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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION

12 LUCAS R., *et al.*,

13 Plaintiffs,

14 v.

15 XAVIER BECERRA, Secretary of
16 U.S.
17 Department of Health and Human
18 Services, *et al.*,

19 Defendants.

No. 2:18-CV-05741 DMG PLA

MEMORANDUM IN SUPPORT OF JOINT
MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENTS AND
APPROVAL OF CLASS NOTICES OF
SETTLEMENT OF PLAINTIFFS' THIRD,
FOURTH, AND FIFTH CLAIMS FOR
RELIEF [PSYCHOTROPIC
MEDICATIONS, LEGAL
REPRESENTATION, AND DISABILITY]

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1 The Parties hereby jointly move the Court for entry of an order preliminarily
2 approving their Settlement Agreements (“Agreements”), attached as Exhibits A-C to
3 the Declaration of Mishan Wroe in support of the Parties’ Joint Motion for
4 Preliminary Approval (“Wroe Decl.”). The Parties respectfully request that the Court
5 (1) grant preliminary approval of the Agreements; (2) approve the form and manner of
6 the Notices of Proposed Class Action Settlement, which are attached to Wroe Decl. as
7 Exhibits D-F; (3) set the deadline for written submissions from Class Members or
8 their legal representatives or advocates who wish to be heard in favor of or in
9 objection to the Agreements; (4) set a schedule for Plaintiffs to file their motion for
10 fees and costs; and (5) set the date for a final fairness hearing pursuant to Federal Rule
11 of Civil Procedure 23(e)(2).

12 **I. FACTUAL BACKGROUND**

13 **A. Overview of the Litigation**

14 On June 29, 2018, named Plaintiffs Lucas R., Daniela Marisol T., Gabriela N.,
15 Miguel Angel S., and Jaime D. and non-profit organizational Plaintiffs San Fernando
16 Valley Refugee Children Center, Inc. and Unaccompanied Central American Refugee
17 Empowerment (“Plaintiffs”) filed the Complaint in the above-captioned action against
18 the Secretary of the U.S. Department of Health and Human Services (“HHS”) and the
19 Director of the Office of Refugee Resettlement (“ORR”) in their official capacities
20 (collectively “Defendants”). ECF No. 1 ¶¶ 1-20 (“Plaintiffs’ Complaint”). The
21 individual named Plaintiffs filed the Complaint on behalf of themselves and four
22 proposed classes, including youth in ORR custody who have been or will be
23 administered psychotropic medications allegedly without procedural safeguards and
24 youth who are natives of non-contiguous countries to whom ORR is allegedly
25 impeding or will impede legal assistance in legal matters or proceedings involving
26 their custody, placement, release, and/or administration of psychotropic drugs.

27 On September 7, 2018, Plaintiffs filed their First Amended Complaint (ECF
28 No. 81, “FAC”), adding two named class members, Sirena P. and Benjamin F., and

1 adding a fifth claim for relief on behalf of a class of children in ORR custody who
2 have, will have, or are perceived to have a behavioral, mental health, intellectual,
3 and/or developmental disability and who are segregated and denied release solely
4 because of their disability. FAC ¶¶ 1-5, 15-16.

5 The FAC challenged, among other things, Defendants’ policies and practices
6 with respect to their administration of psychotropic medications to children in ORR
7 custody allegedly without procedural safeguards such as, obtaining informed parental
8 consent or other authorization prior to medicating a child, involving a neutral
9 decisionmaker in the initial determination of whether to prescribe psychotropics to a
10 child in ORR custody, or involving a neutral decision-maker to conduct periodic
11 reviews of those medications as treatment continues. *See generally* Plaintiffs’
12 Complaint, FAC. Additionally, Plaintiffs challenged Defendants’ policies and
13 practices with respect to accessing legal representation and assistance in legal matters
14 or proceedings involving their custody, placement, release, and the administration of
15 psychotropic medications. *Id.* Plaintiffs further challenged Defendants’ policies and
16 practices with respect to the rights of children in ORR custody who have, will have, or
17 are perceived to have a behavioral, mental health, intellectual, and/or developmental
18 disability. *Id.* Plaintiffs alleged these policies result in unjustified and harmful
19 segregation of children with disabilities in restrictive placements that do not meet their
20 needs. *Id.* Moreover, Plaintiffs alleged the release of children in ORR custody to
21 qualified sponsors is prolonged solely because of their disabilities.

