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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JANET FAVREAU, *et al.*,  
Plaintiffs,  
v.  
CITY OF ESCONDIDO, *et al.*,  
Defendants.

Civil No. 10-CV-2348-GPC (WVG)  
ORDER GRANTING PETITION TO  
APPROVE MINOR’S  
COMPROMISE  
[DOC. NO. 75]

Pending before this Court is Petitioner Janet Favreau’s Petition to Approve Minor’s Compromise. (Doc. No. 75.) For the reasons set forth below, Petitioner’s Petition is hereby GRANTED, with Option 1 of the payment plan, as recommended by both Plaintiff’s counsel and Defense counsel, APPROVED, with the amendments described below.

**I. BACKGROUND**

On November 15, 2010, this case was filed by Petitioner Janet Favreau, the mother of Decedent Jennifer Favreau, and Minor Plaintiff, D.F., daughter of Decedent. Minor D.F. has been represented in this action by Petitioner, her grandmother and Guardian Ad Litem. (Doc. No. 1 at. 2.) On January 18, 2013, Petitioner filed a Notice of Tentative Settlement, which was contingent upon approval by the City Council of Defendant City of Escondido, and approval by this Court of a minor’s compromise on behalf of Minor D.F. (Doc. No. 72.)

1 In the instant Petition, Petitioner notes that she remains willing to serve as Minor  
2 D.F.'s Guardian Ad Litem, is fully competent to understand and protect the rights of the  
3 minor, and has no interest adverse to that of the minor, including any financial interest in the  
4 case, as her claims were summarily dismissed. (Doc. No. 75 at 3.) Petitioner explains that  
5 she "prays for assistance in the best interest of the minor for financial support so that D.F.  
6 can have some semblance of a normal childhood." Id. Further, Petitioner requests to collect  
7 \$500 per month from the settlement funds for costs of food, clothing, cell phone, school  
8 supplies, and social activities for D.F., to be paid to an unblocked account out of an annuity  
9 fund every month. Id.

10 On March 5, 2013, Petitioner filed the instant Petition to Approve Minor's  
11 Compromise, which sets forth three payment plan options for the Court to review and  
12 consider. (Doc. No. 75.) The proposed annuity terms, payment plans, and instructions are  
13 attached to the instant Petition as Options 1, 2, and 3. (Id.; Exh. 2.) On April 5, 2013, the  
14 Court held a Hearing on the instant Petition. Mr. Raymond Ryan appeared on behalf of  
15 Minor D.F., and Mr. Manuel Valdez participated as a representative of Ringler and  
16 Associates, a company that will assist with facilitating the structured settlement. Petitioner  
17 and Minor D.F. were also present in the undersigned's courtroom. Mr. Michael McGuinness  
18 appeared on behalf of all Defendants.

19 On April 9, 2013, the Court requested additional information from the San Diego  
20 Injury Law Center and the Law Offices of John L. Burris, the two law firms representing  
21 Minor D.F. in this litigation. (Doc. No. 78.) In compliance with the Court's Order, both  
22 firms provided the requested information. On April 16, 2013, the Court requested additional  
23 information from the Law Offices of John L. Burris. (Doc. No. 81.) The Court received the  
24 requested information on April 17, 2013.

## 25 **II. APPLICABLE LAW**

26 This Court's Local Rule 17.1 addresses settlements for minors and provides in  
27 pertinent part,

28 (a) Order or Judgment Required. No action by or on behalf of a minor or  
incompetent will be settled, compromised, voluntarily discontinued, dismissed

1 or terminated without court order or judgment. All settlements and compro-  
2 mises must be reviewed by a magistrate judge before any order of approval will  
3 issue. The parties may, with district judge approval, consent to magistrate  
4 judge jurisdiction under 28 U.S.C. § 636(c) for entry of an order approving the  
5 entire settlement or compromise.<sup>1/</sup>

4 CivLR 17.1(a)

5 A settlement for a minor, and attorney's fees to represent a minor, must be approved  
6 by the court. Cal. Prob. Code § 3601. In addition, reasonable expenses and court costs to  
7 be paid out of the settlement must also be approved by the court. Id. To determine whether  
8 a request for attorney's fees is reasonable, the court may consider, among other factors, the  
9 time and labor required, whether the minor's representative consented to the fee, the amount  
10 of money involved and the results obtained, and whether the fee is fixed, hourly, or  
11 contingent. Prescott v. County of Stanislaus, 2012 WL 2317542 (E.D. Cal. Jun. 18, 2012.)

