

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

L.P., a minor, by and through his guardian
and guardian ad litem, Yamin B.,
Plaintiff,
v.
BELLA MENTE MONTESSORI
ACADEMY,
Defendant.

Case No.: 3:23-cv-01166-LL-AHG
**REPORT AND
RECOMMENDATION FOR ORDER
GRANTING PETITION FOR
APPROVAL OF MINOR'S
COMPROMISE**
[ECF No. 1]

1 Before the Court is the Complaint and Petition for Approval of Minor’s Compromise
2 filed by minor Plaintiff L.P. (“Plaintiff”), by and through his guardian *ad litem* Yamin B.,
3 seeking Court approval of the settlement of Plaintiff’s putative claims against Defendant
4 Bella Mente Montessori Academy. ECF No. 1. This Report and Recommendation is
5 submitted to United States District Judge Linda Lopez pursuant to 28 U.S.C. § 636(b)(1)
6 and Local Civil Rule 17.1 of the United States District Court for the Southern District of
7 California. After reviewing the Petition and all supporting documents, and for the reasons
8 discussed below, the undersigned **RECOMMENDS** that the Court **GRANT** the Petition.

9 **I. BACKGROUND**

10 Plaintiff L.P. is a minor appearing by and through his mother and court-appointed
11 guardian *ad litem*, Yamin B. ECF No. 11. Plaintiff initiated this action by filing the instant
12 Complaint and Petition for Approval of Minor’s Compromise on June 23, 2023. ECF No.
13 1.¹ Plaintiff’s putative claims stem from L.P.’s suspension and subsequent expulsion from
14 the school he attended during the 2022-2023 school year, Bella Mente Montessori
15 Academy (“BMMA”), which resulted in administrative proceedings before the Office of
16 Administrative Hearings (“OAH”) and, ultimately, pre-litigation settlement. *Id.* at 3.

17 **A. Plaintiff’s Putative Claims**

18 The following factual allegations are taken from Plaintiff’s Complaint and are taken
19 as true only to the extent the Court must consider the nature of Plaintiff’s claims to evaluate
20 the fairness of the settlement.

21 In August 2022, thirteen-year-old Plaintiff L.P. began attending BMMA, a public
22 charter located within the boundaries of Vista Unified School District. ECF No. 1 at 2. As
23 a disabled student, L.P. qualified for an individualized education program (“IEP”) at
24

25 ¹ As noted in the Petition, although the parties reached a pre-litigation settlement and legal
26 proceedings were thus never commenced in this Court regarding the underlying dispute,
27 since Plaintiff’s putative claims arise under federal law, it is appropriate for the Court to
28 construe the parties’ case-initiating filing as **both** a complaint and a petition for approval
of minor’s compromise. *P.R. v. Fresno Unified Sch. Dist.*, No. 1:19-cv-00220-DAD-BAM,
2019 U.S. Dist. LEXIS 46346, at *2 (E.D. Cal. Mar. 20, 2019).

1 BMMA under the primary eligibility category of Other Health Impairment (“OHI”), due
2 to his Attention-Deficit Hyperactivity Disorder (“ADHD”) and secondary eligibility of
3 Specific Learning Disability (“SLD”). *Id.*

4 On or around October 17, 2022, BMMA suspended and subsequently expelled L.P.
5 for violating the student code of conduct. *Id.* at 3. L.P. allegedly made terroristic threats to
6 commit a school shooting targeting specific individuals during a two-week period. *Id.* On
7 November 7, 2022, BMMA convened a manifestation determination review meeting
8 pursuant to the Individuals with Disabilities Education Act (“IDEA”). *See* 20 U.S.C. §
9 1415(k)(1)(E); 34 C.F.R. § 300.530(e)(1) (requiring that, within 10 school days of any
10 decision to change the placement of a child with a disability because of a violation of a
11 code of student conduct, the school, parent, and relevant members of the child’s IEP team
12 must review all relevant information in the student’s file and other information to determine
13 if the conduct in question was caused by, or had a direct and substantial relationship to, the
14 child’s disability, or if the conduct was the direct result of the school’s failure to implement
15 the IEP). Prior to the meeting, a BMMA school psychologist prepared a draft manifestation
16 determination report, which concluded that L.P.’s behaviors were not caused by and did
17 not have a direct or substantial relationship to L.P.’s disability and were not the result of
18 BMMA’s failure to implement his IEP. *See* ECF No. 1-2 at 13-17. After the meeting, the
19 BMMA members of the manifestation determination review team made no changes to the
20 draft report and reached the same conclusion. *Id.* at 20-21. BMMA held an expulsion
21 hearing on December 2, 2022, and expelled L.P. on December 5, 2022. *Id.* Based on the
22 suspension and expulsion, Plaintiff alleges that BMMA denied him a free appropriate
23 public education (“FAPE”), as required under IDEA, from October 17, 2022, until the end
24 of the winter term. ECF No. 1 at 3; *see also* 20 U.S.C. § 1412(a)(1); 34 CFR § 300.101.

