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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

RICHARD GARRIES, *et al.*,

Plaintiff-Petitioners,

vs.

LOUIS MILUSNIC, *et al.*,

Defendant-Respondents.

CASE NO. 2:20-cv-04450-CBM-
(PVCx)

**ORDER RE: JOINT MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT; AND
PLAINTIFF-PETITIONERS'
UNOPPOSED MOTION FOR
ATTORNEYS' FEES**
[250][251][345][439][828] JS-6

The matters before the Court are the parties' Joint Motion for Final Approval of Class Action Settlement (Dkt. No. 828),¹ and Plaintiff-Petitioner's Unopposed Motion for Attorneys' Fees (Dkt. No. 439).

I. BACKGROUND

This action was brought on behalf of a class of inmates medically vulnerable to severe illness or death from COVID-19 at FCC Lompoc. Petitioners challenged

¹ Petitioners and Respondents each filed a supplemental brief in support of the Motion for Final Approval. (Dkt. Nos. 829, 830.)

1 the Director of the Bureau of Prisons (“BOP”) and Warden of Lompoc’s response
2 during the COVID-19 pandemic, and sought an expedited process for reviewing
3 medically-vulnerable inmates at Lompoc for home confinement and an injunction
4 requiring Respondents to implement certain measures at FCC Lompoc to protect
5 against COVID-19 and its continued spread. The original Complaint asserted two
6 causes of action: (1) Unconstitutional Conditions of Confinement in Violation of
7 the Eighth Amendment to the U.S. Constitution pursuant to 28 U.S.C. §§ 2241,
8 2243; and (2) and Unconstitutional Conditions of Confinement in Violation of the
9 Eighth Amendment to the U.S. Constitution pursuant to U.S. Const, Amend. VIII;
10 28 U.S.C. § 1331; 5 U.S.C. § 702, “Injunctive Relief Only.”

11 On July 14, 2020, the Court certified a class of inmates medically vulnerable
12 to COVID-19 based on age (over 50) or due to a specific underlying condition,²
13 granted Petitioners’ motion for a preliminary injunction, and ordered Respondents to
14 make “fully and speedy use of their authority under the CARES Act and evaluate
15 each class member’s eligibility for home confinement which gives substantial
16 weight to the inmate’s risk factors for severe illness and death from COVID-19
17 based on age (over 50) or Underlying Health Conditions.” (Dkt. No. 45.)
18 Subsequently, numerous motions were filed, the parties engaged in discovery, and
19 the Court-appointed expert inspected Lompoc on three occasions and filed reports
20 with the Court regarding his observations at Lompoc. On May 31, 2022, Plaintiff-

21
22 ² The certified class was defined as “all current and future people in post-conviction
23 custody at FCI Lompoc and USP Lompoc over the age of 50, and all current and
24 future people in post-conviction custody at FCI Lompoc and USP Lompoc of any
25 age with underlying health conditions, including chronic obstructive pulmonary
26 disease; serious heart conditions such as heart failure, coronary artery disease, or
27 cardiomyopathies; Type 2 diabetes; chronic kidney disease; sickle cell disease;
28 immunocompromised state from a solid organ transplant; obesity (body mass index
of 30 or higher); asthma; cerebrovascular diseases; cystic fibrosis; hypertension or
high blood pressure; immunocompromised state from blood or bone marrow
transplant; immune deficiencies, HIV, or those who use corticosteroids, or use other
immune weakening medicines; neurologic conditions such as dementia; liver
diseases; pulmonary fibrosis; thalassemia; Type 1 diabetes; and smokers.” (Dkt.
No. 45.)

1 Petitioners filed a First Amended Complaint which asserting the same claims as
2 asserted in the original complaint but named Richard Garries and Andrew Ybarra as
3 Plaintiffs-Petitioners. (Dkt. No. 421.)³

4 On June 10, 2022, the parties filed a Motion for Preliminary Approval of the
5 class settlement (Dkt. No. 426), which was heard on an expedited basis per the
6 parties' request on June 21, 2022. Following the preliminary approval hearing, the
7 parties filed an amended joint motion for preliminary approval of the class
8 settlement (Dkt. No. 443) which was granted by the Court on June 28, 2022 (Dkt.
9 No. 444). The deadline for class members to file objections to the settlement was
10 August 2, 2022. (Dkt. No. 444.) The deadline for the parties to respond to
11 objections to the settlement was August 30, 2022. (Dkt. No. 794.) The instant
12 Motion for Final Approval of the class settlement was filed on August 30, 2022
13 (Dkt. No. 828), and was heard on October 4, 2022.

