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

CAMILA S. RUVALCABA,  
Plaintiff,  
  
v.  
  
OCWEN LOAN SERVICING,  
LLC, *et al.*,  
Defendants

Case No. 15-cv-0744-BAS-DHB

**ORDER GRANTING  
JOINT MOTION FOR  
DETERMINATION OF  
GOOD FAITH SETTLEMENT  
PURSUANT TO CAL. CIV.  
CODE §877.6(a)(2)**

[ECF No. 196]

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AND RELATED CROSS-CLAIMS

Defendants Prospect Mortgage, LLC (“Prospect”), People’s Escrow, Inc. (“People’s”), and Dennise Gurfinkiel (“Gurfinkiel) (collectively “Settling Defendants”) now move this Court to approve the settlement (the “Settlement”) they have reached with Plaintiff Camila S. Ruvalcaba as a settlement made in good faith pursuant to California Code of Civil Procedure Sections 877, *et seq.* (ECF No.196.) They further seek (1) dismissal with prejudice all cross-claims by Ocwen against them and (2) dismissal with prejudice of Plaintiff’s claim against them and their cross-claims against each other, as set forth in the Settlement. (*Id.*) In support of the motion, the Settling Defendants have filed a declaration, which includes a copy of the Settlement Agreement. (ECF Nos. 197 (“Hilbert Decl.”); 197-1, Ex. 1

1 (Settlement Agreement).) No opposition to the Settling Defendants’ motion has been  
2 filed. For the reasons set forth herein, the Court **GRANTS** the motion.

3 **I. BACKGROUND**

4 **A. The Handling of Plaintiff’s Loan and Refinancing<sup>1</sup>**

5 In December 2005, Plaintiff Ruvalcaba purchased a home located at 3815  
6 Hollyhock Lane, National City, CA 91950 (the “Property”), with a mortgage from  
7 American Home Mortgage secured by a deed of trust (the “Mortgage”). (ECF No.  
8 99 ¶35.) The Mortgage was transferred to Ocwen in March 2013 and became the  
9 Ocwen Loan. (*Id.* ¶39.) To lower the amount of her mortgage, Plaintiff sought to  
10 refinance the Mortgage. (*Id.* ¶42.)

11 Around August 2013, after communications with Gurfinkiel, Plaintiff received  
12 a loan from Prospect (“Prospect Loan”) in the amount of \$292,500.00 for her  
13 Mortgage refinancing. People’s handled the refinance escrow and Equity handled  
14 the sub-escrow function. After escrow on the Prospect Loan closed on November  
15 27, 2013, the proceeds from the Prospect Loan were tended to Ocwen as payment on  
16 the Ocwen Loan. Ocwen alleged that the payment was short of a full payoff by about  
17 \$4,000 and refused to apply the Prospect Loan funds to the balance due on the Ocwen  
18 Loan. Plaintiff alleges that the shortfall was caused by the actions of Gurfinkiel, who  
19 was an employee of Prospect at the time. While Ocwen refused to apply the proceeds  
20 from the Prospect Loan, Ocwen held the \$284,377.74 payment in a suspense account  
21 for seven months before returning the funds to Equity. Ocwen also permitted interest  
22 and late fees to continue to accrue on the Ocwen Loan and allegedly made a series of  
23 adverse credit reports to credit agencies about the status of the Ocwen Loan. The  
24 Settling Defendants assert that they had no role in the nature, timing, or content of  
25 the alleged adverse credit reports.

26 In a payoff quote (the “Payoff Quote”) dated May 18, 2017 and valid through  
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28 <sup>1</sup> These facts are taken from the operative pleading, the Third Amended  
Complaint (ECF No. 99) and the Settling Defendants’ motion (ECF No. 196).

1 June 16, 2017, Ocwen claimed that \$366,417.03 was due on the Ocwen Loan, of  
2 which \$285,465.06 was principal. (ECF No. 197-1, Ex. 2.) In July 2017, Equity  
3 once more tendered the Prospect Loan proceeds to Ocwen. On November 7, 2017,  
4 the parties filed a stipulation in which Ocwen agreed to apply the Prospect Loan  
5 proceeds to the principal amount due on the Ocwen Loan. (ECF No. 185.)

### 6 **B. The Settlement**

7 On November 13, 2017, Plaintiff and the Settling Defendants memorialized  
8 the Settlement that is the subject of this motion. (Settlement ¶4.) The Settlement was  
9 reached after multiple meet and conferrals between counsel for the Settling  
10 Defendants and Plaintiff's counsel, and participation in mediation by all parties in  
11 this litigation. (Hilbert Decl. ¶¶5–6.)

