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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MINNESOTA LIFE INSURANCE COMPANY,	
Plaintiff,	
v.	
BRIAN MICHAEL PHILPOT, et al.,	
Defendants.	

Case No. 11cv00812 BTM (POR)
**ORDER GRANTING MOTION
FOR DETERMINATION OF
GOOD FAITH SETTLEMENT**

Pending before the Court is a motion for determination of good faith settlement filed by Plaintiff Minnesota Life Insurance Company and Defendant Alex Almeida (ECF No. 121). For the reasons set forth herein, the Court GRANTS the motion for determination of good faith settlement.

I. BACKGROUND

This action arises out of an alleged fraudulent scheme, coordinated among the various defendants (insurance sales agents, their employers, and their funding entities), to elicit large sales commissions from Plaintiff for policies that were deliberately allowed to lapse—resulting in Plaintiff paying more in sales commissions than it earned in policy payments. For a more comprehensive overview of the events giving

1 rise to this lawsuit, see the Court’s September 25, 2012 Order re Motions to Dismiss
2 (ECF No. 101).

3 On February 4, 2013, Plaintiff and Defendant Almeida filed a joint motion for
4 determination of good faith settlement (ECF No. 121), along with the accompanying
5 settlement agreement (filed under seal). The material terms of the settlement agreement
6 provide:¹

- 7 • Mr. Almeida will cause a certain sum of money to be paid to
8 Plaintiff.
- 9 • Each of the parties shall bear their own attorneys’ fees and costs.
- 10 • In return for the payments, Plaintiff will dismiss the case as to Mr.
11 Almeida.

12 On July 22, 2013, the Court ordered the parties to submit evidence as to Mr.
13 Almeida’s individual liability (ECF No. 133). Plaintiff submitted the evidence on July
14 26, 2013 (see ECF Nos. 134 & 135).

15 II. DISCUSSION

16
17 Plaintiff Minnesota Life and Defendant Alex Almeida seeks a determination by
18 the Court that their settlement is in good faith. As discussed below, the Court finds that
19 it is.

20 Under Cal. Civ. Proc. Code § 877.6(a)(1), “[a]ny party to an action wherein it is
21 alleged that two or more parties are joint tortfeasors shall be entitled to a hearing on the
22 issue of the good faith of a settlement entered into by the plaintiff or other claimant and
23 one or more alleged tortfeasors” If the court determines that the settlement was
24 made in good faith, such determination “shall bar any other joint tortfeasor from any
25 further claims against the settling tortfeasor for equitable comparative contribution, or
26 partial or comparative indemnity, based on comparative negligence or comparative
27

28 ¹ The Court excepts from the sealing the terms of the settlement set forth in this
Order.

1 fault.” Cal. Civ. Proc. Code § 877.6(c). A party asserting the lack of good faith bears
2 the burden of proof on that issue. Cal. Civ. Proc. Code § 877.6(d).

3 In Tech-Bilt, Inc. v. Woodward-Clyde & Assoc., 38 Cal. 3d 488, 499 (1985), a
4 case in which the good faith nature of the settlement was disputed, the California
5 Supreme Court set forth a number of factors to be considered by the court in
6 determining whether a settlement is in good faith, including: (1) a rough approximation
7 of plaintiffs’ total recovery and the settlors’ proportionate liability; (2) the amount paid
8 in settlement; (3) the allocation of settlement proceeds among plaintiffs; (4) a
9 recognition that the settlor should pay less in settlement than he would if he were found
10 liable after trial; (5) the financial condition and insurance policy limits of settling
11 defendant; and (6) the existence of collusion, fraud, or tortious conduct aimed to injure
12 the interests of non-settling defendants.

13 The California Court of Appeal has held that it is incumbent upon the court
14 deciding the motion for good faith settlement to consider and weigh the Tech-Bilt
15 factors only when the good faith nature of a settlement is disputed. City of Grand
16 Terrace v. Superior Court, 192 Cal. App. 3d 1251, 1261 (1987). “That is to say, when
17 no one objects, the barebones motion which sets forth the ground of good faith,
18 accompanied by a declaration which sets forth a brief background of the case is
19 sufficient.” Id.; see also Hernandez v. Sutter Medical Center of Santa Rosa, 2009 WL
20 322937 (N.D. Cal. Feb. 9, 2009) (granting motion for good faith settlement without
21 performing Tech-Bilt analysis because there were no objections); Bonds v. Nicoletti
22 Oil, Inc., 2008 WL 4104272 (E.D. Cal. Sept. 3, 2008) (declining to weigh Tech-Bilt
23 factors because there was no opposition to the motion for good faith settlement).

24 Here, no opposition or objections have been filed to the motion. Accordingly,
25 the Court does not deem it necessary to engage in a comprehensive Tech-Bilt analysis.

26 The Court has reviewed the terms of the settlement, as well as the supplemental
27 evidence submitted by Plaintiff regarding Mr. Almeida’s individual liability, and is
28 satisfied that the settlement is in good faith. There is no evidence of collusion or fraud,

1 and the amount to be paid by Mr. Almeida under the settlement agreement is
2 reasonable given Plaintiff's estimation of his individual liability as compared to the
3 cost of further litigation.


4 The Court concludes that the settlement is in good faith and **GRANTS** the
5 motion.

6
7 **III. CONCLUSION**

8 For the reasons discussed above, the settling defendant's motion for
9 determination of good faith settlement is **GRANTED**. The settlements reached
10 between Plaintiff and Defendant Alex Almeida is found to be in good faith within the
11 meaning of Cal. Civ. Proc. Code § 877.6, and any other joint tortfeasor is barred from
12 any further claims against Defendant Almeida for equitable comparative contribution
13 or comparative indemnity based on comparative negligence or comparative fault.

14
15 **IT IS SO ORDERED.**

16 DATED: August 19, 2013

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18 **BARRY TED MOSKOWITZ**, Chief Judge
19 United States District Court
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