

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Pacific Resources Associates LLC v. Suzy Cleaners

No. 3:20-cv-00234-RBM-DEB, United States District Court for the Southern District of California (April 21,
2025)

OPINION

Pacific Resources Associates LLC v. Suzy Cleaners

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10

11 PACIFIC RESOURCES ASSOCIATES Case No.: 3:20-cv-00234-RBM-DEB

LLC, a Delaware limited liability 12 company, ORDER GRANTING JEONG-SOON

13 LONG’S MOTION FOR

Plaintiff,

DETERMINATION OF GOOD

14

v. FAITH SETTLEMENT

15 SUZY CLEANERS, an organization, et al., [Doc. 240] 16 Defendants. 17 18 19 On September
19, 2024, Defendant and Cross-Defendant Jeong-Soon Long (“Ms. 20 Long”) filed a Motion for
Determination of Good Faith Settlement [C.C.P. § 877(a)(1)] 21 (“Settlement Motion”). (Doc.
240.) In her Settlement Motion, Ms. Long asserts that she 22 has entered into a settlement with
Defendants, Cross-Claimants, and Third-Party Plaintiff 23 Kim Hortman Buhler, as administrator
and executor of The Estate of Barbara Hortman, 24 and Kim Hortman Buhler and Norman Alton
Hortman, III, as trustees of The Norman 25 Alton Hortman and Barabra Hortman Recoverable
Trust No 1 Dated July 2, 1985 26 (collectively, the “Hortman Parties”). (Id. at 2.) Ms. Long
requests an order finding that 27 “the settlement was made in food faith within the meaning of
California Code of Civil 28 Procedure § 877.6 and that such settlement will bar all such existing
or future claims 1 against [her] for indemnity and/or contribution, equitable, partial or total.” (Id.)
To date, 2 no opposition has been filed. 3 The Court finds the matter suitable for determination on
the papers and without oral 4 argument pursuant to Civil Local Rule 7.1(d)(1). For the reasons
discussed below, Ms. 5 Long’s Settlement Motion is GRANTED.

6 I. BACKGROUND

7 A. The Parties and Properties 8 1. Pacific Resources and the 1680 Property 9 Plaintiff Pacific
Resources Associates LLC (“Pacific Resources”) owned a 10 storefront property in the Valley

Plaza shopping center located at 1680 East Valley 11 Parkway, Escondido, California 92027 (the “1680 Property”) from February 12, 2001 until

12 November 2022. (Doc. 114, Second Amended Complaint (“SAC”) ¶ 33.)

13 2. M&E, the Barawids, the Hortman Parties, and the 1718 Property 14 M&E Brothers, LLC (“M&E”) owns the property located at 1718 East Valley 15 Parkway, Escondido, California 92027, another storefront in the Valley Plaza shopping 16 center (the “1718 Property”). (Id. ¶ 18.) The 1718 Property is located east of the 1680 17 Property. (Id. ¶ 28; see also Doc. 168 at 3.)