22 Plaintiffs alleged that Defendants failed to implement procedural safeguards
23 when prescribing children psychotropic medications, and that this violates the rights
24 of children in ORR custody under the United States Constitution, the *Flores*
25 Settlement, and Section 235(c)(2) of the Trafficking Victims Protection
26 Reauthorization Act (“TVPRA”), 22 U.S.C. § 78. Plaintiffs further alleged that
27 Defendants violate the relevant laws of the states in which children are placed,
28 incorporated by reference into the *Flores* Settlement, including Texas Administrative

1 Code sections 748.2001(b), 748.2253, and 748.2255; Texas Family Code section
2 266.004(a); and California Welfare and Institutions Code sections 369.5(a)(1) and
3 730.5(a)(1). FAC ¶¶ 132-142.

4 Plaintiffs further alleged that as a matter of policy and practice, ORR routinely
5 bars legal service providers from representing unaccompanied children from non-
6 contiguous countries in legal proceedings involving ORR’s custody, release,
7 placement, and psychotropic medication decisions in violation of the *Flores*
8 Settlement Agreement and the TVPRA. *Id.* ¶¶ 143-152.

9 Finally, Plaintiffs alleged Defendants’ policies and practices with respect to
10 children in ORR custody who have, will have, or are perceived to have a disability
11 violate these children’s rights under Section 504 of the Rehabilitation Act of 1973
12 (“Rehabilitation Act”), 29 U.S.C. § 794, and HHS regulations implementing Section
13 504, 45 C.F.R. § 84.4(b)(1)(ii-iv), (vii),¹ and result in segregation of children with
14 disabilities in restrictive facilities and delays to their release. *Id.* ¶¶ 153-177.

15 To address these alleged issues, Plaintiffs sought, among other things,
16 injunctive relief enjoining Defendants from administering psychotropic drugs to
17 Plaintiffs or class members in non-exigent circumstances without parental consent or
18 the lawful equivalent thereof. *See generally* FAC. Additionally, Plaintiffs sought to
19 enjoin Defendants from blocking Plaintiffs from receiving legal assistance pursuant to
20 8 U.S.C. § 1232(c)(5) in legal proceedings or matters involving ORR’s decisions
21 regarding custody, placement, or release. *Id.* Plaintiffs further sought injunctive relief
22 enjoining Defendants from, first, unnecessarily placing Plaintiffs in restrictive settings
23 solely on the basis of disability and, second, from delaying and/or obstructing
24 Plaintiffs’ release on the basis of disability. *Id.* In their Answer, Defendants denied
25 liability for Plaintiffs’ claims. ECF No. 144.

26 _____
27 ¹ ORR’s Unaccompanied Children Program is a federal program and ORR is not itself
28 a recipient of Federal financial assistance (unlike its care providers); ORR’s actions
are governed by Part 85 of HHS’s Section 504 regulations, rather than Part 84.

1 Prior to filing the lawsuit, Plaintiffs’ counsel undertook a lengthy research
2 process, including meeting with children in ORR custody at various facilities
3 throughout the country, speaking with children’s immigration attorneys and other
4 stakeholders, analyzing case files and other records, and conducting legal research and
5 factual analysis regarding a range of potential legal issues. Wroe Decl. ¶ 5.

