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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

CALIFORNIA COALITION FOR WOMEN
 PRISONERS et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA FEDERAL
 BUREAU OF PRISONS et al.,

Defendants.

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Case No. 4:23-cv-04155-YGR

**NOTICE OF MOTION AND
 MOTION FOR FINAL APPROVAL
 OF CONSENT DECREE**

Date: February 25, 2025
 Time: 1:00 pm

Judge: Hon. Yvonne Gonzalez Rogers

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE THAT on February 25, 2025 at 1:00 pm or as soon thereafter as the matter may be heard, Plaintiffs CALIFORNIA COALITION FOR WOMEN PRISONERS (“CCWP”); R.B., J.L., S.L., G.M., J.M., A.H.R., A.S., and L.T. (“Named Plaintiffs”) (together, the “Plaintiffs”), by and through Class Counsel will and hereby do move the Court pursuant to Federal Rule of Civil Procedure 23(e) for entry of an Order: granting final approval of the proposed Consent Decree and finding its terms to be fair, adequate, and reasonable.

The motion is based upon this Notice of Motion and Motion; the accompanying Memorandum of Points and Authorities; the attached Declaration of Luma Khabbaz; all pleadings and papers on file in this action; and any oral argument this Court permits.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY

The Court should grant final approval of the parties’ agreed-upon Consent Decree because it provides much needed and hard-won injunctive relief to the certified class of individuals who were formerly incarcerated at FCI Dublin. As the Court recognized in its order granting preliminary approval, “The Proposed Consent Decree is the product of arm’s-length, serious, informed, and non-collusive negotiations between experienced and knowledgeable counsel who have actively prosecuted and defended this litigation.” Dkt. 442 at 2.¹

In November 2024, after years of factual investigation, visits with incarcerated people, an unannounced FCI Dublin visit from Judge Gonzalez Rogers, a week-long evidentiary hearing, appointment of a Special Master, a preliminary injunction and multiple extensions thereof, seven settlement conferences, and several private negotiations by the Parties, the Parties reached an agreement to resolve all class claims for injunctive relief raised in this case. Dkt. 438 at 6-10.

The Proposed Consent Decree provides relief to class members including, *inter alia*, a public acknowledgement of abuse by the BOP; appointment of a Monitor to implement requirements and issue reports; mechanisms to ensure proper designation and credit-earning for class members and release to community placement as soon as practicable; provision of medical and mental health care to class members in their primary language; restrictions on the use of the Special Housing Unit (“SHU”) and expanded privileges for those housed in the SHU; improved processes to report staff abuse and retaliation; and improved access to Class Counsel. *See generally* Dkt. 442-2.

The Court granted preliminary approval of the Proposed Consent Decree on December 20, 2024. Dkt. 442. Plaintiffs, by and through Class Counsel, respond herein to class member comments and objections regarding the Proposed Consent Decree and

¹ Page numbers refer to ECF numbering.

1 request final approval so the reforms contained therein can be fully implemented
2 expeditiously.

3 The Court has received 15 filings with comments or objections to the Consent
4 Decree. Eleven are from class members, including the Organizational Plaintiff. Of those
5 eleven, four exclusively describe problems with conditions of confinement, which align
6 with terms in the Consent Decree and support the urgent need for such relief. None of
7 the objections rebut the presumption that the Consent Decree is fair, reasonable, and
8 adequate.

9 **II. LEGAL STANDARD FOR FINAL APPROVAL**

10 Federal Rule of Civil Procedure 23(e) requires the Court to hold a hearing to
11 determine whether the proposed Consent Decree is “fair, reasonable, and adequate” after
12 considering, as relevant here, whether: “the class representatives and class counsel have
13 adequately represented the class”; “the proposal was negotiated at arm’s length”; “the
14 relief provided for the class is adequate” based on “the costs, risks, and delay of trial and
15 appeal,” “the effectiveness of any proposed method of distributing relief,” “the terms of
16 any proposed award of attorney’s fees,” and, “the proposal treats class members equitably
17 relative to each other.” Fed. R. Civ. P. 23(e).

18 To determine whether a settlement meets these standards, courts must balance
19 several factors, including:

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

24 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998), *overruled on other*
25 *grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011).

26 The Court must “evaluate the fairness of a settlement as a whole, rather than
27 assessing its individual components.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 818-19 (9th
28 Cir. 2012) (citing *Hanlon*, 150 F.3d at 1026). Although the Court must “explore[]

comprehensively all factors,” it is not required to “reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.” *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 964 (9th Cir. 2009) (quoting *Officers for Just. v. Civ. Serv. Comm’n of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982)). Additionally, “[n]ot all of these factors will apply to every class action settlement. Under certain circumstances, one factor alone may prove determinative in finding sufficient grounds for court approval.” *Nat’l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525–26 (C.D. Cal. 2004) (citing *Torrissi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993)). And the Court “must also be mindful of the Ninth Circuit’s policy favoring settlement, particularly in class action law suits.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1041 (N.D. Cal. 2008); *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008) (“[T]here is a strong judicial policy that favors settlements, particularly where complex class action litigation is concerned.”). Ultimately, “[i]n most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.” *Nat’l Rural Telecomms. Coop.*, 221 F.R.D. at 526.

