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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

E.C., a minor, by and through her mother,  
Gretta Caraballo; V.B., a minor, by and  
through her father, Jeffrey Logan  
Bradley; Z.M., a minor, by and through  
his mother, Abigail Merten; GRETTA  
CARABALLO; REBECCA  
PATTERSON; and JOHNATHON  
MERTEN,  
  
Plaintiffs,  
  
v.  
  
LINCOLN MILITARY PROPERTY  
MANAGEMENT LP; et al.,  
  
Defendants.

Case No.: 21-cv-2070-JES-BLM

**ORDER GRANTING UNOPPOSED  
EX PARTE MOTION TO CONFIRM  
PLAINTIFF Z.M.’S MINOR’S  
COMPROMISE**

**[DKT. NO. 73]**

Before the Court is Plaintiffs’ Unopposed Ex Parte Motion to Confirm Plaintiff Z.M.’s Minor’s Compromise. Dkt. No. 73.<sup>1</sup> Defendants do not oppose the Motion. For the reasons stated below, the Court **GRANTS** the Motion.

**I. BACKGROUND AND NATURE OF THE CLAIM**

Plaintiffs filed a complaint alleging claims for personal injury against Defendants Lincoln Military Property Management, LP, LMH Holdings, LLC, Camp Pendleton & Quantico Housing, LLC, and LPC Pendleton Quantico PM LP (collectively, “Defendants”). Dkt. No. 8. The Complaint alleges that Plaintiff Johnathon Merten (“Merten”) turned on the faucet of the bathroom sink to give his 21-month-old son, Z.M., a bath. Merten felt the water before putting Z.M. into the sink; it was lukewarm to the

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<sup>1</sup> This case was assigned to U.S. Magistrate Judge Daniel E. Butcher for review of the Minor’s Compromise, and the parties subsequently consented to the undersigned’s jurisdiction for purposes of reviewing the Minor’s Compromise. Dkt. Nos. 76–79.

1 touch, not hot. *Id.* at 8. Merten placed Z.M. into the sink. *Id.* Z.M. was enjoying the bath  
2 and playing with the water when he turned the hot water handle. *Id.* Within seconds, the  
3 water became scalding hot. Z.M. screamed in pain. *Id.* Merten immediately pulled Z.M.  
4 from the scalding water. *Id.* Z.M. continued to scream and cry in pain; the scalding water  
5 had burned his right leg, knee, thigh, and genitals. *Id.*

6 Tricare covered Z.M.’s medical care, and the medical lien is \$856.53. Dkt. No.  
7 73-1 (Ritterbeck Decl. ¶ 7); Dkt. No. 73-5 (A. Merten Decl. ¶ 6). Z.M.’s medical care is  
8 not ongoing. Dkt. No. 73-5 (A. Merten Decl ¶ 6).

9 The Amended Complaint asserts the property at issue is owned by Defendants  
10 Camp Pendleton & Quantico Housing, LLC and LMH Holdings, LLC and managed by  
11 LPC Pendleton Quantico PM, LP and Lincoln Military Property Management LP. Dkt.  
12 No. 8.

13 After extensive litigation, Plaintiffs Johnathon Merten and Z.M. settled their claims  
14 with Defendants for \$150,000.00, apportioning \$83,000 to Z.M. and the balance to  
15 Merten. Dkt No. 73 and 73-1 (Ritterbeck Decl. ¶ 4). Plaintiffs now move for approval of  
16 Z.M.’s settlement. Dkt. No. 73.

## 17 **II. LEGAL STANDARD**

18 “District courts have a special duty, derived from Federal Rule of Civil Procedure  
19 17(c), to safeguard the interests of litigants who are minors.” *Robidoux v. Rosengren*, 638  
20 F.3d 1177, 1181 (9th Cir. 2011). Rule 17(c) provides that a district court “must appoint a  
21 guardian ad litem—or issue another appropriate order—to protect a minor . . . who is  
22 unrepresented in an action.” Fed. R. Civ. P. 17(c)(2). “In the context of proposed  
23 settlements in suits involving minor plaintiffs, this special duty requires a district court to  
24 ‘conduct its own inquiry to determine whether the settlement serves the best interests of  
25 the minor.’” *Robidoux*, 638 F.2d at 1181 (quoting *Dacanay v. Mendoza*, 573 F.2d 1075,  
26 1080 (9th Cir. 1978)); *see also Salmeron v. United States*, 724 F.2d 1357, 1363 (9th Cir.  
27 1983) (“Thus, a court must independently investigate and evaluate any compromise or  
28 settlement of a minor’s claims to assure itself that the minor’s interests are protected, even

1 if the settlement has been recommended or negotiated by the minor’s parent or guardian  
2 *ad litem.*”).

