

LAGOMARSINO LAW

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17 *Attorneys for Defendants*

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

16 JANE DOE, a minor, by and through her natural
17 parent,

18 Plaintiff,

19 vs.

20 CITY OF LAS VEGAS, a political subdivision
21 of the State of Nevada; ASHLEY
22 FERNANDEZ, individually; CINDY MOYES,
23 individually; and ANDREA ANZALONE,
24 individually;

25 Defendants.

CASE NO: 2:16-cv-1979-GMN-VCF

STIPULATED PETITION FOR MINOR’S COMPROMISE AND [PROPOSED] ORDER

26 COME NOW all parties, by and through their respective counsel of record, and hereby
27 jointly submit the following Stipulated Petition for Minor’s Compromise.

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1 **I. APPLICABLE STANDARD**

2 The court has an inherent duty to protect the interests of minors and incompetents who
3 appear before it. See *Keith v. Jackson*, 855 F. Supp 765, 775 (E.D. Pa. 1994) (citing *Dacanay v.*
4 *Mendoza*, 573 F.2d 1075, 1079 (9th Cir. 1978)). As part of that duty, the court must determine the
5 fairness of any settlement agreement and the reasonableness of any attorneys' fees and costs to be
6 paid from the settlement amount in a suit brought on behalf of a minor or incompetent.
7

8 Federal courts have held that it is appropriate to apply the rules prescribed by state law in
9 determining the fairness of a minor's compromise and the reasonableness of any attorneys' fees and
10 costs allocated from that settlement in both federal question and diversity cases.¹ For example, see
11 *Erie RR. v. Tompkins*, 304 U.S. 64 (1938), and *Stecyk v. Bell Helicopter Textron, Inc.*, 53 F Supp.2d
12 794, 801 (E.D. Pa.1999).

13 In approving the settlement, the court must also assess the reasonableness of the requested
14 counsel fees. In so doing, the court must “strike a balance between being a ‘passive proforma
15 rubber stamp’ ...and being too intrusive in its consideration of the fairness of counsel fees.”²
16

17 **II. BACKGROUND INFORMATION**

18 1. Plaintiff, JANE DOE (“JANE”) is a minor child who suffers from mental
19 disabilities.

20 2. CATRINA JAMES is JANE’S parent and is legally permitted to bring this Petition
21 on JANE’S behalf pursuant to NRS § 12.080.
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27 ¹ Local district courts are authorized to adopt rules of procedure. See 28 U.S.C. § 2071. The local rules, however must be
28 consistent with the national rules. See Fed. R. Civ. P. 83(a) (“ A local rule shall be consistent with--but not duplicative of
--Acts of Congress and [the national} rules ”). Once adopted, the local rule has the force of law. See *Tarkett, Inc. v.*
Congoleum Corp., 144 F.R.D. 282,284 (E.D. Pa. 1992) (citing *Baylson v. Disciplinary Bd. Of the Supreme Court or Pa.*,
764 F. Supp. 328,348 (E.D. Pa. 1991), aff’d, 975 F.2d 102 (3d Cir. 1992)).

Plaintiff's Allegations³

3. At all times relevant herein, Plaintiff JANE DOE was a minor-aged participant of the City of Las Vegas Adaptive Recreation Program at the East Las Vegas Community Center located at 250 N. Eastern Ave., Las Vegas, Nevada 89101.

4. Plaintiff filed a lawsuit in the Federal District Court, District of Nevada, giving rise to Case No. 2:16-CV-01979- GMN-VCF ("lawsuit") against the above named parties, alleging: (1) City of Las Vegas Inadequate Training Program and Policies were deliberately indifferent to the rights of Plaintiff and other participants, and caused her to be inappropriately touched one time on January 28, 2016 by another participant; (2) 42 U.S.C. § 1983 against defendant FERNANDEZ; (3) Negligence against Defendants FERNANDEZ and CITY OF LAS VEGAS; (4) Negligence against Defendants MOYES and CITY OF LAS VEGAS; (5) Negligence against Defendants ANZALONE and CITY OF LAS VEGAS; (6) Negligent Training, Supervision and Retention against CITY OF LAS VEGAS (7) 42 U.S.C. § 1983 – Supervisor Liability against Defendant MOYES; (8) 42 U.S.C. § 1983 – Supervisor Liability against Defendant ANZALONE; and (9) 42 U.S.C. § 1983 – Municipal Liability against Defendant CITY OF LAS VEGAS.

III. TOTAL SETTLEMENT DISBURSEMENT

5. A Settlement Agreement ("Agreement") was reached in the instant litigation matter between Plaintiff and Defendants in March, 2017 in the amount of (\$160,000.00).

