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6 UNITED STATES DISTRICT COURT

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8 SOUTHERN DISTRICT OF CALIFORNIA

9 LUIS JESUS LOBATON, an individual;
10 HEDY JULCA, an individual; DIEGO
11 STEVEN LOBATON, an individual;
12 and “B.C.,” a minor, by and through his
13 mother and guardian *ad litem*, Hedy
14 Julca,

15 Plaintiffs,

16 v.

17 CITY OF SAN DIEGO, a municipal
18 corporation; NATHAN PARGA, an
19 individual; KELVIN LUJAN, an
20 individual; SAM EULER, an individual;
21 ALI BAKHSHI, an individual; and
22 DOES 1 through 200, inclusive.

23 Defendants.

Case No. 15-cv-1416 GPC (DHB)

**REPORT AND
RECOMMENDATION RE:
PETITION OF GUARDIAN AD
LITEM FOR COMPROMISE OF
MINOR’S DISPUTED CLAIM**

[ECF No. 42]

24 Before the Court is the *ex parte* petition of Hedy Julca, mother and court-appointed
25 guardian *ad litem* of minor Plaintiff B.C., for approval of the compromise of B.C.’s
26 disputed claim. (ECF No. 42.) This Report and Recommendation is submitted to United
27 States District Judge Gonzalo P. Curiel pursuant to 28 U.S.C. § 636(b)(1) and Local Civil
28 Rule 17.1 of the United States District Court for the Southern District of California. For
the reasons discussed below, the Court recommends that the District Court **GRANT** the
Petition.

1 **I. Background**

2 Plaintiff B.C. is a minor appearing by and through his mother and court-appointed
3 *guardian ad litem* Hedy Julca. (See ECF No. 8.) The operative complaint alleges that
4 Plaintiff B.C. suffered serious emotional distress when several San Diego Police Officers
5 forcefully entered the mobile-telephone store in which Plaintiff and his family were living
6 and physically assaulted and injured Plaintiff’s mother and her adult son, Luis Lobaton.
7 (ECF No. 3 at 29–31.) Plaintiff, approximately three feet from the physical confrontation,
8 witnessed the assault upon his mother and brother and their being led out of the store in
9 handcuffs. (*Id.*) The incident occurred on July 29, 2014, and lasted approximately ninety
10 seconds. (ECF No. 49 at 2.) Plaintiff was three years old at the time. (*Id.*)

11 In the weeks that followed the incident, Plaintiff became more dependent on his
12 mother and less verbally expressive. (*Id.* at 3.) He also expressed a fear of the police. (*Id.*)
13 Because of these behavioral changes, Plaintiff’s mother sought emotional counseling for
14 Plaintiff. (*Id.*) In total, Plaintiff attended 27 one-hour counseling sessions over a period
15 of ten months. (*Id.*) His counseling sessions concluded when his behavioral symptoms
16 resolved and his counselor recommended no further treatment. (*Id.*) Plaintiff is now five
17 years old, and he behaves and expresses himself at an age-appropriate level. (*Id.* at 3, 10.)

18 Plaintiffs commenced the instant action on June 26, 2015. (ECF No. 1.) The parties
19 reached a settlement agreement at a settlement conference before Magistrate Judge Louisa
20 S Porter on December 8, 2016. (ECF No. 34.) On April 25, 2017, Plaintiff’s *guardian ad*
21 *litem* filed the instant Petition setting forth the terms of the settlement and the intended
22 distribution of the settlement proceeds. (ECF No. 42.) At the request of the Court, on May
23 23, 2017, Plaintiff’s *guardian ad litem* filed a supplemental brief in support of the Petition.
24 (ECF No. 49.)

25 **II. Discussion**

26 This Court’s Local Civil Rule 17.1 addresses settlements for minors and provides in
27 pertinent part:
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1 **Order or Judgment Required.** No action by or on behalf of a minor or
2 incompetent, or in which a minor or incompetent has an interest, will be
3 settled, compromised, voluntarily discontinued, dismissed or terminated
4 without court order or judgment. All settlements and compromises must be
5 reviewed by a magistrate judge before any order of approval will issue. The
6 parties may, with district judge approval consent to magistrate judge
jurisdiction under 28 U.S.C. § 636(c) for entry of an order approving the entire
settlement or compromise.

