

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

J.K.E. v. United Parks & Resorts, Inc.

J.K.E. · No. 24CV1059 L (VET) · Decided February 28, 2025

SUMMARY

This Report and Recommendation addresses a joint amended petition for approval of a minor’s settlement arising from a slip-and-fall incident at SeaWorld San Diego. The court recommends finding the settlement, attorney’s fees, medical lien, litigation costs, and blocked-account disbursement arrangement fair, reasonable, and in the minor’s best interests. The recommendation was issued to the referring district judge for approval.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 Case No.: 24CV1059 L (VET) 11 J.K.E., by and through his guardian, Dorothy
Kelly, individually, 12 REPORT AND RECOMMENDATION FOR Plaintiff, ORDER
GRANTING PETITION FOR 13 APPROVAL OF MINOR’S COMPROMISE v. AND FINDING
THE PROPOSED 14 SETTLEMENT FAIR AND REASONABLE UNITED PARKS &
RESORTS, INC.; SEA 15 WORLD PARKS & ENTERTAINMENT, INC. & [ECF No. 29] SEA
WORLD LLC; SEA WORLD SAN DIEGO; 16 DOES 1 THROUGH 50, 17 Defendants.

18 19 20 21 22 Currently before the Court is the parties’ Joint Amended Petition for Approval of
23 Compromise of Minor’s Claim (“Am. Pet.”). ECF No. 28. This Report and Recommendation is
24 submitted to United States District Judge M. James Lorenz pursuant to 28 U.S.C. § 636(b)(1)
25 and Local Civil Rule 17.1 of the United States District Court for the Southern District of
California.

26 After reviewing the Amended Petition and all supporting documents, and for the reasons 27
discussed below, the Court RECOMMENDS that District Judge Lorenz GRANT the Amended
Petition as set forth below. 1 BACKGROUND 2 The above entitled matter was removed to this
Court on June 19, 2024. ECF No. 1.

On 3 May 13, 2024, Plaintiff J.K.E., by and through his grandmother and guardian ad litem
(“GAL”), 4 Dorothy Kelly, filed a Complaint (“Compl.”) arising out a slip and fall incident that
occurred at 5 Sea World San Diego on April 17, 2021. Id. at 6-17. Magistrate Judge Valerie Torres
held an 6 Early Neutral Evaluation Conference on October 9, 2024 during which the parties
agreed to a 7 settlement.

ECF No. 16. 8 On December 12, 2024, Plaintiff filed the Petition for Approval of Compromise of Minor's 9 Claim. ECF No. 20. On December 17, 2024, this matter was randomly referred to this Court for 10 consideration of the Minor's Compromise. ECF No. 22.

The Court reviewed the joint petition 11 and found deficiencies in the pleading. ECF No. 25. The parties were directed to file an amended 12 joint petition to correct the identified deficiencies. Id. 13 On January 31, 2025, the parties filed an Amended Joint Petition for Approval of 14 Compromise of Minor's Claim under seal and also filed a redacted version of the Amended Joint 15 Petition.

ECF Nos. 28, 29. The Court has considered the Joint Amended Petition and for the 16 reasons set forth below, the Court RECOMMENDS that the Joint Amended Petition be 17 GRANTED. 18 LEGAL STANDARD 19 It is well settled that courts have a special duty to safeguard the interests of litigants who 20 are minors in civil litigation. *Robidoux v. Rosengren*, 638 F.3d 1177, 1181 (9th Cir.

2011); see 21 also Fed. R. Civ. P. 17(c) (district courts "must appoint a guardian —or issue another 22 appropriate order—to protect a minor or incompetent person who is unrepresented in an 23 action."). "In the context of proposed settlements in suits involving minor plaintiffs, this special 24 duty requires a district court to 'conduct its own inquiry to determine whether the settlement 25 serves the best interests of the minor.'" *Robidoux*, 638 F.3d at 1181 (quoting *Dacanay v. 26 Mendoza*, 573 F.2d 1075, 1080 (9th Cir.

1978)); see also *Salmeron v. United States*, 724 F.2d 27 1357, 1363 (9th Cir. 1983) (holding that "a court must independently investigate and evaluate 1 protected, even if the settlement has been recommended or negotiated by the minor's parent 2 or guardian.").

To facilitate the Court in satisfying the duty to safeguard, Civil Local 3 Rule 17.1(a) provides that "[n]o action by or on behalf of a minor or incompetent will be settled, 4 compromised, voluntarily discontinued, dismissed or terminated without court order or 5 judgment." CivLR. 17.1(a). This requires the Court to determine if the settlement is in the best 6 interests of the minor and to consider not only the fairness of the amount of the settlement, but 7 the structure and manner of distribution of the assets for the benefit of the minor.

8 The Ninth Circuit established that courts reviewing the settlement of a minor's federal 9 claim should "limit the scope of their review to the question whether the net amount distributed 10 to each minor plaintiff in the settlement is fair and reasonable, in light of the facts of the case, 11 the minor's specific claim, and recovery in similar cases." *Robidoux*, 638 F.3d at 1181–82.