III. THE CONSENT DECREE IS FAIR, ADEQUATE, AND REASONABLE AND SHOULD BE GRANTED FINAL APPROVAL

A. The Class Representatives and Class Counsel Have Adequately Represented the Class and The Proposal was Negotiated at Arm’s Length

This Court has already found that the Consent Decree is “the product of arm’s-length, serious, informed, and non-collusive negotiations between experienced and knowledgeable counsel who have actively prosecuted and defended this litigation.” Dkt. 442 at 2. Class Counsel has also adequately represented the class. As this Court has already found, Class Counsel collectively have extensive experience in complex civil litigation, in class action cases, and in litigation regarding the rights of incarcerated persons. *See* Dkt. 222 at 18. Class Counsel has vigorously litigated the matter, obtaining

1 a preliminary injunction appointing a Special Master, and diligently negotiated the
 2 Consent Decree over the course of seven settlement conferences and several more private
 3 conferences between the parties.

4 **B. The Consent Decree Provides Comprehensive Relief to the Class**
 5 **Members and Treats Class Members Equitably Relative to Each Other**

6 The Consent Decree provides broad and meaningful injunctive relief to the
 7 certified class balancing the costs, risks, and delay of litigation and the effectiveness of
 8 providing relief to class members. The Consent Decree requires substantial changes to
 9 BOP policies and procedures and provides for a Monitor that will ensure implementation
 10 of the terms in the Consent Decree. Not all class members will encounter the issues
 11 addressed by the Consent Decree, but all class members will be treated equitably under
 12 the Consent Decree in the event they do encounter an issue covered by the Consent
 13 Decree.

14 **1. Summary of Key Provisions that Will Benefit Class Members**

15 **(a) Access to the Monitor and Class Counsel**

16 Regarding access to Counsel, the Complaint sought relief that required BOP to
 17 “provide timely and consistent access to confidential attorney calls and visits. Dkt. 152 at
 18 ¶ 532.

19 The Consent Decree requires that class members have confidential two-way
 20 communication with the Monitor as well as be able to send “special mail” to the Monitor
 21 that must not be opened by staff. Dkt. 442-2 at ¶¶ 78-79. Class members will be able to
 22 call Class Counsel regardless of phone restrictions. *Id.* at ¶ 80. Class members will be
 23 able to have weekly confidential legal calls with Class Counsel in pre-scheduled blocks
 24 of time at no cost to the class members. *Id.* at ¶ 81. The Monitor will report on issues
 25 regarding confidential communication with Class Counsel and the Monitor and provide
 26 recommendations on the resolution of those issues. *Id.* at ¶ 83.

27 **(b) Class Member Case Work Requirements**

28 Class members must be housed according to BOP policy, and the Monitor shall

review and report on designations. *Id.* at ¶¶ 68-69. Class members with more than 9 months remaining on their sentence may not be at administrative detention facilities for more than 6 months or at Federal Transfer Centers (“FTCs”) for more than 1 month. *Id.* at ¶ 70. The BOP must also review all disciplinary reports from January 1, 2020 to May 1, 2024 at FCI Dublin, expunge reports with deficiencies, and update class members’ case work accordingly. *Id.* at ¶ 75. The Monitor also will report on class member release dates, credit, and eligibility for community release. *Id.* at ¶ 71. The BOP shall release anyone eligible for community placement as soon as practicable. *Id.* at ¶ 72. BOP cannot deny FTCs or community placement based on immigration status or detainer. *Id.* The BOP must also ensure no class members lost credits due to transfer from FCI Dublin, including for time spent in Administrative Detention Facilities following transfer. *Id.* at ¶ 73. The Monitor will also review and report on the status of class member compassionate release requests quarterly (*Id.* at ¶ 77), a process which class members previously had little information about.

(c) Access to Medical and Mental Health Care

Plaintiffs, in their First Amended Complaint, sought relief to “provide constitutionally adequate medical and mental health care to survivors of sexual abuse.” Dkt. 152 at ¶ 532.