3 This Court’s Civil Local Rule 17.1 states, “[no] action by or on behalf of a minor  
4 . . . will be settled, compromised, voluntarily discontinued, dismissed or terminated  
5 without court order or judgment. All settlements and compromises must be reviewed by  
6 a magistrate judge before any order of approval will issue.” CivLR 17.1(a). In addition,  
7 any “[m]oney or property recovered by a minor or incompetent California resident by  
8 settlement or judgment must be paid and disbursed in accordance with California Probate  
9 Code Section 3600, *et seq.*” CivLR 17.1(b)(1).

10 Under California law, the Court must “evaluate the reasonableness of the settlement  
11 and determine whether the compromise is in the best interests of the minor.” *A.M.L., et*  
12 *al. v. Cernaianu, M.D., et al.*, LA CV12-06082 JAK (RZx), 2014 WL 12588992, at \*3  
13 (C.D. Cal. Apr. 1, 2014). The court is afforded “broad power . . . to authorize payment  
14 from the settlement—to say who and what will be paid from the minor's money—as well  
15 as direct certain individuals to pay it.” *Goldberg v. Super. Ct.*, 23 Cal. App. 4th 1378,  
16 1382 (Cal. Ct. App. 1994); *see also Peason v. Super. Ct.*, 136 Cal. Rptr. 3d 455, 459 (Cal.  
17 Ct. App. 2012) (explaining that the purpose of requiring court approval of a minor’s  
18 settlement is to “allow[ ] the guardians of a minor to effectively negotiate a settlement  
19 while at the same time protect[ing] the minor’s interest by requiring court approval before  
20 the settlement can have a binding effect on the minor”).

21 District courts “limit the scope of their review to the question whether the net  
22 amount distributed to each minor plaintiff in the settlement is fair and reasonable, in light  
23 of the facts of the case, the minor’s specific claim, and recovery in similar cases.”  
24 *Robidoux*, 638 F.3d at 1181-82. “[T]he district court should evaluate the fairness of each  
25 minor plaintiff’s net recovery without regard to the proportion of the total settlement value  
26 designated for the adult co-plaintiffs or plaintiffs’ counsel—whose interests the district  
27 court has no special duty to safeguard.” *Id.* at 1182. “So long as the net recovery to each  
28 minor plaintiff is fair and reasonable in light of their claims and average recovery in

1 similar cases, the district court should approve the settlement as proposed by the parties.”

2 *Id.*

### 3 **III. DISCUSSION**

4 Plaintiffs and Defendants settled their claims for \$150,000.00, apportioned as  
5 follows: \$67,000 to Merten and \$83,000 to Z.M. Dkt. No. 73-1 (Ritterbeck Decl. ¶ 4);  
6 Dkt. No. 73-5 (A. Merten Decl. ¶ 4). Regarding the \$83,000 to Z.M., the Court finds the  
7 amount fair, reasonable, and in the minor’s best interests considering the facts and  
8 circumstances of this action. The Court also finds the net disbursement to Z.M. after  
9 deductions for a medical lien, litigation costs, and attorney’s fees is reasonable.

#### 10 **A. Proposed Settlement Amount**

11 The Court has reviewed the confidential Settlement Agreement. Under the  
12 Settlement Agreement, Z.M. will net \$20,770.30 (\$83,000.00 less \$856.53 for the medical  
13 lien, \$36,473.17 in litigation costs, and \$24,900 in legal fees). The \$20,770.30 net  
14 proceeds will fund an annuity providing payments to Z.M. as follows:

15 \$5,000.00 guaranteed lump sum at Age 18 on 08/01/2037.

16 \$10,000.00 guaranteed lump sum at Age 21 on 08/01/2040.

17 \$30,742.18 guaranteed lump sum at Age 24 on 08/01/2043.

18 Dkt. No. 73-2. The total payout from the annuity Z.M. is \$45,742.18. Dkt. No. 73-1  
19 (Ritterbeck Decl. ¶ 7); Dkt. No. 73-5 (A. Merten Decl. ¶ 6).