25 Plaintiff filed an administrative complaint and due process hearing request against
26 Defendant BMMA on November 23, 2022. ECF No. 1 at 3. The Office of Administrative
27 Hearings convened the hearing on January 10, 11, 12, 17, and 28, 2023 before an
28 Administrative Law Judge (“ALJ”). On January 31, 2023, the ALJ issued an expedited

1 decision in Plaintiff’s favor. *See* ECF No. 1-2, OAH Decision. The ALJ held that BMMA
2 failed to comply with the IDEA because, since the BMMA manifestation determination
3 review team relied entirely on the pre-written draft report prepared by the school
4 psychologist, BMMA had “predetermined the outcome of the November 7, 2022,
5 manifestation determination meeting, failed to follow IDEA procedures, and denied [L.P.’s
6 parents] meaningful participation in the manifestation determination process required for
7 a disciplinary change of [L.P.’s] placement.” *Id.* at 29. The ALJ ordered that BMMA
8 conduct a new manifestation determination review meeting for L.P., complying with all
9 IDEA procedures, within 45 days of the order. *Id.* at 30-31.

10 On or around March 17, 2023, L.P.’s parent, through her counsel, notified BMMA
11 of her intention to pursue civil and administrative claims and damages in federal court on
12 behalf of L.P. for alleged violations of IDEA, Section 504 of the Rehabilitation Act of
13 1973, 29 U.S.C. § 794, the Americans with Disabilities Act, and additional causes of action
14 for race and disability discrimination and negligent and intentional infliction of emotional
15 distress. ECF No. 1 at 5. L.P. also intended to bring a constitutional due process claim
16 against BMMA and planned to seek injunctive relief to overturn the alleged unlawful
17 expulsion. *Id.*

18 After extensive negotiations, the parties eventually entered into a series of two
19 settlement agreements to settle all claims. *Id.* The first settlement agreement, which is now
20 before this Court, (“the Agreement”), settles any and all civil actions, resolving all of
21 Plaintiff’s putative claims for monetary damages under federal and state law, and is
22 contingent upon the Court’s approval of the minor’s compromise. *See* ECF No. 1 at 5; *see*
23 *also* ECF No. 1-3, Compl. Ex. B: Settlement and General Release.² The BMMA board
24 approved the Agreement on April 20, 2023. *See* ECF No. 1 at 5-6.

25
26 ² The second settlement agreement applies to educational claims under the jurisdiction of
27 the Office of Administrative Hearings. *See id.* at 6; *see also* ECF No. 1-4, Compl. Ex. C,
28 Education Settlement and General Release. The second agreement is not contingent on
Court approval and is not before the Court.

1 **B. Terms of Settlement**

2 The Agreement fully resolves all known and unknown claims arising from or related
3 to L.P.’s educational program from August 2022 to December 2022, in exchange for the
4 following settlement terms:

- 5 • BMMA will pay Plaintiff’s guardian ad litem damages in the amount of \$35,000,
6 subject to and payable consistent with this Court’s approval of the minor’s
7 compromise.
- 8 • BMMA will reimburse Plaintiff’s attorney fees in the amount of \$10,000.