The Consent Decree requires the Monitor to continue creating, assessing, and clearing alerts related to unresolved medical and mental health care concerns. Dkt. 442-2 at ¶ 42. The Monitor will provide monthly reports on clinical staffing levels and wait times for outside providers. *Id.* at ¶¶ 36-37. The BOP must provide a class member information about the status of their outside provider medical care if a class member asks for it. *Id.* at ¶ 37. The BOP must provide class members with care in their primary language, leaving as a last resort the use of other Adults-In-Custody (AICs) to provide translation. *Id.* at ¶ 38. The BOP must provide class members free and confidential access to Rape Crisis Centers when requested. *Id.* at ¶ 39. Such access supplements, but does not replace, mental health care BOP provides class members. *Id.*

(d) SHU Placements

Plaintiffs’ requested relief regarding the SHU was for BOP to “immediately cease the practice of placing individuals who report sexual abuse into solitary confinement in the SHU.” Dkt. 152 at ¶ 532.

This Consent Decree introduces a number of procedures to govern placement of class members in the SHU, including those placed in the SHU prior to or without any incident report. For Administrative Detention, or non-disciplinary status, BOP must provide an administrative detention order within 24 hours and then conduct further review including by the BOP Liaison. Dkt. 442-2 at ¶ 44. If the BOP Liaison disagrees with placement, the Regional Director must review it. *Id.* Class members in administrative detention must receive access to a number of privileges set out by BOP policy, including social and legal calls, visitation, exercise, programming, personal property, and commissary access. *Id.* at ¶ 46. When class members are placed in SHU for alleged disciplinary violations, the Consent Decree requires that BOP provide the class member, Class Counsel, and the Monitor the incident report within 24 hours; a hearing within 5 workdays; and if referred, a DHO hearing within 10 work days. *Id.* at ¶¶ 53-55. All documentation must be provided within 24 hours of the hearing. *Id.* at ¶ 55. There is also a process set out for class members to grieve any violations of the SHU provisions. *Id.* at ¶¶ 51, 56. The Monitor shall also report on SHU placements. Per the Consent Decree, class members may not be placed in SHU for administrative detention status pending UDC or DHO hearing for a 300 or 400 level violation, absent written explanation detailing why it is necessary for security reasons. *Id.* at ¶ 57.

(e) Sexual Abuse and Staff Retaliation

The First Amended Complaint sought relief in a number of ways to address rampant staff sexual abuse and retaliation. Specifically, it sought to require BOP to “adequately, hire, train and supervise its employees to prevent their ongoing sexual misconduct and abuse of power”; “implement a confidential and reliably available method for individuals to report abuse to fully independent outside authorities who are

1 not employed by the BOP”; “properly investigate claims of abuse”; “address rampant
 2 retaliation against survivors, including but not limited to placement in solitary
 3 confinement, punitive cell and strip searches, and punitive transfers, which harm
 4 survivors and deter others from reporting”; “ensure that officers who have substantiated
 5 claims of sexual abuse and harassment against them are promptly fired and not permitted
 6 to return to BOP employment”; “install fixed cameras in areas where abuse is known to
 7 occur and properly monitor and maintain the fixed cameras that do exist”; and “address
 8 increasingly dire living conditions that contribute to the ongoing sexual exploitation of
 9 incarcerated persons.” Dkt. 152 at ¶ 532.

10 The Consent Decree provides class members with various confidential options to
 11 report staff abuse, including to the Monitor, BOP Office of Internal Affairs (“OIA”), and
 12 DOJ Office of Inspector General (“OIG”). Dkt. 442-2 at ¶ 62. The Monitor must report
 13 allegations of abuse to the BOP Liaison and DOJ OIG. *Id.* at ¶ 63. If an allegation is
 14 made to BOP, the Liaison must alert the Monitor within 48 hours. *Id.* BOP must
 15 provide, upon request, documentation of staff abuse reports and written determinations,
 16 as well as other updates about the staff member’s employment status. *Id.* at ¶ 64. The
 17 Monitor will also report on staff physical and sexual abuse toward class members and
 18 BOP’s responses. *Id.* at ¶ 65. The Monitor can also recommend corrective action in
 19 cases of abuse. *Id.* The Monitor will further report on reports made pursuant to the
 20 Prison Rape Elimination Act (“PREA”) relating to Dublin and reports related to staff
 21 misconduct on transports between BOP facilities. *Id.* at ¶¶ 66-67.

22 The Consent Decree also addresses class member concerns of retaliation. The
 23 following procedures are available to Class Members under the Consent Decree. Class
 24 members or Class Counsel may submit complaints of retaliation to the Liaison or
 25 Monitor. If the complaints are reported only to the Monitor, the Monitor must then report
 26 the allegations to the Liaison who informs BOP OIA and DOJ OIG for further
 27 investigation. If a class member reports directly to the Liaison, the Liaison must also
 28 inform the Monitor and Class Counsel. The Liaison must also report to the Monitor any

discipline imposed on class members after reporting staff misconduct, which the Monitor will review and report on. The Monitor may recommend reconsideration of discipline or corrective action to address retaliation. *Id.* at ¶¶ 58-61.