12 The three payment options proposed in the Petition request monthly payments to be  
13 made to Petitioner from the settlement for the benefit of Minor D.F. California Code of Civil  
14 Procedure Section 372, subdivision (a) reads, in part,

15 Any money or other property to be paid or delivered pursuant to the order or  
16 judgment for the benefit of a minor...shall be paid and delivered as provided  
17 in Chapter 4 (commencing with Section 3600) of Part 8 of Division 4 of the  
18 Probate Code.

17 Cal. Civ. Code § 372.

18 California Probate Code Section 3601, subdivision (a) reads,

19 The court making the order or giving the judgment...as a part thereof, shall  
20 make a further order authorizing and directing that reasonable expenses,  
21 medical or otherwise and including reimbursement to a parent, guardian, or  
22 conservator, costs, and attorney's fees, as the court shall approve and allow  
23 therein, shall be paid from the money or other property to be paid or delivered  
24 for the benefit of the minor or person with a disability.

23 Cal. Prob. Code § 3601(a).

24 Further, California Probate Code Section 3601, subdivision (b)(1), states that the court  
25 order required by Section 3601, subdivision (a) above may be directed to, "[a] parent of the  
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27 <sup>1/</sup> On April 11, 2013, the Court Clerk's Office filed a Consent to Exercise of Settlement Jurisdiction  
28 by a United States Magistrate Judge, signed by all counsel and the Honorable Gonzalo P. Curiel, United  
States District Judge. (Doc. No. 80.) The parties have consented to this Court's jurisdiction over the  
settlement for a period of three months. Id.

1 minor, the guardian ad litem, or the guardian of the estate of the minor or the conservator of  
2 the estate of the person with a disability.” Cal. Prob. Code § 3601(b)(1).

3 **III. RULING**

4 The Court has reviewed Petitioner’s Petition to Approve Minor’s Compromise,  
5 invoices, time sheets, and retainer agreements from the Law Offices of John L. Burris and  
6 the San Diego Injury Law Center, considered the sworn testimony of Petitioner, and listened  
7 to arguments by counsel for both parties at the Hearing. The Court hereby issues the  
8 following orders:

9 **A. GUARDIAN AD LITEM**

10 The Court finds that it is in the best interest of Minor D.F. to approve Petitioner Janet  
11 Favreau, her grandmother, to remain as her Guardian Ad Litem for purposes of enforcement  
12 of the settlement in this action. On April 5, 2013, Petitioner testified in open court at the  
13 Minor’s Compromise Hearing as to her daily care of D.F., and her future intentions, and the  
14 Court is satisfied that Petitioner will continue to be Minor D.F.’s full-time guardian and  
15 caretaker, and to remain focused on the best interests of her granddaughter.

16 **B. SETTLEMENT**

17 The Court finds the settlement in this case to be fair and in the best interest of Minor  
18 D.F. Therefore, the settlement is hereby approved.

19 **C. ATTORNEY’S FEES, ADVANCES, AND COSTS**

20 **1. ATTORNEY’S FEES**

21 After a thorough review of the accounting, the Retainer Agreement, and the Division  
22 of Fees Agreement provided by the San Diego Injury Law Center and the Law Offices of  
23 John L. Burris, the Court finds the attorney’s fees to be reasonable and appropriate. This  
24 case involved the tragic shooting death of Petitioner’s daughter (Minor D.F.’s mother). The  
25 legal issues were complex and involved. Given the background of Decedent’s participation  
26 with the Defendant police officers, as well as her history and characteristics, Petitioner’s  
27 attorneys were confronted with difficult legal and factual issues over the course of this 28-  
28 month litigation.

