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13
14 **UNITED STATES DISTRICT COURT**
15 **EASTERN DISTRICT OF CALIFORNIA**
16 **SACRAMENTO DIVISION**

17 LORENZO MAYS, RICKY)
18 RICHARDSON, JENNIFER BOTHUN,)
19 ARMANI LEE, LEERTESE BEIRGE, and)
20 CODY GARLAND, on behalf of themselves)
and all others similarly situated,)

21 Plaintiffs,)

22 v.)

23 COUNTY OF SACRAMENTO,)

24 Defendant.)
25)
26)
27)
28)

Case No. 2:18-cv-02081 TLN KJN

CLASS ACTION

**JOINT MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: December 6, 2019

Time: 11:00 a.m.

Judge: Hon. Kendall J. Newman

INTRODUCTION

1
2 In June 2019, after engaging in extensive settlement negotiations, the parties entered into a
3 Consent Decree to settle class claims for injunctive relief in this suit concerning conditions in the
4 Sacramento County Jails (“Jails”). The Court granted preliminary approval of the Consent Decree
5 on August 13, 2019. Doc. No. 88. Plaintiffs and Defendant, by and through their counsel, now
6 respond to class member comments about the settlement and request final approval of the Consent
7 Decree. If the Court grants final approval, the Consent Decree will resolve all class claims in the
8 case.

9 The Court should grant final approval of the Consent Decree because, as the Court has
10 already ruled, “the proposed settlement is the product of arms-length, serious, informed, and non-
11 collusive negotiations between experienced and knowledgeable counsel who have actively
12 prosecuted and defended this litigation.” Order Granting Prelim. Approval of Consent Decree and
13 Class Notice at 2, Doc. No. 88. Further, the Consent Decree adequately addresses the class claims
14 for injunctive relief. It includes a detailed 62-page Remedial Plan addressing medical and mental
15 health care, suicide prevention, disability accommodations, restrictive housing, and mental health
16 input into the Jails’ disciplinary and use of force practices. *See* Consent Decree, Doc. No. 85, Ex. 1.
17 The Remedial Plan requires Defendant to remedy the deficiencies alleged in the class action
18 complaint. *See* Complaint, Doc. No. 1.

19 The Court has received four letters commenting on the proposed settlement. The comments
20 support the need to settle this case and provide timely relief to address the conditions of confinement
21 in Defendant’s Jails. None of these comments show that the Consent Decree is not the product of
22 good-faith negotiations conducted at arm’s length.

23 There is also no evidence that the Consent Decree will fail to achieve the primary objectives
24 of the class claims for injunctive relief — constitutionally adequate medical and mental health care,
25 adequate measures for suicide prevention, provision of access and reasonable accommodations for
26 people with disabilities, limits to the use of solitary confinement, and expanded mental health input
27 into the Jails’ disciplinary and use of force practices. Moreover, Plaintiffs’ counsel will vigorously
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1 enforce the terms of the Consent Decree. The Court should therefore grant final approval of the
2 settlement.

3 **BACKGROUND**

4 As explained in the Motion for Preliminary Approval of Consent Decree, Plaintiffs are
5 people who are or have been incarcerated in the Sacramento County Jails representing a class of
6 “[a]ll people who are now, or in the future will be, incarcerated in the Sacramento County jails” and
7 a subclass of “[a]ll qualified individuals with disabilities, as that term is defined in 42 U.S.C. §
8 12102, 29 U.S.C. § 705(9)(B), and California Government Code § 12926(j) and (m), who are, or will
9 be in the future, incarcerated in the Sacramento County jails.” Order Certifying Action as Class
10 Action, filed December 28, 2018, Doc. No. 49, at 2. Defendant is the County of Sacramento, which
11 is responsible for the operation of the Jails.

12 In 2015, Disability Rights California (DRC), the protection and advocacy system for the
13 State of California charged under federal and state law to protect the rights of people with
14 disabilities, issued a public report on conditions in Jails regarding findings of policies, practices, and
15 conditions that harm people incarcerated in the Jails, in particular those with serious mental illness,
16 medical conditions, and physical, sensory, and mental health disabilities. The Prison Law Office
17 (PLO), serving as DRC’s authorized agent, participated in the investigation.