They 12 should "evaluate the fairness of each minor plaintiff's net recovery without regard to the 13 proportion of the total settlement value designated for adult co-plaintiffs or plaintiffs' counsel — 14 whose interests the district court has no special duty to safeguard." Id. at 1182 (citing

Dacanay, 15 573 F.2d at 1078). “So long as the net recovery to each minor plaintiff is fair and reasonable in 16 light of their claims and average recovery in similar cases, the district court should approve the 17 settlement as proposed by the parties.” Robidoux, 638 F.3d at 1182.

18 The Ninth Circuit limited its decision in Robidoux to “cases involving the settlement of a 19 minor’s federal claims.” Id. at 1181–82 (emphasis added). Where a settlement involves state 20 law claims, federal courts are generally guided by state law rather than Robidoux. J.T. by & 21 Through Wolfe v. Tehachapi Unified Sch. Dist., 2019 WL 954783, at *2 (E.D.

Cal. Feb. 27, 2019). 22 See also A.M.L. v. Cernaianu, 2014 WL 12588992, at *3 (C.D. Cal. Apr. 1, 2014) (collecting 23 cases). The court in A.M.L. noted that, although federal courts generally require claims by 24 minors to “be settled in accordance with applicable state law,” the Ninth Circuit in Robidoux held 25 such an approach “places undue emphasis on the amount of attorney’s fees provided for in a 26 settlement, instead of focusing on the net recovery of the minor plaintiffs.” Id. at *2 (quoting 27 Robidoux, 638 F.3d at 1181) (other citation omitted).

But see Mitchell v. Riverstone Residential 1 applied the rule provided in Robidoux to evaluate the propriety of a settlement of a minor’s state 2 law claims as well”) (collecting cases). 3 The California Probate Code provides the applicable statutory scheme for approval of a 4 minor’s compromise under state law. See Cal. Prob. Code §§ 3601.

Under California law, 5 the Court is tasked with evaluating the reasonableness of the settlement and determining 6 whether the compromise is in the best interest of the minor. A.M.L., 2014 WL 12588992, at *3 7 (citations omitted).

The Court is afforded “broad power... to authorize payment from the 8 settlement—to say who and what will be paid from the minor’s money—as well as direct certain 9 individuals to pay it.” Goldberg v. Superior Court, 23 Cal. App. 4th 1378, 1382 (Cal. Ct. App. 10 1994); see also Pearson v. Superior Court, 136 Cal. Rptr. 3d 455, 459 (Cal. Ct. App. 2012) 11 (explaining that the purpose of requiring court approval of a minor’s settlement is to “allow[] 12 the guardians of a minor to effectively negotiate a settlement while at the same time protect[] 13 the minor’s interest by requiring court approval before the settlement can have a binding effect 14 on the minor”).

15 DISCUSSION 16 A. Proposed Settlement 17 The proposed settlement of this case is a gross amount of \$ and after payment of 18 attorneys’ fees, Plaintiff’s medical liens, and all required fees and costs the remaining amount 19 will go to Plaintiff. Am. Pet. at 4.

In the application, Plaintiff identifies the following expenses 20 to be deducted from the settlement amount: \$ in attorneys’ fees (approximately 25% of 21 the total settlement amount), \$ in medical expenses, and \$ in other fees and 22 expenses. Id. at 4-5.

Under this structure, Plaintiff would receive a net settlement of 23 \$. Id. at 5. Plaintiff's recovery will be deposited in an interest bearing, federally insured 24 blocked account in the legal name of minor Plaintiff. Id. No withdrawal of principal or interest 25 may be made from this account without a written order from this Court or any court of competent 26 jurisdiction until the minor reaches 18 years of age.

27 In analyzing the pending application, the Court initially finds that \$ is a fair and 1 representation by the parties that Plaintiff is no longer seeking treatment for his injuries and 2 there is no significant medical care anticipated for him in the future. 3 B. Attorney's Fees and Costs 4 In addition to assessing whether the settlement is fair and reasonable, the Court must 5 approve the attorneys' fees and costs to be paid for representation of a minor.

See Cal. Prob. 6 Code § 3601; Cal. Rule of Ct. 7.955.1 In contingency fee cases, attorneys' fees for representing 7 a minor historically have been limited to 25% of the gross recovery. See, e.g., *DeRuyver v. 8 Omni La Costa Resort & Spa, LLC*, 2020 WL 563551, at *2 (S.D. Cal. Feb. 4, 2020); *Mitchell v. 9 Riverstone Residential Grp.*, 2013 WL 1680641, at *2 (E.D.

Cal. Apr. 17, 2013); *McCue v. South 10 Fork Union Sch. Dist.*, 2012 WL 2995666, at *2 (E.D. Cal. Jul. 23, 2012); *Welch v. Cty. Of 11 Sacramento*, 2008 WL 3285412, at *1 (E.D. Cal. Aug. 5, 2008); *Red v. Merced Cty.*, 2008 WL 12 1849796, at *2 (E.D. Cal. Apr. 23, 2008).

