

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

11 STEVEN CHALKER, et al.,

12 Plaintiffs,

13 v.

14 TARGET CORPORATION,

15 Defendant.

Case No.: 22cv457-W(MSB)

**REPORT AND RECOMMENDATION FOR  
ORDER GRANTING MINOR'S  
COMPROMISE [ECF NO. 23]**

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17 Before the Court is the parties' September 16, 2022, "Joint Motion for Approval of  
18 Minor Compromise Settlement and Dismissal of this Action" ("Joint Motion") [ECF No.  
19 23]. This Report and Recommendation is submitted to United States District Judge  
20 Thomas J. Whelan pursuant to 28 U.S.C. §636(b)(1) and Civil Local Rule 17.1 of the  
21 United States District Court for the Southern District of California. After reviewing the  
22 Joint Motion and supporting declaration,<sup>1</sup> and for the reasons discussed below, the  
23 Court **RECOMMENDS** that the District Court **GRANT** the Joint Motion.

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28 <sup>1</sup> Defendant's counsel submitted a declaration in support of the Joint Motion [ECF No. 23, Attachment  
1] that the Court has also considered.

## I. BACKGROUND

## A. Factual Background

3 This is a personal injury action brought by Steven Chalker and Monique Herrera-  
4 Chalker on behalf of their minor child, N.C., and Steven Chalker (“Plaintiffs”). (See  
5 Compl., ECF No. 1-3 at 2–14.) According to the Complaint, on January 1, 2020, Plaintiffs  
6 were customers at a Target Corporation (“Target”) retail store located at 14823  
7 Pomerado Road, Poway, California 92064. (Id. at 6.) While in the home goods aisle,  
8 N.C. opened the drawer of a piece of furniture that was within his reach. (Id.) Shortly  
9 after, an “end table constructed of metal and wood with sharp edges” fell from the top  
10 shelf onto N.C.’s head, injuring him. (Id.) Steven, who was within view and witnessed  
11 the incident, later inspected the end table and observed that none of its wheel locks  
12 were engaged. (Id.)

13 As a result of the incident, N.C. required stitches totaling \$393 in medical  
14 expenses. (See J. Mot., ECF No. 23 at 4.) Apart from this treatment, N.C. did not  
15 continue to treat for injuries or incur any additional medical expenses. (Id.) N.C.’s  
16 father, Steven, claimed emotional distress—including “suffering, anguish, fright, horror,  
17 nervousness, grief, anxiety, worry, and shock” from witnessing the incident—but has  
18 not received any medical care or incurred any medical expenses. (Id. at 2.)

## B. Procedural History

20 On December 9, 2021, Plaintiffs commenced this action by filing a Complaint  
21 against Defendant Target in the Superior Court of California, County of San Diego. (See  
22 Compl., ECF No. 1-3 at 3.) Plaintiffs brought general negligence and premises liability  
23 claims under California law, alleging that Defendant “knew or in the exercise of  
24 reasonable care should have known of the dangerous condition” of storing the end table  
25 on the top shelf without securing it. (Id. at 6.) Furthermore, Plaintiffs alleged  
26 Defendant negligently failed to maintain the furniture aisle, and this negligence resulted  
27 in N.C.’s injury and Steven’s emotional distress. (Id.) Defendant was served with the  
28 Summons and Complaint on December 20, 2021, and filed an Answer on January 19,

1 2022. (See ECF No. 1 at 2.) On March 18, 2022, Plaintiffs served a Statement of  
2 Damages seeking a total of \$150,393 in emotional distress damages; pain, suffering, and  
3 inconvenience damages; and medical expenses. (See ECF No. 1-5 at 2–5.) On April 5,  
4 2022, Defendant filed a Notice of Removal to federal court. (ECF No. 1.) This Court held  
5 an Early Neutral Evaluation and Case Management Conference on May 9, 2022, and  
6 issued a Scheduling Order on May 10, 2022. (ECF Nos. 14 & 15.) On August 2, 2022, the  
7 parties informed the Court they settled the case, and on September 16, 2022, they filed  
8 the instant Joint Motion. (ECF Nos. 21 & 23.)

