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

BANNER LIFE INSURANCE
COMPANY,

Plaintiff,

vs.
BRIAN MICHAEL PHILPOT et al.,

Defendants.

CASE NO. 13-cv-0690-H
(MDD)

**ORDER GRANTING JOINT
MOTION FOR
DETERMINATION OF
GOOD FAITH
SETTLEMENT AS TO
DEFENDANTS WIRA,
LACAPE, AND LYTLE**

[Doc. No. 111]

On May 9, 2014, Plaintiff Banner Life Insurance Company ("Plaintiff") and Defendants Richard Wira, Rene Lacape, and Stacy Lytle filed a joint motion for a determination of good faith settlement pursuant to California Code of Civil Procedure § 877.6. (Doc. No. 111.) No party has filed an opposition to the motion. For the following reasons, the Court grants the parties' motion for a determination of good faith settlement.

1 **I. Background**

2 In this lawsuit, Plaintiff alleges that Defendants participated in a scheme to
3 fraudulently obtain commissions and bonuses by inducing complicit individuals to
4 purchase life insurance policies without paying for the premiums. (Doc. No. 1 at ¶ 2.)
5 According to the complaint, Defendants facilitated the purchase of insurance policies
6 by advancing premium payments or paying complicit individuals secret rebates. (Id.)
7 Plaintiff alleges that Defendants would collect up-front sales commissions, bonuses,
8 and other incentives paid to them by Banner Life, and then let the policies lapse. (Id.)
9 Plaintiff alleges that Defendants Wira, Lacape, and Lytle were insurance agents who
10 participated in the fraudulent course of conduct. (Id. at ¶¶ 7, 14, 18.) The complaint
11 invokes this Court's jurisdiction under 28 U.S.C. § 1332 based on the diversity of the
12 parties' citizenship. (Id. at ¶ 24.)

13 **II. Legal Standard for Determination of Good Faith Settlement**

14 A district court sitting in diversity may determine that a settlement is in good
15 faith pursuant to California Code of Civil Procedure § 877.6. See Mason & Dixon
16 Intermodal, Inc. v. Lapmaster Int'l LLC, 632 F.3d 1056, 1060-64 (9th Cir. 2011).
17 Under section 877.6(a)(1), “[a]ny party to an action wherein it is alleged that two or
18 more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to
19 a hearing on the issue of the good faith of a settlement entered into by the plaintiff or
20 other claimant and one or more alleged tortfeasors or co-obligors” Cal. Civ. Proc.
21 Code § 877.6(a)(1). When a court determines that a settlement was made in good faith
22 pursuant to section 877.6, the settlement “bar[s] any other joint tortfeasor or co-obligor
23 from any further claims against the settling tortfeasor or co-obligor for equitable
24 comparative contribution, or partial or comparative indemnity, based on comparative
25 negligence or comparative fault.” Id. § 877.6(c).

26 “To determine whether a settlement has been made in good faith, California
27 courts consider (1) ‘a rough approximation of plaintiffs’ total recovery and the settlor’s
28 proportionate liability’; (2) ‘the amount paid in settlement’; (3) ‘the allocation of

1 settlement proceeds among plaintiffs’; and (4) ‘a recognition that a settlor should pay
2 less in settlement than he would if he were found liable after a trial.’” Mason & Dixon
3 Intermodal, 632 F.3d at 1064 (quoting Tech-Bilt, Inc. v. Woodward-Clyde &
4 Associates, 38 Cal. 3d 488, 499 (1985)). “Other relevant considerations include the
5 financial conditions and insurance policy limits of settling defendants, as well as the
6 existence of collusion, fraud, or tortious conduct aimed to injure the interests of
7 non-settling defendants.” Tech-Bilt, 38 Cal. 3d at 499. These factors are to be
8 assessed “on the basis of the information available at the time of settlement.” Id. at
9 499. The burden of proving that a settlement between the parties was not made in good
10 faith is on the non-settling tortfeasor. See Cal. Civ. Pro. § 877.6(d).

11 **III. Discussion**

12 The Court has reviewed the terms of the settlement and concludes that the
13 settlement is in good faith. The settlement is the product of mediation and arm's length
14 negotiation. (Doc. No. 111 at 4.) In addition, the terms of the settlement are
15 reasonable in light of the commissions that Plaintiff paid them and the stage of the
16 litigation. (Id. at 7-8; see generally Doc. No. 112.) In addition, there is no evidence
17 of collusion, fraud, or tortious conduct aimed to injure the interests of other involved
18 parties. No party has filed an opposition to the motion. Accordingly, the Court
19 concludes that the settlement agreement is in good faith.

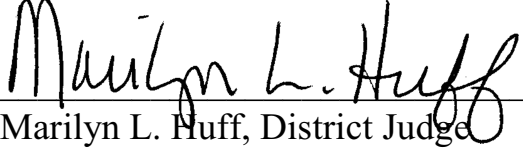
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1 **IV. Conclusion**

2 The Court grants the parties' motion for determination of good faith settlement
3 as to Defendants Rene Lacape and Stacy Lytle pursuant to California Code of Civil
4 Procedure § 877.6. The Court prohibits future tortfeasors from bringing any future
5 claims against Defendants Rene Lacape and Stacy Lytle for indemnity, contribution or
6 declaratory relief.

7 **IT IS SO ORDERED**

8 DATED: May 29, 2014

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11 Marilyn L. Huff, District Judge
12 UNITED STATES DISTRICT COURT
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