To determine whether a request for attorney's fee is 13 reasonable, the Court may consider factors such as the time and labor required, whether the 14 minor's representative consented to the fee, the amount of money involved, the result obtained, 15 and whether the fee is fixed, hourly, or contingent. See California Rule of Court 7.955(b). 16 1. Attorney's Fees 17 Here, Plaintiff's counsel requests 25% of the gross settlement amount.

Am. Pet. at 4. 18 Under the facts and circumstances of this action, the Court finds that the requested attorney's 19 fees are reasonable. 20 2. Medical Lien 21 Plaintiff's medical bills total \$ and are attached as exhibits to the amended 22 petition. Am. Pet. at 4.

The parties represent that Plaintiff was treated conservatively for his 23 injuries and the medical bills reflect that position. In addition, the California Department of 24 Health Care Services has provided documentation of \$ in medical expenses but has 25 agreed to reduce the lien to \$. Id. 26 27 1 Similarly, San Diego Superior Court Civil Rule 2.4.6.2 states that, regarding a minor's compromise, "the court will determine the amount of costs, expenses, and attorney's fees to be 1 Given the negotiated lien amount and amount of medical expenses, the Court finds these 2 to be reasonable costs.

3 3. Remaining Costs 4 The remaining costs at issue include \$ in Court filing fees, \$ in service of 5 process fees, and \$ in parking expenses. Am. Pet. at 5, 33. The Court finds theses costs 6 to be fair and reasonable under the circumstances of this case. 7 4. Conclusion 8 After reviewing the

various litigation costs, and considering the facts and issues in this case, the Court finds that the following fees and costs are fair and reasonable and result in a settlement that is in the best interests of Plaintiff.

11 Item Amount 12 Gross Settlement \$ Attorneys' Fees (25%) (\$) 13 Litigation Costs (\$) 14 Medical bills and Lien (\$) Total to Plaintiff: \$ 15 C. Method of Disbursement 16 Courts may use a wide variety of methods for the disbursement of settlement funds to a 17 minor. See Cal. Prob. Code § 3600 et. seq.

Here, the parties have agreed to an interest bearing, 18 federally insured blocked account in the legal name of the minor Plaintiff. Am. Pet. at 5. There 19 will be no withdrawal of principal or interest from this blocked account without a written order 20 of this Court, or any other court of competent jurisdiction, until the minor Plaintiff reaches 18 21 years of age.

When the minor Plaintiff reaches 18 years of age, the depository, without further 22 order of this Court or any other court of competent jurisdiction, is authorized and directed to 23 pay by check or draft directly to the former minor Plaintiff all funds, including interest, deposited 24 under this Court's order.

The Court finds that this method of disbursement is fair, reasonable, 25 and within the bounds of applicable law. See Cal. Prob. Code § 3611. 26 CONCLUSION 27 After conducting an independent inquiry and evaluation of the proposed settlement, the 1 Court finds that the proposed settlement is fair, reasonable, and in the best interests of the 2 minor Plaintiff, given the legal and factual issues involved in this case, and recoveries in similar 3 cases.

See Robidoux et al., 638 F.3d at 1181-82 (holding that district courts should limit the 4 scope of their review of a compromise or settlement of a minor's claims "to the question whether 5 the net amount distributed to each minor plaintiff in the settlement is fair and reasonable, in 6 light of the facts of the case, the minor's specific claim, and recovery in similar cases").

The 7 Court also finds that the proposed expenses and attorneys' fees are fair and reasonable. 8 Accordingly, the Court RECOMMENDS that Judge Lorenz approve the proposed settlement, 9 grant the petition for compromise of claim of minor, and issue the following orders: 10 1. Within twenty-one days of Judge Lorenz's order, Defendant must provide Plaintiff's 11 counsel with a check in the amount of \$ made payable to "Law Offices 12 of Michael R. Rhames, PC FBO J.K.E.2." 13 2.

Upon receipt of the \$, Plaintiff's counsel shall retain \$ for 14 attorney's fees and use the remaining money to pay the hard costs incurred during 15 the litigation and the remaining medical bills and liens. 16 3. Within thirty days of Judge Lorenz's order, the minor's net settlement proceeds, 17 \$, are to be deposited in the legal name of minor Plaintiff in a blocked 18 interest-bearing and federally insured account; 19 4.

A joint motion for dismissal of the instant case must be filed within five days after 20 Plaintiff's counsels' receipt of the settlement check. 21 IT IS HEREBY ORDERED that any objections to this Report and Recommendation must 22 be filed with the Court and served on all parties no later than March 14, 2025.

The document 23 should be captioned "Objections to Report and Recommendation."3 24 2 The check should include Plaintiff's full name. 25 3 Although the federal statutory scheme provides for a 14-day objections period to a Magistrate Judge's Report and Recommendation, the undersigned notes that the Amended Petition in this 26 case is filed jointly. See ECF No. 28.

Therefore, if all parties wish to waive the objections period, 27 they should file a joint stipulation to that effect immediately, to allow the Court to adopt this Report and Recommendation without further delay. There will be no adverse consequences to 1 IT IS SO ORDERED. 2 ~ 3 Dated: 2/28/2025 lobe Mager 4 Hon. Barbara L. Major United States Maaistrate Judae 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28