6 Since the lawsuit was filed, the Parties have engaged in extensive discovery
7 efforts. The Parties have both propounded interrogatories, requests for admission, and
8 document requests to one another. Wroe Decl. ¶ 6. The Parties have negotiated
9 search terms for electronically stored information and Defendants have produced more
10 than 235,000 pages of documents, which Plaintiffs have reviewed. *Id.* The Parties
11 have also taken more than 20 depositions of fact witnesses and completed 17 expert
12 witness depositions. *Id.*

13 On December 27, 2018, in an amended order, the Court granted Plaintiffs’
14 motion for certification of five classes. ECF No. 141 at 27-28. As relevant to this
15 motion, three of the classes are defined as all minors in ORR custody: (1) who are or
16 will be prescribed or administered one or more psychotropic medications without
17 procedural safeguards (“Psychotropic Medications Class”); (2) who are natives of
18 non-contiguous countries and to whom ORR is impeding or will impede legal
19 assistance in legal matters or proceedings involving their custody, placement, release,
20 and/or administration of psychotropic medications (“Legal Representation Class”);
21 and (3) who have or will have a behavioral, mental health, intellectual, and/or
22 developmental disability as defined in 29 U.S.C. § 705, and who are or will be placed
23 in a secure facility, medium-secure facility, or residential treatment center (RTC)
24 solely by reason of such disabilities (“Disability Class”). *Id.* In its amended order the
25 Court dismissed Plaintiffs’ claims under the *Flores* Agreement but permitted Plaintiffs
26 to “pursue due process claims predicated on Defendants’ [alleged] failure to provide
27 sufficient procedural safeguards for alien minors to exercise their *Flores* rights
28 because Plaintiffs cannot bring those claims in the *Flores* action.” *Id.* at 10-11.

1 On March 11, 2022, the Court ruled on the Parties' cross-motions for summary
2 judgment. ECF No. 376. Relevant here, the Court ruled on Plaintiffs' legal
3 representation class claim and held that ORR is not affirmatively obligated to fund
4 legal representatives for minors in internal ORR challenges involving ORR decisions
5 regarding minors' placement, sponsorship applications, and/or administration of
6 psychotropic medications. *Id.* at 47. The Court denied summary judgment for both
7 parties regarding whether ORR retaliates against attorneys who represent minors in
8 ORR's administrative decisions and blocks the effective assistance of counsel, finding
9 that a disputed issue of material fact remained to be litigated at trial. *Id.* at 49.
10 Neither party sought summary judgment on the Psychotropic Medications or the
11 Disability class claims, and thus the Court's partial summary judgment decision does
12 not address those claims.

13 **B. Settlement Negotiations**

14 These Agreements are the result of lengthy negotiations conducted over several
15 years. The Parties engaged in structured negotiations focused primarily on the First,
16 Second, and Fourth Claims for Relief from approximately May 2019 through January
17 2020. Wroe Decl. ¶ 7. These negotiations included a settlement conference before
18 Judge Pym in June 2019. *Id.* Negotiations were unsuccessful and the Parties
19 subsequently completed expert discovery and filed cross-motions for summary
20 judgment addressing the First, Second, and Fourth Claims for Relief. *Id.* ¶ 8.

21 As relevant here, in November 2020, the Parties re-engaged in negotiations
22 primarily focused on the Third and Fifth Claims for Relief relating to the Psychotropic
23 Medications Class and the Disability Class, which, as noted, were not part of the
24 cross-motions for summary judgment. *See, e.g.*, Order re Cross-Motions for
25 Summary Judgment [ECF No. 376]; *see also* Wroe Decl. ¶ 9. With respect to
26 settlement negotiations regarding the Third Claim for Relief, the Parties began the
27 November 2020 negotiations by utilizing draft settlement agreements that were
28 created with the assistance of *Flores* Special Monitor Andrea Ordin following nine

1 months of mediation to resolve Plaintiffs’ Motion to Enforce in *Flores v. Sessions*,
2 No. 2:85-cv-4544 DMG (AGRx), which addressed the administration of psychotropic
3 medications to children held at Shiloh Residential Treatment Center in Texas. Wroe
4 Decl. ¶ 10.

5 To assist the negotiations, the Parties participated in a Settlement Conference
6 before Judge Pym in January 2021 and also engaged a private mediator, Kathleen
7 Noonan, Esq., beginning in 2021. Wroe Decl. ¶ 11. For approximately two years, the
8 Parties engaged in a vigorous arms’ length negotiation mediated by Ms. Noonan,
9 exchanging numerous draft settlement agreements relating to the Psychotropic
10 Medications and Disability classes, and participating in many telephonic discussions
11 and two in-person mediations in Washington, DC. *Id.* ¶ 12. While the Parties were
12 working to resolve the Third and Fifth Claims for Relief, in August 2022, the Court
13 entered a preliminary injunction following its partial grant of summary judgment
14 regarding Plaintiffs’ First, Second, and Fourth Claims for Relief. ECF No. 391.