7 CivLR 17.1(a).

8 “District courts have a special duty, derived from Federal Rule of Civil Procedure
9 17(c), to safeguard the interests of litigants who are minors.” *Robidoux v. Rosengren*, 638
10 F.3d 1177, 1181 (9th Cir. 2011). Rule 17(c) provides that a district court “must appoint a
11 guardian *ad litem*—or issue another appropriate order—to protect a minor or incompetent
12 person who is unrepresented in an action.” Fed. R. Civ. P. 17(c). “In the context of
13 proposed settlements in suits involving minor plaintiffs, this special duty requires a district
14 court to ‘conduct its own inquiry to determine whether the settlement serves the best
15 interests of the minor.’” *Id.* (quoting *Dacanay v. Mendoza*, 573 F.2d 1075, 1080 (9th Cir.
16 1978)); *see also Salmeron v. United States*, 724 F.2d 1357, 1363 (9th Cir. 1983) (“[A] court
17 must independently investigate and evaluate any compromise or settlement of a minor’s
18 claims to assure itself that the minor’s interest are protected, even if the settlement has been
19 recommended or negotiated by the minor’s parent or guardian *ad litem*.”).

20 The Ninth Circuit in *Robidoux v. Rosengren* established that district courts reviewing
21 the settlement of a minor’s claim should “limit the scope of their review to the question
22 whether the net amount distributed to each minor plaintiff in the settlement is fair and
23 reasonable, in light of the facts of the case, the minor’s specific claim, and recovery in
24 similar cases.” 638 F.3d at 1181–82. They should also “evaluate the fairness of each minor
25 plaintiff’s net recovery without regard to the proportion of the total settlement value
26 designated for adult co-plaintiffs or plaintiffs’ counsel—whose interests the district court
27 has no special duty to safeguard.” *Id.* at 1182 (citing *Dacanay*, 573 F.2d at 1078).

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1 *Robidoux*, however, expressly limited its holding to cases involving the settlement
2 of a minor’s federal claims, noting that it did “not express a view on the proper approach
3 for a federal court to use when sitting in diversity and approving the settlement of a minor’s
4 state law claims.” *Id.* at 1179 n.2. Nevertheless, some district courts have found the
5 *Robidoux* rule reasonable in the context of state law claims and have applied the rule to
6 evaluate the propriety of a settlement of a minor’s state law claims as well. *Frary v. Cty.*
7 *of Marin*, No. 12-cv-03928-MEJ, 2015 WL 575818, at *2 (N.D. Cal. Feb. 10, 2015); *see*
8 *also Mitchell v. Riverstone Residential Grp.*, No. Civ. S-11-2202 LKK/CKD, 2013 WL
9 1690641, at *1 (E.D. Cal. Apr. 17, 2013) (collecting cases). Other district courts have
10 declined to apply the *Robidoux* rule to state law claims in diversity jurisdiction cases. *See,*
11 *e.g., Chance v. Prudential Ins. Co. of Am.*, No. 1:15-cv-01889-DAD-JLT, 2016 WL
12 3538345, at *2 (E.D. Cal. June 28, 2016).

13 Here, the claim pursued by Plaintiff B.C. is a state law claim of negligent infliction
14 of emotional distress. (*See* ECF No. 3 at 29–31.) Although Plaintiff B.C.’s claim is a state
15 law claim, this is not a diversity jurisdiction case. Rather, it is the federal claims of the
16 adult plaintiffs in this case that give rise to this Court’s jurisdiction, and the Court has
17 supplemental jurisdiction over B.C.’s state law claim pursuant to 28 U.S.C. § 1367(a).
18 Therefore, this Court concludes that application of the rule in *Robidoux* is appropriate to
19 evaluate the settlement of Plaintiff B.C.’s claim in this case.

20 Minor Plaintiff B.C., through Petitioner, has agreed to settle his claim against
21 Defendants for a total sum of \$10,000.00. (ECF No. 42 at 3.) The parties agree that
22 Defendants will pay this amount to B.C. in exchange for B.C.’s release of his claim against
23 Defendants. (*Id.* at 3–4.) No costs or attorneys’ fees will be deducted from the total
24 settlement amount to be paid to B.C.,¹ and Petitioner plans to pay for B.C.’s past counseling
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27 ¹ The parties have agreed to a separate sum for the collective Plaintiffs’ costs and attorneys’ fees.
28 (ECF No. 42 at 3.) The reasonableness of these costs and fees will be decided by United States District
Judge Gonzalo P. Curiel in a subsequent, separate order.