2. The Consent Decree is Reasonable In Light of the Costs, Risks and Delay of Trial and Appeal.

The significant benefits that the Class will enjoy under the Consent Decree, considered in light of the risks of litigation, support final approval. *See In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 318 (N.D. Cal. 2018) (finding final approval appropriate where litigation “would have been costly and uncertain and would have detrimentally delayed any potential relief for the Class” and where relief is “timely, certain, and meaningful . . .”).

It is uncertain whether pursuing additional litigation would result in greater relief, and additional litigation would involve uncertainty and delay for all parties. Declaration of Kara J. Janssen in Support of Preliminary Approval, Dkt. 438-1 at ¶ 4. Here, proceeding to trial, along with possible appeals, could delay resolution of this matter by several years. Moreover, the extensive factual issues and novel legal issues in the case would involve extensive resources at trial, including the use of experts. Given the importance and urgency of the issues alleged in this matter involving sexual assault, retaliation, and the provision of critical medical and mental health services, the difference between the possibly long delay involved in continued litigation and the immediate improvements promised by the Consent Decree is an important consideration. The risks of continued litigation therefore weigh in favor of final approval.

3. The Terms Regarding Attorneys’ Fees and Timing of Payment Prioritize Relief for the Class Over Prompt Payment of Attorney Fees.

To ensure the parties’ ability to reach agreement on substantive relief for the class, Class Counsel have prioritized those discussions over attorneys’ fees rather than delay resolution of the matter. Accordingly, Class Counsel have deferred finalization of attorneys’ fees and expenses until after the class begins receiving relief under the Consent

Decree. The Consent Decree does not guarantee Class Counsel any set amount of fees, but instead provides process for Class Counsel to make a fees demand, attempt to resolve it informally with Defendants, and if it cannot be resolved, submit it to dispute resolution through mediation with Judge Spero. *See* Dkt. 442-2 at ¶ 110. Any agreement reached on fees and expenses will be submitted to the Court for approval to ensure that the hours and rates are reasonable. If the fees cannot be resolved through negotiation or mediation, the Plaintiffs will file an application for fees and expenses pursuant to Paragraph 106 of the Consent Decree.

The process described above will delay any award of attorneys' fees to Class Counsel for the years of work performed thus far, and does not guarantee Class Counsel any particular amount of compensation for fees and expenses. Courts have utilized this type of fees process in other consent decrees involving purely injunctive relief. *See generally L.H. v. Schwarzenegger*, 645 F. Supp. 2d 888 (E.D. Cal. 2009) (resolving disputes over fees approximately seven months after approval of settlement).

IV. NONE OF THE OBJECTIONS REFUTE THE PRESUMPTION THAT THE CONSENT DECREE IS FAIR, ADEQUATE, AND REASONABLE AND INSTEAD POINT TO THE IMPORTANCE OF ENTERING THE DECREE

A. Releases to Community Placement

Three objectors discussed the Consent Decree's terms related to release to community placement. Class Counsel supports immediate release of all eligible class members to community placements, and appreciates class members' concerns regarding BOP's practices related to halfway house and home confinement, including implementation of the First Step Act (FSA).² The Consent Decree provides meaningful class-wide relief related to community placements, including ongoing monitoring of eligibility and release, and requires BOP to release eligible class members to community placement as soon as practicable. Dkt. 442-2 at ¶¶ 71-72.

² Accurate implementation of the FSA is the subject of a separate suit pending in the District of Columbia. *See Crowe v. BOP*, Case No. 1:24-cv-03582-APM (D.D.C.).

Two of the objections argue that Class Counsel should have negotiated through the Consent Decree the release of low security, low recidivism Dublin sexual abuse survivors to home confinement. Dkts. 444, 450. Class Counsel appreciates the importance of release, including for survivors of prison staff abuse who are retraumatized by continued incarceration. The Consent Decree provides pathways to community placements for eligible class members, and Class Counsel continue to advocate for the release of FCI Dublin survivors whenever possible. Both objectors also assert that the BOP has not complied with this Court’s previous orders following the closure of FCI Dublin. *Id.* While Class Counsel understands these concerns, to the extent that the objectors in Dkts. 444 and 450 are concerned that BOP will not comply with the Consent Decree, the Consent Decree is Court-enforceable and includes provisions to ensure compliance. Dkt. 442-2 at ¶¶ 111, 113-14.

