

1

2

3

4

5

6

7

UNITED STATES DISTRICT COURT

8

SOUTHERN DISTRICT OF CALIFORNIA

9

JESUS ROMERO, a Minor, by and through his Guardian ad Litem, MERIDA RAMOS; MARCOS ROMERO, a Minor, by and through his Guardian ad Litem, MERIDA RAMOS; and PERLA ROMERO, a Minor, by and through her Guardian ad Litem, MERIDA RAMOS,

CASE NO. 15cv815-GPC(MDD)

10

11

12

13

Plaintiff,

ORDER GRANTING RALPH LAUREN DEFENDANTS' MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT

14

v.

[Dkt. No. 125.]

15

16

17

18

19

MACY'S, INC., fka FEDERATED DEPARTMENT STORES, INC., a Delaware corporation; RALPH LAUREN CORPORATION, a Delaware corporation; and DOES 1 through 50, Inclusive,

Defendant.

20

21

22

23

24

25

26

Defendants Macy's Inc., Macy's West Stores, Inc., and Ralph Lauren Corporation ("Ralph Lauren Defendants") filed a motion for determination of good faith settlement. (Dkt. No. 125.) Schwab Defendants¹ filed an opposition. (Dkt. No. 133.) Ralph Lauren Defendants filed a reply. (Dkt. No. 136.) Plaintiff Jesus Romero filed a response in support of the motion. (Dkt. No. 137.) After a review of the briefs,

27

28

¹After the Court granted summary judgment in favor of the individually named Schwab Defendants, the remaining Schwab Defendants are RL Childrenswear Company, LLC; S. Schwab Company, Inc.; Sylvia Company, LLC; Cuny Associates, LLC; and LM Services, LLC.

1 supporting documentation and the applicable law, the Court GRANTS Ralph Lauren
2 Defendants' motion for determination of good faith settlement.

3 **Procedural Background**

4 On April 13, 2015, the case was removed from state court. (Dkt. No. 1.) On
5 August 18, 2015, Plaintiff Jesus Romero² ("Plaintiff" or "Jesus") filed a first amended
6 complaint against Ralph Lauren Defendants and added the Schwab Defendants. (Dkt.
7 No. 17.) The FAC alleges claims against Ralph Lauren Defendants and Schwab
8 Defendants for severe burns suffered by Plaintiff Jesus Romero, a minor at the time,
9 when a shirt ("Shirt") allegedly purchased at Macy's caught fire after being exposed to
10 a flame. Jesus claims that the Shirt was defective because it was not 100% cotton as
11 stated on the label and the blend of fibers in the Shirt increased the risk of severe injury.
12 Jesus asserts six causes of action against the designer and manufacturer of the shirt,
13 Ralph Lauren Corporation and Schwab Defendants, and the seller, Macy's Inc. and
14 Macy's West Stores, Inc. ("Macy's"), for manufacturing defect, design defect and
15 failure to warn under strict products liability, negligence, breach of warranty and
16 negligent misrepresentation. On September 16, 2015, the Court granted Ralph Lauren
17 Defendants' motion for leave to file a third party complaint. (Dkt. No. 21.) On April
18 28, 2016, Ralph Lauren Defendants filed a third party complaint for express and
19 equitable indemnification, equitable contribution and declaratory relief against the
20 Schwab Defendants. (Dkt. No. 61.) On May 20, 2016, Schwab Defendants filed an
21 answer to the third party complaint and a counterclaim against Ralph Lauren
22 Defendants for express and equitable indemnification, equitable contribution and
23 declaratory judgment. (Dkt. No. 64.)

24 On September 13, 2016, the Court denied Ralph Lauren Defendants' motion for
25 summary judgment. (Dkt. No. 94.) On December 6, 2016, the Court granted in part
26

27 ²Jesus' siblings, Marcos and Perla Romero, asserted a cause of action for
28 negligent infliction of emotional distress based on a bystander theory. (Dkt. No. 17,
FAC.) However, on October 13, 2016, the parties filed a joint motion to dismiss the
claims of Marcos and Perla Romero. (Dkt. No. 95.)

1 and denied in part Schwab Defendants' motion for summary judgment where the Court
2 granted summary judgment as to the individually named Defendants. (Dkt. No. 99.)

