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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 Gabriel J. OLIVAS, et al.,

11 Plaintiffs,

12 v.

13 UNITED STATES OF AMERICA, et al.,

14 Defendants.

Case No.: 15-cv-2882-H-AGS

**REPORT AND RECOMMENDATION  
ON MOTION TO APPROVE  
MINOR'S SETTLEMENT  
(ECF No. 72)**

15  
16 In the world of litigation, settlement offers must be weighed against the likelihood  
17 of victory to determine if they are fair. Comparatively small settlements, even in the face  
18 of significant injuries, may be fair when recovery appears unlikely and far off. The guardian  
19 *ad litem* for minor plaintiff P.B. seeks an order approving a proposed settlement of P.B.'s  
20 claims arising from an accident. This Court recommends granting the request because the  
21 settlement serves the minor's best interests, as it covers nearly all of her current and  
22 expected out-of-pocket costs and any trial recovery is highly speculative.

23 **BACKGROUND**

24 While descending a mountain road in California, a commercial bus operated by  
25 Scapadas Magicas LLC crashed when its brakes failed. P.B., then six years old, was a  
26 passenger with her mother and father. As a result, P.B. was hospitalized for three days with  
27 serious injuries, including damage to her back, right hand, and legs. P.B.'s medical  
28 expenses from the accident were about \$36,000, and her future medical care is expected to

1 cost around \$6,600, totaling approximately \$42,600. (ECF No. 72, at 2.) P.B. was one of  
2 the more fortunate victims. Her mother lost her leg, 40 others were injured, and 8 were  
3 killed. Plaintiffs alleged that living through the disaster caused P.B. emotional distress,  
4 anxiety, nightmares, and other psychological injuries. (*Id.*)

5 But Scapadas Magicas was under-insured and had insufficient assets to compensate  
6 all injured parties. Before this suit, Scapadas’s insurance company paid out the \$5,000,000  
7 policy maximum, which was allocated between all the plaintiffs, including \$21,364 to P.B.  
8 This litigation against the United States followed on the theory that federal employees  
9 negligently inspected the bus, and therefore did not identify the bus’s brake issues.

10 Without assigning liability or fault, the parties have reached a settlement. Under the  
11 settlement agreement, P.B. will receive \$41,616.85—\$60,000 minus \$15,000 in attorneys’  
12 fees and \$3,383.15 in costs. (ECF No. 72, at 4.) The funds are to be deposited into a blocked  
13 Bank of America account.

#### 14 **DISCUSSION**

15 District courts have “a special duty” to “safeguard the interests of litigants who are  
16 minors.” *Robidoux v. Rosengren*, 638 F.3d 1177, 1181 (9th Cir. 2011). In the settlement  
17 context, that duty requires the court to “conduct its own inquiry to determine whether the  
18 settlement serves the best interests of the minor.” *Id.* (citations omitted); *see also* Civ.  
19 LR 17.1 (“All settlements and compromises must be reviewed by a magistrate before any  
20 order of approval will issue.”). The Court is required to limit the scope of its review to  
21 “whether the net amount distributed to each minor plaintiff in the settlement is fair and  
22 reasonable in light of the facts of the case, the minors’ specific claim, and recovery in  
23 similar cases.” *Robidoux*, 638 F.3d at 1182. “Most importantly, the district court should  
24 evaluate the fairness of each minor plaintiff’s net recovery without regard to the proportion  
25 of the total settlement value designated for adult co-plaintiffs or plaintiffs’ counsel—whose  
26 interests the district court has no special duty to safeguard.” *Id.*

27 The Court has reviewed the complaint, the parties’ briefing, and the settlement  
28 documents. In addition, the Court presided over several discovery-related matters and was

1 privity to discussions at a settlement conference. From this, the Court has become intimately  
2 familiar with this case's facts and legal issues. With that experience in mind, the Court  
3 concludes that the proposed settlement is fair and reasonable.