Another filing objects to the phrasing of the term related to release to community placement and argues that certain class members should be released to home confinement. Dkt. 443. The objector suggests replacing “after” with “when” regarding BOP’s requirement to release eligible class members to home confinement. *Id.* at 2. She also suggests changing “release” to “transfer” because of the legal distinction between a release and a transfer remaining in BOP custody. *Id.* She raises concerns with who will define “eligibility” due to BOP’s questionable interpretation of eligibility. *Id.* at 3. Lastly, she argues that BOP should designate lead plaintiffs, witnesses, and other AICs with substantiated retaliation to home confinement and other class members should have individualized review according to Section 3621(b). *Id.* at 4. Class Counsel appreciate the distinctions provided by the objector in Dkt. 443, but none of these phrasing concerns should prevent final approval of the Consent Decree. The Consent Decree requires BOP to release anyone eligible for community placement as *soon as practicable*, rendering the distinction between “after” and “when” insignificant. Dkt. 442-2 at ¶ 72. As to the question of eligibility, the Consent Decree also requires the Monitor to report on eligibility of class members for community release. *Id.* at 71. In response to requests in

1 Dkts. 443, 444, and 450 for releases for specific individuals, the Consent Decree provides
2 class-wide relief related to release to community placement. To the extent that class
3 members are not eligible for release to community placement and request release based
4 on extenuating circumstances, there are other avenues for such relief, including filing for
5 compassionate release. To the extent that objectors request a prisoner release order, that
6 requires that other options be exhausted first, requires a three-judge panel, and
7 overcrowding must be at issue. *See* 18 U.S.C. § 3626(a)(3). The Consent Decree is a
8 step toward remedying the deprivation of rights that must be exhausted before any
9 prisoner release order.

10 **B. Monetary Relief**

11 One class member objected on the basis that she has not received monetary
12 compensation for the retaliation she experienced at FCI Dublin and during the subsequent
13 closure. *See* Dkt. 454. She writes that she was reassigned from her coveted job to a low
14 paying one at FCI Dublin and was unable to attend classes. *Id.* at 1. She subsequently
15 was transferred twice before she arrived to her current institution, where she awaits
16 starting a drug treatment program. *Id.* at 2. As a result, she objects that this Consent
17 Decree is unfair because she did not receive monetary compensation or early release to
18 home confinement.

19 Class Counsel appreciates this objector's concerns and desire for accountability,
20 however the lack of monetary compensation should not preclude final approval of this
21 Consent Decree. The class claims in this case are for injunctive relief; there are no class
22 damages claims. Approval of this Consent Decree creates no bar to damages claims, and
23 class members are able to pursue monetary relief under the law. The Court granted class
24 certification for injunctive relief and was warranted in doing so based on Rule 23(b)(2).
25 Dkt. 222 at 19-20. "[E]very federal court of appeals that has considered the question has
26 held that a class action seeking only declaratory or injunctive relief does not bar subsequent
27 individual suits for damages." *Hiser v. Franklin*, 94 F.3d 1287, 1291 (9th Cir. 1996)
28 (quoting *In re Jackson Lockdown/MCO Cases*, 568 F. Supp. 869, 892 (E.D. Mich. 1983)).

1 This objector's experience at FCI Dublin and subsequent transfers are issues that
 2 form the basis for many of the terms in the Consent Decree. For example, the Consent
 3 Decree lays out a procedure for class members to report suspected retaliation, which
 4 requires BOP to report the allegation up the chain of command and to Class Counsel.
 5 Dkt. 442-2 at ¶¶ 62-64. It also allows the Monitor to recommend corrective action to
 6 address retaliation. *Id.* at ¶ 65. The Monitor shall also report on eligibility of class
 7 members for community release, and BOP shall release anyone eligible for community
 8 placement as soon as practicable. *Id.* at ¶ 72.

9 C. Scope of Consent Decree

10 Three of the filings include objections related to the scope of the Consent Decree
 11 insofar as it relates to conditions at various institutions and the duration of monitoring.

12 In Dkt. 449, the class member acknowledges that the Consent Decree covers
 13 conduct in FCI Dublin and during transfer, and describes abuse and retaliation the class
 14 member has experienced in their current facility. *Id.* at 1-2. The Consent Decree applies
 15 to all class members who were formerly incarcerated at FCI Dublin, and its staff abuse,
 16 retaliation, and SHU terms apply to all facilities where class members are incarcerated
 17 during the term of the Consent Decree. The Consent Decree is agnostic to where any
 18 class member is currently housed, and the objection therefore should not prevent
 19 approval.