3 On January 13, 2017, Ralph Lauren Defendants filed a motion for determination
4 of good faith settlement. (Dkt. No. 101.) However, after being fully briefed, the Court
5 denied Ralph Lauren Defendants motion on February 22, 2017. (Dkt. No. 112.) In that
6 order, the Court denied the request because Ralph Lauren Defendants failed to establish
7 the noncash element of the settlement by assessing the monetary value of the
8 assignment of Ralph Lauren Defendants' indemnification and contribution rights in
9 their third party complaint to Plaintiff. (Id. at 9-10.) On May 1, 2017, Ralph Lauren
10 Defendants filed the instant motion for determination of good faith settlement which is
11 currently fully briefed.³

12 **Factual Background⁴**

13 On January 30, 2005, Jesus' family was planning to go to Mexico, and Jesus,
14 who was 7 years old, and his brother Marcos, who was 6 years old, went outside while
15 the family was getting ready. Before Jesus and his brother went outside, Jesus was
16 dressed wearing a boy's short-sleeved Ralph Lauren red and white gingham button-
17 down dress shirt. Jesus' mother, Merida, purchased the shirt worn by Jesus at Macy's
18 in Chula Vista, CA, and she testified the label said 100% cotton. Merida always bought
19 100% cotton clothing for her children because it was the way her mother used to dress
20 her and because it was the most comfortable fabric.

21 On that day, Marcus had a lighter and the boys wanted to burn something. The
22 boys went outside to the front of their neighbor's house where there were flowers.

23
24 ³In opposition, Schwab Defendants argue that the settling parties must produce
25 their written settlement agreement in order to allow Schwab Defendants to contest the
26 good faith motion. In reply, Ralph Lauren Defendants attaches a copy of the settlement
27 agreement. In their opposition, Schwab Defendants asked that in the event that Ralph
28 Lauren Defendants provide a copy of the written settlement agreement, they ask that
they be given an opportunity to brief any new legal or factual issues arising from the
disclosure of the settlement agreement. (Dkt. No. 133 at 14.) However, to date, they
have not sought leave to file an additional brief.

⁴The facts are taken from the Court's previous orders on Schwab Defendants and
Ralph Lauren Defendants' motions for summary judgment.

1 Jesus and his brother were sitting down and Marcos lit up a flower or weed while Jesus
2 was holding it. Jesus' finger got so hot that he dropped the flower or weed and it landed
3 in the stomach area on his shirt. Jesus told his brother to go get help so Marcos ran into
4 the house to get their father, who came out and ripped the shirt off Jesus and stepped
5 on it to get the flames out. Jesus suffered from severe burns covering about 25% of his
6 body. (Dkt. No. 17, FAC ¶ 27.)

7 Merida testified she purchased the shirt worn by Jesus at Macy's in July or
8 August 2004. RL Childrenswear held a license from Polo Ralph Lauren to manufacture
9 and sell Ralph Lauren brand boys products, including boys' woven shirts such as the
10 woven gingham style shirt that Jesus wore on the day of the incident. On May 25,
11 2004, a few months prior to Merida purchasing the Shirt, Ralph Lauren entered into an
12 Asset Purchase Agreement with RL Childrenswear to reacquire its licenses back. While
13 the Asset Purchase Agreement was dated May 25, 2004, it had a closing date of July 2,
14 2004. At closing, the transition inventory already manufactured by Schwab Defendants
15 including work in progress at factories overseas, remained to be shipped to department
16 stores such as Macy's, and there were also products that were already sitting on shelves
17 in retail stores.

18 Discussion

19 Under California law, "[w]here a release . . . is given in good faith before . . .
20 judgment to one or more of a number of tortfeasors claimed to be liable for the same
21 tort, or to one or more other co-obligors mutually subject to contribution rights," the
22 release shall "reduce the claims against the others in the amount stipulated by the
23 release" and "discharge the party to whom it is given from all liability for any
24 contribution to any other parties." Cal. Code Civ. P. § 877(a) & (b). To obtain a
25 determination that it reached a settlement in good faith, "a settling party may give notice
26 of settlement to all parties and to the court, together with an application for
27 determination of good faith settlement." Cal. Code Civ. P. § 877.6(a)(2). The settling
28 defendant bears the initial burden to demonstrate there has been a settlement. Fisher v.