12 Pursuant to the Settlement, the Settling Defendants agree to pay Plaintiff a total  
13 of \$80,000 in exchange for Plaintiff's dismissal with prejudice of her claims against  
14 them. (Settlement ¶¶1–2.) The settlement amount is derived in part from the alleged  
15 interest and late fees due on the full amount of the Ocwen Loan as set forth in the  
16 Payoff Quote. (Hilbert Decl. ¶7; *see also* ECF No. 197-1, Ex. 2 at 1.) The combined  
17 amount of interest and late fees in the Payoff Quote was \$65,771.83, with  
18 miscellaneous charges bringing the total non-principal amount due to \$80,951.97.  
19 (ECF No. 197-1, Ex. 2 at 1.) In addition to the settlement amount, Plaintiff agrees to  
20 indemnify Prospect, People's and Gurfinkiel against any claims for any amounts still  
21 due to Ocwen at the conclusion of this action. (*Id.* ¶5.) Prospect and People each  
22 agrees to dismiss with prejudice their respective cross-claims against each other. (*Id.*  
23 ¶¶4–5.) Finally, the Settlement is contingent upon a determination by the Court that  
24 it was made in good faith and, based on such a finding, dismissal with prejudice of  
25 Ocwen's cross-claims against the Settling Defendants. (*Id.* ¶8.) No party to the  
26 Settlement admits to liability. (*Id.* ¶17.)

### 27 **C. Procedural History**

28 Plaintiff Ruvalcaba initially commenced this action on April 6, 2015 against,

1 *inter alia*, Defendant Ocwen Loan Servicing, LLC (“Ocwen”), alleging violations of  
2 federal and state statutory law and negligence in connection with the handling of her  
3 home loan. (ECF No. 1.) In the time after Plaintiff filed the initial complaint, both  
4 People’s and Prospect filed cross-claims against Ocwen for equitable indemnity,  
5 contribution, apportionment of fault, and declaratory relief. (ECF Nos. 35, 45-1.)  
6 Plaintiff subsequently added Defendants Prospect and People’s to the action in her  
7 Second Amended Complaint. (ECF No. 64.)

8 In the Third Amended Complaint (“TAC”), Plaintiff’s operative pleadings,  
9 Plaintiff added Equity Title Company (“Equity”) and Dennise Gurfinkiel  
10 (“Gurfinkiel) as defendants. (ECF No. 99.) The TAC once more asserts causes of  
11 action against Ocwen for violations of the Fair Credit Reporting Act, 15 U.S.C.  
12 §§1681, *et seq.*; the California Consumer Credit Reporting Agencies Act, CAL. CIV.  
13 CODE §1785.1, *et seq.*; and the Rosenthal Fair Debt Collection Practices Act, CAL.  
14 CIV. CODE §§1788, *et seq.* (*Id.*) The TAC alleges a cause of action for negligent  
15 hiring, supervision, and/or retention of employee against Prospect only, and a  
16 negligence claim against all Defendants. (*Id.*)

17 After Plaintiff filed the TAC, Ocwen filed its cross-claim for equitable  
18 indemnity, contribution, and equitable apportionment against Plaintiff and  
19 Defendants Equity, Prospect, People’s and Gurfinkiel. (ECF No. 111.) On July 13,  
20 2017, this Court granted Equity’s motion to dismiss Plaintiff’s claims against it in  
21 the TAC, providing Plaintiff with leave to file a fourth amended complaint. (ECF  
22 No. 156.) On July 26, 2017, Equity and Plaintiff agreed to dismiss all of Plaintiff’s  
23 claims against Equity with prejudice, which this Court approved. (ECF Nos. 161,  
24 162.)

25 The Court now turns to the Settling Defendants’ motion for determination of  
26 good faith settlement pursuant to California Code of Civil Procedure §§ 877, *et seq.*

## 27 **II. LEGAL STANDARD**

28 “When a district court sits in diversity, or hears state law claims based on

1 supplemental jurisdiction, the court applies state substantive law to the state law  
2 claims.” *Mason & Dixon Intermodal, Inc. v. Lapmaster Int’l LLC*, 632 F.3d 1056,  
3 1060 (9th Cir. 2011). California Code of Civil Procedure sections 877 and 877.6(c)  
4 constitute substantive law. *Id.*; see also *Fed. Sav. & Loan Ins. Corp. v. Butler*, 904  
5 F.2d 505, 511 n. 6 (9th Cir. 1990).