20 Another objection details conditions at FTC Oklahoma City, including sexual
 21 abuse, retaliation, and conditions of confinement. Dkt. 443 at 1-2. She writes that at the
 22 transfer center, female AICs are punished disproportionately to male AICs. *Id.* at 1. She
 23 also writes that AICs who are placed in the SHU at the transfer center have no avenue to
 24 report sexual abuse electronically, and no signage generally on how to report sexual
 25 abuse despite "several substantiated cases of sexual abuse of women at the FTC-OKC."
 26 *Id.* at 2. The class member argues for "[s]pecial care with enforcement of the Consent
 27 Decree" at this facility. *Id.* at 2. The Consent Decree applies only to class members, but
 28 it attaches wherever class members are housed in BOP custody. *See, e.g.*, Dkt. 442-2,

¶ 36 (“BOP shall provide the Monitor and Class Counsel with monthly reports on the medical and mental health care staffing levels at all BOP facilities where Class Members are designated.”). To the extent class members are at FTC Oklahoma City at any given time, there will be monitoring and other protections inherent in the Consent Decree including review of disciplinary actions, SHU placements, the ability to report abuse electronically, and information for class members regarding their rights under the Consent Decree.

The objector in Dkt. 459 describes ongoing retaliation due to being previously housed at FCI Dublin. She writes that the settlement focuses on a specific time period, and it is important to recognize the problem as a whole. *Id.* at 2. Class Counsel of course shares class members’ concerns about ongoing retaliation, and the Consent Decree provides for monitoring and corrective action for retaliation of class members at their new facilities. It is possible the objector is arguing the terms of the Consent Decree should extend past the agreed-upon duration. The term of the Consent Decree runs for two years from the date of court approval, with the option for BOP to move to terminate it no earlier than 18 months only if BOP reaches substantial compliance. Dkt. 442-2, ¶¶ 18, 32, 115. Class Counsel understands this concern, particularly for class members with years or decades left on their sentences, and agrees that the Consent Decree must include a substantial monitoring period. In negotiating the Consent Decree, Class Counsel weighed the potential outcome and risk of future litigation against the comprehensive, immediate, and certain relief provided by the Consent Decree during this time period. *See, supra*, Section III.B.2. This objection should not be a basis to prevent approval given the broad benefits inherent in this Consent Decree.

D. Use of Special Housing Unit

One objector requested that the Consent Decree be modified to prevent placement in the SHU based on alleged violations of Codes 297 and 298, which she reports are “non-violent,” “minor infractions, routinely lowered to 300 Series violations.” Dkt. 443 at 2.

1 While Class Counsel welcome any changes to the SHU policy that protect class
 2 members from retaliation and mistreatment, this objection should not bar final approval
 3 of the Consent Decree. The Consent Decree requires that BOP improve the protections
 4 for class members who are placed in the SHU, including a requirement that the Monitor
 5 review and report on class member placements in the SHU. Dkt. 442-2, ¶ 50. Class
 6 Counsel and class members may raise issues regarding due process and any decision for
 7 disciplinary segregation with the Monitor, who may recommend that BOP take corrective
 8 action regarding SHU placement. *Id.* at ¶ 56. The Court must consider the Consent
 9 Decree as a whole, rather than individual components. *Lane*, 696 F.3d at 818-19.
 10 Despite the request that a few of the terms be amended, the objector in Dkt. 443 closes
 11 with: “The Proposed Consent Decree is good. Many of the AICs that have read this
 12 document have expressed their appreciation of both Parties working together to achieve
 13 meaningful changes.” Dkt. 443 at 5.

14 **E. Other Filings From Class Members**

15 Other filed objections do not explicitly address the terms of the Consent Decree,
 16 but instead discuss issues that the Consent Decree is designed to ameliorate.

17 One class member discusses her untreated medical issues while at FCI Dublin that
 18 persist untreated at FMC Carswell including that she has suffered multiple injuries to her
 19 feet and legs that cause her serious pain, impact her ability to walk, was further injured by
 20 lack of medical treatment at FCI Dublin, and is not receiving proper medications at FMC
 21 Carswell. Dkt. 447 at 1-2. She also writes about the effect of her medical issues on her
 22 transfer experience. *Id.* Class Counsel appreciates and shares class members’ concerns
 23 about ongoing and unmet medical needs, which form the basis for many of the terms in
 24 the Consent Decree. Class Counsel previously raised concerns related to this class
 25 member in Class Counsel’s May 2025 memo to the Special Master and the current roster
 26 reflects a cleared medical alert, but pursuant to Paragraph 8 of the Consent Decree, the
 27 Monitor may reopen an alert if, based on sufficient proof, the alert should not have been
 28 closed. Dkt. 442-2 at ¶ 8.