14 II. LEGAL STANDARD

15 Federal Rule of Civil Procedure 23(e) requires judicial approval of a
16 settlement in a class action lawsuit. Although the Court has the discretion to
17 approve settlements, "there is a strong judicial policy that favors settlements." *In re*
18 *Syncor ERISA Litig.*, 516 F.3d 1095, 1011 (9th Cir. 2008). Rule 23(e) sets forth a
19 "two-step process in which the Court first determines whether a proposed class
20 action settlement deserves preliminary approval, and then after notice is given to
21 class members, whether final approval is warranted." *Nat'l Rural Telecomms.*
22 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004) (citation omitted).
23 The Ninth Circuit "put(s) a good deal of stock in the product of an arms-length, non-
24 collusive, negotiated resolution." *Rodriguez v. W. Publg. Corp.*, 563 F.3d 948, 965
25 (9th Cir. 2009). Therefore, a court should grant approval of a settlement if it
26

27 ³ Prior named Plaintiffs Yonnedil Carror Torres, Vincent Reed, Felix Samuel
28 Garcia, Andre Brown, and Shawn L. Fears were dismissed from the action because
they were no longer incarcerated at Lompoc. (Dkt. Nos. 419, 420.)

determines that the settlement is “fundamentally fair, adequate and reasonable” after affording settlement class members the opportunity to comment on the proposed settlement. *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d at 625 (9th Cir. 1982).

III. DISCUSSION

A. Class Notice

Federal Rule of Civil Procedure 23(c)(2)(B) requires class members to be provided with the best notice that is practicable under the circumstances. Fed. R. Civ. Proc. 23(c)(2)(B). Here, Respondents posted an electronic version of the Class Notice approved by this Court, the Settlement Agreement, and the Motion for Attorneys’ Fees on the Electronic Bulletin Board (“EBB”) of TRULINCS. Respondents filed a declaration attesting that EBB is a computer system available to all inmates incarcerated at Lompoc. (Weber Decl. ¶ 3.) Respondents also placed paper copies of the Class Notice, Settlement Agreement, and Motion for Attorneys’ Fees at Lompoc’s law library, and posted a hard copy of the Class Notice in all housing units where class members reside. (*Id.* ¶¶ 4-5.) The Class Notice also informed class members that they could request a copy of the Settlement Agreement from class counsel. (*Id.* ¶ 5.) Class counsel also declares they sent copies of the Settlement Agreement by mail to two class members who requested copies. (Rim Decl. ¶ 3.) Accordingly, the notice provided to class members was the best notice practicable under the circumstances.

B. Whether the Settlement Is Fair, Reasonable and Adequate

In considering whether a settlement is fair, adequate and reasonable, courts consider:

- (1) the strength of the plaintiff’s case;
- (2) the risk, expense, complexity, and likely duration of further litigation;
- (3) the risk of maintaining class action status throughout the trial;
- (4) the amount offered in settlement;

1 (5) the extent of discovery completed and stage of the proceedings;

2 (6) the experience and views of counsel;

3 (7) the presence of a governmental participant; and

4 (8) the reaction of the Class members to the proposed settlement.

5 *See Rodriguez v. W. Publg. Corp.*, 563 F.3d 948 (9th Cir. 2009); *Churchill Village,*
6 *LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (citations omitted); *Hanlon v.*
7 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). The list of factors is non-
8 exhaustive, and therefore the Court may consider other important factors. *Torrisi v.*
9 *Tuscon Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993).

