

1 CARLOS R. HOLGUÍN (90754)
2 Center for Human Rights & Constitutional Law
3 256 South Occidental Boulevard
4 Los Angeles, CA 90057
5 Telephone: (213) 388-8693
6 Email: crholguin@centerforhumanrights.org

7 *Attorneys for Plaintiffs*
8 *(Additional counsel listed on next page)*

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

[PROPOSED] ORDER FOR
PRELIMINARY APPROVAL OF
SETTLEMENT AND APPROVAL OF THE
PARTIES' JOINT PROPOSAL RE
NOTICE TO *LUCAS R.* CLASS
MEMBERS OF SETTLEMENT OF
PLAINTIFFS' THIRD, FOURTH, AND
FIFTH CLAIMS FOR RELIEF
[PSYCHOTROPIC MEDICATIONS,
LEGAL REPRESENTATION, AND
DISABILITY]

1 HOLLY S. COOPER (197626)
2 Co-Director, Immigration Law Clinic
3 CARTER C. WHITE (164149)
4 Director, Civil Rights Clinic
5 University of California Davis School of Law
6 One Shields Ave. TB 30
7 Davis, CA 95616
8 Telephone: (530) 754-4833
9 Email: hscooper@ucdavis.edu
10 ccwhite@ucdavis.edu

11 POONAM JUNEJA (300848)
12 FREYA PITTS (295878)
13 MISHAN WROE (299296)
14 MELISSA ADAMSON (319201)
15 DIANE de GRAMONT (324360)
16 National Center for Youth Law
17 1212 Broadway, Suite 600
18 Oakland, CA 94612
19 Telephone: (510) 835-8098
20 Email: pjuneja@youthlaw.org
21 fpitts@youthlaw.org
22 mwroe@youthlaw.org
23 madamson@youthlaw.org
24 ddegramont@youthlaw.org

25 BRENDA SHUM
26 (*ADMITTED PRO HAC VICE*)
27 National Center for Youth Law
28 818 Connecticut Ave. NW, Suite 425
Washington, DC 20006
Telephone: (202) 868-4785
Email: bshum@youthlaw.org

1 SUMMER J. WYNN (240005)
2 MICHAEL J. MCMAHON
3 (ADMITTED PRO HAC VICE)
4 REBECCA L. TARNEJA (293461)
5 ALEXANDRA R. MAYHUGH (300446)
6 JAMIE D. ROBERTSON (326003)
7 Cooley LLP
8 1333 2nd Street, Suite 400
9 Santa Monica, CA 90401
10 Telephone: (310) 883-6400
11 Facsimile: (310) 883-6500
12 Email: swynn@cooley.com
13 mmcmahon@cooley.com
14 rtarneja@cooley.com
15 amayhugh@cooley.com
16 jdrobotson@cooley.com

17 *Attorneys for Plaintiffs*

1 This matter comes before the Court on the Parties’ Joint Motion for Preliminary
2 Approval of Settlements and Approval of Class Notices (the “Joint Motion”). The
3 Parties request that the Court: (a) grant preliminary approval of the Settlement
4 Agreements (“Agreements”); (b) approve the form and manner of the Notices of
5 Proposed Class Action Settlement to be sent to Class Members and their
6 representatives; (c) set the deadline for written submissions from Class Members or
7 their legal representatives who wish to be heard in favor of or in objection to the
8 Agreements; and (d) set the date for a final fairness hearing pursuant to Federal Rules
9 of Civil Procedure 23(e)(2).