1 Superior Ct., 103 Cal. App. 3d 434, 448 (1980). Nonsettling parties are thereafter given
2 an opportunity to contest the settlement. Id.

3 The provisions of sections 877 and 877.6 reflect two major policy goals: “the
4 equitable sharing of costs among the parties at fault and the encouragement of
5 settlements.” Abbott Ford, Inc. v. Superior Ct., 43 Cal. 3d 858, 871-72 (1987). A good
6 faith settlement not only releases the settling defendant from liability for contribution
7 or comparative indemnity,⁵ but also reduces the plaintiff's claims against the nonsettling
8 defendants. Id. “In order to encourage settlement, it is quite proper for a settling
9 defendant to pay less than his proportionate share of the anticipated damages. What is
10 required is simply that the settlement not be grossly disproportionate to the settlor's fair
11 share.” Id. at 874-75. Further, a “plaintiff's claims for damages are not determinative
12 in finding good faith; rather, the court is called upon to make a ‘rough approximation’
13 of what the plaintiff would actually recover.” West v. Superior Ct., 27 Cal. App. 4th
14 1625, 1636 (1994) (internal citation omitted).

15 If the court determines the settlement was entered in good faith, “any other joint
16 tortfeasor or co-obligor” is barred “from any further claims against the settling
17 tortfeasor or co-obligor for equitable comparative contribution, or partial or
18 comparative indemnity, based on comparative negligence or comparative fault.” Id. §
19 877.6(c); Tech-Bilt, Inc. v. Woodward-Clyde & Assocs., 38 Cal. 3d 488, 494 (1985).

20 In determining a good faith settlement, a court must consider the following
21 factors: (1) “a rough approximation of the plaintiffs’ total recovery and a settlor’s
22 proportionate liability”; (2) “the amount paid in settlement”; (3) “a recognition that a
23 settlor should pay less in settlement than if found liable after a trial”; (4) “the allocation
24 of settlement proceeds among plaintiffs”; (5) “the financial conditions and insurance
25

26 ⁵While a good faith settlement releases Ralph Lauren Defendants from liability
27 for contribution or comparative indemnity from Plaintiff, it does not extinguish the
28 indemnity claim by Schwab Defendants, asserted in their counterclaim against Ralph
Lauren Defendants, in the event Plaintiff proves the Shirt was defective but does not
prove the shirt was manufactured by Schwab Defendants. See Bay Dev., Ltd. v.
Superior Ct. of San Diego Cnty., 50 Cal. 3d 1012, 1029-32 (1990).

1 policy limits of settling defendants”; and (6) evidence of “collusion, fraud, or tortious
2 conduct aimed to injure the interests of nonsettling defendants.” Id. at 499. An
3 opposing party must “demonstrate . . . that the settlement is so far ‘out of the ballpark’
4 in relation to these factors as to be inconsistent with the equitable objectives of the
5 statute.” Id. at 499-500. An evaluation of the factors are to be made on the information
6 available at the time of settlement. Id. at 499. The court has discretion in determining
7 whether a settlement is made in good faith. Id. at 502.

8 Where the settlement payment is contingent or is based on value other than cash,
9 the settling party has the burden to establish its monetary value. Arbutnot v.
10 Relocation Realty Serv. Corp., 227 Cal. App. 3d 682, 689 (1991); Brehm Comms. v.
11 Superior Court, 88 Cal. App. 4th 730, 735-36 (2001) (quoting Weil and Brown,
12 California Practice Guide: Civil Procedure Before Trial (The Rutter Group 2000)
13 (“[w]here something other than immediate cash is paid, the settling parties must
14 establish the value of the settlement. Without this information, the court cannot
15 determine whether the settlement is within the ‘ballpark’ of the settling defendant’s
16 proportionate liability; nor the amount of setoff to which the nonsettling defendants are
17 entitled.”)). Under section 877.6, the moving party must set forth the value of the
18 consideration paid and an evidentiary basis for that valuation, and must demonstrate
19 that the valuation “was reached in a sufficiently adversarial manner to justify the
20 presumption that a reasonable valuation was reached.” Franklin Mint Co. v. Superior
21 Ct., 130 Cal. App. 4th 1550, 1558 (2005). “It is well settled that an assignment of
22 indemnity rights may constitute valuable noncash consideration for settlement.” Regan
23 Roofing Co. v. Superior Ct., 21 Cal. App. 4th 1685, 1711 (1994) (citation omitted);
24 Erreca’s v. Superior Ct., 19 Cal. App. 4th 1475, 1496 (1993). “The value of such
25 assigned rights may be determined at the time of settlement by declaration or by expert
26 testimony.” Regan Roofing Co., 21 Cal. App. 4th at 1711. Once the value of the
27 assigned right is presented, a nonsettling defendant can “(1) can accept that value and
28 attempt to show that the settlement is not in good faith because the assigned value is not