4 Plaintiffs sued the United States under the Federal Tort Claims Acts on a gratuitous-  
5 undertaking theory. Plaintiffs alleged that the Federal Motor Carrier Safety Administration  
6 undertook to certify the safety of the bus by performing general compliance inspections  
7 and issuing a Commercial Vehicle Safety Alliance decal to the bus. (Compl., ECF No. 1,  
8 at 9.) But the FMCSA was allegedly negligent in inspecting the bus and issuing a decal,  
9 which caused plaintiffs injury because they relied on the decal in choosing to ride the bus  
10 on the assumption that it was fit and safe. (*Id.*) It is undisputed that the federal government  
11 did not own or operate the bus and that no federal vehicles or employees were involved in  
12 the crash. The United States argued it bore no legal responsibility for plaintiffs' losses, and  
13 in any event, that Scapadas's negligence was a superseding cause. Indeed, the driver pled  
14 no contest to eight counts of vehicular manslaughter with gross negligence.

15 On these facts, plaintiffs' likelihood of continuing beyond summary judgment is  
16 unlikely. At summary judgment, plaintiffs would have to overcome the discretionary  
17 function exception. *See, e.g., United States v. S.A. Empresa de Viacao Aerea Rio*  
18 *Grandense (Varig Airlines)*, 467 U.S. 797 (1984) (discretionary function exception  
19 precluded plaintiffs from seeking damages arising from a plane crashed alleged to result  
20 from the Federal Aviation Administration's negligent inspection and certification of the  
21 aircraft); *GATX/Airlog Co. v. United States*, 286 F.3d 1168 (9th Cir. 2002) (discretionary  
22 function exception barred recovery for damages resulting from Federal Aviation  
23 Administration's issuance of a safety certificate showing aircraft met relevant engineering  
24 requirements). Even if plaintiffs' claims got past summary judgment, whether they would  
25 be able to prove such an attenuated theory of negligence is suspect. And while this is a  
26 tragic and sympathetic case, what award the jury might render is speculative.

27 Indeed, the Court can't find a single case where plaintiffs successfully recovered  
28 against the United States on a theory of negligent inspection or gratuitous undertaking.

1 Rather, in such cases “liability has been more often denied than found.” 2A Stuart M.  
2 Speiser et al., *Am. L of Torts* § 9:15. *See, e.g., Bollinger v. United States*, 275 F. App’x 645  
3 (9th Cir. 2008) (dismissing action brought against Federal Aviation Administration  
4 alleging negligent inspection even though general airworthiness inspections were  
5 mandated and inspector failed to detect defect); *Howell v. United States*, 932 F.2d 915  
6 (11th Cir. 1991) (United States was not liable on a theory of gratuitous undertaking when  
7 Federal Aviation Administration failed to ground and inspect a plane that had been seen  
8 leaking contaminated fuel two days before it crashed); *Patenas v. Unites States*, 687 F.2d  
9 707 (3d Cir. 1982) (denying plaintiffs’ claim for damages against the United States on  
10 theory that Coast Guard negligently inspected vessel).

11 Given the risk inherent in this litigation and the cost to bring it to trial, the settlement  
12 serves P.B.’s interests because, in spite of this, she will recover approximately all of her  
13 out-of-pocket costs for her past and future medical care. This is in addition to the \$21,364  
14 already recovered in the prior settlement. Although this amount is not large in proportion  
15 to the injuries and emotional damage P.B. allegedly suffered, recovery is sufficiently  
16 unlikely in this case to make this settlement in P.B.’s best interests.

17 Thus, this Court recommends that:

- 18 1. The motion to approve the settlement be **GRANTED**.
- 19 2. The compromise and settlement of P.B.’s claims be **APPROVED** as fair and  
20 reasonable and in the best interest of the minor plaintiff.
- 21 3. The settlement of \$60,000 to P.B. be disbursed as follows: The sum of \$18,383.15  
22 must be disbursed to Frantz Law Group, APLC, to cover \$15,000 in attorneys’  
23 fees and \$3,383.15 in costs. The guardian ad litem must place the remaining  
24 \$41,616.85 in a blocked account at Bank of America, 4319 Camino De La Plaza,  
25 San Yasidro, CA 92173, from which no person may make a withdrawal without  
26 further Court order until P.B. reaches the age of 18. A copy of this order must  
27 also be provided to the depository at the time of the deposit.

1 Any objections to this report and recommendation are due by May 22, 2018.

2 Dated: May 8, 2018

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4 Hon. Andrew G. Schopler  
5 United States Magistrate Judge

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