15 Then, on February 3, 2023, the Parties filed a Joint Stipulation and Request to
16 Continue Pretrial and Trial Schedule and informed the Court that “subject to final
17 approval by the Department of Justice, the Parties have with the assistance of a private
18 mediator reached tentative settlement agreements to resolve the two causes of action
19 relating to the Psychotropic Medications Class and Disability Class.” ECF No. 402 at
20 1. This Court subsequently entered an order approving the Joint Stipulation between
21 the Parties and continued the trial date until October 24, 2023, so that the Parties could
22 finalize their settlement negotiations regarding the Psychotropic Medications and
23 Disability class claims. ECF No. 403.

24 The Parties then began discussing a possible resolution of Plaintiffs’ Fourth
25 Claim for Relief regarding the Legal Representation Class. Wroe Decl. ¶ 13. After
26 several months of telephonic discussions and exchanging several drafts of written
27 agreements, the Parties were able to reach resolution of that claim as well. *Id.* On
28 July 24, 2023, this Court entered an order continuing the trial date until April 9, 2024,

1 so that the Parties could finalize a settlement agreement regarding the Legal
2 Representation Class. ECF No. 406.

3 The Parties have now reached Agreements resolving Plaintiffs’ Third, Fourth,
4 and Fifth Claims for Relief. These Agreements were executed by all Parties as of
5 November 2, 2023. *See* Wroe Decl. Exhibits A-C, ¶ 14. The Parties now submit this
6 Joint Motion for Preliminary Approval of the Agreements, along with proposed class
7 notices to inform *Lucas R.* class members of the proposed Agreements. *See* Wroe
8 Decl., Exhibits D-F filed herewith. The Agreements explicitly contemplate dismissal
9 of the Third, Fourth, and Fifth Claims for Relief with the Court retaining jurisdiction
10 only as provided in, and for purposes of interpreting and enforcing, if necessary, the
11 terms of the Agreements. Wroe Decl. Exhibits A-C, ¶ 14.

12 C. Summary of the Settlement Agreements²

13 Plaintiffs continue to believe their claims are meritorious and properly
14 redressable on a class-wide basis. Defendants deny any violations of applicable law.
15 Despite these positions, the Parties share a common desire to address the concerns
16 raised in the lawsuit in a way that benefits the children in ORR’s custody. To that
17 end, the Parties’ Agreements address the issues raised in Plaintiffs’ FAC related to
18 Plaintiffs’ Third, Fourth, and Fifth Claims for Relief by requiring ORR to implement
19 policies and procedural protections related to the administration of psychotropic
20 medications to children in ORR custody, children’s access to legal representation, and
21 the treatment of children in ORR custody who have or are perceived to have
22 disabilities. Wroe Decl. Exhibits A-C.

23 i. Summary of the Psychotropic Medications Agreement

24 The Agreement resolving Plaintiffs’ Third Claim for Relief related to the
25 administration of psychotropic medications requires ORR to develop policies and
26 _____

27 ² The Parties have endeavored to provide an accurate summary of many of the key
28 terms of the Agreements. In the event of a conflict between this summary and the
terms of the Agreements themselves, the Agreements will control.