10 **1. The Strength of the Plaintiffs’ Case; the Risk, Expense,**
11 **Complexity, and Likely Duration of Further Litigation; and the**
12 **Risk of Maintaining Class Action Status Throughout the Trial**

13 When evaluating the strength of a case, the Court should “evaluate
14 objectively the strengths and weaknesses inherent in the litigation and the impact of
15 those considerations on the parties’ decisions to reach these agreements.” *Adoma v.*
16 *Univ. of Phoenix, Inc.*, 913 F. Supp. 2d 964, 975 (E.D. Cal. 2012). Moreover,
17 Approval of settlement is generally “preferable to lengthy and expensive litigation
18 with uncertain results.” *DIRECTV, Inc.*, 221 F.R.D. at 526.

19 The strength of Petitioners’ case is demonstrated based on the Court’s
20 granting of the preliminary injunction in this action. However, the parties argue the
21 outcome of the litigation and the extent of any relief that the class might be awarded
22 if the case went to trial is uncertain, as demonstrated by Respondents’ pending
23 motion for summary judgment and motion to dissolve the preliminary injunction;
24 proceeding through pre-trial motions, trial, and probable appeal would impose risks,
25 costs, and a substantial delay in the implementation of any remedy in this matter;
26 and given the relief achieved and the risks and costs involved in further litigation,
27 the Settlement Agreement represents a fundamentally “fair, reasonable, and
28 adequate” resolution of the disputed issues and should be preliminarily approved.

Moreover, Petitioners filed a motion for non-provisional certification which Respondents have opposed as untimely. Thus, there is a risk that the class action status of this case will not be maintained through trial. Accordingly, these factors weigh in favor of final approval.⁴

2. Amount Offered in Settlement

This factor is inapplicable since the settlement does not include monetary terms because this action seeks declaratory and injunctive relief.

3. Extent of Discovery Completed and Stage of the Proceedings

This litigation has been pending for over two years, during which the parties have filed numerous motions, conducted discovery, the Court has conducted numerous hearings and status conferences, and the Court appointed expert has visit Lompoc on three occasions and filed three reports. Accordingly, this factor weighs in favor of final approval because with the benefit of considerable discovery, the parties are likely informed about the merits of their respective cases.

4. Experience and Views of Counsel

The parties argue the settlement is reasonable because it was “reached after years of litigation and negotiations between the parties, who were zealously represented by their experienced counsel throughout this litigation.” Accordingly, this factor weighs in favor of final approval.

5. Presence of a Governmental Participant

The government represents Respondents in this case. Therefore, this factor weights in favor of final approval. *See Criswell v. Boudreaux*, 2021 WL 5811887, at *7 (E.D. Cal. Dec. 7, 2021).

6. Reaction of the Class Members to the Proposed Settlement

“Comments” and/or objections to the settlement were filed by some class

⁴ The parties requested that the Court not rule on the pending summary judgment motion, motion to dissolve the preliminary injunction, and motion for non-provisional class certification until it rules on the instant Motion for Final Approval, which if approved, would render those motions moot.

1 members or sent by class members to class counsel after notice was given to the
2 class through August 23, 2022 (i.e., three weeks after the August 2, 2022 deadline
3 set by this Court for class members to file an objection to the settlement). (Rim
4 Decl. ¶ 7.) Class counsel sorted these “comments” and objections into the following
5 three categories: (a) emergency motions for immediate release pursuant to 28
6 U.S.C. § 2241 (“2241 Petitions”); (b) motions to amend 2241 Petitions
7 (“Amendments to 2241 Petitions”); and (c) objections and other responses (includes
8 miscellaneous Comments such as letters, emails, and “Amicus Briefs”) (“Objections
9 and Other”) (collectively “Comments”). (*Id.* ¶ 3.)

10 Class counsel submits a copy of the Review Worksheets for home
11 confinement for all class members who filed or sent Comments to Class counsel.
12 (Rim Decl. ¶ 5, Ex. B.) Class counsel also submits copies of review worksheets for
13 certain class members whom counsel declares she was “unable to determine good
14 cause for denial” of home confinement. (*Id.* ¶ 6, Ex. C) Class counsel further
15 declares she informed counsel for Respondents that she “will be requesting re-
16 review of home confinement for these class members once the Settlement
17 Agreement is approved”, and represented during the final approval hearing that a list
18 of 32 inmates were sent to Respondents for re-review for home confinement which
19 Respondents are in the process of reviewing.⁵ (*Id.* ¶ 6.)

