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

UNITED STATES OF AMERICA for
the Use and Benefit of PENN AIR
CONTROL INC., a California
corporation,

Plaintiff,

v.

BILBRO CONSTRUCTION
COMPANY, INC., a California
corporation; and INTERNATIONAL
FIDELITY INSURANCE
COMPANY, a New Jersey
corporation;

Defendants.

CASE NO. 16cv0003-WQH-NLS

ORDER

BILBRO CONSTRUCTION
COMPANY, INC., a California
corporation,

Counterclaim Plaintiff,

v.

PENN AIR CONTROL INC., a
California corporation; and ALPHA
MECHANICAL, INC., a California
corporation;

Counterclaim Defendants.

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2 ALPHA MECHANICAL, INC., a
California corporation,

3 Counterclaim Plaintiff,

4 v.

5 BILBRO CONSTRUCTION
6 COMPANY, INC., a California
corporation; FERGUSON PAPE
7 BALDWIN ARCHITECTS, INC., a
California corporation; SPARLING,
8 INC., a Washington corporation;
SHADPOUR CONSULTING
9 ENGINEERS, INC., a California
corporation; and DOES 1 through 10;

10 Counterclaim Defendants.

11
12 HAYES, Judge:

13 The matter before the Court is the Motion for a Determination of Good Faith
14 Settlement (ECF No. 146) filed by Counterclaim defendants Sparling, Inc. and
15 Ferguson Pope Baldwin Architects, Inc.

16 **I. Background**

17 Penn Air Control Inc. (“Penn Air”) initiated this action by filing the Complaint
18 against Bilbro Construction Company. Inc. (“Bilbro”) and International Fidelity
19 Insurance Company (“Fidelity”). (ECF No. 1). Penn Air alleges that Bilbro wrongly
20 failed to pay for services Penn Air performed during the renovation of Watkins Hall,
21 a building in Monterey, California. *Id.* Bilbro filed a counterclaim against Penn Air
22 and Alpha Mechanical, Inc. (“Alpha”) based on the noise level of the HVAC systems
23 installed in Watkins Hall. *Id.* Alpha filed a counterclaim against Bilbro; Ferguson Pape
24 Baldwin Architects, Inc. (“FPBA”); Sparling, Inc.; and Shadpour Consulting Engineers
25 (“SC Engineers”). (ECF No. 45). Alpha’s counterclaim includes causes of action for
26 (1) breach of contract against Bilbro, (2) breach of fiduciary duty against Bilbro, (3)
27 negligence against Bilbro, (4) full indemnity against SC Engineers, and (5) partial
28 indemnity against SC Engineers. *Id.*

1 On September 8, 2017, Counterclaim Defendants FPBA and Sparling filed the
2 Motion for Determination of Good Faith Settlement (ECF No. 146). According to
3 FPBA and Sparling, they “have agreed to settle this matter with Alpha for \$385,000.”
4 *Id.* at 6. FPBA and Sparling ask the Court to order

5 [t]hat the settlement between FPBA and Sparling and Alpha [(the
6 “Settlement”)] was entered in good faith [and t]hat any present or future
7 claims and/or counter-complaints against FPBA or Sparling, for equitable
8 comparative contribution, implied contractual indemnity, or partial or
9 comparative indemnity, based on comparative negligence or comparative
10 fault, and/or for declaratory relief arising out of the incident(s) giving rise
11 to this litigation, shall be forever barred pursuant to Code of Civil
12 Procedure sections 877.6.

13 *Id.* at 3. Bilbro and Fidelity filed an Opposition to the Motion for a Determination of
14 Good Faith Settlement. (ECF No. 149). However, Bilbro and Fidelity do not contend
15 that the Settlement was not entered into in good faith.¹

16 **II. Discussion**

17 California Code of Civil Procedure § 877.6 lays out the procedure to be followed
18 when one or more, but not at all, joint defendants enter into a settlement agreement with
19 a plaintiff. First, “a settling party may give notice of settlement to all parties and to the
20 court, together with an application for determination of good faith settlement.” Cal.
21 Civ. Proc. Code § 877.6(a)(2). Then, “a nonsettling party may file a notice of motion
22 to contest the good faith of the settlement.” *Id.* “The party asserting the lack of good
23 faith shall have the burden of proof on that issue.” *Id.* at § 877.6(d). To determine
24 whether a settlement was made in good faith, a court considers: (1) the amount of the
25 settlement, (2) a rough approximation of the plaintiff’s total recovery and the settlers’
26 proportionate liability, (3) allocation of settlement proceeds among the plaintiff’s
settlement, (4) the settlers’ financial condition and insurance limits, (5) evidence of
fraud or collusion; and (6) a recognition that a settler should pay less in settlement than

27 ¹ Bilbro and Fidelity contend that Bilbro, as the only Defendant named in Alpha’s negligence
28 claim that is not a party to the Settlement, “is entitled to a full and complete setoff of the settlement
sum of \$385,000.” (ECF No. 149 at 2). The Motion for a Determination of Good Faith Settlement
(ECF No. 146) does not require this Court to decide whether or not Bilbro is entitled to a setoff.

1 he would if he were found liable at trial. *Tech-Bilt Inc. v. Woodward-Clyde &*
2 *Associates*, 38 Cal. 3d 488, 499-500 (1985). “A determination by the court that the
3 settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from
4 any further claims against the settling tortfeasor or co-obligor for equitable comparative
5 contribution, or partial or comparative indemnity, based on comparative negligence or
6 comparative fault.” Cal. Civ. Proc. Code § 877.6(c).

7 No party contends that the Settlement was not entered into in good faith. *See*
8 ECF No. 149 (contending that Bilbro is entitled to a setoff, not that the Settlement was
9 not entered into in good faith). Based on this fact, the Court’s knowledge of the terms
10 of the Settlement, and the Court’s review of the factors articulated in *Tech-Bilt*, 38 Cal.
11 3d at 488, the Court finds that the Settlement was entered into in good faith within the
12 meaning of California Code of Civil Procedure § 877.6. The Court’s determination that
13 the Settlement was made in good faith bars Bilbro (or any party added as a joint
14 defendant in Alpha’s negligence claim) from asserting any claims against FPBA or
15 Sparling “for equitable comparative contribution, or partial or comparative indemnity,
16 based on comparative negligence or comparative fault.” Cal. Civ. Proc. Code §
17 877.6(c).

18 **III. Conclusion**

19 IT IS HEREBY ORDERED that the Motion for Determination of Good Faith
20 Settlement (ECF No. 146) is GRANTED. The Court determines that the Settlement
21 was made in good faith and approves the Settlement pursuant to California Code of
22 Civil Procedure § 877.6.

23 DATED: November 15, 2017

24 
25 **WILLIAM Q. HAYES**
26 United States District Judge
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