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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 H.D., et al.,

12 Plaintiffs,

13 v.

14 OMNI LA COSTA RESORT & SPA,  
15 LLC,

16 Defendant.

Case No.: 17-cv-0516-H-AGS

**REPORT AND RECOMMENDATION  
TO APPROVE MINORS'  
COMPROMISE (ECF No. 164)**

17 Christopher DeRuyver, plaintiff and guardian *ad litem* for minor plaintiffs H.D.,  
18 N.D., and Z.D., seeks an order approving a proposed settlement of the minors' claims  
19 against defendant. Because the settlement serves the minors' best interests, the Court  
20 recommends that the motion be granted.

21 **BACKGROUND**

22 This suit arises from allegations of negligence on the part of defendant, a hotel in  
23 Carlsbad, California. While H.D. was seated in a high chair at defendant's Bistro 65  
24 restaurant, an Omni employee placed a carafe of hot coffee on the table. (ECF No. 164,  
25 at 2.) The coffee spilled, resulting in burns to H.D.'s left fingers, torso, and upper thighs.  
26 (*Id.*)

27 This case went to trial, and plaintiffs secured a total judgment of \$6,028,400.92.  
28 (*Id.* at 4.) Defendant then appealed, and the parties reached a settlement while participating

1 in the Ninth Circuit’s mediation program. (*Id.*) The settlement agreement was provided to  
2 the Court, along with the total settlement amount, the amounts paid to the non-minor  
3 plaintiffs, and the amount paid to plaintiffs’ attorney. The net settlement amount, after costs  
4 and fees, is \$4,041,437.17. (*Id.* at 9.) H.D. will receive \$3,493,583.61, N.D. \$85,147.82,  
5 and Z.D. \$68,948.97. (*Id.*) These amounts reflect the proportions of the overall settlement  
6 amount that were originally approved by a jury at trial. (*See* ECF No. 167, at 5.) Christopher  
7 DeRuyver has been appointed conservator regarding any proceeds from the settlement.  
8 (ECF No. 164, at 9.) He will invest those proceeds as ordered by the Washtenaw County,  
9 Michigan Probate Court, and that court will retain jurisdiction over the matter until each of  
10 the minors reaches the age of majority. (*Id.* at 8-9.)

## 11 **DISCUSSION**

### 12 I. Review of Settlement

13 Under this court’s Local Rules, “[n]o action by or on behalf of a minor” may be  
14 settled “without court order or judgment.” S.D. Cal. Local R. 17.1(a). “All settlements and  
15 compromises must be reviewed by a magistrate judge before any order of approval will  
16 issue.” *Id.* A district court in this Circuit must consider “whether the net amount distributed  
17 to each minor plaintiff is fair and reasonable, in light of the facts of the case, the minor’s  
18 specific claim, and recovery in similar cases.” *Robidoux v. Rosengren*, 638 F.3d 1177, 1182  
19 (9th Cir. 2011).

20 But the Ninth Circuit limited this holding to a minor’s federal claims, and did “not  
21 express a view on the proper approach for a federal court to use when sitting in diversity  
22 and approving the settlement of a minor’s state law claims.” *Id.* at 1179 n. 2. Because this  
23 case involves only state negligence claims, this Court “will continue to follow the practice  
24 of district courts in this Circuit and apply California law” to evaluate the settlement.  
25 *Primerica Life Ins. Co. v. Cassie*, No. CIV 2:12-1570 WBS GGH, 2013 WL 1705033,  
26 at \*1 (E.D. Cal. Apr. 19, 2013).

27 Regardless of whether the Ninth Circuit or California standard applies, this court  
28 finds the settlement and attorney’s fees to be fair and in the minors’ best interests.

1           A. Settlement Amount

2           California law requires a Court to approve the settlement of a claim involving a  
3 minor. Cal. Civ. Proc. Code § 372; Cal. Prob. Code §§ 3500, 3600, 3601. This is in keeping  
4 with the “special duty” of district courts in this Circuit to “safeguard the interests of  
5 litigants who are minors.” *Robidoux v. Rosengren*, 638 F.3d 1177, 1181 (9th Cir. 2011). In  
6 the settlement context, that duty requires the court to “conduct its own inquiry to determine  
7 whether the settlement serves the best interests of the minor.” *Id.* (citations omitted).

8           Having reviewed the complaint and been privy to the parties’ briefing and  
9 discussions at the Early Neutral Evaluation and Mandatory Settlement Conference, the  
10 Court is intimately familiar with this case’s facts and legal issues. With that experience in  
11 mind, the Court recognizes that litigation is always uncertain and concludes that the  
12 proposed settlement is fair, reasonable, and in the minors’ best interests.

13           Moreover, the minors’ recovery in this case is reasonable in light of those approved  
14 in similar cases. *See, e.g., A. M. L., et al. v. Mirela Cernaianu, M.D., et al.*,  
15 No. LA CV12-06082 JAK (RZx), 2014 WL 12588992, at \*2, 5 (C.D. Cal. Apr. 1, 2014)  
16 (approving a medical negligence settlement for \$1,161,587.32 where the minor sustained  
17 permanent brain injuries during birth.); *Sykes v. Shea, et al.*, No. 16-2851 WBS GGH, 2018  
18 WL 2335774, at \*1-2 (E.D. Cal. May 23, 2018) (approving a negligence settlement for  
19 \$87,500, where the minor sustained injuries in a car crash); *E. J. v. United States*,  
20 No. 13-cv-1923 NC, 2014 WL 988893, at \*1-2 (N.D. Cal. Mar. 10, 2014) (approving a  
21 negligence settlement for \$32,505.47, where the minor was injured at a child care facility).