20 **a. 2241 Petitions**

21 In the 2241 petitions filed or sent by class members to class counsel, the
22 inmates argue the Settlement Agreement benefits a small fraction of the class,
23 contend the “merits of the complaint” will “never come to fruition if the section
24 2241 process is halted,” and seek immediate release for the individual inmate. (*See*,
25 *e.g.*, Dkt. No. 447-1, 448-1, 449-1.)

26 _____
27 ⁵ The parties represented at the final approval hearing that they have also discussed a
28 process going forward for Respondents to submit review worksheets to Petitioners’
counsel which Petitioners’ counsel will review and notify Respondents regarding
inmates whom they believe there is no good cause for denying home confinement.

1 This action was brought as a class action to obtain a process-based remedy to
2 improve Lompoc’s policies and practices relating to COVID-19. The Settlement
3 Agreement requires Respondents to continue to comply with the Court’s orders
4 requiring Respondents to promptly evaluate Lompoc inmates who are over the age
5 of 50 or have underlying health conditions for home confinement, imposing
6 deadlines by which approved class members must be transferred to their homes,
7 prohibiting Respondents from transferring those eligible for home confinement to
8 halfway houses, and prohibiting Respondents from denying class members home
9 confinement based on time served or prior offenses alone. (Dkt. Nos. 45, 105, 290.)
10 The Settlement Agreement also requires Respondents to attest to Class Counsel that
11 Lompoc is in compliance with BOP’s testing, screening, isolation, and quarantine
12 policies. These requirements apply to the entire class as a whole, and not to one
13 individual or only a “small fraction of the class” as argued in the 2241 Petitions.

14 As to the requests in the 2241 Petitions that the individual inmate should be
15 granted home confinement, these requests are beyond the scope of this action. This
16 is a class action seeking class-wide injunctive relief by requiring Respondents to
17 make full and speedy use of their authority under the CARES Act to evaluate each
18 class members’ eligibility for home confinement which gives substantial weight to
19 the inmates risk factors for severe illness or death from COVID-19 based on age
20 (over 50) or underlying health conditions. *See, e.g., Pride v. Correa*, 719 F.3d 1130,
21 1137 (9th Cir. 2013) (“Individual claims for injunctive relief related to medical
22 treatment are discrete from the claims for systemic reform”). Nothing in the
23 Settlement Agreement precludes a class member from filing a habeas petition under
24 28 U.S.C. § 2241 and the CARES Act in the proper forum on an individual basis,
25 nor precludes a class member from seeking monetary damages in a separate action.
26 *See Hiser v. Franklin*, 94 F.3d 1287, 1291 (9th Cir. 1996) (“Moreover, the general
27 rule is that a class action suit seeking only declaratory and injunctive relief does not
28 bar subsequent individual damage claims by class members, even if based on the

1 same events”); *see also Fortner v. Thomas*, 983 F.2d 1024, 1030-32 (11th Cir. 1993)
2 (“It is clear that a prisoner’s claim for monetary damages or other particularized
3 relief is not barred if the class representative sought only declaratory and injunctive
4 relief, even if the prisoner is a member of a pending class action”).

5 Accordingly, the “objections” to the settlement set forth in the 2241
6 Petitioners are overruled.

7 **b. Amendments to 2241 Petitions**

8 Some class members filed or sent to class counsel “Amendments” to their
9 2241 Petitions. Each of the “Amendments” to the 2241 Petitioners seek relief as an
10 “individual and on behalf of myself” rather than class-wide relief. The inmates also
11 argue in the “Amendments” that they have been abandoned by class counsel who
12 failed to object to unspecified unfavorable terms and conditions, contend the BOP
13 would not release any “high risk” offenders to home confinement without a
14 legislative and statutory overhaul, contend their conditions of confinement are
15 unconstitutional, and allege that they have individually suffered physical and mental
16 harm. (*See, e.g.*, Dkt. Nos. 713, 714, 788, 795.) However, as discussed above, the
17 individual relief requested in the Amendments to 2241 Petitions are beyond the
18 scope of this class action seeking injunctive relief requiring Respondents to make
19 full and speedy use of their authority under the CARES Act to evaluate each class
20 members’ eligibility for home confinement which gives substantial weight to the
21 inmates risk factors for severe illness or death from COVID-19 based on age (over
22 50) or underlying health conditions. The fact that an inmate may have individually
23 suffered physical and mental harm is outside the scope of this litigation and does not
24 warrant disapproval of the Settlement Agreement which provides for class-wide
25 injunctive relief.