6. Attorneys' Fees: Three (3) attorneys and one (1) paralegal worked extensively on this case. The undersigned partner was the lead attorney on the case and conducted all of the depositions. The firm has rendered extensive legal services on behalf of the Plaintiff including, but not limited to, pre-litigation investigations, drafting and preparing pleadings and papers filed in this case, client conferences, depositions, discovery disputes, extensive written discovery, motion

² *Stecyk*, 53 F. Supp.2d at 800 (quoting *Gilmore v. Dondero*, 582 A.2d 1106, 1109 (Pa. Super. Ct. 1990)).

³ Defendants deny the allegations recited herein.

1 practice, negotiations with the City of Las Vegas' attorneys that lasted several months, and
2 ultimately a mediation with Judge Pro. Plaintiff requests confirmation of the following amounts to
3 be paid from the Agreement⁴ amount (\$160,000.00):

- 4 a) Costs advanced to Lagomarsino Law totaling **\$11,660.41⁵**;
- 5 b) Attorney Fees (40%) to Lagomarsino Law
6 totaling **\$64,000.00⁶**;
- 7 c) Medical bills totaling (Dr. Eric Smith, Ph.D.) **\$3,970.60; and**
- 8 d) Proceeds to the JANE DOE BLOCKED
9 TRUST ACCOUNT **\$80,368.99.**

10
11 **IV. CREATION OF THE BLOCKED TRUST ACCOUNT FOR JANE DOE**

12 Petitioner, first being duly sworn, states under penalty of perjury as follows:

13 7. CATRINA JAMES is the natural parent of JANE DOE, minor, whose birthdate is
14 September 11, 2000. They reside at 1724 Sierra Hills Way, Las Vegas, Nevada 89128.

15 8. JANE DOE was a participant at of the City of Las Vegas Adaptive Recreation
16 Program at the East Las Vegas Community Center and alleged to have been inappropriately
17 touched. This matter was resolved though settlement negotiations.

18 9. After attorney's fees and costs, minor child, JANE DOE, will be awarded
19 \$80,368.99 as full and final settlement arising out of her claims against CITY OF LAS VEGAS,
20 ANDREA ANZALONE, CINDY MOYES, and ASHLEY FERNANDEZ.

21 10. The full settlement amount has been apportioned as follows: Attorney's fees in the
22 amount of \$64,000.00 representing the total on a contingency 40.00% contingency fee, attorney's
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28 ⁴ Settlement is pending with the Las Vegas City Council, to be approved on April 5, 2017 City Council meeting.
⁵ An itemized statement has been attached hereto as Exhibit 1.
⁶ The Fees awarded are reasonable. If the Court was to calculate Lagomarsino Law's actual time and billing rate for its attorneys and paralegals, the fees would exceed \$100,000.00

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costs in the amount of \$11,660.41, and medical bills to be paid to Dr. Eric Smith, Ph.D. in the amount of \$3,970.60.

11. Petitioner hereby requests that the Court give her authorization to utilize the funds as follows on behalf of JANE DOE:

- a) Costs advanced to Lagomarsino Law totaling **\$11,660.41⁷**;
- b) Attorney Fees (40%) to Lagomarsino Law totaling **\$64,000.00**;
- c) Medical bills totaling (Dr. Eric Smith, Ph.D.) **\$3,970.60**; and
- d) The blocked trust account for JANE DOE will contain the remaining balance of: **\$80,368.99**.

12. That Petitioner believes that the acceptance of this compromise is in the best interests of the minor child, JANE DOE.

13. That Petitioner has been advised and understands that acceptance of the compromise will bar the minor from seeking further relief from the Defendants offering the compromise.

14. Upon receiving the proceeds of the compromise, CATRINA JAMES will establish a blocked financial investment for the benefit of JANE DOE for the proceeds of the compromise. This account will be established at Chase Bank. CATRINA JAMES will file verified reports with the court as necessary and as dictated by NRS 41.200(5).

⁷ An itemized statement has been attached hereto as Exhibit 1.

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WHEREFORE, Petitioner prays as follows:

15. That this Honorable Court authorize the compromise of the claims of the minor, JANE DOE;

16. That this Honorable Court approve the opening of the blocked trust account by CATRINA JAMES, the natural parent of JANE DOE, for the benefit of her minor child, JANE DOE.

17. That this Honorable Court allow CATRINA JAMES to serve a Guardian *Ad Litem* for the minor child, without bond, for the limited purpose of administering funds of the minor child, JANE DOE.

18. That this Honorable Court order that Petitioner distributes the funds as delineated in paragraph 6 above.

19. That the Court confirm the payment of attorney fees and costs to be made from the settlement proceeds to Lagomarsino Law and authorize and direct said payments to be made immediately. That the Petitioner be authorized to execute any and all documents necessary for these transactions.

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20. That the Court confirm the payment of psychological bills to be made from the settlement proceeds to Dr. Eric Smith, Ph.D. and authorize and direct said payments to be made immediately. That the Petitioner be authorized to execute any and all documents necessary for these transactions.

DATED this ____ day of April, 2017.

DATED this ____ day of April, 2017.