1 within the settling defendant’s Tech-Bilt ballpark, or (2) can attempt to prove that the
2 parties’ assigned value is too low and that a greater reduction in plaintiff’s claims
3 against the remaining defendants is actually warranted.” United Servs. Auto Ass’n v.
4 Superior Ct., 93 Cal. App. 4th 633, 642 (2001) (quoting Abbott Ford, Inc. v. Superior
5 Ct., 43 Cal. 3d 858, 879 (1987)).

6 **A. Amount Paid in Settlement**

7 Under the terms of the settlement, Ralph Lauren Defendants “have agreed to pay
8 Plaintiff the sum of \$300,000 and to assign to Plaintiff any and all of their
9 indemnification and contribution rights, whether contractual or equitable, against the
10 Schwab Defendants, as outlined and alleged in the Ralph Lauren Defendants’ Third
11 Party Complaint; and Jesus Romero has agreed to release all claims and dismiss this
12 action against the Ralph Lauren Defendants, with prejudice.” (Dkt. No. 125-2,
13 Kawabata Decl. ¶ 9.)

14 The indemnification and contribution rights are based on the provisions in the
15 Asset Purchase Agreement between Schwab Defendants and Ralph Lauren Defendants
16 which provides for indemnification of Ralph Lauren Defendants in the event of a
17 products liability claim where Schwab Defendants are liable. (Dkt. No. 125-2,
18 Kawabata Decl. ¶ 11.) When Ralph Lauren Defendants tendered the claim to Schwab
19 Defendants, they denied it. Ralph Lauren Defendants claim that the value of the
20 assigned indemnity claim is potentially \$562,657.59 which consists of \$300,000 paid
21 by Ralph Lauren Defendants in settlement; \$162,657.59 in attorney’s fees and costs
22 incurred by the Ralph Lauren Defendants from the date of tender, July 30, 2015, to the
23 present; and estimated \$100,000 in additional fees and costs to be incurred by Ralph
24 Lauren Defendants to defend the case through the end of trial. (Dkt. No. 125-1 at 10;
25 Dkt. No. 125-2, Kawabata Decl. ¶ 12.) Moreover, Schwab Defendants have indicated
26 they are covered by a one million dollar policy on this claim so Plaintiff can recover the
27 full amount of the assigned claim if he prevails. (Dkt. No. 125-2, Kawabata Decl. ¶ 13.)
28 Schwab Defendants do not dispute the value Ralph Lauren Defendants has placed on

1 the indemnification and contribution rights. In sum, the monetary value of the
2 settlement totals around \$862,000.

3 **B. Approximation of Plaintiff’s Potential Recovery and Settling Defendants’**
4 **Proportionate Liability**

5 To meet the standard of “good faith,” the amount of the settlement must be
6 “within the reasonable range of the settling tortfeasor’s proportional share of
7 comparative liability for the plaintiff’s injuries.” Tech-Bilt, 38 Cal. 3d at 499; see also
8 Torres v. Union Pac. R. Co., 157 Cal. App.3d 499, 509 (1984) (holding that “a
9 co-defendant’s settlement price cannot be grossly disproportionate to his fair share of
10 the damages”). A “settlement figure must not be grossly disproportionate to what a
11 reasonable person, at the time of the settlement, would estimate the . . . liability to be.”
12 Torres, 157 Cal. App. 3d at 509.