10 The Court has reviewed the Joint Motion, the Agreements, the Notices of
11 Proposed Class Action Settlement, the Proposed Notice Plan, the Proposed Order, and
12 all declarations and exhibits submitted with the Motion. The Court GRANTS the
13 Motion and ORDERS as follows:

- 14 1. Based on the record before it, the Court tentatively finds, pursuant to Federal
15 Rule of Civil Procedure 23(e), that the terms of the Agreements, attached as
16 Exhibits A-C to the Declaration of Mishan Wroe, are fair, reasonable, and
17 adequate for the Classes. The Court finds that: (a) the Agreements resulted
18 from arm’s length negotiations; (b) there is no evidence of fraud, collusion, or
19 overreaching or that the rights of Class Members were disregarded; and
20 (c) Class Counsel has sufficient experience in similar litigation to propose the
21 Agreements. The Court’s preliminary approval is subject to change pending the
22 outcome of the final settlement approval hearing scheduled herein.
- 23 2. The Court finds that the Notices of Proposed Class Action Settlement
24 (“Notices”), attached as Exhibits D-F to the Declaration of Mishan Wroe, meet
25 the requirements of Federal Rule of Civil Procedure 23, due process, and
26 applicable law. The Notices (a) describe the terms of the Agreements; (b) give
27 notice of the time and place of the Fairness Hearing; and (c) describe how a
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1 Class Member may comment on, object to, or support the Agreements. The
2 Notices are approved.

3 3. The Court finds that the Notice Plan submitted in connection with the Joint
4 Motion, attached as Exhibit G to the Declaration of Mishan Wroe, is reasonably
5 calculated to provide adequate notice to Class Members of the proposed
6 Agreements and satisfies the requirements of due process and Federal Rule of
7 Civil Procedure 23. The Court authorizes and directs the Parties to enact the
8 Notice Plan. The Parties shall be authorized to make non-material changes to
9 the Notices and Notice Plan, so long as Class Counsel and Defendants' counsel
10 agree and one of the Parties notifies the Court of the change before the Final
11 Approval Hearing. Neither the insertion of dates nor the correction of
12 typographical or grammatical errors shall be deemed a change to the Notices or
13 Notice Plan. In accordance with the Notice Plan, within 14 days of the date of
14 this Order, Defendants shall post copies of the approved Notices in English and
15 Spanish in a prominent location at each facility in which ORR houses children¹
16 and on ORR's website. Children placed in out-of-network, therapeutic group
17 homes, or foster care placements will receive copies of the Notices in English
18 or Spanish during a regularly scheduled case management meeting during the
19 notice period. For any children whose preferred language is not English or
20 Spanish, ORR will instruct staff at all care provider facilities to offer to orally
21 interpret (or obtain oral interpretation) of the Notices in a child's preferred
22 language during a regularly scheduled case management meeting during the
23 notice period. Defendants will also distribute a copy of the Notices and the
24 Agreements by email to ORR's legal service provider contractor, and ORR will
25 ask the legal service provider contractor to direct its legal service providers to
26 review the Notices with class members during their Know-Your-Rights

27 _____
28 ¹ ORR is not required to post notices in out-of-network facilities, therapeutic group homes, or foster care homes.

1 presentations during the notice period. Finally, Class Counsel will coordinate
2 the dissemination of the proposed Notices and copies of the proposed
3 Agreements to list-servs and other electronic fora where they are reasonably
4 likely to reach Class Members' legal service providers, child advocates, and
5 other organizations who regularly work with children in ORR custody and the
6 family members who seek to sponsor them. Plaintiffs may also post the Notices
7 on Class Counsel's public websites.

8 4. Defendants shall notify Plaintiffs' counsel in writing when the Notices have
9 been posted and will provide a link to the Notices posted online. The notice
10 period shall be 45 days long beginning 14 days from the date of this Order.
11 Plaintiffs shall maintain a dedicated email address and toll-free number
12 available to people with questions about the Agreements, review the content of
13 the proposed Agreements with any Class Members and their advocates who
14 request such assistance in their preferred language, and answer any questions
15 they may have. Defendants and Class Counsel will submit declarations to the
16 Court confirming their compliance with the class notice procedures within three
17 weeks of the date of this Order.

18 5. The Court will hold a Fairness Hearing to determine if the proposed
19 Agreements are fair, reasonable, and adequate, and should receive final
20 approval on [date] at [time] at the following address: United States Courthouse,
21 350 West 1st Street Los Angeles, CA, 90012, Courtroom 8C, 8th Floor or
22 virtually [Insert Zoom information].