9 ECF No. 1 at 6.

10 **II. LEGAL STANDARD**

11 It is well-settled that courts have a special duty to safeguard the interests of litigants
12 who are minors in the context of settlements proposed in civil suits. *Robidoux v. Rosengren*,
13 638 F.3d 1177, 1181 (9th Cir. 2011); *see also* Fed. R. Civ. P. 17(c) (district courts “must
14 appoint a guardian *ad litem*—or issue another appropriate order—to protect a minor or
15 incompetent person who is unrepresented in an action”). This evaluation requires the Court
16 to determine if the settlement is in the best interests of the minor, by considering not only
17 the fairness of the settlement, but the structure and manner of the plan for the payment and
18 distribution of the assets for the benefit of the minor. “In the context of proposed
19 settlements in suits involving minor plaintiffs, this special duty requires a district court to
20 ‘conduct its own inquiry to determine whether the settlement serves the best interests of
21 the minor.’” *Robidoux*, 638 F.3d at 1181 (quoting *Dacanay v. Mendoza*, 573 F.2d 1075,
22 1080 (9th Cir. 1978)); *see also* *Salmeron v. United States*, 724 F.2d 1357, 1363 (9th Cir.
23 1983) (holding that “a court must independently investigate and evaluate any compromise
24 or settlement of a minor’s claims to assure itself that the minor’s interests are protected,
25 even if the settlement has been recommended or negotiated by the minor’s parent or
26 guardian *ad litem*”).

27 To facilitate courts within this district fulfilling the duty to safeguard the interests of
28 minor plaintiffs, the Local Rules provide that “[n]o action by or on behalf of a minor or

1 incompetent will be settled, compromised, voluntarily discontinued, dismissed or
2 terminated without court order or judgment.” CivLR 17.1 To that end, parties must submit
3 any settlement of a minor’s claims to a magistrate judge for preliminary review of the
4 structural components of the agreement. *See* CivLR 17(a) (“All settlements and
5 compromises must be reviewed by a magistrate judge before any order of approval shall
6 issue.”). In making this evaluation, the Court must apply the state probate code, even where
7 the settlement involves claims arising under federal law. *See* CivLR 17.1(b)(1) (“Money
8 or property recovered by a minor or incompetent California resident by settlement or
9 judgement must be paid and disbursed in accordance with California Probate Code § 3600,
10 *et seq.*”).

11 The Ninth Circuit has established that courts reviewing the settlement of a minor’s
12 federal claim should “limit the scope of their review to the question whether the net amount
13 distributed to each minor in the settlement is fair and reasonable, in light of the facts of the
14 case, the minor’s specific claim, and recovery in similar cases.” *Robidoux*, 638 F.3d at
15 1181–82. They should also “evaluate the fairness of each minor plaintiff’s net recovery
16 without regard to the proportion of the total settlement value designated for adult co-
17 plaintiffs or plaintiffs’ counsel—whose interests the district court has no special duty to
18 safeguard.” *Id.* at 1182 (citing *Dacanay*, 573 F.2d at 1078). “So long as the net recovery to
19 each minor plaintiff is fair and reasonable in light of their claims and average recovery in
20 similar cases, the district court should approve the settlement as proposed by the parties.”
21 *Robidoux*, 638 F.3d at 1182.

22 Significantly, the Ninth Circuit limited its decision in *Robidoux* to “cases involving
23 the settlement of a minor’s *federal* claims.” *Id.* at 1181–82 (emphasis added). Where a
24 settlement involves state law claims, federal courts are generally guided by state law rather
25 than the *Robidoux* framework. *J.T. by & Through Wolfe v. Tehachapi Unified Sch. Dist.*,
26 No. 116-CV-01492-DAD-JLT, 2019 WL 954783, at *2 (E.D. Cal. Feb. 27, 2019). *See also*
27 *A.M.L. v. Cernaianu*, No. LA CV12-06082 JAK (RZx), 2014 WL 12588992, at *3 (C.D.
28 Cal. Apr. 1, 2014) (collecting cases). The *A.M.L.* court noted that, although federal courts

1 generally require claims by minors to “be settled in accordance with applicable state law,”
2 the Ninth Circuit in *Robidoux* held such an approach “places undue emphasis on the
3 amount of attorney’s fees provided for in a settlement, instead of focusing on the net
4 recovery of the minor plaintiffs.” No. LA CV12-06082 JAK (RZx), 2014 WL 12588992,
5 at *2 (quoting *Robidoux*, 638 F.3d at 1181) (other citation omitted). *But see Mitchell v.*
6 *Riverstone Residential Grp.*, No. CIV. S-11-2202 LKK, 2013 WL 1680641, at *1 (E.D.
7 Cal. Apr. 17, 2013) (“[A] number of district courts have applied the rule provided in
8 *Robidoux* to evaluate the propriety of a settlement of a minor’s state law claims as well”)
9 (collecting cases).