18 The 1718 Property is not currently being used as a dry cleaner, but Ms. Long asserts
19 the Hortman Parties owned and operated a dry-cleaning business at the 1718 Property in 20 the 1990s. (Doc. 240 at 7.) 21 3. The Kim Parties and the 1654 Property 22 Guhn Y. Kim, Yun Soon Kim, and The Kim Family Trust of 2017 (the “Kim 23 Parties”) own the property located at 1654 East Valley Parkway, Escondido, California 24 92027, a third storefront in the Valley Plaza shopping center (the “1654 Property”). (SAC 25 ¶ 5.) The 1654 Property is located west of Pacific Resources’ 1680 Property. (Id. ¶ 28; 26 27 1 The facts and law summarized in this background section constitute the factual allegations 28 1 see also Doc. 168 at 3.) The 1654 Property is currently home to Suzy Cleaners. (SAC ¶ 2 5.) 3 B. Procedural History 4 Pacific Resources filed this action on February 6, 2020. (Doc. 1.) Pacific Resources 5 amended its complaint on February 3, 2023 (Doc. 83) and on May 1, 2023 (Doc. 114 6 [SAC]). Pacific Resources’ SAC asserted three causes of action under the federal 7 Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”), 8 one cause of action under California’s Hazardous Substances Account Act (“HSAA”), and 9 nine additional tort and equitable causes of action under California state common law. (Id. 10 ¶¶ 47–122.) Each cause of action was premised on the alleged contamination of Pacific 11 Resources’ 1680 Property with perchloroethylene (“PCE”). (Id.) Pacific Resources 12 alleged that all former and current owners and operators of the dry-cleaning businesses 13 located or previously located at the 1654 Property and the 1718 Property released PCE into 14 the soil beneath the properties, which then migrated and contaminated the soil beneath the 15 1680 Property. (Id. ¶¶ 36, 39, 41.) Pacific Resources alleged that it incurred substantial 16 response, removal, and remediation costs. (Id. ¶¶ 40, 42–46.) Pacific Resources no longer 17 owns the 1680 Property (Id. ¶ 33) and was dismissed from this action following the 18 settlement of its claims (Doc. 200). However, as set forth below, various claims remain. 19 On April 27, 2023, the Kim Parties answered Pacific Resources’ SAC. (Doc. 115 at 20 1–17.) The Kim Parties filed Second Amended Third-Party Claims against M&E and its 21 owners, the Hortman Parties, and other former owners and operators of the dry-cleaning 22 businesses previously located at the 1718 Property for the alleged contamination of Pacific 23 Resources’ 1680 Property, as well as the contamination at their own 1654 Property. (Doc. 24 115 at 17–27.) The Kim Parties allege that they are entitled to contribution and/or 25 indemnity because the sole source of the PCE contamination on the 1680 Property is the 26 1718 Property, not their 1654 Property. (Doc. 115 at 18–19, 20–25.) 27 On May 19, 2023, the Hortman Parties answered Pacific

Resources’ SAC, denying all liability. (Doc. 129.) Additionally, the Hortman Parties filed crossclaims for contribution and/or indemnity under CERCLA, HSAA, and California Civil Code section 1432 against all other named defendants in Pacific Resources’ SAC, including the Kim Parties and M&E, for any potential liability to Pacific Resources. (Id. at 32.) The Hortman Parties also filed a Third-Party Complaint against prior owners and operators of the 1718 Property, dating back to the 1960s, for contribution and/or indemnity under CERCLA, HSAA, and California Civil Code section 1432. (Id. at 48–63.) On November 30, 2022, M&E filed a separate complaint against the Hortman Parties (Case No. 22-cv-01892-RBM-DEB, Doc. 1), which it then amended on March 22, 2023 (Case No. 22-cv-01892-RBM-DEB, Doc. 13). In its First Amended Complaint against the Hortman Parties, M&E contends that it is entitled to the recovery of response costs and contribution for the investigation and cleanup of its 1718 Property, as well as damages for negligence, nuisance, trespass, and waste. (Id. at 5–8; 10–24.) On June 13, 2024, the Hortman Parties answered M&E’s First Amended Complaint and filed a third-party complaint against Ms. Long, among others.² (See Case No. 22-cv-01892-RBM-DEB, Doc. 15 at 44.) In their third-party complaint against Ms. Long, the Hortman Parties allege that Ms. Long owned and operated the dry-cleaning business at the 1654 Property from approximately 1999 to 2001. (Id. at 48.) The Hortman Parties allege that Ms. Long used PCE during her operation of the dry-cleaning business. (Id. at 62.) The Hortman Parties allege that Ms. Long received a notice of violation for PCE vapor leaks on the 1654 Property in 2001. (Id. at 63.) Therefore, the Hortman Parties seek contribution from Ms. Long pursuant to 42 U.S.C. § 9613(f); indemnity/contribution pursuant to California Health & Safety Code § 25363(a); and cost recovery pursuant to 42 U.S.C. § 9607. (Id. at 24 65–73.) The Hortman Parties’ Third-Party Complaint is the subject of the Settlement Motion and 1 C. The Tentative Settlement Agreement 2 The Hortman Parties and Ms. Long have negotiated a settlement of the Hortman Parties’ third-party claims against Ms. Long. (See Doc. 240-1 at 5–13 [Settlement 4 Agreement].) In the Settlement Agreement, “the Hortman Parties, on the one hand, and 5 [Ms.] Long, on the other hand, desire and intend to effect a full and final settlement and 6 resolution of all past, present and future, known and unknown, [c]laims ... that each has, 7 may have or will have against each other relating to the alleged contamination at the Site 8”³ (Id. at 5.) Ms. Long “agrees to pay the Hortman Parties the total sum of seven 9 thousand five-hundred dollars and zero cents (\$7,500.00) ... , provided that the Court 10 approves [this Settlement Motion].” (Id. at 6.) 11 D. Ms. Long’s Settlement Motion 12 In the Settlement Motion at issue, Ms. Long argues that the settlement is a just, fair, 13 adequate, and equitable resolution of all claims against her. (Doc. 240 at 15–19.) 14 Specifically, Ms. Long asserts that California Regional Water Quality Board has never 15 identified Ms. Long as a responsible party (id. at 16) and that she only operated the dry- 16 cleaning business located at the 1654 Property for 31 months, more than 22 years ago (id. 17 at 17). (See also Doc. 240-2, Declaration of Jeong Soon Long in Support of Motion for 18 Determination of Good Faith Settlement (“Long Decl.”), ¶¶ 1, 4–5.) Therefore,