1 expenses, a total amount of \$3,180.00 (ECF No. 49 at 4), from her share of the settlement
2 proceeds. (ECF No. 42 at 3.) B.C.'s settlement fund will be placed in a blocked account
3 at a federal-chartered bank, B.C.'s mother will be the trustee of the account, and no sum
4 can be withdrawn from the account absent an order of this Court. (ECF No. 42-1 at 4.)

5 After considering the Petition and the supplemental brief filed in support of the
6 Petition, the Court concludes that the settlement of minor Plaintiff B.C.'s claim is fair and
7 reasonable under *Robidoux*. Plaintiff suffered only modest emotional injuries as a result
8 of the July 29, 2014 incident, and he was able to recover fully from his emotional injuries
9 in under a year. Moreover, as set forth in the supplemental brief, Plaintiff B.C. faced many
10 obstacles to prevailing at trial, creating significant uncertainty as to his ability to obtain a
11 substantial judgment. Furthermore, no attorneys' fees or legal costs will be deducted from
12 Plaintiff's settlement amount, and the cost of Plaintiff's emotional counseling will be paid
13 from the settlement proceeds awarded to Plaintiff's mother. Finally, the settlement amount
14 awarded to Plaintiff is commensurate with recoveries in similar cases.²

15 **III. Conclusion**

16 For the reasons discussed above, the Court concludes that Plaintiff B.C.'s settlement
17 is fair and reasonable and it serves Plaintiff's best interests. Accordingly, the Court
18 recommends that the Petition of Guardian *ad Litem* for Compromise of Minor's Disputed
19 Claim (ECF No. 42) be **GRANTED**. The Court further recommends that:
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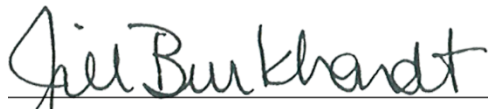
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23 ² See, e.g., *Smith v. City of Stockton*, 185 F. Supp. 3d 1242 (E.D. Cal. 2016) (approving settlement
24 sum of \$11,873.94 to minor who witnessed her brother be tackled and restrained by police officer, bitten
25 by police dog, and then arrested); *Dumas v. City of Elk Grove*, No. CIV2:09-cv-1573-GEB-JFM, 2012
26 WL 2116390 (E.D. Cal. June 6, 2012) (approving settlement amount of \$18,750 to seven-year-old
27 daughter who witnessed police officers arrest and use excessive force against her mother) (relevant facts
28 derived from *Dumas v. City of Elk Grove*, No. CIV2:09-cv-1573-GEB-JFM, 2011 WL 2173727 (E.D.
Cal. June 2, 2011)); *Parson v. City of Bakersfield*, No. 1:07cv01468 OWW DLB, 2009 WL 453118 (E.D.
Cal. Feb. 23, 2009) (approving settlement of \$3,750 to minor who woke up and realized that his father
had been shot by police officer); *Hearn v. Philadelphia Police Officer Fuss*, No. Civ.A.02-3525, 2004
WL 345412 (E.D. Penn. Feb. 23, 2004) (approving settlement of \$2,000 each to minors who suffered
emotional distress after witnessing police officers enter home and use excessive force against their father).

1 1. Within 72 hours of Petitioner's receipt of Plaintiff B.C.'s settlement fund,
2 Petitioner shall deposit the balance of the settlement fund into a blocked account belonging
3 to Plaintiff B.C.;

4 2. No withdrawals of principal or interest may be made from the blocked account
5 belonging to Plaintiff B.C. without a further written order under this case name and
6 number, signed by a judge, and bearing the seal of this court, until B.C. attains the age of
7 18 years; and

8 3. When B.C. attains the age of 18 years, the depository, without further order
9 of this Court, shall pay by check or draft directly to the former minor, upon proper demand
10 by the former minor, all moneys including interest deposited under this order. The money
11 on deposit is not subject to escheat.

12 Dated: May 26, 2017

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15 Hon. Jill L. Burkhardt
16 United States Magistrate Judge
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