20 Costs deducted from the settlement proceeds consist of filing fees, expert costs  
21 (including four liability experts and three damages experts), seventeen depositions,  
22 investigator costs, service costs, medical records, postage, and mediation. Shared costs  
23 are split evenly between the three families involved in this lawsuit (Bradley, Merten, and  
24 Caraballo). The total costs for the Mertens’ claims, including the individual costs and the  
25 portion of the shared costs attributed to them are \$64,427.19. Dkt. No. 73-1 (Ritterbeck  
26 Decl. ¶ 6); Dkt. No. 73-5 (A. Merten Decl. ¶ 7). This amount is apportioned between Z.M.  
27 (\$36,473.17) and Merten (\$27,954.02) proportionate to their recovery. *Id.* The Court finds  
28 this is a fair and reasonable apportionment.

1 The parties submitted an itemized breakdown of the Mertens’ costs, which the  
2 Court has reviewed. Dkt. No. 73-4. Although the costs are high in relation to the overall  
3 settlement amount, the Court finds these costs are reasonable given the difficulty,  
4 complexity, and length of the litigation.

5 In sum, the Court finds the total amount of the settlement and the costs apportioned  
6 to Z.M. are fair and equitable under the circumstances.

7 **B. Attorney’s Fees**

8 The Court next evaluates the reasonableness of the \$24,900 in attorney’s fees  
9 deducted from the proceeds to Z.M. In California, courts must approve attorney fees for  
10 representing a minor. *See* CAL. PROB. CODE § 2601; Cal. Rule of Ct. 7.955; *see also*  
11 *A.G.A. v. Cty. of Riverside*, No. EDCV 19-00077-VAP (SPx), 2019 WL 2871160, at \*1  
12 (C.D. Cal. Apr. 26, 2019) (the district court must “consider whether the net amount  
13 distributed to each minor plaintiff in the settlement is fair and reasonable”) (internal  
14 quotations omitted).

15 “When approving the amount of attorney’s fees paid as part of a minor’s  
16 compromise, California Rule of Court 7.955 is instructive on factors that may be  
17 considered ‘in determining whether an attorney’s proposed fee is reasonable.’” *L.C.C. by*  
18 *& through Calihan v. United States*, No. 20-cv-1489-KSC, 2022 WL 16579320, at \*4  
19 (S.D. Cal. Nov. 1, 2022). The Court considers, for example, the time and labor required,  
20 whether the minor’s representative consented to the fee, the amount of money involved,  
21 the result obtained, and whether the fee is fixed, hourly, or contingent. California Rule of  
22 Court 7.955(b); *see V.C. by & through Anaya v. Hunterwood Techs. USA, Ltd.*, No. 21-  
23 cv-888-AJB-LR, 2023 WL 2914284, at \*5 (S.D. Cal. Apr. 11, 2023), report and  
24 recommendation adopted, No. 21-cv-0888-AJB-LR, 2023 WL 4047589 (S.D. Cal. Apr.  
25 17, 2023) (consulting Rule 7.955(b) and approving 33.33% contingency fee where  
26 attorneys spent hundreds of hours collaborating with experts, conducting investigations,  
27 and working with structured settlement professionals to determine the best approach to  
28 disburse the settlement proceeds).

1 “[F]ees in minors’ cases have historically been limited to twenty-five percent  
2 (25%) of the gross recovery.” *See, e.g., DeRuyver v. Omni La Costa Resort & Spa, LLC*,  
3 No. 17-cv-0516-H-AGS, 2020 WL 563551, at \*2 (S.D. Cal. Feb. 4, 2020); *Napier v. San*  
4 *Diego City*, No. 15-cv-581-CAB-KSC, 2017 WL 5759803, at \*9 (S.D. Cal. Nov. 28,  
5 2017); *Mitchell v. Riverstone Residential Grp.*, No. Civ. S-11-2202 LKK/CKD, 2013 WL  
6 1680641, at \*2 (E.D. Cal. Apr. 17, 2013). “[M]ost courts require a showing of good cause  
7 to award more than 25% of any recovery” and such an award is “rare and justified only  
8 when counsel proves that he or she provided extraordinary services.” *Schwall v. Meadow*  
9 *Wood Apts.*, CIV. S-07-0014 LKK, 2008 WL 552432, at \*1-\*2 (E.D. Cal. Feb. 27, 2008)  
10 (internal quotations omitted).