10 Just like federal claims, a minor’s settlement of state law claims must also be
11 approved by the Court, under the same applicable statutory scheme for approval of a
12 minor’s compromise set forth in the California Probate Code. *See* Cal. Prob. Code §§ 3601
13 *et seq.* Under California law, the Court is tasked with evaluating the reasonableness of the
14 settlement and determining whether the compromise is in the best interest of the minor.
15 *A.M.L.*, 2014 WL 12588992, at *3 (citations omitted). In carrying out that task, the Court
16 is afforded “broad power . . . to authorize payment from the settlement—to say who and
17 what will be paid from the minor’s money—as well as direct certain individuals to pay it.”
18 *Goldberg v. Super. Ct.*, 23 Cal. App. 4th 1378, 1382 (Cal. Ct. App. 1994). *See also Pearson*
19 *v. Super. Ct.*, 136 Cal. Rptr. 3d 455, 459 (Cal. Ct. App. 2012) (explaining that the purpose
20 of requiring court approval of a minor’s settlement is to “allow[] the guardians of a minor
21 to effectively negotiate a settlement while at the same time protect[ing] the minor’s interest
22 by requiring court approval before the settlement can have a binding effect on the minor”).

23 Here, Plaintiff’s putative damages claims arise under both federal and state law.
24 Therefore, the Court will review the settlement with an eye towards both the state law
25 standard, which focuses on the “best interests of the minor,” as well as the *Robidoux*
26 standard, which focuses on whether the net amount distributed to the minor plaintiff
27 (without regard to the proportion of the settlement allocated to adult co-plaintiffs or
28 attorney fees) is “fair and reasonable.” *See A.M.L.*, 2014 WL 12588992 at *3 (finding it

1 unnecessary for the court to resolve whether *Robidoux* or state rules applied to approval of
2 minor’s compromise in case involving state law tort claims, because the proposed
3 settlement would satisfy both standards). For the reasons explained below, the Court finds
4 the settlement should survive scrutiny under both standards.

5 **III. DISCUSSION**

6 As mentioned above, the parties engaged in extensive negotiations before they
7 eventually entered into a series of two settlement agreements to settle all claims, and the
8 first settlement agreement is now before this Court for approval. ECF No. 1 at 5. To
9 determine whether the agreement is fair, reasonable, and in the best interests of L.P., the
10 Court will analyze the proposed net settlement amount for Plaintiff, the method of
11 disbursing Plaintiff’s net recovery, and the proposed attorney fees and costs.

12 **A. Proposed Net Settlement Amount for Plaintiff**

13 In reviewing a petition to approve a minor’s compromise, “courts typically consider
14 such information as the relative worth of the settlement amount, the circumstances of the
15 settlement, counsel’s explanation of their views and experiences in litigating these types of
16 actions, and other, similar compromises that have been approved by courts.” *J.T.*, 2019 WL
17 954783, at *2. As discussed above, under the federal standard, the Court’s inquiry should
18 take into account “whether the net amount distributed to each minor plaintiff in the
19 settlement is fair and reasonable, in light of the facts of the case, the minor’s specific
20 claims, and recovery in similar cases.” *Robidoux*, 638 F.3d at 1181-82. Taking all relevant
21 considerations into account, the Court finds that the proposed net recovery of \$35,000 for
22 Minor L.P. is fair, reasonable, and in Plaintiff’s best interests, considering the facts and
23 circumstances of this action.