6 Section 877.6(a)(2) provides that “a settling party may give notice of  
7 settlement to all parties and to the court, together with an application for  
8 determination of good faith settlement,” setting forth the settling parties, basis, terms,  
9 and amount of the settlement, and a proposed order. CAL. CIV. PROC. CODE  
10 §877.6(a)(2). “Within 25 days of the mailing of the notice, application, and proposed  
11 order, or within 20 days of personal service, a nonsettling party may file a notice of  
12 motion to contest the good faith of the settlement.” *Id.* “If none of the nonsettling  
13 parties files a motion within 25 days of mailing . . . , or within 20 days of personal  
14 service, the court may approve the settlement.” *Id.*

15 The court is given broad discretion in deciding whether a settlement is in good  
16 faith for purposes of section 877.6. *Cahill v. San Diego Gas & Elec. Co.*, 124 Cal.  
17 Rptr. 3d 78, 94 (Cal. Ct. App. 2011). The court’s exercise of discretion to determine  
18 good faith “should be exercised in view of the equitable goals of the statute, in  
19 conformity with the spirit of the law and in a manner that services the interests of  
20 justice.” *Long Beach Mem’l Med. Ctr. v. Super. Ct.*, 91 Cal. Rptr. 3d 494, 500 (Cal.  
21 Ct. App. 2009). To determine whether a settlement was entered into in good faith,  
22 courts consider the *Tech-Bilt* factors, which include: (1) a rough approximation of  
23 plaintiffs’ total recovery and the settlor’s proportionate liability; (2) the amount paid  
24 in settlement; (3) a recognition that a settlor should pay less in settlement than he  
25 would if he were found liable after a trial; (4) the allocation of settlement proceeds  
26 among plaintiffs; (5) the settling party’s financial condition and the availability of  
27 insurance; and (6) evidence of any collusion, fraud or tortious fraud between the seller  
28 and the plaintiff aimed at requiring the non-settling parties to pay more than their fair

1 share. *Tech-Bilt, Inc. v. Woodward-Clyde & Assocs.*, 698 P.2d 159, 166–67 (Cal.  
2 1985)); *see also Fed. Sav. & Loan Ins. Corp. v. Butler*, 904 F.2d 505, 512 (9th Cir.  
3 1990). The evaluation must be made based on the information available at the time  
4 of the settlement. *Tech-Bilt*, 698 P.2d at 167. Once a settlor shows good faith, the  
5 burden of proof to rebut good faith shifts to the nonsettlor who asserts that the  
6 settlement was not made in good faith. *City of Grand Terrace v. Superior Ct.*, 238  
7 Cal. Rptr. 119, 124 (Cal. Ct. App. 1987).

8 “A party which receives court approval of a settlement is entitled to a dismissal  
9 of the action.” *Great W. Bank v. Converse Consultants, Inc.*, 58 Cal. App. 4th 609,  
10 613 (Cal. Ct. App. 1997). Moreover, court approval of a settlement bars the claims  
11 of any other joint tortfeasors against the settling tortfeasor for equitable comparative  
12 contribution, or partial or comparative indemnity, based on comparative negligence  
13 or comparative fault. *See* CAL. CIV. CODE §877.6(c).

### 14 **III. DISCUSSION**

#### 15 **A. Good Faith**

16 Settling Defendants move this Court to approve their settlement with Plaintiff  
17 for \$80,000, which they contend is proportionate to their possible liability in this case.  
18 (ECF No. 196.) They further contend that there has been no collusion, fraud, or  
19 tortious conduct amongst them in reaching the Settlement. (*Id.*) The Court finds that  
20 the settlement is a good faith settlement. Of great weight to the Court is the fact that  
21 no party opposes the motion.

#### 22 **1. Approximation of Proportionate Liability, Settlement** 23 **Amount, and Allocation**

24 The settling party’s proportionate liability is one of the most important factors.  
25 *Long Beach Memorial Med. Ctr. v. Superior Ct.*, 91 Ca. Rptr. 3d 494, 500–01 (Cal.  
26 Ct. App. 2009). According to Settling Defendants, the only basis for liability against  
27 them is that they acted negligently in connection with the payment of Plaintiff’s home  
28 loan. (ECF No. 196 at 4–5.) The Court agrees. The only causes of action against

1 them concern negligence, whereas liability against Ocwen includes alleged violations  
2 of fair credit reporting acts—violations which substantially increase Ocwen’s  
3 potential liability in this action.<sup>2</sup> The Settling Defendants’ proportionate liability is  
4 therefore framed according to the negligence cause of action against them. Prospect’s  
5 proportionate liability also includes Plaintiff’s negligent hiring, supervision, and/or  
6 retention of employee claim related to Prospect’s employment of Gurfinkiel.