22           Because the amount of the settlement is close to the jury’s original award, and based  
23 on a comparison of similar cases, this Court finds the settlement amount for each minor  
24 plaintiff to be fair and in their best interest.

25           B. Review of Attorney’s Fees

26           California requires that a court approve not only the settlement itself, but also any  
27 agreed-upon attorney’s fees. *See* Cal. Prob. Code §§ 3500, 3600, 3601; *Delaware Life Ins.*  
28 *Co. v. Moore*, No. 18cv944-L (MSB), 2019 WL 762655, at \*4 (S.D. Cal. Feb. 21, 2019).

1 When evaluating the reasonableness of an attorney’s fees, California courts consider “the  
2 type and difficulty of the matter, counsel’s skill vis-à-vis the skill required to handle the  
3 case, counsel’s age and experience, the time and attention counsel gave to the case, and the  
4 outcome.” *Padilla v. McClellan*, 93 Cal. App. 4th 1100, 1107 (4th Dist. 2001). A court  
5 must use a “reasonable fee standard” when approving attorney’s fees to be payable from a  
6 minor’s settlement. Cal. R. of Court 7.955. California courts have generally held that a  
7 contingency fee of up to 25% in a minor’s case is reasonable. *See Schwall v. Meadow Wood*  
8 *Apartments*, No. CIV. S-07-0014 LKK, 2008 WL 552432, at \*1-2 (E.D. Cal.  
9 Feb. 27, 2008); 2 Weil & Brown, Cal. Practice Guide, *Civil Procedure Before Trial* (2007)  
10 Settlement Procedures, ¶¶ 12:576-12:577.

11 Plaintiffs contracted for a 25% contingency fee in this case. (ECF No. 164, at 7.)  
12 Plaintiffs’ counsel litigated this case for over two years, achieving a unanimous verdict and  
13 a judgment of just over \$6 million at trial. (*Id.* at 3-4.) Even after defendant filed a notice  
14 of appeal, plaintiffs’ counsel continued to participate in post-trial negotiations, settling for  
15 a final amount of \$5.8 million. Due to the result achieved, effort expended, and the fact  
16 that counsel’s fees will be taken in proportion to each plaintiff’s award (*see id.* at 7), this  
17 Court finds that the attorney’s fees in this case are reasonable.

## 18 II. Applicability of Michigan Court Rule 2.420

19 But while the parties agree on the dollar amounts, Omni objects to approval of the  
20 settlement at this time. (ECF No. 166, at 2.) Omni argues that Christopher DeRuyver  
21 cannot seek this Court’s blessing in his role as guardian ad litem while he is also a plaintiff  
22 in the case. (ECF No. 166, at 3-4.) According to Omni, Michigan law requires that an  
23 independent guardian ad litem be appointed for purposes of this minors’ compromise.  
24 (*See id.* at 3.) And because the plaintiffs are Michigan residents, Omni explains, Michigan  
25 court rules apply. (*Id.*) Omni rests its argument on Michigan Court Rule 2.420, which sets  
26 out procedural requirements for settlements involving minors, including the appointment  
27 of an independent guardian ad litem. (*See id.*)

28 But the Michigan Court Rules, by their own terms, apply only to cases in “courts

1 established by the constitution and laws of the State of Michigan[.]” Mich. Court R. 2.001.  
2 This case was not brought in a Michigan court and does not involve Michigan law.

3 This Court knows of no California law or Ninth Circuit precedent that requires the  
4 appointment of an independent guardian ad litem purely for purposes of approving the  
5 settlement. Defendant points to no authority to the contrary.

6 What the Ninth Circuit does require is that this Court “independently investigate and  
7 evaluate” any minor’s compromise, “even if the settlement has been recommended or  
8 negotiated by the minor’s parent or guardian *ad litem*.” *Salmeron v. United States*,  
9 724 F.2d 1357, 1363 (9th Cir. 1983). This Court has done so and finds the settlement terms  
10 to be in the minors’ best interest. Because Michigan’s court rules are clear, and because  
11 this court is not required to give weight to Christopher DeRuyver’s approval of the  
12 settlement, appointment of an independent guardian ad litem would serve no purpose other  
13 than to create unnecessary delay.

14 Accordingly, the Court recommends:

- 15 1. The motion to approve the settlement be granted.
- 16 2. The compromise and settlement of the claims of the minors H.D., N.D., and Z.D. be  
17 approved as fair and reasonable and in the best interests of the minor plaintiffs.
- 18 3. The attorney’s fees and costs sought by plaintiffs’ counsel be approved as  
19 reasonable.
- 20 4. The disposition of the proceeds for each minor be as ordered by the Washtenaw  
21 County Probate Court.

22 Any objections to this report and recommendation are due by January 29, 2020.  
23 *See* 28 U.S.C. § 636(b)(1). A party may respond to any such objection within 14 days of  
24 being served with it. *See* Fed. R. Civ. P. 72(b)(2).

25 Dated: January 15, 2020

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28 Hon. Andrew G. Schopler  
United States Magistrate Judge