11 Z.M.’s fee agreement provides for a 35% contingency fee. Dkt. No. 73-1  
12 (Ritterbeck Decl. ¶ 5); Dkt. No. 73-5 (A. Merten Decl. ¶ 7). As part of the Settlement  
13 Agreement, however, counsel agreed to reduce the fee to 30% of the gross recovery. *Id.*  
14 The Court finds a 30% contingency fee is appropriate under the circumstances.

15 Plaintiff’s counsel submitted a declaration explaining the case involved extensive  
16 written discovery and three attorneys completed seventeen depositions. Dkt. No. 73-1  
17 ¶ 5. Counsel successfully opposed several motions to dismiss and a motion to sever. *Id.*  
18 Counsel attended two settlement conferences and two mediations. *Id.* Counsel also  
19 engaged four liability experts and three damages experts, attended inspections with some  
20 of those experts, and obtained expert reports before finally reaching a settlement one  
21 month before the final Pretrial Conference. Dkt. No. 73-5 ¶ 7.

22 The Court agrees that counsel expended significant time and resources to obtain a  
23 favorable result for Plaintiff Z.M. The Court also notes that Z.M.’s guardian, Abigail  
24 Merten, consents to the fee. Dkt. No. 73-5 (A. Merten Decl. ¶ 8-9). The Court, therefore,  
25 finds a 30% contingency fee is appropriate here. *See Alter by & through Alter v. Cnty. of*  
26 *San Diego*, No. 21-cv-1709-BLM, 2023 WL 4166096, at \*5 (S.D. Cal. June 22, 2023)  
27 (relying on *Robidoux* to find attorney’s fees for 33.33% of settlement to incompetent adult  
28 reasonable given attorney’s experience, the length of the litigation, the difficult and

1 complex legal and factual issues raised, and counsel’s significant success); *Garcia v.*  
2 *Cnty. of San Diego*, No. 15-cv-189-JLS-NLS, 2022 WL 2973429, at \*3 (S.D. Cal. July  
3 27, 2022) (approving minor’s compromise with attorney’s fees of 50% of settlement  
4 pursuant to fee agreement finding that counsel were experienced attorneys and excessive  
5 litigation was involved).

6 **IV. CONCLUSION**

7 For the reasons discussed above, the Court **APPROVES** the settlement agreement  
8 and **GRANTS** Plaintiffs’ Motion to confirm Plaintiff Z.M.’s minor’s compromise. Dkt.  
9 No. 73.

10 Under the Settlement Agreement, Plaintiff Z.M. will receive \$83,000.00 as the total  
11 settlement amount, minus \$856.53 in medical fees to Tricare and \$36,473.17 in legal  
12 costs. The Court also approves attorney’s fees at 30% of Plaintiff Z.M.’s recovery  
13 (\$24,900.00). The settlement proceeds will be distributed as follows:

14	Gross amount of settlement	\$83,000.00
15	Medical Lien to be paid from settlement	(\$856.53)
16	Attorney’s Fees to be paid from settlement	(\$24,900.00)
17	Legal expenses to be paid from settlement	(\$36,473.17)
18	Net Balance of Proceeds for annuity	\$20,770.30.

19 The \$20,770.30 net proceeds to Z.M. are to be used to purchase an annuity from  
20 MetLife Assignment Company, Inc., which will provide for the following periodic  
21 payments to be made by Metropolitan Tower Life Insurance Company, rated A+ XV by  
22 A.M. Best:

23 TO PAYEE: Z.M.

24 \$5,000.00 payable guaranteed lump sum at Age 18 on 08/01/2037.

25 \$10,000.00 payable guaranteed lump sum at Age 21 on 08/01/2040.

26 \$30,742.18 payable guaranteed lump sum at Age 24 on 08/01/2043.

27 *See* Dkt. No. 73-2. These annuity payments to Z.M. total \$45,742.18.

28 The parties shall implement the settlement in accordance with the terms of the

1 Settlement Agreement. In addition, the parties shall file a Joint Motion to Dismiss this  
2 action within 30 days after the date of this Order.

3 **IT IS SO ORDERED.**

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5 Dated: July 21, 2023



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Daniel E. Butcher  
United States Magistrate Judge

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