1 The 25% contingency fee is fair and reasonable under the circumstances and in  
2 keeping with local custom and practice. The Court hereby approves the payment of the  
3 attorney's fees as set forth in the instant Petition. The Petition requests attorney's fees  
4 totaling \$62,500.00, to be shared 60% to the Law Offices of John L. Burriss, and 40% to the  
5 San Diego Injury Law Center. (Doc. No. 75 at 5.) The Law Offices of John L. Burriss is to  
6 receive \$37,500.00 and the San Diego Injury Law Center is to receive \$25,000.00. Id.

## 7 **2. ADVANCES TO PETITIONER**

8 After a thorough review of the accounting provided by the San Diego Injury Law  
9 Center, the Court finds that the funds advanced to Petitioner by the firm were reasonable,  
10 necessary, and provided for the benefit of Minor D.F. The Court hereby approves the  
11 reimbursement of the advanced funds to the San Diego Injury Law Center, as set forth in the  
12 instant Petition.

## 13 **3. COSTS**

14 The Petition to Approve Minor's Compromise lists the total costs advanced to  
15 Petitioner by the Law Offices of John L. Burriss as \$32,763.45. (Doc. No. 75 at 4.) At the  
16 Petition Hearing on April 5, 2013, the Court requested a breakdown of the costs from the  
17 Law Offices of John L. Burriss. The firm provided a Transaction Detail by Account, which  
18 listed \$32,763.45 as the total costs advanced to Petitioner by their firm. However, in  
19 response to the Court's request for additional information on April 9, 2013, the Law Offices  
20 of John L. Burriss provided a revised Transaction Detail by Account, which listed the total  
21 costs advanced to Petitioner as \$36,835.67. On April 17, 2013, in response to another  
22 request for additional information, the Law Offices of John L. Burriss provided another  
23 revised Transaction Detail by Account, which lists the total costs advanced to Petitioner as  
24 \$40,373.68. Therefore, the Court will use the revised amount of \$40,373.68, as the total  
25 costs advanced to Petitioner by the Law Offices of John L. Burriss.

26 After reviewing all of the attorney time sheets and invoices lodged with the Court in  
27 response to its request, the Court notes that the billings provided appear to be fair,  
28 reasonable, and indicate diligent efforts to prosecute the case on behalf of Petitioner and

1 Minor D.F. However, the Court does find that the Law Offices of John L. Burriss is  
2 attempting to shift legal fees (characterized as costs) to Minor D.F. that were paid to Ms.  
3 Elizabeth Heller Eto, a contract attorney who performed legal research and drafted legal  
4 memoranda, functions clearly expected of Mr. Burriss and falling within the scope of the  
5 Retainer Agreement. The Court finds this cost-shifting to be contrary to the Retainer  
6 Agreement between Petitioner and the San Diego Injury Law Center. (Doc. No. 79 at 10.)  
7 The relevant paragraph reads, in part, “The fees paid to Attorney by Client pursuant to this  
8 Agreement may be shared with associated attorneys, but the total attorneys fees paid by  
9 Client will not increase because of any association of counsel.” Id.

10 The Court has also reviewed the retainer agreement provided by the Law Offices of  
11 John L. Burriss, titled, “Division of Fees Agreement.” This Agreement, signed by counsel  
12 from both law firms, and Petitioner, simply describes the division of attorney’s fees between  
13 the two law firms. Neither the Retainer Agreement provided by the San Diego Injury Law  
14 Center, nor the Division of Fees Agreement provided by the Law Offices of John L. Burriss,  
15 provides for additional attorney’s fees above and beyond the agreed upon 25% contingency  
16 fee noted in the Agreement between Petitioner and the San Diego Injury Law Center.<sup>2/</sup> (Doc.  
17 No. 79 at 4.) According to counsel, the Law Offices of John L. Burriss did not execute a  
18 separate retainer agreement with Petitioner. Consequently, Mr. Burriss is bound by and  
19 subject to the terms of the Retainer Agreement entered into by and between Petitioner and  
20 the San Diego Injury Law Center. (Doc. No. 79 at 3-10.)