18 In January 2016, DRC, PLO, and the County of Sacramento entered into a Structured
19 Negotiations Agreement as an alternative to imminent litigation. The parties agreed to utilize joint
20 neutral experts to inspect the Jails and issue reports and recommendations. The five experts were:
21 Bruce Gage, M.D. (mental health care), Lindsay M. Hayes, M.S. (suicide prevention), Eldon Vail
22 (custody and solitary confinement), Sabot Consulting (disability discrimination), and James Austin,
23 Ph.D. (classification). Plaintiffs’ counsel, with the assistance of a correctional medical care expert,
24 inspected the facilities and reviewed documents related to medical care, which formed the basis of
25 the medical care component of the remedial plan.

26 This action was filed on July 31, 2018. Doc. No. 1. The complaint alleged that conditions in
27 the Jails violated the constitutional rights of people in the jail, under the Eighth and Fourteenth
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1 Amendments to the United States Constitution. Specifically, Plaintiffs alleged that the County does
2 not provide people in the jails with access to adequate medical or mental health care; imposes the
3 harmful and excessive use of solitary confinement; fails to implement adequate or appropriate
4 measures to prevent suicide; fails to adequately account for people’s mental health needs and
5 disabilities in the disciplinary process and when using force; and discriminates against people with
6 disabilities in violation of the Americans with Disabilities Act and Section 504 of the Rehabilitation
7 Act.

8 On October 2, 2018, Defendant filed its answer to the complaint, denying the material
9 allegations and asserting affirmative defenses. Doc. No. 24. The parties filed a Joint Motion for
10 Class Certification (Doc. No. 28), which was granted on December 28, 2018 (Doc. No. 49).

11 The parties then engaged in limited discovery. On February 12, 2019, Plaintiffs filed a
12 motion for Partial Summary Judgment or in the Alternative Preliminary Injunction regarding access
13 to mental health care and the use of solitary confinement in the Jails. Doc. No. 62. While the
14 motion was pending, the parties continued to negotiate the terms of a proposed Consent Decree,
15 which incorporates the Remedial Plan. The Board of Supervisors approved the Consent Decree on
16 June 4, 2019. Plaintiffs subsequently withdrew their motion. Doc. No. 82.

17 On August 13, 2019, the Court granted the parties’ joint motion seeking preliminary approval
18 of the Consent Decree and found that “the proposed settlement is the product of arms-length,
19 serious, informed, and non-collusive negotiations between experienced and knowledgeable counsel
20 who have actively prosecuted and defended this litigation.” Order Granting Prelim. Approval of
21 Consent Decree and Class Notice at 2, Doc. No. 88. The Court directed Defendant “to post the
22 Notice in English and Spanish in all housing units in such a manner as to make the notice visible to
23 all people incarcerated in the Jails.” *Id.* at 2. The Court set a hearing regarding final approval of the
24 Consent Decree for December 5, 2019, *id.* at 3, and later continued the hearing to December 6, 2019.
25 Doc No. 101.

26 On September 6, 2019, Lieutenant Alex McCamy filed a declaration affirming the
27 Defendant’s compliance with the Court’s August 13, 2019 order. *See* Doc. No. 91. The Class
28 Notice described the key terms of the settlement and the proposed agreement regarding attorneys’

1 fees and advised class members that the Court would consider written comments when deciding
2 whether to approve the settlement. *See* Doc. No. 90, Ex. A. Defendant also established a process to
3 provide copies of the full Consent Decree, the Remedial Plan, and Plaintiffs' Unopposed Motion for
4 Attorneys' Fees and Expenses to people in the jail who requested them.

5 To date, four letters have been filed with the Court. *See* Doc. Nos. 96-98, 100. One is from a
6 non-class member. Doc. No. 100. Each letter is addressed below.