1 practices to ensure a meaningful consent process prior to administering psychotropic
2 medications and oversight mechanisms to prevent the over utilization of psychotropic
3 medications. For example, the Agreement requires, among other things, that when a
4 doctor prescribes psychotropic medication to a child in ORR custody, ORR must seek
5 consent to give the child this medication from, in order of preference, the child's
6 parent or legal guardian, certain related sponsors (including siblings, grandparents, or
7 any aunts, uncles, or cousins who were previously the child's primary caregiver), or
8 from the child themselves if they are at least 16 years old. Wroe Decl. Exhibit A. The
9 Agreement also requires informed consent, meaning that facility staff must explain to
10 the consentor what the medication does, why the doctor believes it is needed, its
11 benefits and risks, and possible alternatives to medication. *Id.* The Agreement further
12 prohibits Defendants from punishing children or their consentors for refusing to give
13 consent for any psychotropic medication or for changing their minds about giving
14 consent. *Id.* Additionally, the Agreement establishes oversight mechanisms to
15 monitor and provide guidance regarding the number of medications and dosage of
16 medications prescribed to children in specified cases. *Id.*

17 ii. Summary of the Legal Representation Agreement

18 The Agreement resolving Plaintiffs' Fourth Claim for Relief regarding the
19 Legal Representation Class affirms that children in ORR custody have the right to
20 seek legal representation regarding decisions involving their placement, release,
21 custody, and/or the administration of psychotropic medications, although ORR need
22 not fund such representation. Wroe Decl. Exhibit B. The Agreement requires, in part,
23 that ORR not interfere with or take adverse action against legal representatives,
24 including those directly funded by ORR, who seek to assist children in ORR custody.
25 *Id.* Specifically, the Agreement requires ORR to implement policies and procedures
26 to ensure legal representatives receive updates on their clients' cases and access to
27 necessary documents and information to ensure they are able to represent their clients
28 vigorously. *Id.* The benefits the Agreement confers on class members do not

1 supplant, but are in addition to, counsel-related relief the Court granted on Plaintiffs’
2 First and Second Claims for Relief. The Agreement also incorporates the Court’s
3 “Legal Representation Class” requirements ordered in the preliminary injunction.
4 ECF No. 391 at 8-9.

5 iii. Summary of the Disability Agreement

6 As detailed in the Agreement resolving Plaintiffs’ Fifth Claim for Relief
7 regarding the Disability Class, the Parties have agreed on procedural protections that
8 Defendants must implement for children in ORR custody who have or are perceived
9 to have one or more disabilities. Wroe Decl. Exhibit C. For example, the Agreement
10 requires, in part, that ORR identify children with disabilities and provide those
11 children who need them Section 504 Service Plans to meet the children’s disability-
12 related needs, to ensure that they can participate in the UC Program in the most
13 integrated setting appropriate to their needs, and to ensure they are released from
14 ORR’s custody without any unnecessary delay solely due to their disability. *Id.* The
15 Agreement further requires ORR to place children with disabilities in the least
16 restrictive setting that is in the best interest of the child and the most integrated setting
17 appropriate to their needs. *Id.* Additionally, if a child with a disability is placed in a
18 restrictive placement, the Agreement requires ORR to document reasons why the
19 child’s needs could not be met in a more integrated and/or less restrictive setting with
20 additional supports, services, and/or accommodations. *Id.* This documentation must
21 be included in the child’s first Notice of Placement. *Id.* The Agreement also includes
22 system-wide requirements, such as commitments that ORR will track data about
23 children with identified disabilities across the ORR system, that ORR will undertake a
24 system-wide needs assessment to identify any gaps in the system related to children
25 with disabilities and develop and implement a responsive disability plan, and that
26 ORR will develop and deliver mandatory trauma-informed disability-related training
27 for staff. *Id.*

1 iv. Monitoring and Termination of the Agreements

2 The Parties agree that Kathleen Noonan will be appointed as the Monitor to
3 oversee, evaluate, report on, and certify Defendants’ implementation progress and
4 compliance with the Agreements related to the Psychotropic Medications and
5 Disability Classes. Wroe Decl. ¶ 15. Every six months, Defendants will provide
6 reports to the Monitor that detail ORR’s implementation of and compliance with the
7 Psychotropic Medications and Disability Agreements. *Id.* Defendants will also
8 concurrently publish streamlined public reports online. *Id.* The Parties do not believe
9 a Monitor is necessary for the Legal Representation Agreement and the Agreement
10 does not provide for such monitoring. Wroe Decl. ¶ 16.

