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

TRAVELERS COMMERCIAL
INSURANCE COMPANY,

Plaintiff,

v.

GABAI CONSTRUCTION, *ET*
AL.,

Defendants

AND RELATED CROSS-CLAIMS

Case No. 13-cv-01881-BAS(DHB)

**ORDER GRANTING MOTION
FOR CONFIRMATION OF
GOOD FAITH SETTLEMENT**

(ECF No. 58)

Plaintiff Travelers Commercial Insurance Company (“Travelers”) commenced this action on August 13, 2013 against Gabai Construction (“Gabai”) alleging strict products liability, breach of implied warranty of fitness, breach of implied warranty of merchantability, breach of contract, negligence, and breach of express warranty. (ECF No. 1.) On March 10, 2014, Gabai filed a Cross Claim for equitable indemnity, contribution, and equitable apportionment against Roanja Planning, Inc. dba Westside Door & Moulding (“Westside”). (ECF No. 16.) On April 10, 2014, Travelers filed a First Amended Complaint (“FAC”) against Gabai and Fire Protection Group, Inc. (“FPG”). (ECF No. 22.)

1 Westside now moves this Court to approve the settlement it has reached with
2 Travelers as made in good faith pursuant to California Code of Civil Procedure
3 sections 877, *et seq.*, and to dismiss the Cross Claim against Westside. (ECF No.
4 58.) No opposition has been filed.

5 The Court finds this motion suitable for determination on the papers submitted
6 and without oral argument. *See* Civ. L.R. 7.1(d)(1). For the following reasons, the
7 Court **GRANTS** Travelers’ motion for confirmation of good faith settlement and
8 **DISMISSES** the Cross Claim.

9 **I. BACKGROUND**

10 **A. Statement of Facts**

11 Gabai was the developer and/or general contractor of a residential property
12 located in Beverly Hills, California (“Residence”) purchased by Travelers’ insureds.
13 (FAC at ¶¶ 2-4, 18.) Gabai subcontracted with FPG to install a fire sprinkler system
14 in the Residence. (*Id.* at ¶ 5; ECF No. 58-3 at Exh. C.) On or about December 2010,
15 Gabai hired Westside, a window and door supplier, to furnish a replacement skylight
16 panel for the central entry-way skylight of the Residence. (ECF No. 16 at ¶ 7, ECF
17 No. 58-2 at p. 3.) On May 3, 2011, one of the sprinkler heads installed in a skylight
18 well in the central entryway flooded the home and caused damages paid for by
19 Travelers in the approximate amount of \$894,999.06. (ECF No. 58-2 at ¶ 2; FAC at
20 ¶ 3; ECF No. 16 at ¶ 10.)

21 Travelers alleges the flood was caused by: (1) “[f]aulty design, construction,
22 remodel and installation of an entry way sky-light;” and (2) “[f]aulty design,
23 construction and installation of a fire sprinkler system.” (FAC at ¶ 19.) Gabai filed
24 a Cross Claim against Westside alleging that Gabai “hired Westside to furnish a
25 replacement skylight panel for the central entry-way skylight.” (ECF No. 16 at ¶ 7.)
26 According to the Cross-Claim, “[t]he Skylight materials [used by Westside] were
27 different than the prior entry-way skylight panel which it replaced” and thus Westside
28 may be in some way responsible for the resulting flood. (*Id.* at ¶¶ 9, 11.)

1 As of the date of filing of Westside’s motion, three separate theories as to what
2 caused the sprinkler head to trigger had emerged: (1) the wrong sprinkler head was
3 installed; (2) when Westside changed the skylight from domed to flat and from
4 Plexiglas to glass, this increased the temperature in the skylight well and triggered
5 the sprinkler; and (3) the glass bulb which serves as the triggering mechanism for the
6 sprinkler head was damaged. (ECF No. 58-1 at p. 4.) Each of the three theories and
7 their relationship to Westside is discussed below.