26 As to the contention regarding abandonment by class counsel, this Court
27 previously found class counsel to be adequate to protect the class. Class counsel has
28 litigated this case for nearly two years, obtained a preliminary injunction on behalf

1 of the class, filed motions to enforce the Court’s preliminary injunction order,
2 opposed Respondents’ motion for summary judgment, and conducted substantial
3 discovery including depositions and requesting thousands of pages of documents.
4 The Amendments to 2241 Petitions thus fail to demonstrate class counsel has
5 abandoned class members.

6 With respect to the contention that the conditions of confinement are
7 unconstitutional, this class action asserts two causes of action 1) Unconstitutional
8 Conditions of Confinement in Violation of the Eighth Amendment to the U.S.
9 Constitution pursuant to 28 U.S.C. §§ 2241, 2243; (2) and Unconstitutional
10 Conditions of Confinement in Violation of the Eighth Amendment to the U.S.
11 Constitution pursuant to U.S. Const, Amend. VIII; 28 U.S.C. § 1331; 5 U.S.C. §
12 702, “Injunctive Relief Only.” Based on the alleged unconstitutional conditions of
13 confinement at Lompoc related to COVID-19, the preliminary injunction and the
14 Settlement Agreement require Respondents to expedite review and determination of
15 eligibility of Lompoc inmates for home confinement.

16 Therefore, the “objections” to the settlement set forth in the Amendments to
17 the 2241 Petitioners are overruled.

18 **c. Objections**

19 Some class members filed objections to the settlement or sent objections to
20 class counsel. Many of the “objections” were substantially similar or nearly
21 identical.

22 Some class members objected to paragraph 6 of the Settlement Agreement,
23 which lists information Respondents are required to include on Review Worksheets
24 (such as the offense of conviction, projected release date, security level, etc.). Some
25 inmates contend Respondents should not be permitted to consider their offense of
26 conviction when making home confinement decisions. (*See, e.g.*, Dkt. Nos. 571,
27 572, 573.) However, the information such as the offense of conviction, projected
28 release date, and security level listed in the Review Worksheets is not the sole basis

1 for or sole criteria examined by Respondents for their home confinement decision.
2 Moreover, the preliminary injunction and the Settlement Agreement do not require
3 Respondents to disregard the offense of conviction in their home confinement
4 review, but rather require that Respondents give substantial weight to an inmates’
5 age or underlying health condition in their home confinement review. The parties
6 thus agree that the requested relief in these objections are “beyond the scope of this
7 lawsuit, which was brought to enforce the CARES Act and the directives in the Barr
8 memos, both of which permit Respondents to consider the offense of conviction.”
9 (Motion at 21.)

10 Some inmates object to the BOP retaining ultimate authority to make home
11 confinement decisions, object to home confinement decisions being made on any
12 basis other than a class member’s PATTERN score, and object to the BOP’s ability
13 to transfer class members to other facilities. These objections and requests do not
14 relate to any specific terms of the settlement agreement and are beyond the scope of
15 this litigation. This class action sought, and the Settlement Agreement requires that
16 Respondents give substantial weight to an inmates’ age or underlying health
17 condition in making full and speedy use of their authority under the CARES Act for
18 home confinement review.

19 Some objectors also argue Class Counsel has abandoned the class and are
20 ineffective. Some objectors also request that the Court order counsel to provide an
21 accurate and complete explanation in laymen’s terms of the Settlement Agreement.
22 However, as discussed above, the Court has found class counsel adequate to
23 represent the class. The objectors fail to offer evidence or any compelling argument
24 to change the Court’s finding regarding class counsel’s adequacy. Moreover, in
25 connection with the motion for preliminary approval, the Court required the class
26 notice to be revised to summarize the settlement agreement in a simplified matter,
27 and approved the revised class notice which was sent to the class.