11 The Agreements state that Defendants’ obligations will terminate on the earliest
12 of the following dates:

13 For the Psychotropic Medications Agreement, (1) beginning three years after
14 the Agreement’s Effective Date, Defendants may move for a Court Order permitting
15 early termination if they can demonstrate Substantial Compliance for a continued
16 period of six months following implementation of the Agreement nationwide,
17 supported by certification from the Monitor; or (2) six years from the Agreement’s
18 Effective Date. Wroe Decl. Exhibit B.

19 For the Disability Agreement, (1) beginning two years after Defendants
20 implement³ the Agreement, Defendants may move for a Court Order permitting early
21 termination if they can demonstrate Substantial Compliance, supported by
22 certification from the Monitor; or (2) five years after implementing the Agreement.
23 Wroe Decl. Exhibit C.

24 The Legal Representation Agreement terminates three years after its Effective
25 Date or upon promulgation of regulations incorporating the terms of the Agreement.
26 Wroe Decl. Exhibit A.

27 _____
28 ³ The implementation date is defined as 12 months after the date of final approval of
the Agreement by the Court.

1 **D. Attorneys’ Fees and Costs**

2 Within thirty (30) days following entry of the final judgment in this Action,
3 Plaintiffs will file a motion for attorney’s fees and other expenses pursuant to 28
4 U.S.C. § 2412 and will include in that motion a request to direct notice to Class
5 Members and an objection deadline in compliance with Federal Rule of Civil
6 Procedure 23(h). The Agreements require the Parties to meet and confer in a good
7 faith effort to settle such fees and costs.

8 **II. Legal Argument**

9 **A. Standard for Approval of a Class Action Settlement Agreement**

10 The law favors and encourages settlement, especially of class action lawsuits.
11 *See, e.g., In re Synacor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008) (“There is a
12 strong judicial policy that favors settlements, particularly where complex class action
13 litigation is concerned.”); *Marshall v. Northrop Grumman Corp.*, 469 F. Supp. 3d
14 942, 948 (C.D. Cal. 2020) (noting that the Court “must ... account[] for the strong
15 judicial policy that favors settlements” in complex class action litigation); *In re Toys R*
16 *Us-Delaware, Inc.-Fair & Accurate Credit Transactions (FACTA) Litig.*, 295 F.R.D.
17 438, 448 (C.D. Cal. 2014); *Churchill Vill. L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576 (9th
18 Cir. 2004); *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995); *Class*
19 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Officers for Just. v.*
20 *Civ. Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). The Ninth Circuit recognizes
21 the “overriding public interest in settling and quieting litigation . . . particularly [] in
22 class action suits[.]” *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir.
23 1976).

24 Federal Rule of Civil Procedure 23 governs the settlement of class actions.
25 “The claims, issues, or defenses of a certified class . . . may be settled, voluntarily
26 dismissed, or compromised only with the court’s approval.” Fed. R. Civ. P. 23(e).
27 Rule 23(e) provides that a proposed settlement may be approved only after the court
28 makes a “finding that it is fair, reasonable and adequate.” Fed. R. Civ. P. 23(e)(2).

1 Rule 23(e) further sets forth the procedure for settling a class action, including that the
2 court must direct notice in a reasonable manner to all class members who would be
3 bound by the proposal, and that any class member may object to the proposal, stating
4 with specificity their grounds for objection. To determine whether the settlement is
5 fair, adequate, and reasonable, the court must consider it “as a whole, rather than the
6 individual component parts.” *Fed. Ins. Co. v. Caldera Med., Inc.*, No.
7 215CV00393SVWPJW, 2016 WL 5921245, at *3 (C.D. Cal. Jan. 25, 2016) (quoting
8 *Staton v. Boeing Co.*, 327 F.3d 938, 960 (9th Cir. 2003)); see *Hanlon v. Chrysler*
9 *Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (“The settlement must stand or fall in its
10 entirety.”), *abrogated on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S.
11 338 (2011). In making that determination, Rule 23(e) requires the court to consider
12 whether the class has been adequately represented by the class representatives and
13 class counsel, whether the proposal was negotiated at arm’s length, whether the relief
14 is adequate considering the costs and risks of trial and how effective the proposed
15 method of distributing relief will be, and the terms of any proposed award of
16 attorney’s fees.