LAGOMARSINO LAW

CITY OF LAS VEGAS

/s/ ANDRE LAGOMARSINO

/s/ Philip R. Byrnes

ANDRE M. LAGOMARSINO, ESQ. (#6711)
3005 West Horizon Ridge Parkway, Suite 241
Henderson, Nevada 89052
Attorney for Plaintiff

Philip R. Byrnes, Esq. (#166)
Elias P. George, Esq. (#12379)
495 South Main Street, Sixth Floor
Las Vegas, Nevada 89101
Attorneys for Defendants

ORDER

IT IS SO ORDERED.

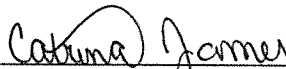
UNITED STATES DISTRICT COURT JUDGE

Dated: April 4, 2017

VERIFICATION

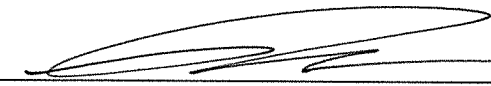
STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

CATRINA JAMES, being first duly sworn under penalty of perjury, deposes and says:
I am the Plaintiff and the Petitioner in the above-entitled action; I have read the foregoing
STIPULATED PETITION FOR MINOR'S COMPROMISE; and I know the contents thereof;
the same is true of my own knowledge, except for those matters therein contained stated upon
information and belief; and as to those matters I believe them to be true.

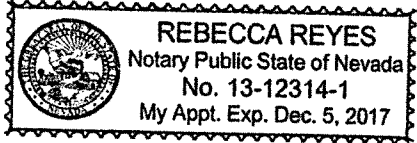


CATRINA JAMES

SUBSCRIBED and SWORN to before
me this 3rd day of April, 2017.



NOTARY PUBLIC in and for said
County and State.



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EXHIBIT 1

SETTLEMENT STATEMENT FOR JANE DOE

AMOUNT RECOVERED:\$160,000.00

ATTORNEY FEES (40%): (\$64,000.00)

ADVANCED COSTS: (\$11,660.41)

DATE	VENDOR	DESCRIPTION	AMOUNT
8/19/2016	United State District Court	Filing Fees	\$400.00
8/29/2016	AMPM Legal Solutions	Service of Process	\$70.00
8/29/2016	AMPM Legal Solutions	Service of Process	\$25.00
9/2/2016	AMPM Legal Solutions	Service of Process	\$70.00
12/16/2016	Las Vegas Legal Video	Videography	\$1,459.35
12/22/2016	LVMPD	Subpoena Fees	\$30.00
12/28/2016	Dalos Legal Services	Court Reporter	\$1,002.00
12/29/2016	Dalos Legal Services	Court Reporter	\$974.89
12/29/2016	Dalos Legal Services	Court Reporter	\$800.64
1/8/2017	AMPM Legal Solutions	Service of Process	\$45.00
1/8/2017	AMPM Legal Solutions	Service of Process	\$90.00
1/9/2017	AMPM Legal Solutions	Service of Process	\$45.00
1/10/2017	Desert Valley Pediatrics, LLC	Records	\$27.22
1/12/2017	LVMPD	Records	\$9.00
1/17/2017	Las Vegas Legal Video	Videography	\$243.23
1/12/2017	LVMPD Communications	Records	\$44.00
1/12/2017	LVMPD	Records	\$9.00
1/19/2016	Dalos Legal Services	Court Reporter	\$380.85
2/17/2017	Desert Regional Centers	Medical Records Fee	\$109.20
2/28/2017	Las Vegas Legal Video	Videography	\$245.00
2/28/2017	Las Vegas Legal Video	Videography	\$545.00
3/3/2017	Dalos Legal Services	Court Reporter	\$490.96
3/3/2017	Dalos Legal Services	Court Reporter	\$933.66
3/3/2017	Jams	Mediator Fees	\$2,963.14
3/7/2017	Desert Valley Pediatrics, LLC	Records	\$7.09
3/7/2017	AMPM Legal Solutions	Service of Process	\$45.00
2/3/2016 to 3/22/17	Lagomarsino Law	Postage & Delivery	\$23.58
2/3/2016 to 3/22/17	Lagomarsino Law	1,563 Scans at \$.10 per page	\$156.30

2/3/2016 to 3/22/17	Lagomarsino Law	281 Color Prints at \$1.00 per page	\$281.00
2/3/2016 to 3/22/17	Lagomarsino Law	419 Black & White Prints at \$.10 per page	\$41.90
2/3/2016 to 3/22/17	Lagomarsino Law	344 Color Copies at \$.10 per page	\$34.40
2/3/2016 to 3/22/17	Lagomarsino Law	590 Black & White Copies at \$.10 per page	\$59.00

LIENS TO BE PAID: (\$3,970.60)

Forensic Specialists Ltd. (*Reduced from \$4,150.00*):..... (\$3,970.60)

AMOUNT PAID TO CLIENT: \$80,368.99