24 The Court has performed its own review of cases involving facts similar to those at
25 issue here and finds the net recovery amount to be reasonable and fair. In fact, Plaintiff’s
26 net recovery of \$35,000 exceeds the typical amount recovered by other minors in similar
27 circumstances or actions. *See, e.g., Stanley v. Bellflower Unified Sch. Dist.*, 2022 U.S. Dist.
28 LEXIS 142039, at *2 (C.D. Cal. Jul. 1, 2022) (approving a total gross settlement amount

1 of \$30,000 and a net settlement amount of \$22,245.75 for a minor plaintiff bringing claims
2 under the IDEA and ADA against his school district for denying him disability services);
3 *T.L. v. So. Kern Unified Sch. Dist.*, 2019 WL 3072583, at *3 (E.D. Cal. Jul. 15, 2019)
4 (approving a net recovery of \$24,750 to the minor plaintiff in an IDEA case where a
5 disabled student was suspended and recommended for expulsion due to disability-related
6 behaviors); *V.A. v. Montebello Unified Sch. Dist.*, No. LACV1904645JAKKSX, 2020 U.S.
7 Dist. LEXIS 260202, at *2 (C.D. Cal. Sept. 17, 2020) (approving a gross settlement amount
8 of \$36,000 and a net settlement amount of \$30,000, to be placed in a blocked account for
9 the benefit of the minor plaintiff, where the plaintiff alleged violations of the ADA against
10 his school district); *Colbey T. v. Mt. Diablo Unified Sch. Dist.*, No. C 11-03108 LB, 2012
11 U.S. Dist. LEXIS 62930, at *1–2 (N.D. Cal. May 4, 2012) (approving a minor’s
12 compromise of civil rights, ADA, and Rehabilitation Act claims for \$29,000, and allocating
13 \$28,650 to be held in a trust account for the minor plaintiff’s counseling, therapy,
14 educational, and other expenses, where the minor plaintiff alleged the school district
15 exacerbated his emotional and behavioral disabilities rather than accommodating them).

16 Based upon these recoveries in similar actions, consideration of the facts, and the
17 risks associated with pursuing Plaintiff’s claims through litigation, the Court concludes the
18 proposed net settlement amount of \$35,000 for Plaintiff is fair and reasonable under both
19 state and federal law standards.

20 **B. Proposed Method of Disbursement**

21 Under the California Probate Code, various alternative methods are available for
22 disbursement of the funds of a settlement of a minor. *See* Cal. Prob. Code §§ 3600 *et. seq.*
23 Here, the net amount payable to L.P. is \$35,000. L.P.’s guardian *ad litem* Yamin B.
24 proposes that the net settlement amount be placed in an account pursuant to the California
25 Uniform Transfers to Minors Act (“CUTMA”), with Yamin B. serving as custodian of the
26 account and L.P. as the beneficiary of the account. *See* Cal. Prob. Code §§ 3900 *et seq*; *see*
27 *also* ECF No. 1-5, Decl. of Yamin B. Plaintiff’s proposed distribution method is in line
28 with Section 3611(f) of the California Probate Code, which provides that “money . . . to be

1 paid or delivered for the benefit of the minor” may “be transferred to a custodian for the
2 benefit of the minor under [CUTMA], Part 9 (commencing with Section 3900).”

3 Yamin B. has opened a CUTMA account for L.P. at San Diego County Credit Union.
4 ECF No. 1 at 7; *see also* ECF No. 1-5, Yamin B. Decl. ¶ 5. Accordingly, Plaintiff requests
5 that the Court issue an order for Defendant to distribute \$35,000 by check made payable to
6 “Yamin B. as custodian for L.P. under the California Uniform Transfers to Minors Act.”
7 ECF No. 1 at 7. Under the CUTMA, the funds will remain in the account until L.P. reaches
8 the age of 18, the custodian will have fiduciary responsibilities over the account and be
9 required to keep it separate, and when L.P. reaches the age of 18, the custodian of the
10 account will be required to pay the funds to L.P. *Id.*

11 The Court finds that the guardian *ad litem*’s proposed method of disbursement of
12 Plaintiff’s net settlement proceeds is fair, reasonable, and compliant with the relevant
13 California Probate Code governing approval of minor’s compromises and CUTMA. *See*
14 §§ 3611(f), 3904, 3909(a), 3920. Accordingly, the undersigned will recommend that the
15 Court approve the proposed distribution of the minor’s net settlement proceeds set forth in
16 the petition.

