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3 UNITED STATES DISTRICT COURT
4 SOUTHERN DISTRICT OF CALIFORNIA

5 Cody SMITH, Michelle Smith, A.S., and
6 C.S.;
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8 Plaintiffs,
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10 v.
11 AMETEK, INC., a Delaware corporation;
12 SENIOR OPERATIONS, LLC, a limited
13 liability company; THOMAS DEENEY;
14 and Does 1 through 100,
15 Defendants.

Case No.: 3:20-cv-2359-TWR-BLM

**REPORT AND
RECOMMENDATION TO
APPROVE MINORS’
COMPROMISE (ECF 29)**

14 Plaintiffs seek an order approving a proposed settlement of the minors’ claims.
15 Because the settlement serves the minors’ best interests, the Court recommends that the
16 motion to approve the minors’ settlement be granted.

17 **BACKGROUND**

18 This suit arises from allegations that defendants, as landlords, failed to adequately
19 address mold build-up in plaintiffs’ military housing. (See ECF 1-2, at 14-19.) As a result,
20 plaintiffs sued for various types of negligence, breach of warranty, fraud, constructive
21 eviction, and premises liability, all arising under California law. (See generally ECF 1-2.)
22 As a result of the failure to adequately clean the mold, plaintiffs claim they underwent
23 “wheezing, coughing, and allergic reactions,” with minor plaintiff C.S. suffering from
24 greater issues including “pediatrician prescribed medication to treat the presenting ailments
25 including steroids, inhalers, breathing treatments, and a rescue inhaler.” (Id. at 15-16.)
26 Plaintiffs lived as defendants’ tenants for one year. (Id. at 14.)
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1 With the help of another Magistrate Judge, the parties reached a settlement
2 agreement. (*See* ECF 208-1, at 2.) The proposed gross settlement amount is \$75,000.
3 (ECF 29, at 4.) Of that, C.S. will receive \$5,000 and A.S. \$3,000. (*Id.*) After attorney’s fees
4 and costs are removed, C.S.’s net recovery will be \$3,669.50 and A.S.’s net recovery will
5 be \$2,206.72. (*Id.*) Cody and Michelle Smith, the other plaintiffs and the minors’ parents,
6 will receive the remainder. (*Id.*) The parties propose to deliver C.S. and A.S.’s recovery to
7 Cody and Michelle “to be held in trust” “until the minor plaintiffs reach the age of
8 majority.” (*Id.*) In support of the proposed recovery distribution, plaintiffs argue that Cody
9 and Michelle’s damages include paying rent for an uninhabitable home and “between
10 \$25,000 and \$30,000 in costs for moving, cleaning property via an independent restoration
11 company, and replacing personal property that was exposed to mold spores but could not
12 be effectively cleaned.” (ECF 29-1, at 3.) Plaintiffs also indicate that both minors have
13 fully recovered from the mold exposure and have no “ongoing symptoms or illness.”
14 (ECF 29-1, at 7.)

15 DISCUSSION

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

26 This Court’s Local Rules also contemplate the use of the California procedures to
27 approve minors’ compromises. *See* CivLR 17.1(b)(1) (“Money or property recovered by a
28 minor or incompetent California resident by settlement or judgment must be paid and

1 disbursed in accordance with California Probate Code Section 3600, et seq.”). Relevant to
2 this settlement, those sections authorize the court, if it is in the best interests of the child,
3 to order the settlement funds to be deposited “in an insured account in a financial institution
4 in this state . . . subject to withdrawal only upon the authorization of the court” or even
5 directly paid “to a parent of the minor” if the minors’ estates “do[] not exceed five thousand
6 dollars (\$5,000).” Cal. Prob. Code 3611(b) & (e).