9 **C. Settlement Terms**

10 As set forth in their Motion, the total settlement amount is \$30,000, with N.C.  
11 (“Minor Plaintiff”) to receive \$25,000 and Steven Chalker to receive \$5,000. (See J.  
12 Mot., ECF No. 23 at 3–4.) The parties state that Minor Plaintiff’s counsel will receive  
13 \$5,000 (20%) in attorney’s fees and \$495.85 in reimbursement of costs, while Steven’s  
14 counsel will receive \$1,750 (35%) in attorney’s fees and \$99.17 in reimbursement of  
15 costs.<sup>2</sup> (*Id.* at 4.) After attorney’s fees and costs are removed, Minor Plaintiff’s net  
16 recovery will be \$19,504.15 and Steven’s net recovery will be \$3,150.83. (*Id.* at 4.)  
17 Minor Plaintiff’s settlement proceeds will be “deposited in a blocked account in a  
18 financial institution in the State of California for [his] benefit . . . subject to withdrawal  
19 only on authorization of the Court.” (See Decl. Peter Schulz, ECF No. 23-1 at 3.) There is  
20 no information about the method of disbursement for Steven’s proceeds.

21 Given that N.C. did not suffer from any long-term injuries and his medical  
22 expenses were minimal, the parties argue this settlement agreement is “fair,  
23 reasonable, and in the best interest of the minor,” regardless of whether state or  
24 federal laws are applied. (*Id.*) Further, they state the average gross settlement value in  
25 cases with similar facts is less than the \$30,000 agreed to in this case. See W.B. v. Mr.  
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27 28 <sup>2</sup> The parties explain that Plaintiffs’ litigation costs consist of filing fees (\$509.02), service fees (\$41.18),  
and photocopies (\$44.25). (See ECF No. 23 at 4 n. 1.)

1 G's For Toys, JVR No. 1802060044, 2016 WL 10891226 (Cal. Super. Feb 24, 2016)  
2 (\$8,000 settlement for a two-year-old boy who cut his head on a display shelf in a toy  
3 store, which required seven stitches and caused permanent scarring).

4 **II. LEGAL STANDARD**

5 Civil Local Rule 17.1 governs settlements for minors. It provides that, “[n]o action  
6 by or on behalf of a minor . . . , or in which a minor . . . has an interest, will be settled,  
7 compromised, voluntarily discontinued, dismissed or terminated without court order or  
8 judgment.” See Civ.L.R. 17.1(a). It further mandates that, “[a]ll settlements and  
9 compromises must be reviewed by a magistrate judge before any order of approval will  
10 issue.” Id. This rule implements the court’s special duty to safeguard the interests of  
11 minor litigants in the context of civil settlements. See Robidoux v. Rosengren, 638 F.3d  
12 1177, 1181 (9th Cir. 2011); Fed. R. Civ. P. 17(c). The Ninth Circuit has held this duty  
13 obliges the court to “conduct its own inquiry to determine whether the settlement  
14 serves the best interest of the minor.” Robidoux, 638 F.3d at 1181 (quoting Dacanay v.  
15 Mendoza, 573 F.2d 1075, 1080 (9th Cir. 1978)); see also Salmeron v. United States, 724  
16 F.2d 1357, 1353 (9th Cir. 1983) (“a court must independently investigate and evaluate  
17 any compromise or settlement of a minor’s claims to assure itself that the minor’s  
18 interests are protected, . . . even if the settlement has been recommended or  
19 negotiated by the minor’s parents or guardian ad litem.”).

20 District courts reviewing the settlement of a minor’s federal claim should “limit  
21 the scope of their review to the question whether the net amount distributed to each  
22 minor plaintiff in the settlement is fair and reasonable, in light of the facts of the case,  
23 the minor’s specific claim, and recovery in similar cases.” Robidoux, 638 F.3d at 1181–  
24 82. Courts should “evaluate the fairness of each minor plaintiff’s net recovery without  
25 regard to the proportion of the total settlement value designated for adult co-plaintiffs  
26 or plaintiffs’ counsel—whose interests the district court has no special duty to  
27 safeguard.” Id. at 1182 (citing Dacanay, 573 F.2d at 1078). “So long as the net recovery  
28 to each minor plaintiff is fair and reasonable in light of their claims and average recovery