17 **C. Proposed Attorney Fees and Costs**

18 Attorney fees and costs are typically controlled by statute, local rule, or local custom.
19 *Napier v. San Diego Cty.*, 2017 U.S. Dist. LEXIS 196223, at *9 (S.D. Cal Nov. 28, 2017).
20 Generally, fees in minors’ cases have historically been limited to 25% of the gross
21 recovery. *See, e.g., DeRuyver v. Omni La Costa Resort & Spa, LLC*, No. 3:17-CV-0516-
22 H-AGS, 2020 WL 563551, at *2 (S.D. Cal. Feb. 4, 2020); *McCue v. South Fork Union*
23 *Sch. Dist.*, NO. 1:10-cv-00233-LJO-MJS, 2012 WL 2995666, at *2 (E.D. Cal. Jul. 23,
24 2012); *Welch v. Cty. of Sacramento*, No. 2:07-cv-00794-GEB-EFB, 2008 WL 3285412, at
25 *1 (E.D. Cal. Aug. 5, 2008); *Red v. Merced Cty.*, No. 1:06-cv-01003-GSA, 2008 WL
26 1849796, at *2 (E.D. Cal. Apr. 23, 2008). In California, courts are required to approve the
27 attorney fees to be paid for representation of a minor. *See* Cal. Prob. Code § 2601; Cal.
28 Rule of Ct. 7.955. To determine whether the fee is reasonable, courts consider a myriad of

1 factors including: the amount of the fee in proportion to the value of the services performed;
2 the novelty and difficulty of the questions involved, and skills required; the amount
3 involved and the results obtained; and the experience and ability of the attorney. In
4 instances where a contingency fee has been proposed, “most courts require a showing of
5 good cause to award more than 25% of any recovery” whereas a greater reward is “rare
6 and justified only when counsel proves that he or she provided extraordinary services.”
7 *Schwall v. Meadow Wood Apts.*, No. CIV. S-07-0014 LKK, 2008 WL 552432, at *1-*2
8 (E.D. Cal. Feb. 27, 2008) (internal quotation marks omitted).

9 Plaintiff requests that BMMA reimburse Plaintiff’s attorney fees in the amount of
10 \$10,000.00, a sum that represents 22.22% of the gross settlement proceeds. ECF No. 1 at
11 6.

12 The Court finds Plaintiff’s request for attorney fees to be permitted under the usual
13 historical limits. *See* 28 U.S.C. § 2678; *Napier v. San Diego*, No. 15-cv-581-CAB-KSC,
14 2017 WL 5759803, at *9 (S.D. Cal. No. 20, 2017). Given the specialization required to
15 represent a minor in an IDEA case, the time needed for counsel to familiarize themselves
16 with the case, the positive result before the ALJ, the time spent negotiating the two
17 settlement agreements, the time spent preparing this petition for review, and the fee
18 request’s adherence to the historically applied limit in cases involving minors, the
19 undersigned will recommend the Court find that the requested allocation of the settlement
20 funds towards attorney fees and costs is reasonable.

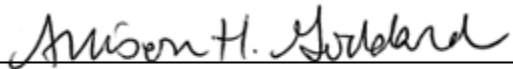
21 **IV. CONCLUSION**

22 For the reasons discussed above, **IT IS HEREBY RECOMMENDED** that the
23 District Court issue an Order: (1) adopting this Report and Recommendation; and (2)
24 **GRANTING** the Petition for Approval of Minor’s Compromise (ECF No. 1).

25 **IT IS ORDERED** that, pursuant to 28 U.S.C. § 636(b)(1)(C), any party to this action
26 may file written objections with the Court and serve a copy on all parties no later than
27 **August 15, 2023**. The document should be captioned “Objections to Report and
28 Recommendation.” If objections are filed, any reply is due by **August 22, 2023**.

1 Although the federal statutory scheme provides for a 14-day objections period to a
2 Magistrate Judge’s Report and Recommendation, the undersigned notes that the Petition
3 in this case is apparently unopposed. *See* ECF No. 13. Therefore, **if all parties wish to**
4 **waive the objections period, they should file a joint stipulation to that effect**
5 **immediately**, to allow the Court to adopt this Report and Recommendation without further
6 delay. However, there shall be no adverse consequences to any party who files objections
7 or otherwise chooses not to waive the objections period.

8
9 Dated: August 1, 2023

10 
11 _____
12 Honorable Allison H. Goddard
13 United States Magistrate Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28