17 Judicial review of a proposed class settlement typically requires a preliminary
18 approval review and a final fairness hearing. Preliminary approval is not a
19 commitment to approve the final settlement; rather, it is a limited inquiry that “there
20 are no obvious deficiencies and the settlement falls within the range of reason.” *Smith*
21 *v. Pro. Billing & Mgmt. Servs., Inc.*, No. 06-4453JEI, 2007 WL 4191749, at *1
22 (D.N.J. Nov. 21, 2007) (quoting *In re Nasdaq Market-Makers Antitrust Litig.*, 176
23 F.R.D. 99, 102 (S.D.N.Y. 1997)); see also *Nat’l Rural Telecomms. Coop. v.*
24 *DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004) (citing Manual for Complex
25 Litigation (Third) § 30.41 (1995)). The Court may grant preliminary approval of a
26 settlement if the “settlement: (1) appears to be the product of serious, informed, non-
27 collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly grant
28 preferential treatment to class representatives or segments of the class; and (4) falls

1 within the range of possible approval.” *Berry v. DCOR, LLC*, No.
2 CV152792RGKAJWX, 2015 WL 13918869, at *3 (C.D. Cal. Sept. 29, 2015) (citing
3 *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1333 (N.D. Cal. 2014)).

4 If the settlement is preliminarily approved by the court, notice of the proposed
5 settlement and the fairness hearing is provided to class members. Class members may
6 object to the proposed settlement at the fairness hearing.

7 **B. The Settlement Agreement is Appropriate for Preliminary Approval**

8 The Parties’ Agreements meet all the requirements for preliminary approval.
9 The Agreements are each the product of years of highly contested, arm’s length
10 negotiations and will benefit current and future Class Members by requiring systemic
11 improvements to ORR’s practices and policies. Wroe Decl. ¶¶ 9-12, 17. The
12 Agreements are fair and were not the result of collusion between the Parties. Class
13 Counsel is experienced in similar class actions and recommends that the Agreements
14 be approved.

15 i. The Agreements are the Result of Informed, Non-Collusive
16 Negotiations

17 As discussed above, the Parties engaged in extensive, non-collusive
18 negotiations over the course of several years, facilitated in part by skilled mediators
19 and neutrals. Class Counsel has experience in similar class actions and experience in
20 the subject area of the matter. Wroe Decl. ¶ 4. As noted above, Class Counsel
21 thoroughly researched the issues before filing suit. Wroe Decl. ¶ 5. This case has
22 been pending for more than five years and litigated vigorously, including extensive
23 fact and expert discovery as well as cross-motions for summary judgment related to
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1 Plaintiffs’ Fourth Claim for Relief and class claims that are not the subject of
2 settlement.

3 ii. The Agreements Provide Important Benefits to the Classes that
4 Outweigh the Benefits of Continued Litigation

5 As discussed above, the Agreements provide important benefits to the Classes,
6 including new procedures to obtain informed consent prior to the administration of
7 psychotropic medications, additional supports and services to ensure children with
8 disabilities are placed in the least restrictive setting that is in the best interest of the
9 child and also the most integrated setting appropriate to the child’s needs, and
10 procedural protections to ensure access to counsel.

11 Based on the knowledge that the Parties gained through investigation and
12 discovery, as well as Class Counsel’s extensive experience in litigating similar cases,
13 Wroe Decl. ¶¶ 4-6, the Parties were able to make well-informed assessments
14 regarding the strengths and weaknesses of their respective claims and defenses, as
15 well as the costs and risks of proceeding to trial.

16 Absent settlement, the Parties anticipate significant trial preparation, including
17 pretrial motion practice and potential additional fact discovery. This work would
18 require additional attorney time and judicial resources, as well as delay relief for Class
19 Members. Settlement would allow Defendants to begin to implement aspects of the
20 Agreements that will require substantial development, accelerating the rate at which
21 Class Members will receive the benefits of the Agreements and avoiding the risk of
22 delayed or denied relief.

