recommended and negotiated by the minor's
23 parent or guardian ad litem." Salmeron v. United States, 724 F.2d
24 1357, 1363 (9th Cir. 1983), (internal citation omitted).

25 California Probate Code section 3601 authorizes the court
26 approving a compromise of a minor's disputed claim to "make a
27 further order authorizing and directing that reasonable expenses,
28 medical or otherwise[,] . . . costs, and attorney's fees, as the

1 court shall approve and allow therein, shall be paid from the money
2 or other property to be paid or delivered for the benefit of the
3 minor." Cal. Prob. Code § 3601(a) (West 2009). The order may be
4 directed to the parent, guardian ad litem or to the payer of any
5 money to be paid pursuant to a settlement. Id. § 3601(b).

6 The California Probate Code provides that after the payment of
7 all expenses, fees, and costs as approved by the Court, the
8 remaining balance shall be disbursed in one or more of the
9 following ways:

10 (b) That the remaining balance of any money paid or to be
11 paid be deposited in an insured account in a financial
12 institution in this state, or in a single-premium deferred
13 annuity, subject to withdrawal only upon the authorization of
14 the court

15

16 (d) If the remaining balance of the money to be paid or
17 delivered does not exceed twenty thousand dollars (\$20,000),
18 that all or any part of the money be held on any other
19 conditions the court in its discretion determines to be in the
20 best interest of the minor

21 (e) If the remaining balance of the money and other
22 property to be paid or delivered does not exceed five thousand
23 dollars (\$5,000) in value and is to be paid or delivered for
24 the benefit of a minor, that all or any part of the money and
25 the other property be paid or delivered to a parent of the
26 minor, without bond, upon the terms and the conditions
27 specified in Article 1 (commencing with Section 3400) of
28 Chapter 2.

Cal. Probate Code § 3611(b),(d),(e) (West 2009).

23 Findings

24 1. The Court finds that, in light of the claims against
25 the United States, its affirmative defenses, and the medical
26 expenses incurred by the minor, the proposed settlement with the
27 United States is fair and reasonable. (See also Compl. 1-3, ECF
28 No. 1; Answer 1-4, ECF No. 11.)