1 The filing ends with a request from the Court to obtain a visa to stay in the United
 2 States because of what she has endured at FCI Dublin. Dkt. 447 at 3. Class Counsel
 3 understands the concerns of many noncitizen class members, including survivors of FCI
 4 Dublin staff abuse, who are vulnerable to deportation. However, neither BOP nor the
 5 Court has the authority to grant an immigration visa.³

6 Another class member writes about a humiliating and difficult search she
 7 experienced before leaving FCI Dublin where she was strip-searched multiple times
 8 while she was being transferred from Dublin during the closure process by four different
 9 officers. Dkt. 448 at 1-4. The class member also writes about her experience reporting
 10 this incident and the institutions' insufficient responses. *Id.* at 4-5. She describes
 11 harassment and retaliation at her current institution, alleging her restitution payment has
 12 been increased in retaliation. *Id.* at 5-6. The class member also writes about her
 13 experience with the FIT program and includes a request to be transferred to FCI Waseca
 14 and a request for a lower, more reasonable restitution payment. *Id.* at 6. Class Counsel
 15 appreciates these serious concerns, and the Consent Decree aims to address these very
 16 issues. Class Counsel has also been in contact with this class member and has repeatedly
 17 raised these issues to BOP Counsel and the Monitor. *See* Khabbaz Decl. ¶ 10.

18 Another class member pleads for her time credits back so she can be released and
 19 deported. Dkt. 457. She raises a concern shared by many noncitizen class members,
 20 related to a carveout in the First Step Act which states that noncitizens with final orders
 21 of removal are not eligible for FTCs or release to community placement, which has
 22 resulted in many immigrant class members losing up to a year of early release credits and
 23 community replacement referrals upon transfer to new facilities where staff more closely
 24 collaborate with the Department of Homeland Security (DHS). The filing also describes
 25 the trauma from FCI Dublin due to officers entering their quarters while sleeping. *Id.* at
 26 1. It describes the transfer experience, losing property, and fearing for their lives during a
 27

28 ³ Both the BOP and the Court have the authority to sign U visa certifications.

reckless bus ride. *Id.* It then goes on to detail the retaliation she faced at her subsequent institutions. *Id.* at 1-2. The objector also believes she is missing credits that would allow her to be released this year. *Id.* She filed for compassionate release with her sentencing judge, but due to mail issues at FCI Waseca, she is unsure if it was properly received. *Id.* at 2. This filing provides very real examples of the problems the Consent Decree aims to address. The Consent Decree provides a reporting process for staff abuse and retaliation, including retaliation based on immigration status. Dkt. 442-2, ¶¶ 58-67. The Monitor will review and report on class members’ release dates, FTCs, eligibility for community placement, and any issues with receiving or applying credits. *Id.* at ¶ 71.

Yet another class member’s filing details her experiences at BOP, including experiencing and reporting a PREA incident, medical neglect at FCI Dublin, a difficult transfer, and treatment at receiving institutions related to being a Dublin AIC. Dkt. 461 at 1. She also writes that she elected to do the FIT program in Spanish only to later learn that she was ineligible to receive time off for it. *Id.* at 1-2. She thanks Class Counsel, the Monitor, and Judge Gonzalez Rogers for their work on this case. *Id.* at 2. She requests to be able to stay in the country and work after her release. *Id.* She also describes BOP’s recent shift requiring AICs to pay for phone minutes. *Id.* at 3. She does not object to the Consent Decree.

F. Filing by Organizational Plaintiff

Organizational Plaintiff California Coalition for Women Prisoners (“CCWP”) filed a letter to the Court signaling their support for the Consent Decree and urging the Court to “approve—and just as importantly, enforce” the agreement. Dkt. 463 at 1. CCWP also notes “alarming reports of ongoing abuse, retaliation, and medical neglect against people transferred from Dublin,” and raises a number of ongoing concerns from their members regarding the scope of the Consent Decree, the ability to enforce terms, releases for survivors, and updates on BOP staff who engage in misconduct. *Id.* at 1-4. Class Counsel share many of CCWP’s concerns, and like CCWP believe that the Consent Decree is a crucial step toward protecting class members’ constitutional rights.

1 The Consent Decree applies to all class members and attaches at any institution
2 the class member is housed at during the monitoring term. The class definition is
3 currently based on the date of class certification, but Class Counsel has previously
4 indicated support for expanding the definition to include those who were at FCI Dublin
5 when the Complaint was filed, as well as victims of FCI Dublin staff sexual and physical
6 abuse. The Consent Decree is court-enforceable and includes a dispute resolution
7 process in the event differences in interpretation arise. Dkt. 442-2 at ¶¶ 111, 113, 114,
8 106. The Consent Decree requires the Monitor to report on the eligibility of class
9 members for community placement and requires the BOP to release those eligible as soon
10 as practicable. *Id.* at ¶¶ 71-72. It also requires the Monitor to report on the status of
11 compassionate release requests, which CCWP notes BOP previously failed to respond to.
12 *Id.* at ¶ 77; Dkt. 463 at 2. The Consent Decree further requires BOP to inform the
13 reporting class member, upon request, when the staff member is no longer working in
14 their unit, no longer employed at the facility, or if the staff member has been indicted or
15 convicted of sexual abuse at a BOP facility. Dkt. 442-2 at ¶ 64.