8 The first theory, which appears to be supported by some documentary evidence
9 supplied in Westside’s motion is that an “ordinary” sprinkler head with a 155 degree
10 trigger point was installed, when an “intermediate” sprinkler head with a higher
11 minimum trigger point of 175 degrees should have been installed. (*Id.* at pp. 4-5.)
12 Westside provides an Installation Guide from the sprinkler head manufacturer noting
13 that “[w]hen residential sprinklers will be exposed to the rays of the sun passing
14 through glass or plastic skylights, use intermediate temperature rated sprinklers.”
15 (ECF No. 58-3, Exh. D.) According to Westside’s motion, which is unopposed,
16 experts retained by Travelers, Gabai, and Westside are all in agreement that an
17 intermediate sprinkler head should have been installed. (ECF No. 58-1 at p. 4.)
18 FPG’s expert has taken no position on this issue. (*Id.*) Although there is
19 disagreement among the parties as to who installed the sprinkler head, there is no
20 dispute that Westside had no involvement in the supply, installation, or maintenance
21 of any sprinkler heads. (ECF No. 58-1 at p. 3; ECF No. 58-2 at ¶ 8.)

22 The second theory of liability is that the change in skylight type increased the
23 temperature such that the sprinkler head was then triggered. (ECF No. 58-1 at p. 5.)
24 According to Westside’s motion, which is unopposed, while Traveler’s and FPG’s
25 experts issued reports suggesting this theory of liability, Gabai’s expert directly
26 contradicts this theory. (ECF No. 58-3, Exh. E.)

27 The third theory of liability has to do with the fragile nature of the glass bulb
28 which serves as the triggering mechanism for the sprinkler head. (ECF No. 58-1 at

1 p. 5.) According to Westside’s motion, just prior to the flood, Gabai installed a large
2 steel structure to support a chandelier. This installation required demolition of a wall
3 and moving the offending sprinkler head physically to one side and then reinstalling
4 it. (*Id.* at p. 6.) Thus, it is possible the glass bulb was damaged in the move, and the
5 flood ensued. Again, Westside had no involvement in the installation of the steel
6 structure or movement of the sprinkler head. (*Id.*)

7 **B. Procedural History**

8 Travelers commenced this action on August 13, 2013 against Gabai alleging
9 strict products liability, breach of implied warranty of fitness, breach of implied
10 warranty of merchantability, breach of contract, negligence, and breach of express
11 warranty. (ECF No. 1.) Travelers asserted diversity jurisdiction pursuant to 28
12 U.S.C. § 1332. (*Id.* at ¶ 11.) On March 10, 2014, Gabai filed a Cross Claim for
13 equitable indemnity, contribution, and equitable apportionment against Westside.
14 (ECF No. 16.) On April 7, 2014, Westside filed an Answer to the Cross Claim. (ECF
15 No. 19.)

16 On April 10, 2014, Travelers filed the FAC against Gabai and FPG. (ECF No.
17 22.) Again, Travelers asserted diversity jurisdiction. (*Id.* at ¶ 12.) On April 28, 2014
18 and May 5, 2014, Gabai and FPG filed their respective Answers to the FAC. (ECF
19 Nos. 25, 26.) On May 5, 2014, FPG filed a Cross Complaint for equitable indemnity
20 against Gabai. (ECF No. 27.) Gabai filed an Answer to the Cross Complaint on May
21 30, 2014. (ECF No. 31.)

22 On December 29, 2014, FPG filed a motion for summary judgment or, in the
23 alternative, summary adjudication as to Travelers’ FAC. (ECF No. 42.) The Court
24 granted in part and denied in part the motion for summary judgment on October 19,
25 2015. (ECF No. 63.) Presently before the Court is a motion for confirmation of good
26 faith settlement pursuant to California Code of Civil Procedure §§ 877, *et seq.* filed
27 by Westside requesting that this Court confirm its settlement reached with Travelers.

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1 **II. LEGAL STANDARD**

2 “When a district court sits in diversity, or hears state law claims based on
3 supplemental jurisdiction, the court applies state substantive law to the state law
4 claims.” *Mason & Dixon Intermodal, Inc. v. Lapmaster Int’l LLC*, 632 F.3d 1056,
5 1060 (9th Cir. 2011). California Code of Civil Procedure sections 877 and 877.6(c)
6 constitute substantive law. *Id.*; *see also Fed. Sav. & Loan Ins. Corp. v. Butler*, 904
7 F.2d 505, 511, n. 6 (9th Cir. 1990). While the rest of section 877.6 is mostly
8 procedural, “nothing is to prevent the district court from granting a motion for an
9 early determination of the good faith question.” *Fed. Sav. & Loan Ins. Corp.*, 904
10 F.2d at 511.