13 **1. Approximation of Plaintiff’s Potential Recovery**

14 Recently, as part of preparing for the final pretrial conference, Plaintiff’s counsel
15 represented that Plaintiff’s total recoverable economic medical expenses, after
16 adjustments, are about \$28,259.56. (Dkt. No. 125-2, Kawabata Decl. ¶ 11.) As to non-
17 economic damages, Plaintiff has never articulated a specific amount sought; however,
18 Ralph Lauren Defendants contend that amount will not be substantial based on the fact
19 that Jesus has recovered well physically and psychologically, as revealed in deposition
20 testimonies. Lastly, Ralph Lauren Defendants argue there is no evidence of malice,
21 fraud or oppression by Ralph Lauren Defendants or the Schwab Defendants to warrant
22 an award of punitive damages. (Id. ¶ 19.)

23 Schwab Defendants claim that Plaintiff is also seeking past and future medical
24 expenses which is estimated at around \$144,800 as indicated by Plaintiff’s retained
25 plastic surgeon and defense expert’s recommendation. (Dkt. No. 109-1, Walshok Decl.,
26 Exs. E & F.) As to non-economic and punitive damages, Schwab Defendants argue that
27 after a review of jury verdicts and settlements in these types of cases, these damages
28 comprise the majority of the awards given to prevailing plaintiffs and Plaintiff’s counsel

1 will undoubtedly ask the jury to award non-economic damages in the mid-seven-figure
2 to eight-figure range which are consistent with other favorable jury awards in trial
3 involving serious burn injuries suffered by a minor. (Id. ¶¶ 10, 11.) Therefore, they
4 contend that \$300,000 is grossly disproportionate to what could be considered to be
5 Plaintiff’s potential recovery.

6 Ralph Lauren Defendants argue that despite the claim of future medical expenses
7 of \$144,800, at trial, Schwab Defendants will argue there is little evidence for the
8 necessity of future care based on their medical psychiatric expert Dr. Mark Kalish.
9 However, Ralph Lauren Defendants reply that even accepting Schwab Defendants’
10 evidence that the cost of future treatment is \$144,800, the total value of the settlement
11 of \$860,000 far exceeds the economic damages.

12 The court makes a “rough approximation of what plaintiff would actually
13 recover.” West, 27 Cal. App. 4th at 1636 (citing Tech-Bilt, 38 Cal. 3d at 499).
14 Plaintiff’s claim for damages are not determinative. Id. “[A] ‘good faith’ settlement
15 does not call for perfect or even nearly perfect apportionment of liability.” N. Cnty.
16 Contractor’s Ass’n v. Touchstone Ins. Servs., 27 Cal. App. 4th 1085, 1091 (1994)
17 (citation omitted). Ultimately, the court is to determine whether the “settlement is
18 grossly disproportionate to what a reasonable person at the time of settlement would
19 estimate the settlor’s liability to be.” City of Grand Terrace v. Superior Ct., 192 Cal.
20 App. 3d 1251, 1262 (1987).

21 The deposition transcripts provided by Ralph Lauren Defendants in their motion
22 raise questions concerning Plaintiff’s potential recovery for non-economic damages in
23 the mid-seven-figure to eight-figure range of an award. Dr. Mark Kalish, Schwab
24 Defendants’ psychiatric expert, reviewed Plaintiff’s medical records and testified that
25 at the initial visit, there was no noticeable psychological difficulties, that Plaintiff
26 initially was withdrawn, dysthymic and reluctant to verbalize, but he started making
27 progress three months after the incident. (Dkt. No. 125-2 Kawabata, Decl., Ex. E,
28

1 Kalish Depo. at 28-29.)⁶ He exhibited anxiety from February 2005 to 2007, (id. at 32),
2 and had concern or embarrassment about his scars but then he was making good
3 progress. (Id. at 32-33.) In filling out the “Staying Healthy” Assessment, in 2010,
4 2011, 2012, and 2013, Plaintiff indicated he exercised or played active sports five days
5 a week and he does not feel sad or down. (Id. at 32-34, 36.) In 2013, at age 16,
6 Plaintiff felt self-conscious about his extensive scar which affected his social
7 functioning. (Id. at 35.) In 2014, a suicide screening was conducted and revealed no
8 evidence of severe depression. (Id. at 37-38.)

9 Dr. Kevin Border, Plaintiff’s treating plastic surgeon, testified that Plaintiff has
10 full range of motion and no deficit in strength and did not complain of pain. (Id., Ex.
11 F, Border Depo. at 22-25.) He noted that Plaintiff has “mild banding” on his right
12 armpit region, and mild hypertrophic (firm and raised) scarring on his chest. (Id. at 24.)