Ms. Long 19 argues that, “[i]n the unlikely event that [she] would ever be found responsible for any of 20 the contamination on the property anywhere, her share of the responsibility for clean-up 21 would be infinitesimal compared to other defendants.” (Doc. 240 at 17 (emphasis added).) 22 Ms. Long also argues that the so-called “Gore factors” regarding the apportionment of 23 liability weigh in favor of approving the settlement (id. at 17–18 (citing TDY Holdings, 24 25 3 “‘Site’ means the property known as the Valley Plaza Shopping Center in Escondido, 26 California, including the real property located at 1654 East Valley Parkway, 1680 East 27 Valley Parkway, and 1718 East Valley Parkway, Escondido, California, 92027 and adjacent lands, including, without limitation, the structures, soil, subsoil, air, soil vapor, 28 1 LLC v. United States, 885 F.3d 1142, 1147–48 (9th Cir. 2018))); that she should pay less 2 in settlement than after trial (id. at 18); that her financial condition weights in favor of 3 settlement (id. at 18–19); and that the settlement is not the result of collusion or fraud (id. 4 at 19). To date, no opposition has been filed.

5 II. DISCUSSION

6 A. State Law Claims—California Code of Civil Procedure Sections 877 and 877.6 7 Ms. Longs seeks a determination that the Settlement Agreement was made in good 8 faith pursuant to California Code of Civil Procedure sections 877 and 877.6. (Doc. 240 at 9 2.) 10 “When a district court ... hears state law claims based on supplemental jurisdiction, 11 the court applies state substantive law to the state law claims.” *Mason & Dixon Intermodal, 12 Inc. v. Lapmaster Int’l LLC*, 632 F.3d 1056, 1060 (9th Cir. 2011). The Ninth Circuit has 13 held that California Code of Civil Procedure section 877 constitutes substantive law and, 14 therefore, that federal courts look to California law to decide whether a settlement was 15 made in good faith with respect to state law claims. *Id.* (citing *Fed. Savings & Loan Ins. 16 Corp. v. Butler*, 904 F.2d 505, 511 (9th Cir.1990)); see also *Slaven v. BP Am., Inc.*, 958 F.