7 With respect to Plaintiff’s negligence cause of action, the Settling Defendants  
8 estimate their maximum total liability as the amount of actual damages. That amount  
9 is the \$82,000 in interest and late fees allegedly due on the Ocwen Loan after the  
10 proceeds from the Prospect Loan are applied to the principal due.<sup>3</sup> The Settling  
11 Defendants contend that their minimum potential liability would be under \$10,000.  
12 They arrive at this estimate by asserting that had Ocwen applied the proceeds from  
13 the Prospect Loan in December 2013, Plaintiff’s actual damages would have been the  
14 approximate \$4,000 in principal due on the Ocwen Loan, with interest and late fees  
15 on that amount bringing their liability to roughly under \$10,000. The Settling  
16 Defendants also contend that \$82,000 is the maximum potential liability for  
17 Plaintiff’s negligent hiring, supervision, and/or retention of employee claim against  
18 Prospect. (ECF No. 196 at 5.) As to both causes of action, the Settling Defendants  
19 assert that Plaintiff cannot cover emotional distress damages for the financial injury  
20 she suffered. (*Id.* (citing *Potter v. Firestone Tire & Rubber Co.*, 6 Cal. 4th 965, 985  
21 (1983).)

22 The Court finds that the \$80,000 settlement payment is “not out of proportion”  
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24 <sup>2</sup> The Settling Defendants indicate that at the mediation in which all parties  
25 participated, it became evident that a global settlement could not be reached because  
26 Plaintiff sought separate amounts from Ocwen based on its alleged violations of  
various credit reporting statutes. (Hilbert Decl. ¶6.)

27 <sup>3</sup> The Settling Defendants use \$82,000 as a rough estimate. Reviewing the  
28 Payoff Quote, the Court has determined that the total non-principal amount that  
would be due is specifically \$80,951.97. (ECF No. 197-1, Ex. 2 at 1.)

1 to what Plaintiff's probable recovery from them would have been if she had proven  
2 her case against them. *Kohn v. Superior Ct.*, 191 Cal. Rptr. 78, 82 (Cal. Ct. App.  
3 1983); *see also Delis v. Sionix Corp.*, SACV 13-1547 AG (RNBx), 2014 U.S. Dist.  
4 LEXIS 194705, at \*7 (C.D. Cal. Oct. 27, 2014) (accounting for defendants'  
5 proportional share of comparative liability for Plaintiff's liability). Here, the  
6 settlement represents nearly all of Plaintiff's overall damages, based on the  
7 information available at the time of settlement. Thus, the settlement is more than a  
8 rough approximation of the Settling Defendants' potential liability. The allocation  
9 of the settlement amount to the Plaintiff is also reasonable because she is the only  
10 plaintiff in this litigation.

11 Moreover, in making these determinations, the Court is mindful that a settling  
12 defendant should pay less in settlement than it would if it were found liable after a  
13 trial. Although the settlement amount does not account for potential non-economic  
14 damages, the Settling Defendants have come to an agreement after multiple meet and  
15 conferrals with Plaintiff and a mediation sitting. Under these circumstances, a  
16 settling defendant is allowed to receive a discount by settling, rather than proceeding  
17 to trial. *See Select Portfolio Servicing v. Valentino*, No. C 12-0334 SI, 2013 WL  
18 3956667, at \*3 (N.D. Cal. July 30, 2013).

## 19 **2. Financial Condition of Settling Defendants**

20 Although the Settling Defendants have not provided evidence of their financial  
21 and insurance policy limits, the fact that the Settling Defendants and Plaintiff agreed  
22 to the settlement terms through counsel and after arm's-length negotiations suggests  
23 that any ability by them to pay more has been balanced against the facts of the case  
24 and the degree to which the Settling Defendants are liable. *See, e.g., Perez v. Ford*  
25 *Motor Co.*, No. 1:10-cv-02213-LJO-SKO, 2012 WL 1119782, at \*4 (E.D. Cal. April  
26 3, 2012). Therefore, this factor is neutral in the Court's assessment of good faith.

## 27 **3. Collusion, Fraud or Tortious Conduct**

28 The final relevant factor is collusion, fraud, or tortious conduct aimed at



1 injuring the interests of the joint tortfeasors. *N. Cty. Contractor's Ass'n. v.*  
2 *Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089-90 (1994) (“Good faith may be  
3 found only if there has been no collusion between the settling parties and where the  
4 settlement amount appears to be within the ‘reasonable range’ of the settling party’s  
5 proportionate share of comparative liability for a plaintiff’s injuries.”). Based on a  
6 review of the Settlement and the moving papers, the Court finds that there is no  
7 evidence of collusion, fraud, or tortious conduct. Nor has any other party to the  
8 litigation raised the possibility of such conduct.