21 Based on the Transaction Detail by Account provided to the Court by the Law Offices  
22 of John L. Burriss on April 17, 2013, Ms. Eto was paid a total of \$27,160.00 for work that she  
23 conducted as an attorney on this case. This total is supported either by Ms. Eto’s time sheets,  
24 checks disbursed to her by Mr. Burriss, or the Declaration of Maxine Johnson, Mr. Burriss’  
25 paralegal (submitted on April 17, 2013). The costs advanced to Ms. Eto for her work as  
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27 <sup>2/</sup> The Retainer Agreement binding between Petitioner and the San Diego Injury Law Center  
28 provides, “The attorney fee for any minor client is 25% of the total recovery for all claims while client is  
a minor.” (Doc. No. 79 at 4.)

1 counsel associated with this case shall not be recoverable from the settlement. If the Court  
2 were to approve reimbursement for the charges by Ms. Eto, then the reality is that the law  
3 firms could have contracted with outside counsel for all of the legal work on this case, and  
4 claimed all of those charges as recoverable costs in addition to the 25% contingency fee  
5 deducted from the settlement. Although it appears that Ms. Eto may have worked with the  
6 Law Offices of John L. Burris as an independent contractor in this case, the Court finds that  
7 she is an “associated attorney,” within the definition of and as described in the Retainer  
8 Agreement between Petitioner and the San Diego Injury Law Center. (Doc. No. 79 at 10.)  
9 Again, as noted in the Retainer Agreement, “[t]he fees paid to Attorney by Client pursuant  
10 to this Agreement **may be shared with associated attorneys**, but the total attorneys fees  
11 paid by Client **will not increase** because of any association of counsel.” *Id.* (emphasis  
12 added). Therefore, the Court will deduct Ms. Eto’s fees from the total costs recoverable.

13 **After factoring in the adjustments outlined above, the Court hereby approves**  
14 **reimbursement of costs in the amount of \$13,213.68, to the Law Offices of John L.**  
15 **Burris.** This total is supported either by invoices, checks disbursed by Mr. Burris, or the  
16 Declaration of Maxine Johnson (submitted on April 17, 2013). This amount accounts for the  
17 increased amount of costs reflected on the Transaction Detail by Account lodged with the  
18 Court on April 17, 2013, and the deduction of \$27,160.00 in fees paid to Ms. Eto.

#### 19 **D. OPTION 1 PAYMENT PLAN**

20 The Court hereby GRANTS the Petition according to the terms of the Petition,  
21 amended as follows:

22 Petitioner Janet Favreau, having been previously appointed Guardian Ad Litem by  
23 Judge Powazek from Superior Court in Vista, California on January 8, 2010, shall prosecute  
24 the settlement in this action of minor Plaintiff D.F.

25 The Petition to Approve the Compromise of Minor D.F.’s claim is granted, as  
26 amended, and the Court orders the following:

27 Plaintiff D.F. shall receive \$250,000.00 in full settlement from Defendant City of  
28 Escondido in exchange for an Order of Dismissal of the entire action, and any and all claims,

1 and as to all Defendants. Attorney's fees from this settlement shall be 25% of the total  
2 recovery, or \$62,500. The attorney's fees will be shared between the Law Offices of John  
3 L. Burris, receiving \$37,500, and the San Diego Injury Law Center, receiving \$25,000.

4 The approved costs advanced to Petitioner by the Law Offices of John L. Burris total  
5 \$13,213.68,<sup>3/</sup> and shall be recovered out of the settlement. The costs advanced to Petitioner  
6 by the San Diego Injury Law Center total \$36,266.58, and shall be recovered out of the  
7 settlement. Therefore, the total costs and attorney's fees recoverable by the Law Offices of  
8 John L. Burris is \$50,713.68.<sup>4/</sup> A check shall be drafted to the Law Offices of John L. Burris  
9 in the amount of \$50,713.68, to be paid by Defendant City of Escondido. The costs and  
10 attorney's fees recoverable by the San Diego Injury Law Center total \$61,266.58. A check  
11 shall be made payable to the San Diego Injury Law Center in the amount of \$61,266.58, to  
12 be paid by Defendant City of Escondido.