11 Section 877.6(a)(2) provides that “a settling party may give notice of
12 settlement to all parties and to the court, together with an application for
13 determination of good faith settlement,” setting forth the settling parties, basis, terms,
14 and amount of the settlement, and a proposed order. Cal. Civ. Proc. Code §
15 877.6(a)(2). “Within 25 days of the mailing of the notice, application, and proposed
16 order, or within 20 days of personal service, a nonsettling party may file a notice of
17 motion to contest the good faith of the settlement.” *Id.* “If none of the nonsettling
18 parties files a motion within 25 days of mailing . . . , or within 20 days of personal
19 service, the court may approve the settlement.” *Id.*

20 The court is given broad discretion in deciding whether a settlement is in good
21 faith for purposes of section 877.6. *Cahill v. San Diego Gas & Elec. Co.*, 194 Cal.
22 App. 4th 939, 957 (2011). However, discretion is not unlimited and “should be
23 exercised in view of the equitable goals of the statute, in conformity with the spirit of
24 the law and in a manner that services the interests of justice.” *Long Beach Mem’l*
25 *Med. Ctr. v. Super. Ct.*, 172 Cal. App. 4th 865, 873 (2009). The two major goals of
26 section 877.6 include: (1) the equitable sharing of costs among parties at fault; and
27 (2) the encouragement of settlements. *Id.* at 872; *see also Tech-Bilt, Inc. v.*
28 *Woodward-Clyde & Assocs.*, 38 Cal. 3d 488, 494-97 (1985).

1 The court may determine the issue of the good faith of a settlement “on the
2 basis of affidavits served with the notice of hearing, and any counteraffidavits filed
3 in response, or the court may, in its discretion, receive other evidence at the hearing.”
4 Cal. Civ. Proc. Code § 887.6(b). Nonexclusive factors the court should take into
5 account in determining whether the settlement is made in good faith include: (1) “a
6 rough approximation of plaintiffs’ total recovery and the settlor’s proportionate
7 liability”; (2) “the amount paid in settlement”; (3) “the allocation of settlement
8 proceeds among plaintiffs”; and (4) “a recognition that a settlor should pay less in
9 settlement than he would if he were found liable after a trial.” *Mason & Dixon*
10 *Intermodal, Inc.*, 632 F.3d at 1064 (citing *Tech-Bilt, Inc. v. Woodward-Clyde &*
11 *Assocs.*, 38 Cal.3d 488, 499 (1985)). “Other relevant considerations include the
12 financial conditions and insurance policy limits of settling defendants, as well as the
13 existence of collusion, fraud, or tortious conduct aimed to injure the interests of non-
14 settling defendants.” *Id.* (citing *Tech-Bilt, Inc.*, 38 Cal.3d at 499); *see also Fed. Sav.*
15 *& Loan Ins. Corp. v. Butler*, 904 F.2d 505, 512 (9th Cir. 1990) (“[T]he provisions of
16 section 877 require that any settlement that cuts off the right of contribution by
17 nonsettling defendants must be in good faith.”); *N. Cnty. Contractor’s Ass’n. v.*
18 *Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089-90 (1994) (“Good faith may be
19 found only if there has been no collusion between the settling parties and where the
20 settlement amount appears to be within the ‘reasonable range’ of the settling party’s
21 proportionate share of comparative liability for a plaintiff’s injuries.”).

22 “The party asserting the lack of good faith shall have the burden of proof on
23 that issue.” Cal. Civ. Proc. Code § 887.6(d). That party must show that the settlement
24 is “so far ‘out of the ballpark’” as to be inconsistent with the equitable goals of section
25 877.6. *Tech-Bilt, Inc.*, 38 Cal. 3d at 499–500.

26 “A party which receives court approval of a settlement is entitled to a dismissal
27 of the action.” *Great W. Bank v. Converse Consultants, Inc.*, 58 Cal. App. 4th 609,
28 613 (1997). “A cross-defendant who has not been named as a defendant in the main

1 action may enter into a good faith settlement with the plaintiff in the main action and
2 obtain a dismissal of the cross-complaint pursuant to Code of Civil Procedure section
3 877.6.” *Id.* (citation omitted). “However, such a settlement should be carefully
4 scrutinized to ensure the settlement is reasonable, not collusive or fraudulent, and
5 made in good faith.” *Id.* (citation omitted).