9 After considering all of the *Tech-Bilt* factors, the Court concludes the  
10 settlement was reached in good faith under California Code of Civil Procedure  
11 Section 877.6.

### 12 **B. Dismissal of Claims and Cross-Claims**

13 The Settling Defendants also request (1) dismissal with prejudice all cross-  
14 claims by Ocwen against them and (2) dismissal with prejudice of Plaintiff’s claims  
15 against them and their cross-claims against each other, subject to the terms of the  
16 Settlement. (ECF No. 196.)

17 Because the Court finds the settlement to be in good faith, the Settling  
18 Defendants are entitled to dismissal of Ocwen’s cross-claims against them and a bar  
19 on similar claims from other joint tortfeasors. *See Great W. Bank*, 58 Cal. App. 4th  
20 at 613. “A determination by the court that the settlement was made in good faith  
21 shall bar any other joint tortfeasor or co-obligor from any further claims against the  
22 settling tortfeasor or co-obligor for equitable comparative contribution, or partial or  
23 comparative indemnity, based on comparative negligence or comparative fault.”  
24 CAL. CIV. PROC. CODE §877.6(c); *see also* CAL. CIV. PROC. CODE §877(b) (“Where a  
25 release . . . is given in good faith before verdict or judgment . . . [i]t shall discharge  
26 the party to whom it is given from all liability for any contribution to any other  
27 parties.”); *Bay Dev., Ltd. v. Super. Ct.*, 791 P.2d 290, 293 (Cal. 1990) (claims seeking  
28 implied contractual indemnity barred by finding of good faith); *Far West Fin. Corp.*

1 v. *D&S Co., Inc.*, 760 P.2d 399, 413 (Cal. 1998) (all equitable indemnity claims,  
2 including total equitable indemnity claims, barred by finding of good faith). Here,  
3 Ocwen has asserted cross-claims for equitable indemnity, contribution, and equitable  
4 apportionment against Prospect and People’s. These cross-claims fall directly within  
5 the scope of Section 877.6(c) and its interpretation by California courts. Accordingly,  
6 these cross-claims are hereby dismissed.<sup>4</sup>

7 With respect to dismissal with prejudice of Plaintiff’s claims against the  
8 Settling Defendants and their cross-claims against each other, the Settlement  
9 Agreement provides that Plaintiff and the Settling Defendants will dismiss their  
10 claims and cross-claims with prejudice upon Plaintiff’s receipt of the settlement  
11 payment. (ECF No. 197-1 at ¶¶2–4.) The Settling Defendants have thirty days from  
12 the date of this Court’s good faith determination to pay Plaintiff. (*Id.* ¶¶1, 8.)  
13 Although a finding of good faith entitles a party to dismissal of the action, the Court  
14 will order the parties to comply with the terms of the settlement pertaining to payment  
15 and the procedure for subsequent dismissal of their claims and cross-claims against  
16 each other rather.

#### 17 **IV. CONCLUSION & ORDER**

18 For the foregoing reasons, the Settling Defendants’ motion for determination  
19 of good faith settlement (ECF No. 196) is **GRANTED**. It is further **ORDERED** that:

20 1. All Cross-Claims by Ocwen (ECF No. 111) against the Settling  
21 Defendants are **DISMISSED WITH PREJUDICE**. Ocwen’s sole remaining cross-  
22 claims in this action are against Plaintiff and Equity.

23 2. The Court **HEREBY BARS** any present or potential joint tortfeasor  
24 from bringing any future claims against the Settling Defendants for equitable  
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26 <sup>4</sup> The Court observes that both Prospect and People’s have cross-claims against  
27 Ocwen. (ECF Nos. 35, 45-1.) Ocwen has answered both of these cross-claims. (ECF  
28 Nos. 46, 50.) If Prospect and People’s intend for their cross-claims against Ocwen  
to be dismissed in light of the dismissal of Ocwen’s identical cross-claims against  
them, Prospect and People’s should provide notice to the Court.

1 contribution or partial or comparative indemnity based on comparative negligence or  
2 comparative fault in connection with the conduct at issue in this litigation.

3           3.     The Settling Defendants and Plaintiff are **ORDERED** to carry out the  
4 terms of the Settlement. (ECF No. 197-1 Ex. 1.) Pursuant to those terms, within 30  
5 days of this Court’s order, Settling Defendants shall pay Plaintiff the agreed upon  
6 amount. The Plaintiff and Settling Defendants shall thereafter move to dismiss with  
7 prejudice their respective claims and cross-claims against each other.

8           **IT IS SO ORDERED.**

9  
10 **DATED: January 26, 2018**

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

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