13 After the approved attorney's fees, costs, and advances have been deducted from the  
14 settlement, Minor D.F. shall receive a settlement of \$138,019.74, from Defendant City of  
15 Escondido, which shall be used to purchase an annuity by and through her Guardian Ad  
16 Litem, Petitioner Janet Favreau, through Ringler and Associates, who will notice Petitioner  
17 to endorse the check. Petitioner shall endorse the check within 24 hours of receiving notice  
18 from Ringler and Associates that the check is ready for endorsement. If possible, Ringler  
19 and Associates shall purchase the annuity by April 18, 2013, to secure the terms of the  
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24 <sup>3/</sup> Although the Petition lists the total costs advanced to Petitioner by the Law Offices of John L.  
25 Burris as \$32,763.45, the revised invoices lodged with the Court reflect a total of \$40,373.68. The Court  
26 will not approve deductions from the settlement for the costs paid to Ms. Eto, which total \$27,160.00.  
Therefore, the Court will approve reimbursement in the amount of \$13,213.68, to the Law Offices of John  
L. Burris.

27 <sup>4/</sup> The total costs and attorney's fees recoverable by the Law Offices of John L. Burris has been  
28 reduced from the total requested in the Petition by \$27,160.00, which accounts for the costs paid to Ms. Eto.  
The Court once again notes that the costs requested by the Law Offices of John L. Burris in the Petition  
were increased in a revised Transaction Detail provided to the Court on April 17, 2013.



1 annuity.<sup>5/</sup> The annuity shall be purchased with Prudential Insurance Company of America,  
2 located at 751 Broad Street, 23rd Floor, Newark, New Jersey 07102, Telephone Number  
3 973-802-6000. The check shall be made to “Prudential Assigned Settlement Services  
4 Corporation,” Tax Identification Number 22-3444614. The check shall be delivered to  
5 Ringler and Associates, Attention Claudia Rios, at 1230 Columbia Street, Suite 970, San  
6 Diego, California 92101, as soon as possible.

7 The Court finds Option 1 of the instant Petition to be in the best interest of Minor D.F.  
8 However, due to the amendments to the Petition amount described by the Court above, Mr.  
9 Manuel Valdez of Ringler and Associates may need to recalculate the annuity figures and  
10 revise the payment plan for Minor D.F.

11 The original investment is \$138,019.74. Prudential will issue \$500 per month to  
12 Petitioner Janet Favreau for the benefit of Minor D.F., starting on May 23, 2013, and  
13 continuing through May 23, 2018. D.F. will receive \$10,000 on June 23, 2018, and \$10,000  
14 each year until June 23, 2021. D.F. will receive a lump sum of \$30,000 at age 25 on June  
15 23, 2015. D.F. will receive a final lump sum of the remaining settlement funds at age 30 on  
16 June 23, 2030. However, due to the increase in the original investment, the Court suggests  
17 that the payment plan be revised to increase the lump sum payments received each year by  
18 Minor D.F., upon turning eighteen years old. Further, the lifetime yield under Option 1 shall  
19 be revised based upon the amended original investment amount. **If the annuity plan is**  
20 **revised, it will be subject to the Court’s review and final approval.**

21 No alterations or payments to this settlement may be made, unless expressly stated in  
22 this Order, without first obtaining an Order of the Court. Bond is hereby waived. A copy  
23 of this Order shall be delivered to payer.

24 Upon receipt of the full amount of the settlement sum approved in this Order, and the  
25 deposit of the funds, Petitioner is hereby authorized and directed to execute and deliver to  
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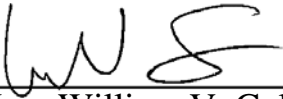
27 <sup>5/</sup> Given the delay in providing the Court with accurate and detailed support for costs incurred and  
28 recognizing that this Order is being issued on the very day that funding is to occur, the Court acknowledges  
and approves a revised funding deadline after April 18, 2013.

1 payer and Defendants, if Petitioner has not yet done so at that time, a full, complete, and final  
2 Release and Discharge of and from any and all claims and demands of Minor D.F., and any  
3 other past or potential plaintiff arising from the incident described in the instant Petition and  
4 the resulting injuries and damages to Minor D.F. or any other plaintiff.

5 Further, the checks to the San Diego Injury Law Center and the Law Offices of John  
6 L. Burris shall be delivered to the respective firms within 30 days of this Order.

7 IT IS SO ORDERED.

8 DATED: April 18, 2013

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12 Hon. William V. Gallo  
13 U.S. Magistrate Judge  
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