7 This settlement is in the best interests of C.S. and A.S. The undersigned did not
8 participate in this case until now but has held settlement conferences and motion hearings
9 in similar cases against the same or similar defendants. *See, e.g., Lopez v. San Diego Family*
10 *Housing, LLC*, 20-cv-1915-JAH-AGS, at ECF 10 (settlement conference) & ECF 41
11 (motion hearing). Thus, the Court is familiar with the legal issues that arise in these cases.
12 Although at first blush plaintiffs appear to have a good case, litigation is always uncertain,
13 especially pre-discovery. There is additional risk in this case, as it was subject to a motion
14 to dismiss based on jurisdictional grounds that may have foreclosed plaintiffs’ suit entirely.
15 (*See* ECF 23.) Plaintiffs also faced several costly medical battles to prove causation and
16 damages, not to mention the potential delay caused by additional years of litigation.
17 Finally, the minor plaintiffs are no longer in contact with any mold at defendants’
18 properties, and they have fully recovered without continuing effects. (ECF 29-1, at 7
19 (“Neither [C.S] nor [A.S.] has any ongoing symptoms or illness.”).) Each of these facts
20 weighs in favor of the settlement being fair and in the minors’ best interests.

21 To the extent the Court must consider it under California procedures, the proposed
22 distribution is also appropriate. *Napier v. San Diego Cty.*, No. 315CV00581CABKSC,
23 2017 WL 5759803, at *3 (S.D. Cal. Nov. 28, 2017) (“In California, courts are required to
24 approve the attorneys’ fees to be paid for representation of a minor.”). Although the parents
25 are receiving the lion’s share of the gross settlement amount, they bore the greater share of
26 costs through rent, moving expenses, and property replacement. Moreover, although the
27 original contingency fee agreement with the parents allowed for a 40% attorney’s fee,
28 counsel is only requesting 25% of the minors’ proposed settlement amounts after costs.

1 (See ECF 29-1, at 24 (If settlement is obtained anytime after 12 weeks before the first date
2 set for trial, our law firm is entitled to forty percent (40%) of the total recovery.”)); *Napier*,
3 2017 WL 5759803, at *3 (“Generally, fees in minors[’] cases have historically been limited
4 to 25% of the gross recovery.”). With those points in mind, and the fact that litigation is
5 always uncertain, the Court concludes that the proposed settlement is fair, reasonable, and
6 in the minors’ best interests.

7 The Court’s fairness conclusion is buttressed by other approved settlements. In
8 another case settled against most of the same defendants arising out of very similar mold
9 allegations, the Court approved a smaller net recovery of “\$1,277.04” for a minor out of a
10 similar gross recovery of “\$69,000.” *Doe v. Lincoln Mil. Prop. Mgmt. LP*, No.
11 320CV00224GPCAHG, 2020 WL 5587488, at *10 (S.D. Cal. Sept. 18, 2020), *adopted*,
12 No. 320CV00224GPCAHG, 2020 WL 5810168 (S.D. Cal. Sept. 30, 2020). That recovery
13 was for a minor who, similar to the minors here, suffered “wet coughs, eye infections, sinus
14 infections, lethargy, and shortness of breath.” *See id.* at *1. A second minor in that suit
15 received a larger net recovery, \$19,793.29. *Id.* at *10. But that minor’s “exposure to toxic
16 mold also exacerbated his autism, regressing his behavioral and speech therapy progress”
17 and caused his “withdraw[al] from school.” *Id.* at *1. So the Court concludes that
18 comparison with that case—the most directly applicable case the Court could locate—
19 supports both the overall distribution and specifically the slightly larger distribution in this
20 case to C.S. given his more serious symptoms.

21 Finally, the procedure for disposition of the funds—turning them over to the parents
22 for care until the minors reach the age of majority—is consistent with the California
23 Probate Code, since the resulting net estate for each minor is less than \$5,000. *See* Cal.
24 Prob. Code 3611(e); (ECF 29-2, at 2).

25 CONCLUSION

26 The settlement here is in the best interests of the children, in line with settlements in
27 similar cases, and in compliance with this Court’s local rules. Accordingly, the Court
28 RECOMMENDS:

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- 1. The motions to approve the settlements (ECF 29) be **GRANTED**.
- 2. The compromise and settlement of the claims of the minors C.S. and A.S. be **APPROVED** as fair and reasonable and in the best interests of the minor plaintiffs.
- 3. The minors’ net recovery—\$3,669.50 and \$2,206.72, respectively—be paid to Cody and Michelle Smith to be held until the minors reach the age of majority. (See ECF 29-2, at 2.)

Any objections to this report and recommendation are due by September 22, 2021. See 28 U.S.C. 636(b)(1). A party may respond to any such objection within 14 days of being served with it. See Fed. R. Civ. P. 72(b)(2).

Dated: September 8, 2021



Hon. Andrew G. Schopler
United States Magistrate Judge