17 Supp. 1472, 1477–78 (C.D. Cal. 1997) (finding that, while California Code of Civil 18 Procedure section 877.6 is the procedural mechanism for section 877, “the case law is clear 19 that state settlement provisions amount to substantive, rather than purely procedural, 20 law.”). 21 California Code of Civil Procedure section 877 governs the effect of a release of 22 claims given “in good faith before verdict or judgment to one or more of a number of 23 tortfeasors claimed to be liable for the same tort, or to one or more other co-obligors 24 mutually subject to contribution rights.” Cal. Civ. Proc. Code § 877. The good faith 25 settlement “shall not discharge any other such party from liability unless its terms so 26 provide, but it shall reduce the claims against the others in the amount stipulated by the 27 release” Cal. Civ. Proc. Code § 877(a). Further, “[i]t shall discharge the party to 28 whom it is given from all liability for any contribution to any other parties.” Cal. Civ. Proc. 1 Code § 877(b). Determinations of good faith made under California Code of Civil 2 Procedure sections 877 and 877.6 apply to claims asserted under the HSAA in addition to 3 California state common law tort claims. *Fullerton Redevelopment Agency v. S. Cal. Gas 4 Co.*, 183 Cal. App. 4th 428, 432 (2010). 5 “[A] settling party may give notice of settlement to all parties and to the court, 6 together with an application for determination of good faith

settlement and a proposed 7 order. The application shall indicate the settling parties, and the basis, terms, and amount 8 of the settlement.” Cal. Civ. Proc. Code § 877.6(a). “A determination by the court that the 9 settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from 10 any further claims against the settling tortfeasor or co-obligor for equitable comparative 11 contribution, or partial or comparative indemnity, based on comparative negligence or 12 comparative fault.” Id. § 877.6(c). In other words, “[s]ection 877 establishes that a good 13 faith settlement bars other defendants from seeking contribution from the settling 14 defendant, but at the same time provides that the plaintiff’s claims against the other 15 defendants are to be reduced by the amount of consideration paid for the settlement. Thus, 16 while a good faith settlement cuts off the right of other defendants to seek contribution or 17 comparative indemnity from the settling defendant, the non-settling defendants obtain in 18 return a reduction in their ultimate liability to the plaintiff.” *Abbott Ford, Inc. v. Superior* 19 *Ct.*, 43 Cal. 3d 858, 872–73 (1987) (citations and quotations omitted). “[T]he provisions 20 of sections 877 and 877.6—governing the effect that a settlement agreement has on a 21 settling defendant’s potential liability to other defendants for contribution or comparative 22 indemnity—have two major goals: the equitable sharing of costs among the parties at fault 23 and the encouragement of settlements.” Id. at 871–72. 24 “The issue of the good faith of a settlement may be determined by the court on the 25 basis of affidavits served with the notice of hearing, and any counteraffidavits filed in 26 response” Cal. Civ. Proc. Code § 877.6(b). To determine whether a settlement has 27 been made in good faith, and therefore bars all future claims by any tortfeasor for 28 1 contribution or indemnity, California courts consider the factors identified by the 2 California Supreme Court: 3 [T]he intent and policies underlying section 877.6 require that a number of factors be taken into account including [1] a rough approximation of 4 plaintiffs’ total recovery and the settlor’s proportionate liability, [2] the 5 amount paid in settlement, [3] the allocation of settlement proceeds among plaintiffs, and [4] a recognition that a settlor should pay less in settlement than 6 he would if he were found liable after a trial. Other relevant considerations 7 include [5] the financial conditions and insurance policy limits of settling defendants, as well as [6] the existence of collusion, fraud, or tortious conduct 8 aimed to injure the interests of nonsettling defendants. 9 10 *Tech-Bilt, Inc. v. Woodward-Clyde & Assocs.*, 38 Cal. 3d 488, 499 (1985). “[P]ractical 11 considerations obviously require that the evaluation be made on the basis of information 12 available at the time of settlement.” Id. 13 “The party asserting the lack of good faith shall have the burden of proof on that 14 issue.” Cal. Civ. Proc. Code § 877.6(d) (emphasis added). The party asserting a lack of 15 good faith, i.e., the non-settling party, is “permitted to demonstrate, if he can, that the 16 settlement is so far ‘out of the ballpark’ in relation to these factors as to be inconsistent 17 with the equitable objectives of the statute.” *Tech-Bilt, Inc.*, 38 Cal. 3d at 499–500 18 (citations omitted). “If contested, declarations by the nonsettlor should be filed which in 19 many cases could require the moving party to file responsive counterdeclarations to negate 20 the lack of good faith asserted by the nonsettling contesting party.” *City of Grand Terrace* 21 *v. Superior Ct.*, 192 Cal. App. 3d