13 Plaintiff testified that he is set to graduate high school, and plans to go to trade
14 school to be an electrician. (Id., Ex. G, Jesus Depo. at 269-70.) He also noted that
15 sometimes when he bends and tries to pick something up that is heavy, his scar starts
16 to hurt or if he has his arm up, it starts to cramp after awhile which makes it harder to
17 move it. (Id. at 236.) He described the sensation as if the scar was being pulled and
18 getting tight and is a sharp pain. (Id. at 237.) Once he drops the item, he stretches.
19 (Id. at 237-38.) These episodes last about a minute. (Id.)

20 Plaintiff’s mother, Merida, stated that Plaintiff is on track to graduate, works at
21 a shoe store, plays soccer with friends and has had girlfriends. (Id., Ex. H, Merida
22 Depo. at 160-64.) She testified that Jesus has told her he does not like to look at himself
23 in the mirror and sometimes when he raises his arm too high to grab a shoe, it hurts, and
24 sometimes when it is very hot outside, his body heats up a lot. (Id.)

25 These depositions demonstrating improvement in Plaintiff’s psychological and
26 physical conditions after the incident raise questions whether Plaintiff will recover the
27

28 ⁶The Court notes that while Ralph Lauren Defendants cite to pages 44-46 of
Kalish’s deposition testimony, those pages were not filed with the Court.

1 full amount of non-economic damages he intends to seek.

2 To rebut Ralph Lauren Defendants' assessment of non-economic and punitive
3 damages, Schwab Defendants' argument on the "rough approximation of the plaintiffs'
4 total recovery" focuses on what Plaintiff will seek to recover; however, the question on
5 this factor is what a plaintiff would actually recover and not what Plaintiff claims as
6 damages. See West, 27 Cal. App. 4th at 1636. Moreover, Schwab Defendants'
7 assertion that Plaintiff will seek an award of non-economic damages in the seven to
8 eight figure range consistent with other favorable jury awards is not supported by any
9 caselaw. Taking into consideration that Schwab Defendants' liability is potentially
10 greater than Ralph Lauren Defendants, as discussed below, the Court concludes that the
11 settlement amount of about \$860,000 is not "grossly disproportionate to what a
12 reasonable person at the time of settlement would estimate the settlor's liability to be."⁷

13 Id.

14 **2. Settling Defendants' Proportionate Liability**

15 In the prior order denying Ralph Lauren Defendants' motion for good faith
16 settlement, the Court concluded that "[t]here is a reasonable inference that the Shirt that
17 was purchased by Jesus' mother in July/August 2004 was manufactured by Schwab
18 Defendants as part of their existing or work in progress inventory. Based on the
19 evidence at the time of settlement, it is reasonable to conclude that Ralph Lauren
20 Defendants' liability is significantly less than Schwab Defendants' liability." (Dkt. No.
21 112 at 9.) In this motion, the parties have not presented any additional facts to alter the
22 Court's prior analysis.

23
24 ⁷In Plaintiff's response in support of Ralph Lauren Defendants' motion, he argues
25 that the settlement is proportional to their fair share of liability as it recognizes their
26 status as more passive actors in creating the product that harmed Plaintiff. (Dkt. No.
27 137 at 2.) Plaintiff also points out that the settlement amount is reasonable if one
28 considers the nominal settlement offers by Schwab Defendants under California Code
of Civil Procedure section 998. On July 20, 2016, Schwab Defendants made a
compromise offer of \$1.00, then on December 2, 2016, they made another compromise
offer of \$10,000.01, and finally on January 26, 2017, they served an offer under Rule
68 allowing entry of judgment against them for "\$10,0001 (sic)." (Dkt. No. 137 at 4-5.)