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

3 Notably, the Ninth Circuit expressly limited Robidoux to “cases involving the  
4 settlement of a minor’s **federal** claims.” Id. at 1181–82 (emphasis added). Where a  
5 settlement involves state law claims, district courts have generally applied state law  
6 rather than the Robidoux framework. See DeRuyver v. Omni La Costa Resort & Spa, LLC,  
7 No. 17-cv-0516-H-AGS, 2020 WL 563551, at \*2 (S.D. Cal. Feb. 4, 2020); J.T. v. Tehachapi  
8 Unified Sch. Dist., No. 16-cv-01492-DAD-JLT, 2019 WL 954783, at \*2 (E.D. Cal. Feb 27,  
9 2019); A.M.L. v. Cernaiaru, LA CV12-06082 JAK (RZx), 2014 WL 12588992, at \*3 (C.D.  
10 Cal. Apr. 1, 2014). Because Plaintiffs’ general negligence and premises liability claims  
11 are brought solely pursuant to California law, the Court will review the settlement under  
12 the state standard, which focuses on “the best interests of the minor.” Anderson v.  
13 Latimer, 166 Cal. App. 3d 667, 676 (1985); see also Pearson v. Superior Court, 202 Cal.  
14 App. 4th 1333, 1338 (2012) (explaining that requiring court approval “allows the  
15 guardians of a minor to effectively negotiate a settlement while at the same time  
16 protect[ing] the minor’s interest”). The California Probate Code provides the applicable  
17 statutory scheme for compromises involving minors. See Cal. Prob. Code. §§ 3600 et  
18 seq. Under California law, the court has broad discretion “to authorize payment from  
19 the settlement—to say who and what will be paid from the minor’s money—as well as  
20 direct certain individuals to pay it.” Goldberg v. Superior Court, 23 Cal. App. 4th 1378,  
21 1382 (1994). To ensure all relevant factors are considered, the Court will also consider  
22 the Robidoux standard of determining whether the net recovery is “fair and  
23 reasonable.” 638 F.3d at 1181.

24 **III. DISCUSSION**

25 **A. Settlement is Fair, Reasonable, and in the Minor’s Best Interests**

26 Based on a review of the record, Joint Motion, and applicable law, the Court finds  
27 that the terms of the settlement are fair, reasonable, and in the best interests of Minor  
28 Plaintiff. As detailed above, the \$30,000 proposed settlement allocates \$25,000 to

1 Minor Plaintiff and \$5,000 to Plaintiff Steven Chalker. (See J. Mot., ECF No. 23 at 3–4.)  
2 After attorney’s fees and costs are removed, Minor Plaintiff’s net recovery will be  
3 \$19,504.15 and Plaintiff Steven Chalker’s net recovery will be \$3,150.83. (Id. at 4.) This  
4 proposed settlement is in the best interests of the minor because it allows for certain  
5 recovery and eliminates the costs, risks, and time commitment of pursuing the case  
6 through trial. Additionally, it is fair and reasonable, considering Minor Plaintiff’s  
7 minimal injuries—a head laceration and stitches totaling \$393. (Id.) Further, the record  
8 does not indicate N.C. has any functional or long-term issues stemming from the  
9 incident.

10 The parties represent that the settlement in this case is more than the average  
11 recovery in similar cases. (Id. at 5.) In support, they cite to W.B. v. Mr. G’s For Toys,  
12 which involved an \$8,000 settlement for a minor who suffered a head laceration in a toy  
13 store and claimed \$1,655 in medical expenses. (Id.) The Court’s review of other  
14 approved settlements in similar cases supports counsel’s assertion. For example, this  
15 Court held a \$6,952.19 net recovery was fair and reasonable for a minor who sustained  
16 slight injuries including lacerations, abrasions, and contusions after falling on a Macy’s  
17 escalator. See Motlagh v. Macy’s Corp. Servs., Inc., No. 19-cv-00042-JLB, 2020 WL  
18 7385836, at \*5 (S.D. Cal. Dec. 16, 2020). In another case, this Court found that net  
19 recoveries of \$13,241.67, \$13,522.98, and \$12,630.46 were fair and reasonable for  
20 minors who suffered temporary back and neck pain, headaches, and mild concussions  
21 from a car collision. See Castro v. United States, No. 19-cv-02240-AJB-JLB, 2022 WL  
22 594545, at \*4 (S.D. Cal. Feb. 28, 2022), report and recommendation adopted, 2022 WL  
23 959649 (S.D. Cal. Mar. 30, 2022).

24 Here, Minor Plaintiff’s net recovery of \$19,504.15 is significantly higher than  
25 typical recoveries garnered by settling minor plaintiffs who, like N.C., suffered only slight  
26 physical injuries without long-term effects. See, e.g., S.C. v. Alaska Airlines, Inc., No. 20-  
27 cv-6245-RSWL-ASx, 2021 WL 3080631, at \*3 (C.D. Cal. July 20, 2021) (finding fair and  
28 reasonable a \$9,888.84 net recovery for a minor who suffered an anaphylactic shock