28 Some objectors contend the newly-appointed class representatives represent a

1 small minority of the class. On May 31, 2022 the Court appointed Petitioners
2 Garries and Ybarra as representatives of the provisional class previously certified by
3 the Court upon finding: 1) Garries and Ybarra are currently incarcerated as USP
4 Lompoc; 2) Garries is over the age of 50 and has one or more underlying health
5 conditions; 3) Ybarra has one or more underlying health conditions; 4) The Court’s
6 findings regarding typicality and adequacy as to the Original Named Plaintiffs in the
7 Provisional Class Certification Order “apply equally to Mr. Garries and Mr.
8 Ybarra”; and 5) Garries and Ybarra have confirmed their willingness to be named
9 plaintiffs in this action, to serve as class representatives, and to represent the claims
10 of the class vigorously. (Dkt. No. 420.) In granting preliminary approval of the
11 settlement, the Court determined that Garries and Ybarra’s claims are adequate to
12 represent the Settlement Class. Objectors fail to submit any evidence demonstrating
13 Garries and Ybarra are inadequate representatives who only represent a small
14 minority of the class.

15 Some objectors complain that TRULINCS email messaging is not available to
16 all class members and is not confidential. Despite these objectors’ contentions
17 regarding the purported lack of availability of the class notice to all class members
18 via TRULINCS, the objectors nonetheless were aware of the class notice and
19 settlement and were able to submit objections. Moreover, Respondents filed a
20 declaration attesting that the electronic version of the class notice was posted on the
21 EBB of TRULINCS which is a computer system available to all inmates
22 incarcerated at Lompoc (Weber Decl. ¶ 3), and paper copies of the Class Notice and
23 Settlement Agreement were placed in Lompoc’s law library, a hard copy of the
24 Class Notice was posted in all housing units where class members reside. (Weber
25 Decl. ¶¶ 4-5.) Furthermore, in *Wal-Mart Stores, Inc. v. Dukes*, the Supreme Court
26 noted Federal Rule of Civil Procedure 23 “provides no opportunity for (b)(1) or
27 (b)(2) class members to opt out, and does not even oblige the District Court to afford
28 them notice of the action.” 564 U.S. 338, 362, 131 S. Ct. 2541, 2558, 180 L. Ed. 2d

1 374 (2011). Therefore, the issue raised as to the availability of the class notice on
2 TRULINCS does not preclude final approval of the settlement agreement.

3 Some objectors argue in general terms that the conditions of confinement at
4 Lompoc are unconstitutional and request that the Court declare the custody of the
5 class is unconstitutional. As discussed above, this class action asserts two causes of
6 action 1) Unconstitutional Conditions of Confinement in Violation of the Eighth
7 Amendment to the U.S. Constitution pursuant to 28 U.S.C. §§ 2241, 2243; (2) and
8 Unconstitutional Conditions of Confinement in Violation of the Eighth Amendment
9 to the U.S. Constitution pursuant to U.S. Const, Amend. VIII; 28 U.S.C. § 1331; 5
10 U.S.C. § 702, “Injunctive Relief Only.” Based on the alleged unconstitutional
11 conditions of confinement at Lompoc related to COVID-19, the preliminary
12 injunction and the Settlement Agreement require Respondents to expedite review
13 and determination of eligibility of Lompoc inmates for home confinement. The
14 objectors’ request that this Court issue a declaration that the custody of the class is
15 unconstitutional is beyond the scope of this litigation and the settlement agreement.

16 Some objectors request that the Court order a vote among all class members.
17 However, Federal Rule of Civil Procedure 23, which sets forth the procedures to be
18 followed in class actions, does not require a vote from class members in determining
19 whether the settlement agreement is fair, adequate, and reasonable. Moreover, class
20 members had the opportunity to object to the settlement.