1 In the Court’s prior order, it explained that substantial evidence supports a
2 reasonable inference that Ralph Lauren was not the manufacturer of the Shirt. (Dkt.
3 No. 112 at 8.) The deposition transcripts note that Ralph Lauren had the ultimate say
4 as to design, theme and styling of the product; but as to the components such as the
5 sourcing or the fabrics, RL Childrenswear made those decisions (Dkt. No. 111-1,
6 Kawabata Decl, Ex. A, Tadd Schwab Depo. at 187:11-188:4; Dkt. No. 109-5, Walshok
7 Decl., Ex. D, Hrdina Depo. at 24:2-20.) Samuel Schwab explained that Polo Ralph
8 Lauren made the final decision under the terms of the license and had the final approval
9 process. (Dkt. No. 109-5, Walshok Decl., Ex. D, Samuel Schwab Depo. at 28:13-18.)
10 Ralph Lauren had the authority to look at every style going into the line and if they did
11 not like what they saw, they would ask RL Childrenwear to change it. (Id. at 29:23-
12 30:7.)

13 At the time of closing of the Asset Purchase Agreement, there was still work in
14 progress being manufactured, there were products that were being shipped from
15 factories to the United States, and there were products that were already sitting on
16 shelves in retail stores. (Dkt. No. 111-1, Kawabata Decl., Ex. B, Hrdina Depo at 88:13-
17 89:23.) It would generally take about 12-18 months for an item to make its way from
18 development to placement on a retailer’s shelf for sale to the public. (Dkt. No. 111-1,
19 Kawabata Decl., Ex. C, Sam Schwab Depo at 88:5-89:12; id., Ex. D, Marsicano Depo.
20 at 53:25-55:22.) Therefore, Court comes to the same conclusion that based evidence
21 at the time of settlement, “it is reasonable to conclude that Ralph Lauren Defendants’
22 liability is significantly less than Schwab Defendants’ liability.” (Dkt. No. 112 at 9.)

23 **C. Financial Conditions and Insurance Policy Limits of Settling Defendants**

24 Schwab Defendant argue that Ralph Lauren Defendants have not made a showing
25 of financial inability to contribute more to the settlement and the proposed settlement
26 does not constitute an amount even close to Ralph Lauren Defendants’ insurance limits
27 and the proposed settlement is grossly disproportionate to their ability to pay.

28 Macy’s, Inc. and Macy’s West Stores, Inc. are self-insured and have assets

1 substantially in excess of Plaintiff's claims and Ralph Lauren Corporation has assets
2 substantially in excess of Plaintiff's claims and carried a general liability policy of
3 \$1,000,000 that provide coverage to both Ralph Lauren and the Macy's entities. (Dkt.
4 No. 125-2, Kawabata Decl. ¶ 25.)

5 Schwab Defendants misconstrue this factor arguing that since they have a higher
6 insurance limit and its entities are worth an amount substantially in excess of the
7 proposed settlement amount, they should pay more in the settlement. The fact that
8 Ralph Lauren Defendants have the ability to pay a larger amount must be balanced
9 against the facts of the case and the degree that they are liable, and not based on their
10 financial ability to pay. See e.g., Perez v. Ford Motor Co., No. 10cv2213-LJO-SKO,
11 2012 WL 1119782, at *4 (E.D. Cal. Apr. 3, 2012) (because parties agreed to a
12 settlement through a mediator, that indicated defendant's ability to pay a larger amount
13 had been balanced against the facts of the case and the degree to which the defendant
14 is liable.)

15 **D. Remaining Factors**

16 In this case, there is only one Plaintiff and all settlement proceeds will go to the
17 plaintiff, Jesus Romero. The parties do not raise an issue whether there has been any
18 evidence of collusion, fraud or tortious conduct aimed at injuring Schwab Defendants'
19 interests. Lastly, Ralph Lauren Defendants should pay less than if they were found
20 liable at trial recognizing that a settlor should pay less in settlement than if found liable
21 after a trial.

22 In evaluating the Tech-Bilt factors, Schwab Defendants have not demonstrated
23 that the settlement is so far "out of the ballpark" to justify denial of the motion for good
24 faith settlement. Thus, the Court GRANTS Ralph Lauren Defendants' motion for
25 determination of good faith settlement.

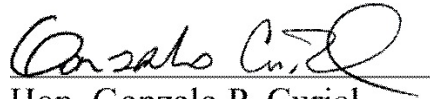
26 **Conclusion**

27 Based on the above, the Court GRANTS Ralph Lauren Defendants' motion for
28 determination of good faith settlement. The hearing set for July 14, 2017 shall be

1 vacated.

2 IT IS SO ORDERED.

3 Dated: June 28, 2017

4 
5 Hon. Gonzalo P. Curiel
6 United States District Judge
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28