7 **SUMMARY OF KEY PROPOSED SETTLEMENT TERMS**

8 The following are some of the key terms of the Consent Decree:

9 1. Utilizing the reports of the joint experts, the subject matter knowledge of class
10 counsel and Jail services leadership, and the extensive information and input gathered by class
11 counsel from class members, the parties have agreed on a detailed Remedial Plan that Defendant will
12 be required to implement. The Remedial Plan provisions cover all the substantive areas in dispute:
13 medical care, mental health care, suicide prevention, the use of solitary confinement, discrimination
14 against people with disabilities, and mental health input into disciplinary and use of force practices.
15 The Remedial Plan is attached to the Consent Decree as Exhibit A. Doc. No. 85-1. Among many
16 other provisions, the Remedial Plan requires the County to: (a) expand its programs and services to
17 meet the treatment needs of people with mental health needs, (b) provide constitutionally adequate
18 medical care, (c) implement appropriate suicide prevention policies and procedures, (d) identify
19 people with disabilities and ensure that they receive reasonable accommodations and can access
20 programs and services in the Jails, (e) limit the use and duration of solitary confinement, including
21 by curbing the placement of people with serious mental illness in solitary confinement; and (f)
22 expand mental health input into the Jails' disciplinary and use of force practices.

23 2. The parties have implemented a process, set forth in the Consent Decree, to select
24 joint neutral experts, to be appointed by the court to monitor implementation of and compliance with
25 the Remedial Plan and to assist in dispute resolution. The experts will complete comprehensive
26 reviews of Defendant's progress and will have reasonable access to all parts of the Jails, including
27 confidential, voluntary interviews with any staff and class members, and documents on request.
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1 litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered
2 in settlement; [5] the extent of discovery completed and the stage of the proceedings; [6] the
3 experience and views of counsel; [7] the presence of a governmental participant; and [8] the reaction
4 of the class members to the proposed settlement.” *Hanlon*, 150 F.3d at 1026; *see also In re Oracle*
5 *Sec. Litig.*, 829 F. Supp. 1176, 1179 (N.D. Cal. 1993). The district court must explore these factors
6 comprehensively to satisfy appellate review, but “the decision to approve or reject a settlement is
7 committed to the sound discretion of the trial judge.” *Hanlon*, 150 F.3d at 1026.

8 “[T]he court’s intrusion upon what is otherwise a private consensual agreement negotiated
9 between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment
10 that the agreement is not the product of fraud or overreaching by, or collusion between, the
11 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
12 concerned.” *Hanlon*, 150 F.3d at 1027 (citing *Officers for Justice*, 688 F.2d at 625). Thus, a district
13 court’s decision to approve a class-action settlement may be reversed “only upon a strong showing
14 that the district court’s decision was a clear abuse of discretion.” *Id.* (citation omitted).

15 Here, the Court already found that the settlement is “the product of arms-length, serious,
16 informed, and non-collusive negotiations between experienced and knowledgeable counsel who
17 have actively prosecuted and defended this litigation.” Order Granting Prelim. Approval of Consent
18 Decree and Class Notice at 2, Doc. No. 88. Thus, the Consent Decree is entitled to a presumption of
19 fairness. *Harris*, 2011 WL 1627973, at *8.

20 The Court should grant final approval of the Consent Decree because it provides substantial
21 equitable relief to class members. Defendant has agreed to settlement terms that directly address the
22 class claims in this case, including the delivery of minimally adequate medical and mental health
23 care, implementation of adequate suicide prevention measures, reforms to the identification of and
24 provision of reasonable accommodations and access for people with disabilities, substantial
25 limitations to the use of solitary confinement, and expanded mental health input into the Jails’
26 disciplinary and use of force practices. *See* Remedial Plan, Doc. No. 85-1, Ex. A. The settlement
27 was reached after several years of negotiations between the parties, who were zealously represented
28 by their experienced counsel throughout this litigation. *See* Decl. of Aaron Fischer in Supp. of Pls.’