21 Accordingly, these “objections” to the settlement are overruled.

22 **d. Other Comments**

23 Some class members also sent letters, emails, or other briefs commenting on
24 the settlement agreement and describing their personal experience and
25 circumstances regarding for example testing, isolation, quarantine practices, and
26 medical treatment for COVID-19. None of these submissions demonstrate that the
27 settlement agreement is not fair, adequate, and reasonable. Rather, these comments
28 demonstrate the relief agreed to in the Settlement Agreement would benefit class

1 members by requiring Respondents to attest to Class Counsel that Lompoc is in
2 compliance with the BOP's testing, screening, isolation, and quarantine policies.

3 Some class members' comments related to conditions at Lompoc unrelated to
4 COVID-19 (e.g., complaints regarding medical treatment generally) or the inmates'
5 underlying conviction or sentence. These issues are outside of the scope of this
6 lawsuit and are irrelevant in determining whether the settlement is fair, adequate,
7 and reasonable.

8 Therefore, the reaction of class members factor does not weigh against final
9 approval of the class action settlement.

10 * * *

11 Accordingly, based on the factors discussed above, the Court finds the
12 Settlement Agreement is fair, adequate, and reasonable.

13 **C. Final Certification of the Class**

14 In granting preliminary approval of the settlement, the Court conditionally
15 certified the settlement class upon finding the requirements of Federal Rule of Civil
16 Procedure 23(a) (i.e., numerosity; commonality; typicality; and adequacy of
17 representation) had been met, and finding the action was maintainable under Rule
18 23(b)(2).⁶ There is no evidence demonstrating the Rule 23 requirements for
19 certification are no longer satisfied. Accordingly, the Court finds final certification
20 of the class for settlement purposes is proper here, and certifies the class for final
21 approval of the settlement. *See Ching v. Siemens Indus.*, 2014 WL 2926210, at *2
22 (N.D. Cal. 2014) (finding final class certification appropriate based on preliminary

23
24 ⁶ Federal Rule of Civil Procedure 23(b)(2) provides "[a] class action may be
25 maintained if Rule 23(a) is satisfied and if . . . the party opposing the class has acted
26 or refused to act on grounds that apply generally to the class, so that final injunctive
27 relief or corresponding declaratory relief is appropriate respecting the class as a
28 whole." Fed. R. Civ. P. 23(b)(2). In granting preliminary approval, the Court
determined this action was maintainable pursuant to Rule 23(b)(2) because
Respondents' failure to make prompt and reasonable use of home confinement and
compassionate release in light of the pandemic which takes into account inmates'
age and medical conditions is applicable to each member of the class so that
injunctive relief is appropriate as to the class as a whole.

1 approval order); *Sandoval v. Tharaldson Employee Mgmt.*, 2010 WL 2486346, at *5
2 (C.D. Cal. June 15, 2010) (same).

3 **D. Attorneys' Fees**

4 Plaintiff-Petitioners also filed an Unopposed Motion for Attorneys' Fees,
5 seeking \$375,000 for attorneys' fees to class counsel as agreed to by the parties in
6 the settlement agreement. Federal Rule of Civil Procedure 23(h) provides that "[i]n
7 a certified class action, the court may award reasonable attorney's fees and
8 nontaxable costs that are authorized by law or by the parties' agreement." Fed. R.
9 Civ. P. 23(h). The district court must be guided by the fundamental principal that
10 fee awards must be "reasonable under the circumstances" in determining the
11 appropriateness of settlement fee awards. *In re Washington Pub. Power Supply Sys.*
12 *Sec. Litig.*, 19 F.3d 1291, 1296 (9th Cir. 1994).

13 **1. Lodestar**

14 "The Supreme Court has instructed that '[t]he initial estimate of a reasonable
15 attorney's fee is properly calculated by multiplying the number of hours reasonably
16 expended on the litigation times a reasonable hourly rate,' an approach commonly
17 known as 'lodestar.'" *Vargas v. Howell*, 949 F.3d 1188, 1194 (9th Cir. 2020)
18 (citation omitted). Courts may use the lodestar method to determine the
19 reasonableness of the requested attorneys' fees and costs. *Hensley v. Eckerhart*, 461
20 U.S. 424, 433 (1983).