1251, 1261–62 (1987). 22 “[W]hen no one objects, the barebones motion which sets forth the ground of good 23 faith, accompanied by a declaration which sets forth a brief background of the case is 24 sufficient.” *Michell v. United States*, No. 09cv0387 BTM(JMA), 2011 WL 3903220, at 25 *2 (S.D. Cal. Sept. 6, 2011) (quoting *City of Grand Terrace*, 192 Cal. App. 3d at 1261); 26 see also *Hernandez v. Sutter Med. Ctr. of Santa Rosa*, No. C 06-03350 SBA, 2009 WL 27 322937, at *3 (N.D. Cal. Feb. 9, 2009) (“Where ... all the parties have received timely and 28 sufficient notice, and have not filed any oppositions to a proposed settlement, a court need 1 not perform a Tech-Bilt analysis.”); *Bonds v. Nicoletti Oil, Inc.*, No. CV-F-07-1600 2 OWW/DLB, 2008 WL 4104272, at *5 (E.D. Cal. Sept. 3, 2008) (“Because no opposition 3 to the motion has been filed ... the Tech-Bilt factors are not considered or weighed.”). 4 Should a court grant an application for a good faith settlement determination under 5 California Code of Civil Procedure sections 877 and 877.6, “only those non-parties with 6 constitutionally sufficient prior notice will be bound by a ‘good faith settlement’ 7 determination[.]” *City of Emeryville v. Robinson*, 621 F.3d 1251, 1266 (9th Cir. 2010) 8 (emphasis added); *Gackstetter v. Frawley*, 135 Cal. App. 4th 1257, 1273 (2006) (“A 9 settling tortfeasor’s section 877.6, subdivision (c) good faith settlement determination 10 discharges indemnity claims by other tortfeasors, whether or not named as parties, so long 11 as the other tortfeasors were given notice and an opportunity to be heard.”) (emphasis 12 added). 13

1. Tech-Bilt, Inc. Analysis 14 As the present Settlement Motion is unopposed, the Court need not weigh the Tech- 15 Bilt factors. See *Michell*, 2011 WL 3903220, at *2; *Hernandez*, 2009 WL 322937, at *3; 16 *Bonds*, 2008 WL 4104272, at *5. Nevertheless, a careful review of the Settlement Motion 17 and the operative pleadings reveals that the Settlement Agreement satisfies the test for a 18 good faith settlement set forth in *Tech-Bilt, Inc.* 19 The first Tech-Bilt, Inc. factors are the most important. *Cooper Drum Cooperating 20 Parties Grp. v. Am. Polymers Corp.*, Case No.: CV 19-03007-AB (FFMx), 2020 WL 21 2504331, at *4 (C.D. Cal. May 13, 2020). They are “[1] a rough approximation of 22 plaintiffs’ total recovery and the settlor’s proportionate liability, [2] the amount paid in 23 settlement, [3] the allocation of settlement proceeds among plaintiffs, and [4] a recognition 24 that a settlor should pay less in settlement than he would if he were found liable after a 25 trial.” *Tech-Bilt, Inc.*, 38 Cal. 3d at 499. Here, William Koska, counsel for Ms. Long, 26 declared that “[a]fter several calls and correspondence with counsel for [the Hortman 27 Parties] over the course of July and August 2024, [Ms. Long and the Hortman Parties] have 28 arrived at a settlement figure of \$7,500.00, or one (1) percent of the total amount of 1 estimated clean-up costs.” (Doc. 240-1 at 2, Declaration of William K. Koska in Support 2 of Motion for Determination of Good Faith Settlement (“Koska Decl.”), ¶ 6.) The Court 3 is persuaded that this amount is sufficient given Ms. Long’s relatively brief tenure 4 operating the dry-cleaning business located at the 1654 Property. (See Long Decl. ¶¶ 1, 4– 5 5 (declaring Ms. Long ran the dry-cleaning business for approximately 31 months from 6 June 1999 until December 2001 when the dry-cleaning business was sold to Angela Hong, 7 who still runs the business).) The Court also finds that this amount is sufficient because “a 8