1 Unopposed Mot. for Attorneys’ Fees and Expenses ¶¶ 2-7, Doc. No. 93; Decl. of Donald Specter in
2 Supp. of Pls.’ Unopposed Mot. for Attorneys’ Fees and Expenses ¶¶ 2-5, Doc. No. 94; Decl. of
3 Jessica Valenzuela Santamaria in Supp. of Pls.’ Unopposed Mot. for Attorneys’ Fees and Expenses ¶
4 2, Doc. No. 95. The settlement was also reached after neutral experts inspected Defendant’s jails
5 and opined on the adequacy of medical and mental health care, classification and solitary
6 confinement practices, suicide prevention, and compliance with federal and state disability law.

7 Further, the outcome of the litigation and the extent of any relief that the class might be
8 awarded if the case went to trial is uncertain. Plaintiffs faced substantial burdens in demonstrating a
9 current and ongoing violation of individuals’ constitutional rights on a system-wide basis.
10 Proceeding through pre-trial motions, trial, and probable appeal would impose risks, costs, and a
11 substantial delay in the implementation of any remedy in this matter. Given the relief achieved and
12 the risks and costs involved in further litigation, the Consent Decree represents a fundamentally
13 “fair, reasonable, and adequate” resolution of the disputed issues and should be given final approval.
14 *See* Fed. R. Civ. Pro. 23(e)(2).

15 **B. None of the comments refute the presumption that the settlement is fair,
16 reasonable, and adequate.**

17 Four letters were submitted to the Court. Doc. Nos. 96-98, 100. Most letters did not provide
18 substantive comments on the terms of the Consent Decree or Remedial Plan. Two of the letters
19 described concerns with the health care and disability accommodations in the Jails and requested
20 individual damages. Doc. Nos. 96, 97. One letter described concerns about the delivery of health
21 care in the Jails and requested that the Court impose fines on the Defendant to induce compliance.
22 Doc. No. 98. The fourth letter, which came from a non-class member,¹ raised concerns about
23 solitary confinement practices and inadequate suicide prevention measures in the Jails. Doc. No.
24 100. The letter also objected to a provision of the Consent Decree limiting the reliance on the
25 Consent Decree in other cases or claims. *Id.* at 4.

26 None of these letters provides any basis for rejecting the settlement. The letters that reported
27 problems with conditions at the jails underscore the need for the agreed-upon remedy in this case. In

28 ¹ The objector states that he was incarcerated in the Sacramento County Jail from September 2015 through May 2017, before the class was certified in December 2018 (*see* Doc No. 49).

1 addition, the letters requesting damages to be paid to class members should not prevent approval of
2 the settlement here: the class and disability subclass sought only declaratory and injunctive relief
3 pursuant to Federal Rule of Civil Procedure 23(b)(2), and the settlement does not bar class members
4 from pursuing individual damage claims. *See Hiser v. Franklin*, 94 F.3d 1287, 1291 (9th Cir. 1996)
5 (“[T]he general rule is that a class action suit seeking only declaratory and injunctive relief does not
6 bar subsequent individual damage claims by class members, even if based on the same events.”).
7 With respect to the concerns about the provision of the Consent Decree that limits its use in other
8 claims or proceedings, nothing limits any litigant from accessing or referencing the policies and
9 procedures adopted by the County in connection with or in response to the Consent Decree, or the
10 evidence submitted in support of Plaintiffs’ claims.

11 In sum, the settlement here is fair, reasonable, and adequate and this Court should approve it.

12 **C. Plaintiffs’ Unopposed Motion for Attorneys’ Fees and Expenses Should Be**
13 **Granted.**

14 Defendant has agreed to pay Plaintiffs’ attorneys’ fees and out of pocket expenses in the
15 amount of \$2,100,000. This amount — which reimburses Plaintiffs’ counsel for some but not all of
16 their actual hours spent and out-of-pocket expenses — is fair and reasonable in light of the
17 extraordinary results obtained through this litigation, the lengthy and detailed settlement
18 negotiations, and the difficulty and complexity of the issues involved. There have been no
19 objections from class members to the proposed attorneys’ fees and expenses. Accordingly, the Court
20 should grant Plaintiffs’ pending Unopposed Motion for Attorneys’ Fees and Expenses, Doc. No. 92,
21 pursuant to Federal Rule of Civil Procedures 23(h).