21 With respect to the hours reasonably expended, class counsel submits
22 evidence that they expended 3,928.70 hours in this action, and demonstrates the
23 hours expended were reasonably and necessarily incurred in this action.⁷ See
24 *Jankey v. Poop Deck*, 537 F.3d 1122, 1132 (9th Cir. 2008); *Hensley*, 461 U.S. at
25 434; *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). As to the
26

27 ⁷ Class counsel filed a declaration regarding the work performed by counsel in this
28 case and attaches an itemized list of the hours expended in this action. (Specter
Decl. ¶¶ 4, 6, Ex. A.)

1 hourly rates, Petitioners submit evidence regarding the rate under the Equal Access
2 to Justice Act (“EAJA”)⁸ applied to each attorney.⁹ Therefore, the hourly rates
3 based on the applicable EAJA rate are reasonable. *See Vargas*, 949 F.3d at 1194.
4 Petitioners thus demonstrate the lodestar amount for attorneys’ fees incurred based
5 on applicable EAJA hourly rates is \$817,728.59, which is significantly higher than
6 the \$375,000 in attorneys’ fees agreed to by the parties in the settlement agreement.
7 Accordingly, the Court finds \$375,000 in attorneys’ fees is a reasonable fee amount
8 to be awarded to class counsel.

9 **2. Kerr Factors**

10 When determining the reasonableness of the fees, courts also consider the
11 following factors, commonly referred to as the *Kerr* factors: (1) the time and labor
12 required; (2) the novelty and difficulty of the questions; (3) the skill requisite to
13 perform the legal service properly; (4) the preclusion of other employment by the
14 attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is
15 fixed or contingent; (7) time limitations imposed by the client or the circumstances;

16
17 ⁸ This action is brought against the Warden of Lompoc in his official capacity. 28
18 U.S.C. § 2412(b) of the EAJA provides:

19 [A] court may award reasonable fees and expenses of attorneys, in addition to
20 the costs . . . to the prevailing party in any civil action brought by or against
21 the United States or any agency or any official of the United States acting in
22 his or her official capacity in any court having jurisdiction of such action. The
23 United States shall be liable for such fees and expenses to the same extent that
24 any other party would be liable under the common law or under the terms of
25 any statute which specifically provides for such an award.

26 The EAJA further provides “[t]he amount of fees awarded under this subsection
27 shall be based upon prevailing market rates for the kind and quality of the services
28 furnished, except that . . . attorney fees shall not be awarded in excess of \$125 per
hour unless the court determines that an increase in the cost of living or a special
factor, such as the limited availability of qualified attorneys for the proceedings
involved, justifies a higher fee.” *Id.* (Emphasis added.)

⁹ On July 14, 2022, the Court ordered Petitioners to file evidence regarding the
hourly market rate and EAJA rate applicable to each attorney who performed work
in this action. (Dkt. No. 516.) On July 15, 2022, Petitioners filed three separate
declarations from their counsel regarding the hourly market rate and EAJA rate
applied by Plaintiff-Petitioners in calculating the fees incurred in this action as set
forth in the Motion. (Dkt. Nos. 529, 530, 531.)

(8) the amount involved and the results obtained; (9) the experience, reputation and ability of the attorneys; (10) the “undesirability” of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975); *see also Hensley v. Eckerhart*, 461 U.S. 424, 430 n.3 (1983)). The Court finds the *Kerr* factors weight in favor of granting Petitioners’ Motion for Attorneys’ Fees.

IV. CONCLUSION

Accordingly, the Court:

- 1) **GRANTS** the Joint Motion for Final Approval of Class Action Settlement, and
- 2) **GRANTS** Plaintiffs-Petitioners’ Unopposed Motion for Attorneys’ Fees, and awards class counsel \$375,000 in attorneys’ fees.

Having granted final approval of the class settlement, Respondents’ Motion for Summary Judgment (Dkt. No. 251), Respondent’s Motion to Dissolve Preliminary Injunction (Dkt. No. 250), and Petitioners’ Motion for non-provisional certification of the class (Dkt. No. 345), are **DENIED AS MOOT**.

IT IS SO ORDERED.

DATED: October 11, 2022.



Hon. Consuelo B. Marshall
United States District Judge

CC:FISCAL