settlor should pay less in settlement than [she] would if [she] were found liable after a 9 trial.” Tech-Bilt, Inc., 38 Cal. 3d at 499–500. 10 “Other relevant considerations include [5] the financial conditions and insurance 11 policy limits of settling defendants, as well as [6] the existence of collusion, fraud, or 12 tortious conduct aimed to injure the interests of nonsettling defendants.” Id. at 499–500. 13 Here, Ms. Long declared that she hopes to retire towards the end of this year and that her 14 seamstress salary is \$46,000 per year. (Long Decl. ¶¶ 10–11.) Ms. Long also declared 15 that, after she retires, she will get only her Social Security benefit of approximately \$2,400 16 per month and that her insurance company from when she operated the dry-cleaning 17 business declined to defend her. (Id. ¶¶ 11–12.) Therefore, the Court finds that Ms. Long’s 18 financial condition weighs in favor of a good faith settlement determination. Further, there 19 is no evidence before the Court that the proposed settlement is the result of collusion, fraud, 20 or tortious conduct. See Tech-Bilt, Inc., 38 Cal. 3d at 499. 21 *** 22 Accordingly, the Court finds that the settlement between Ms. Long and the Hortman 23 Parties was entered into in good faith and in compliance with California Code of Civil 24 Procedure Sections 877 and 877.6. Those given “constitutionally sufficient prior notice” 25 will be bound by the Court’s “good faith settlement” determination to the extent 26 permissible by law. See City of Emeryville, 621 F.3d at 1266 (finding the parties had no 27 expectation that it was resolving “site B” liability when it executed the “site A” settlement 28 1 and, therefore, that any claims related to site B were not barred by the district court’s good 2 faith settlement determination).

3 B. CERCLA

4 Ms. Long also seeks approval of the Settlement Agreement and an order providing 5 her contribution protection under CERCLA. 42 U.S.C. § 9613(f). In considering this 6 request, the Court first reviews CERCLA’s statutory framework. 7 Congress enacted CERCLA “in response to the serious environmental and health 8 risks posed by industrial pollution.” Burlington N. & Santa Fe Ry. Co. v. United States, 9 556 U.S. 599, 602 (2009). CERCLA “imposes strict liability on four categories of 10 potentially responsible parties (PRPs) for the cleanup costs of an environmental hazard, 11 even if the person did not contribute to the contamination.” Chubb Custom Ins. Co. v. 12 Space Sys./Loral, Inc., 710 F.3d 946, 956–57 (9th Cir. 2013) (emphasis added); see also 13 United States v. Coeur d’Alenes Co., 767 F.3d 873, 874 (9th Cir. 2014) (CERCLA 14 “imposes strict liability on certain classes of parties who are potentially responsible for a 15 site’s contamination.”) (internal quotation omitted). “CERCLA liability is joint and 16 several, meaning that a responsible party may be held liable for the entire cost of cleanup 17 even where other parties contributed to the contamination. The party saddled with the 18 cleanup costs may, in turn, sue other potentially responsible parties for contribution.” Cal. 19 Dep’t of Toxic Substances Control v. Hearthside Residential Corp., 613 F.3d 910, 912 (9th

20 Cir. 2010); see also AmeriPride Servs. Inc. v. Tex. E. Overseas Inc., 782 F.3d 474, 480 (9th 21 Cir. 2015); 42 U.S.C. § 9607(a); 42 U.S.C. § 9613(f)(1).