16 Class Counsel is in ongoing contact with CCWP regarding the Consent Decree
17 including implementation and enforcement and CCWP is “grateful for the steps that the
18 Court and the Special Master/Monitor have taken to safeguard the rights of people
19 formerly incarcerated at Dublin and to hold the [BOP] accountable,” and supports and
20 urges approval of the Consent Decree.

21 **G. Filings From Non-Class Members**

22 A number of individuals who are not class members filed responses to the Consent
23 Decree. Only one mentions specific concerns with the Consent Decree. Regardless,
24 Class Counsel summarize their filings below and are reaching out to the below
25 individuals and organization.

26 In Dkt. 451, the author details her personal experiences at FCI Dublin in February
27 2024 prior to her transfer, and notes that while she is changing her life for the better she
28 is still experiencing trauma from her time at FCI Dublin. She does not reference the

1 Consent Decree or any concerns with it.⁴ Class Counsel appreciates this objector's
 2 comments, and recognize the ongoing trauma that many people formerly incarcerated at
 3 FCI Dublin continue to endure.

4 Similarly, another person describes sexual harassment she experienced at FCI
 5 Dublin before she was transferred to FPC Phoenix and that she has submitted all the
 6 appropriate remedies but has not received any responses. Dkt. 458. She does not
 7 reference the Consent Decree or any concerns with it. Class Counsel appreciates this
 8 objector's comments and shares concerns about BOP's administrative remedy process.
 9 Class Counsel has reached out to this individual to get more details and offer resources if
 10 possible but she does not appear on any BOP-produced roster and does not appear to
 11 have been housed at FCI Dublin at the time this case was filed or after that point. *See*
 12 Khabbaz Decl. ¶ 6-7.

13 Dkt. 456 does not raise concerns with the Consent Decree, but rather seeks to
 14 enforce Court orders against the BOP. It alleges previous retaliatory transfers, issues
 15 with mail, loss of credits, and retaliation after reporting abuse by BOP staff. Dkt. 456 at
 16 1. It also raises concerns with the individual's current designation at an FTC and reports
 17 missing time credits. *Id.* To the extent that any class members face such issues in the
 18 future, the Consent Decree provides prospective relief. Class Counsel has mailed her a
 19 letter informing her that she is not a class member and have reached out to her personal
 20 attorney. *See* Khabbaz Decl. ¶ 4-5.

21 Family Violence Law Center ("FVLC"), a nonprofit organization that has
 22 provided services to survivors of FCI Dublin staff abuse through a partnership with the
 23 U.S. Attorney's Office, filed an objection outlining concerns about the Consent Decree,
 24 emphasizing the barriers they have faced in providing critical services to class members
 25 following their transfers. Dkt. 460. Class Counsel reviewed and has discussed FVLC's
 26

27 ⁴ Because this person was at FCI Dublin post-filing but was transferred prior to class
 28 certification, she is not a class member under the class definition in the Consent Decree.
See Khabbaz Decl. ¶ 8.

1 comments with FVLC leadership, and appreciates their concerns and expertise. *See*
2 Khabbaz Decl. ¶ 11-12. That said, FVLC is also not a class member in this litigation, and
3 as such, the objection should not be considered in the Court’s evaluation of fairness to the
4 class.

5 As to the concern in defining “Rape Crisis Centers” as only organizations with
6 active Memorandums of Understanding (MOUs) with BOP, the Consent Decree does not
7 prevent BOP from entering into additional MOUs with organizations like FVLC. If this
8 becomes an issue, it can be raised with BOP without any amendment to the Consent
9 Decree. As to the request for funding through the Consent Decree, Class Counsel
10 recognizes the value of the important work FVLC does with survivors and agree they
11 should be fairly compensated. However, the relief which FVLC seeks regarding payment
12 from the BOP cannot be achieved through a Consent Decree the provides relief to class
13 members based on the constitutional violations alleged in this Complaint. Further, the
14 claims in this case are for injunctive relief; there are no damages for the class-wide
15 claims. *See, supra*, Section IV.B.

16 **V. CONCLUSION**

17 For the foregoing reasons, the Parties respectfully request that this Court enter an
18 order granting final approval of the Consent Decree pursuant to Federal Rule of Civil
19 Procedure 23(e).

20
21 DATED: February 14, 2025

Respectfully submitted,

22 ROSEN BIEN GALVAN & GRUNFELD LLP

23
24 By: /s/ Luma Khabbaz

25 Luma Khabbaz

26 Attorneys for Plaintiffs