6 **III. DISCUSSION**

7 **A. Subject Matter Jurisdiction**

8 The Court has diversity jurisdiction over the FAC. *See* 28 U.S.C. § 1332(a)(1).
9 The Court has subject matter jurisdiction over the Cross Claim pursuant to 28 U.S.C.
10 § 1367 which “permits a federal court to exercise supplemental jurisdiction over a
11 cross-claim between non-diverse defendants, providing such claim is ancillary to a
12 matter over which the court already has jurisdiction.” *Pilavskaya v. Henderson*, No.
13 CV 11-4075 CAS (Ex), 2012 WL 3279517, at *4 (C.D. Cal. Aug. 9, 2012); *see also*
14 *Glen Falls Indem. Co. v. U.S. ex rel. Westinghouse Elec. Supply Co.*, 229 F.2d 370,
15 373-74 (9th Cir. 1955); *Meritor Sav. Bank v. Camelback Canyon Investors*, 783 F.
16 Supp. 455, 457 (D. Ariz. 1991).

17 **B. Good Faith Settlement**

18 Westside moves this Court to approve its settlement with Travelers of
19 \$7,500.00, which is considerably less than the \$894,999.06 Travelers allegedly paid
20 to its insureds as a result of the flood. Westside states the settlement is “only an
21 attempt to extricate Westside from this lawsuit where none of the evidence even
22 suggests that Westside might have responsibility for the subject flooding incident.”
23 (ECF No. 58-2 at ¶ 17.) Of great weight to the Court is the fact that no party opposes
24 this motion.

25 According to Westside, the only theory of liability that could possibly
26 implicate Westside is that installation of the new skylight caused the temperature to
27 rise and triggered the sprinkler head. However, Westside has shown that the expert
28 retained by Gabai, the cross-plaintiff, explicitly contradicts this theory. Moreover,

1 even under this theory of liability, the fact that whoever installed the sprinkler system
2 installed an “ordinary” sprinkler head with a trigger point of 155 degrees is
3 significant. There is no allegation that, as a skylight installer, Westside was
4 responsible for installing the sprinkler head or assessing whether the newly-installed
5 skylight would be appropriate for the currently installed sprinkler system.

6 In light of these unopposed contentions, the Court agrees that the sum of
7 \$7,500.00 “in exchange for a release from any past, present or future liability to
8 [Travelers] or its insureds arising out of the flood incident that forms the basis for
9 this lawsuit,” with each party to bear its own costs and fees, is a good faith attempt
10 to extricate Westside from the lawsuit, when there is no evidence that Westside is
11 likely to be found liable were a trial to ensue. (*See* ECF No. 58-1 at pp. 2-3.) There
12 is no evidence of fraud or collusion in the settlement agreement between Westside
13 and Travelers. Travelers, as the only plaintiff, will receive the entire settlement, and
14 this Court has been given no information about the financial viability of Westside.
15 After considering all of the *Tech-Bilt* factors, the Court concludes the settlement was
16 reached in good faith under California Code of Civil Procedure section 877.6.

17 As the Court finds the settlement to be in good faith, Westside is entitled to
18 dismissal. *See Great W. Bank*, 58 Cal. App. 4th at 613. “A determination by the
19 court that the settlement was made in good faith shall bar any other joint tortfeasor
20 or co-obligor from any further claims against the settling tortfeasor or co-obligor for
21 equitable comparative contribution, or partial or comparative indemnity, based on
22 comparative negligence or comparative fault.” Cal. Civ. Proc. Code § 877.6(c); *see*
23 *also* Cal. Civ. Proc. Code § 877(b) (“Where a release . . . is given in good faith before
24 verdict or judgment . . . [i]t shall discharge the party to whom it is given from all
25 liability for any contribution to any other parties.”); *Bay Dev., Ltd. v. Super. Ct.*, 50
26 Cal. 3d 1012, 1029-33 (1990) (claims seeking implied contractual indemnity barred
27 by finding of good faith); *Far West Fin. Corp. v. D&S Co., Inc.*, 46 Cal. 3d 796, 817
28 (1998) (all equitable indemnity claims, including total equitable indemnity claims,


1 barred by finding of good faith). In the Cross Claim, Gabai seeks equitable
2 indemnity, contribution, and equitable apportionment. Accordingly, the Cross Claim
3 of Gabai against Westside is hereby **DISMISSED**.

4 **IV. CONCLUSION & ORDER**

5 For the foregoing reasons, Westside's motion for confirmation of good faith
6 settlement (ECF No. 58) is **GRANTED** and the Cross Claim against Westside (ECF
7 No. 16) is **DISMISSED**.

8 **IT IS SO ORDERED.**

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10 **DATED: November 6, 2015**


11 **Hon. Cynthia Bashant**
12 **United States District Judge**

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