22 **CONCLUSION**

23 As the Court has already ruled, the Consent Decree is the product of arm’s length, serious,
24 informed, and non-collusive negotiations between experienced and knowledgeable counsel who
25 have actively prosecuted and defended this litigation. Thus, it is entitled to a presumption of
26 fairness. Further, the comments by class members do not demonstrate that the Consent Decree does
27 not fairly, reasonably, and adequately resolve the class’s or disability subclass’s claims for injunctive
28 relief. Accordingly, the parties request that the Court grant final approval of the Consent Decree and

1 grant Plaintiffs' pending Unopposed Motion for Attorneys' Fees. A proposed order on final
2 approval of the class action settlement is filed herewith. The proposed order on Plaintiffs'
3 unopposed motion for attorneys' fees was previously filed. Doc. 92-1.

4
5 Dated: November 12, 2019

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Margot K. Mendelson (SBN 268583)
PRISON LAW OFFICE
Attorney for Plaintiffs

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7
8 Dated: November 12, 2019

Aaron Fischer (as authorized 11/12/19)
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10 Dated: November 12, 2019

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14 **UNITED STATES DISTRICT COURT**
15 **EASTERN DISTRICT OF CALIFORNIA**
16 **SACRAMENTO DIVISION**

17 LORENZO MAYS, RICKY)
18 RICHARDSON, JENNIFER BOTHUN,)
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20 CODY GARLAND, on behalf of themselves)
and all others similarly situated,)

21 Plaintiffs,)

22 v.)

23 COUNTY OF SACRAMENTO,)

24 Defendant.)
25)
26)
27)
28)

Case No. 2:18-cv-02081 TLN KJN

CLASS ACTION

**[Proposed] Order Granting Final
Approval of Class Action Settlement**

Date: December 6, 2019

Time: 11:00 a.m.

Judge: Hon. Kendall J. Newman

1 On November 12, 2019, Plaintiffs and Defendant County of Sacramento (“Defendant”) filed
2 a Joint Motion for Final Approval of Class Action Settlement. The matter came before the Court for
3 a hearing on December 6, 2019. Having considered the briefing in support of the motion, responses
4 from class members, relevant legal authority, and the record in this case, the Court **GRANTS** the
5 motion.

6 1. Under Federal Rule of Civil Procedure 23(e), “claims, issues, or defenses of a
7 certified class may be settled . . . only with the court’s approval.” The Ninth Circuit has instructed
8 district courts to consider and balance multiple factors when assessing whether a settlement is “fair,
9 adequate, and free from collusion” under Rule 23(e). *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
10 1027 (9th Cir. 1998). These factors include:

11 the strength of the plaintiffs’ case; the risk, expense, complexity, and likely duration of
12 further litigation; the risk of maintaining class action status throughout the trial; the
13 amount offered in settlement; the extent of discovery completed and the stage of the
14 proceedings; the experience and views of counsel; the presence of a governmental
participant; and the reaction of the class members to the proposed settlement.

15 *Id.* at 1026. “This list is not exclusive and different factors may predominate in different factual
16 contexts.” *Torrise v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993).

17 2. The Court finds that consideration of the factors favors settlement, and that the
18 settlement is fair, reasonable, and adequate.

19 a. *Strength of Plaintiffs’ Case and the Risk, Expense, and Complexity of Further*
20 *Litigation:* The Plaintiffs’ case is strong, as shown by the evidence that has been submitted and the
21 serious ongoing settlement discussions that began even before the complaint was filed. However,
22 Plaintiffs face substantial burdens in demonstrating a current and ongoing violation of individuals’
23 constitutional rights on a system-wide basis. Proceeding through pre-trial motions, trial, and
24 possible appeal would impose risks, costs, and a substantial delay in the implementation of any
25 remedy in this matter.