23 6. Within 30 days following entry of the final judgment in this Action, Plaintiffs
24 will file a motion for attorney's fees and other expenses pursuant to 28 U.S.C.
25 § 2412 and conforming with Federal Rule of Civil Procedure 23(h).

26 7. Class Members or their advocates who object to or comment on the Agreements
27 need not appear at the Final Approval Hearing for their objections or comments
28 to be considered by the Court.

- 1 8. Class Members or their advocates who wish to comment on or object to the
2 Agreements must submit their written comment and/or objections by U.S. Mail,
3 email, or phone on or before [date] to: Mishan Wroe, National Center for Youth
4 Law, 1212 Broadway, Suite 600, Oakland, CA 94612;
5 lucasrsettlement@youthlaw.org; or 800-266-7313.
- 6 9. Class Members appearing remotely by phone or video as the Court may permit
7 and in accordance with the Parties' proposed notice plan—and their advocates
8 appearing in person or remotely by phone or video as the Court may permit—
9 may be heard orally in support of or in opposition to the proposed Agreements
10 at the Final Approval Hearing.
- 11 10. Unless otherwise ordered by the Court, no objection to or other comment
12 concerning the Agreements shall be heard unless timely submitted in
13 accordance with the guidelines specified above.
- 14 11. Any Class Member who does not make their objection in the manner provided
15 in this Order shall be deemed to have waived any such objection and shall
16 forever be barred from making any objection to the Agreements.
- 17 12. Class Counsel will provide Defendants' counsel a copy of any objections or
18 comments regarding the Agreements submitted by Class Members, their
19 advocates, or any other person, entity, or interested party within seven days of
20 receipt.
- 21 13. Twenty-one days after the objection deadline, Plaintiffs' counsel shall file their
22 motion for final approval. Plaintiffs' counsel shall also file any objections or
23 comments regarding the Agreements received and any written responses from
24 Plaintiffs' counsel to such objections or comments, or notify the Court that no
25 objections or comments have been received.
- 26 14. Plaintiffs' counsel and counsel for Defendants shall be prepared at the Fairness
27 Hearing to respond to objections filed by Class Members, or their advocates,
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1 and to provide other information, as appropriate, bearing on why the
2 Agreements should be approved.

3 15. The Court reserves the right to change the date or location of the Fairness
4 Hearing without further notice to Class Members. Changes to the date or
5 location of the Fairness Hearing will be posted on the National Center for
6 Youth Law website.

7 16. Until further order, the Court retains jurisdiction to consider all further issues
8 arising out of or connected to the Agreements. If by further order the Court
9 grants final approval of the Agreements, the Court’s jurisdiction over the Class
10 claims settled by the Agreements will be governed by the order approving and
11 incorporating the terms of the Agreements.

12 17. The Agreements, and the papers filed relating to the approval of the
13 Agreements (including the notices to Class Members), and this Order, shall not
14 be offered or received against any party as evidence of any presumption,
15 concession, or admission by any Party of the truth or falsity of any fact, claim,
16 defense, or argument that was or could have been asserted in Plaintiffs’ third,
17 fourth, and fifth claims for relief, or any admission of liability, negligence,
18 fault, or wrongdoing by any party, in any other civil, criminal, or administrative
19 action or proceedings. Nothing contained herein, however, shall be construed
20 to prevent offering the Agreements into evidence in seeking or opposing an
21 order to enforce the Agreements.

22 18. The Trial and Pretrial Schedule in this matter are vacated.

23 **IT IS SO ORDERED.**

24
25 Dated: _____

26 _____
27 DOLLY M. GEE
28 UNITED STATES DISTRICT JUDGE

1 Presented by:

2 /s/ Mishan Wroe

3 Mishan Wroe

4 *One of the Attorneys for Plaintiffs*

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