1 reaction but did not sustain any permanent injuries); K.A.K v. Kohl's Department Stores,  
2 Inc., 19-cv-3276-RSWL-JPRx 2021 WL 2376931, at \*3 (C.D. Cal. Feb. 5, 2021) (finding fair  
3 and reasonable a \$11,835.93 net recovery for a minor who was struck in the eye by a  
4 sign in a Kohl's department store, but suffered no functional issues); M.W. v. Safeway,  
5 Inc., No. 18-cv-01404-BAT, 2019 WL 4511927, at \*1 (W.D. Wash. Sept. 19, 2019) (finding  
6 fair and reasonable a \$5,024.77 net recovery for a minor who was struck in the head by  
7 supermarket shopping carts and suffered temporary headaches); De La Cruz v. U.S.  
8 Postal Serv., No. 08-cv-0018-OWW-DLB, 2010 WL 319670, at \*2 (E.D. Cal. Jan 20, 2010),  
9 report and recommendation adopted, 2010 WL 624432 (E.D. Cal. Feb 17, 2010) (finding  
10 fair and reasonable a \$3,750 net recovery for a minor who suffered loss of  
11 consciousness, contusions, and a mouth laceration requiring stitches, but made a full  
12 recovery after a car accident).

13       Based upon recoveries in similar actions, the non-severe nature of Minor  
14 Plaintiff's injuries, N.C.'s minimal medical bills (\$393), and his lack of permanent or long-  
15 term effects from the incident, the Court finds that the proposed net recovery of  
16 \$19,504.15 is fair, reasonable, and in the minor's best interests.

17       **B. Attorney's Fees and Costs**

18       The California Probate Code provides that expenses—including attorney's fees—  
19 to be paid out of a settlement in which a minor has an interest must be approved by the  
20 court. See Cal. Prob. Code §§ 3600, 3601. Here, Minor Plaintiff's counsel seeks \$5,000  
21 in attorney fees, a sum that represents 20% of N.C.'s gross settlement, and \$495.85 in  
22 reimbursement of costs. See J. Mot., ECF No. 23 at 4.) Plaintiff Steven Chalker's counsel  
23 seeks \$1,750, which represents 35% of his gross settlement, and \$99.17 in  
24 reimbursement of costs. (Id.) The Court finds these proposed attorney's fees and costs  
25 are appropriate under California law. See Napier v. San Diego Cnty., No. 15-cv-581-CAB-  
26 KSC, 2017 WL 5759803, at \*3 (S.D. Cal. No. 28, 2017) ("Generally, fees in minors cases  
27 have historically been limited to 25% of the gross recovery"). Specifically, Minor  
28 Plaintiff's counsel is below the historically-applied rate of 25%, and the requested

1 litigation costs appear reasonable based on the duration of the case and amount of  
2 work performed. Additionally, the requested amount of attorney's fees and costs for  
3 Plaintiff Steven Chalker does not render the settlement unfair.

4 **C. Disbursement of Funds**

5 Under the California Probate Code, courts can use a variety of methods for the  
6 disbursement of settlement funds. See Cal. Prob. Code. §§ 3600 et seq. Here, the  
7 parties propose placing Minor Plaintiff's funds in a blocked account in California, subject  
8 to withdrawal only on authorization of the Court. (See ECF No. 23-1 at 3). This is  
9 consistent with Section 3611(b) of the Code, which authorizes courts to order the  
10 settlement funds to be deposited "in an insured account in a financial institution in this  
11 state . . . subject to withdrawal only upon the authorization of the court." See Cal. Prob.  
12 Code § 3611(b). Thus, the Court finds the proposed disbursement procedure  
13 adequately protects N.C.'s interests by providing no withdrawal absent a court order.  
14 Although not included in their proposal, the Court recommends that the funds should  
15 not be disbursed until Minor Plaintiff reaches the age of eighteen.

16 **IV. CONCLUSION**

17 For the reasons discussed above, the Court finds the proposed settlement to be a  
18 fair and reasonable resolution of this case in the best interests of the minor, under both  
19 state and federal law. **IT IS HEREBY RECOMMENDED** that the District Court issue an  
20 Order: (1) adopting this Report and Recommendation; and (2) **GRANTING** the Joint  
21 Motion for Approval of Minor's Compromise [ECF No. 23].

22 Any party may file written objections with the District Court and serve a copy on  
23 all parties on or before January 10, 2023. The document should be captioned  
24 "Objections to Report and Recommendation." Any reply to the objections shall be  
25 served and filed on or before January 17, 2023.

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1 The parties are advised that failure to file objections within the specified time may  
2 waive the right to appeal the district court's order. Martinez v. Ylst, 951 F.2d 1153, 1157  
3 (9th Cir. 1991).

4 **IT IS SO ORDERED.**

5 Dated: December 23, 2022

6   
7 Honorable Michael S. Berg  
8 United States Magistrate Judge

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