26 b. *Risk of Maintaining a Class Action Status Through Trial:* Plaintiffs face little
27 or no risk of maintaining class action status throughout the trial. The Court approved the parties’
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1 joint application for class action status on December 28, 2018, Doc. No. 49, and it is unlikely that
2 Defendant would contest class certification if the Court rejects the proposed Consent Decree. *See*
3 Fed. R. Civ. P. 23(c)(1)(C) (allowing court to revisit certification before final judgment).

4 c. *Extent of Discovery Taken in the Case:* Settlement discussions began even
5 before the filing of this case, and were informed by considerable information-sharing as well as the
6 investigation conducted through class counsel Disability Rights California’s statutory access
7 authority. The parties also engaged in targeted discovery after the case was filed. Throughout,
8 Plaintiffs’ counsel had access to the jails, personnel who worked there, and people incarcerated
9 there. The settlement also was informed by the opinions of five neutral experts who had access to
10 the jails.

11 d. *Experience and Views of Counsel:* Plaintiffs’ counsel has extensive experience
12 in prisoners’ rights litigation and complex class action litigation and believe that the settlement here
13 is in the best interest of all plaintiffs. Defendant is represented by counsel who similarly is
14 experienced and knowledgeable in this type of litigation. The Court has already found that
15 “experienced and knowledgeable counsel . . . have actively prosecuted and defended this litigation.”
16 Doc. No. 88 at 2.

17 e. *Reaction of the Class Members to the Settlement:* The reaction of class
18 members to the settlement further supports final approval. Defendant complied with the Court’s
19 order regarding the provision of notice to the class. Doc. No. 91. Class members were afforded an
20 opportunity to comment or object to the settlement, and this Court held a hearing on the matter.
21 Though approximately 3,700 individuals are incarcerated at Defendant’s jails, the Court received
22 only four letters about the settlement, including one from a non-class member. *See* Doc. Nos. 96-98,
23 100. The letters detailed individual experiences with the deficiencies for which Plaintiffs seek a
24 remedy in this case; these letters weigh in favor of approving the Consent Decree.

25 The Court is satisfied that the concerns in the comments are adequately addressed by
26 the Consent Decree. The Court also notes that the settlement will not bar individual damage claims
27 by class members. *See Hiser v. Franklin*, 94 F.3d 1287, 1291 (9th Cir. 1996) (“[T]he general rule is
28 that a class action suit seeking only declaratory and injunctive relief does not bar subsequent

1 individual damage claims by class members, even if based on the same events.”). Overall, the
2 reaction to the Consent Decree therefore weighs in favor of approval.

3 f. *Whether the Settlement Appears Non-Collusive:* As this Court has previously
4 found, “the proposed settlement is the product of arms-length, serious, informed, non-collusive,
5 negotiations.” Doc No. 88 at 2. The parties have presented no reason for the Court to reconsider
6 this previous finding. Accordingly, this factor weighs in favor of approval.

7 3. The Court further finds that the Consent Decree meets the requirements of the Prison
8 Litigation Reform Act at 18 U.S.C. § 3626(a). In so doing, the Court finds that the relief contained
9 therein is narrowly drawn, extends no further than necessary to ensure the protection of the federal
10 constitutional and statutory rights of Plaintiffs, and is the least intrusive means necessary to
11 accomplish those objectives.

12 Accordingly, the Court hereby **GRANTS** the Joint Motion for Final Approval of the Class
13 Action Settlement. The Court therefore approves and adopts the Consent Decree as the Order of the
14 Court, orders the parties to comply with all its terms, and orders Defendant to implement the
15 Remedial Plan and accompanying policies pursuant to the schedule set forth therein.

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17 **IT IS SO ORDERED.**

18 Dated: December __, 2019

19 _____
20 The Honorable Kendall J. Newman
21 United States Magistrate Judge
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