22 There are four categories of PRPs: 23 (1) the owner and operator of a vessel or a facility,[4] (2)

any person who at the time of disposal of any hazardous substance owned or operated any facility 24 at which such hazardous substances were disposed of, (3) any person who by 25 26 27 4 “The term ‘facility’ means ... any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located” 42 U.S.C. 28 1 contract, agreement, or otherwise arranged for disposal or treatment ... of hazardous substances ... , and (4) any person who accepts or accepted any 2 hazardous substances for transport to disposal or treatment facilities ... from 3 which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance... 4 5 42 U.S.C. § 9607(a). PRPs are responsible for “(A) all costs of removal or remedial action 6 incurred by the United States Government or a State or an Indian tribe ...; (B) any other 7 necessary costs of response incurred by any other person ...; (C) damages for injury to, 8 destruction of, or loss of natural resources, including the reasonable costs of assessing such 9 injury, destruction, or loss resulting from such a release; and (D) the costs of any health 10 assessment or health effects study” 42 U.S.C. § 9607(a)(4)(A)–(D). 11 CERCLA’s otherwise harsh, strict-liability scheme encourages settlement by 12 providing contribution protection to “[a] person who has resolved its liability to the United 13 States or a State in an administrative or judicially approved settlement[.]” 42 U.S.C. 14 § 9613(f)(2). In other words, CERCLA prevents parties settling with the United States or 15 a State from later being sued for contribution by non-settling parties. See *id.* “Such 16 settlement does not discharge any of the other potentially liable persons unless its terms so 17 provide, but it reduces the potential liability of the others by the amount of the settlement.” 18 *Id.* 19 CERCLA is silent as to whether contribution protection and the reduction of the 20 remaining liability from the non-settling parties applies to settlement agreements between 21 private parties. For this reason, the Ninth Circuit looks to another CERCLA provision for 22 the authority to allocate costs and afford contribution protection in settlements between 23 private parties: “In resolving contribution claims, the court may allocate response costs 24 among liable parties using such equitable factors as the court determines are appropriate.” 25 42 U.S.C. § 9613(f)(1) (emphasis added). In *AmeriPride Services, Inc.*, the Ninth Circuit 26 held that “a district court has discretion under [this provision] to determine the most 27 equitable method of accounting for settlements between private parties in a contribution 28 action.” 782 F.3d at 487; see also *Cooper Drum Cooperating Parties Grp.*, 2020 WL 1 2504331, at *3 (“To facilitate early and complete settlement of private cost-recovery 2 actions ..., federal courts may approve settlements and enter bar orders that discharge all 3 claims of contribution by non-settling defendants against settling defendants.”) (emphasis 4 added). However, district courts must exercise their discretion in a manner that is 5 consistent with the principles and purposes of CERCLA. *AmeriPride*, 782 F.3d at 488. 6 “Choosing a method that would discourage settlement or produce plainly inequitable 7 results could constitute an abuse of discretion.” *Id.* 8 Courts generally review settlements and “enter contribution and indemnity bar 9 orders in CERCLA cases if the settlement is fair, reasonable, and adequate.” *Cooper Drum* 10 *Cooperating Parties Grp.*, 2020 WL 2504331, at *3 (quoting *Coppola v. Smith*, CASE NO. 11