23 iii. The Proposed Notices and Plan are Reasonable

24 Federal Rule of Civil Procedure 23(e)(1) requires that the class that would be
25 bound by a proposed settlement receive notice. Individualized notice is not required,
26 as long as the notice “generally describes the terms of the settlement in sufficient
27 detail to alert those with adverse viewpoints to investigate and to come forward and be
28 heard.” *Mendoza v. United States*, 623 F.2d 1338, 1350, 1352 (9th Cir. 1980);

1 *Rodriguez v. NDCHealth Corp.*, No. CV 10-3522-VBF(FMOX), 2011 WL 13124037,
2 at *7 (C.D. Cal. Oct. 17, 2011) (quoting *Churchill Vill.*, 361 F.3d at 575). Notice
3 must also be directed “in a manner that does not systematically leave any group
4 without notice.” *Atzin v. Anthem, Inc.*, No. 217CV06816ODWPLAX, 2022 WL
5 4238053, at *4 (C.D. Cal. Sept. 14, 2022) (quoting *Officers for Just.*, 688 F.2d at 624).
6 Plaintiffs’ proposed Notices, attached to the Declaration of Mishan Wroe as Exhibits
7 D-F, are reasonably calculated to reach Class Members.

8 The proposed Notices summarize the topics addressed by the proposed
9 Agreements, list the proposed remedies contained in the proposed Agreements,
10 provide instructions on how to obtain full copies of the Agreements, and advise
11 recipients what to do if they have questions. The Notices describe the procedures for
12 persons who wish to be heard in favor of or in objection to the Agreements and will
13 specify the date, time, and place of the formal fairness hearing to be set by the
14 Court.

15 The proposed form of Notice is clear and in plain language for Class Members,
16 their representatives, and other stakeholders who may be interested in the
17 Agreements’ terms. The Parties have provided a detailed proposal for dissemination
18 of the Notices in the proposed notice plan. Wroe Decl. Exhibit G. The Parties’
19 proposal would include, among other things, posting the Notices in ORR care
20 provider facilities in English and Spanish with the opportunity to request oral
21 interpretation in a different language if needed, and disseminating notices to ORR-
22 funded legal service providers.

23 The proposed Notices comport with Rule 23 and the requirements of due
24 process, and they should be approved.

C. The Court Should Establish a Schedule for Final Approval

The Parties request that the Court set a schedule for notice to the Classes and final approval of the Agreements as set forth below.

Currently there are thousands of Class Members in ORR’s care and custody located throughout the country. Transporting them to Los Angeles for the Final Approval Hearing would be impracticable and unduly burdensome on Defendants. The Parties therefore respectfully request that the Court permit Class Members who wish to do so to participate in the Final Approval Hearing remotely by video and/or telephonic means, as will be further suggested in the Parties’ proposed notice plan, see Wroe Decl. Exhibit G.

<u>Event</u>	<u>Date</u>
Court’s Order on Preliminary Approval	To be determined by the Court
Completion of Notice Plan	Two weeks after the Court’s Order of Preliminary Approval
Objection Deadline	45 days after Completion of Notice Plan
Plaintiffs to Submit to the Court all comments or objections regarding the Settlement Agreement; Motion for Final Approval including any response(s) to comments or objections regarding the Settlement Agreement (if any)	21 days after Objection Deadline
Final Approval Hearing	At least one week after Plaintiffs’ Submissions at a time set by the Court ⁴

⁴ To facilitate participation of counsel at the Final Approval Hearing, the Parties respectfully request the opportunity to communicate with the Court’s deputy clerk concerning a mutually agreeable date.

1 **III. CONCLUSION**

2 For the foregoing reasons, the Parties respectfully request that the Court enter
3 the accompanying joint Proposed Order granting preliminary approval of the
4 Agreements, approving the form and manner of the Notices of Proposed Class Action
5 Settlement, and setting deadlines and a hearing for the purpose of deciding whether to
6 grant final approval of the Agreements.

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1 Dated: November 14, 2023

Respectfully submitted,

2 *Mishan Wroe*

3 MISHAN WROE

4 *One of the attorneys for Plaintiffs*

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