1:11-CV-1257 AWI BAM, 2016 WL 3407571, at *2 (E.D. Cal. June 20, 2016)); see also 12 Rev 973, LLC v. Mouren-Laurens, Case No. CV 98-10690 DSF (Ex), 2016 WL 9185139, 13 at *1 (C.D. Cal. July 1, 2016) (“In considering a settlement under CERCLA, a district court 14 is to consider whether the proposed settlement is fair, reasonable, and consistent with the 15 purposes that CERCLA is intended to serve.”). “A presumption of fairness in settlement 16 arises where: ‘(1) counsel is experienced in similar litigation; (2) settlement was reached 17 through arm’s-length negotiations; and (3) investigation and discovery are sufficient to 18 allow counsel and the court to act intelligently.’” Cooper Drum Cooperating Parties Grp., 19 2020 WL 2504331, at *4 (quoting City of San Diego v. Nat’l Steel & Shipbuilding Co., No. 20 09cv2275 WQH (JLB), 2014 WL 3489282, at *12 (S.D. Cal. July 10, 2014)). 21 Further, when considering the equitable allocation of costs, courts weigh the so- 22 called “Gore Factors.” They are: 23 (1) the ability of the parties to demonstrate that their contribution to a discharge, release or disposal of a hazardous waste can be distinguished; (2) 24 the amount of the hazardous waste involved; (3) the degree of toxicity of the 25 hazardous waste involved; (4) the degree of involvement by the parties in the generation, transportation, treatment, storage, or disposal of the hazardous 26 waste; (5) the degree of care exercised by the parties with respect to the 27 hazardous waste concerned, taking into account the characteristics of such hazardous waste; and (6) the degree of cooperation by the parties with Federal, 28 1 State, or local officials to prevent any harm to the public health or the environment.” 2 3 TDY Holdings, LLC v. United States, 885 F.3d 1142, 1146 n.1 (9th Cir. 2018) (internal 4 quotation omitted). 5 While districts courts are free to grant settling parties contribution protection, the 6 scope of permissible contribution protection is limited. “CERCLA’s policy of encouraging 7 settlements by authorizing contribution protection to settling parties should not be 8 construed in a manner that ambushes persons ... who had no connection with, and no 9 responsibility for, the pollution on the site at issue in the settlement” City of 10 Emeryville, 621 F.3d at 1264. “[T]he overwhelming majority of courts that have imposed 11 or enforced a CERCLA contribution bar in a private-party settlement have done so only 12 where the persons subject to the bar were either parties to the action, PRPs who were 13 involved in or aware of settlement discussions, or non-parties who otherwise had at least 14 constructive notice that their contribution claims stood to be extinguished.” Id. at 1265. 15 Additionally, a contribution bar should not extend beyond “matter expressly contemplated 16 by the parties in entering into the ... [s]ettlement.” Id. at 1264. 17 For the same reasons set forth above (see Section II.B.1), the Court finds that the 18 proposed settlement is fair, reasonable, adequate, and consistent with the purposes or 19 CERCLA. See Cooper Drum Cooperating Parties Grp., 2020 WL 2504331, at *3; Rev 20 973, LLC, 2016 WL 9185139, at *1. The Court also finds that ““(1) counsel is experienced 21 in similar litigation; (2) settlement was reached through arm’s-length negotiations; and (3) 22 investigation and discovery are sufficient to allow counsel and the court to act 23 intelligently[,]” triggering a presumption of fairness. See Cooper Drum Cooperating 24 Parties Grp., 2020 WL 2504331, at *4 (quoting City of San Diego, 2014 WL 3489282, at 25 *12). (See also Koska Decl.

¶¶ 6, 8 (declaring that Mr. Koska is experienced in 26 environmental matters and that the settlement was reached after several calls and 27 correspondence with the Hortman Parties' counsel).) The Court also bars future actions 28 for contribution against Ms. Long to the extent permissible by law. See *City of Emeryville*, 1 F.3d at 1264 (finding a contribution bar should not extend beyond "matter expressly 2 contemplated by the parties in entering into the [] [s]ettlement").

3 HI. CONCLUSION

4 Based on the foregoing, the Court GRANTS Ms. Long's Settlement Motion. 5 IT ISSO ORDERED. 6 ||DATE: April 21, 2025 Eels Herta.

g HONYRUTH BERMUBEZ MONTENEGRO

UNITED STATES DISTRICT JUDGE

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