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14
 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION

18 AUDLEY BARRINGTON LYON, JR., et al.,
 on behalf of themselves and all others similarly
 19 situated,

20 Plaintiffs,

21 v.

22 UNITED STATES IMMIGRATION AND
 CUSTOMS ENFORCEMENT, et al.,

23 Defendants.

Case No.: 13-cv-05878-EMC

**UNOPPOSED NOTICE OF
 MOTION AND MOTION FOR
 (1) PRELIMINARY APPROVAL
 OF CLASS ACTION SETTLEMENT (2)
 ORDER DIRECTING NOTICE TO THE
 CLASS AND (3) ORDER SCHEDULING
 A FAIRNESS HEARING**

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1 **NOTICE OF MOTION**

2 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE THAT on June 30, 2016 at 1:30 p.m., or as soon thereafter as
4 counsel may be heard in the courtroom of the Honorable Edward M. Chen in the San Francisco
5 District Court Northern District of California, 450 Golden Gate Avenue, Courtroom 5 – 17th
6 Floor, Plaintiffs will, and hereby do, move under Federal Rules of Civil Procedure 23 for
7 preliminary approval of the settlement reached between Plaintiffs and Defendants. This motion is
8 based upon this Notice, the Memorandum of Points and Authorities and supporting declarations
9 and exhibits filed and served herewith, the pleadings and papers on file in this action, and upon
10 such argument and evidence as may be presented at any hearing on this motion. Defendants do
11 not oppose this motion.

12 **STATEMENT OF RELIEF SOUGHT**

13 Through this motion, Plaintiffs request an order:

- 14 (1) Granting preliminary approval of the settlement reached between Plaintiffs and
15 Defendants, attached as Exhibit 1 to the Declaration of Julia Harumi Mass, as fair,
16 reasonable, and adequate;
17 (2) Granting approval of the proposed notice to the Class and directing provision of
18 notice to the Class;
19 (3) Scheduling a Fairness Hearing to consider final approval of the settlement.
20

21 **STATEMENT OF ISSUES TO BE DECIDED – LOCAL RULE 7-4(a)(3)**

- 22 1. Should the settlement agreement between Plaintiffs and Defendants be granted
23 preliminary approval?
24 2. Should the Notice of Proposed Settlement (Exhibit B to the Agreement) be
25 provided to the Class as provided for in Section VII.A of the Agreement?
26 3. Should the Court schedule a final approval and fairness hearing, and for what
27 date?
28

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Plaintiffs Audley Barrington Lyon, Jr., Nancy Neria-Garcia, and José Astorga-Cervantes, on behalf of themselves and the certified class (“Class”) of “all current and future adult immigration detainees who are or will be held by ICE in Contra Costa County, Kern County, Sacramento County, or Yuba County,” and Defendants U.S. Immigration and Customs Enforcement (“ICE”), et al. have reached a settlement of the claims in this action (“Settlement”). *See* Declaration of Julia Harumi Mass in support of Motion for Preliminary Approval (“Mass Decl.”), Exhibit 1 (“Agreement”). Through this unopposed motion, Plaintiffs seek preliminary approval of the Settlement and an order directing notice to the Class and scheduling a Fairness Hearing, as required by Federal Rule of Civil Procedure 23(e).

Plaintiffs’ complaint sought declaratory and injunctive relief on behalf of the Class, asserting that the telephone access in the immigration detention facilities in which Class Members were held was insufficient to satisfy constitutional and statutory requirements with respect to their immigration cases and requests for release from detention. The proposed Settlement, obtained after extensive arms-length negotiations, provides substantial relief to the Class by obligating ICE to substantially expand access to free and direct calling and to private calling options at the four facilities where Plaintiffs Class Members are held. For the reasons described below, named Plaintiffs and Class Counsel wholeheartedly recommend this Settlement as in the best interests of the class and request preliminary approval.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Court is well acquainted with the facts and legal claims at issue in this case, and they will not be repeated in detail here. *See* Summary Judgment Order (Dkt. 167) at 3-16. Plaintiffs contend that the Class—individuals in immigration detention in certain California counties—are denied the access to telephones they need to fairly defend against removal charges, seek relief or protection from removal, and seek release from detention.¹ Plaintiffs alleged that severe

¹ Class Members are housed in the West County Detention Facility (“Contra Costa”) in Contra Costa County, the Yuba County Jail (“Yuba”), Rio Cosumnes Correctional Center (“RCCC”) in

1 restrictions on access to the telephones denied the Class due process guaranteed by the Fifth
2 Amendment, the right to petition the government for redress of grievances guaranteed by the First
3 Amendment, and their statutory rights to counsel and to present evidence in removal proceedings.
4 *See* 8 U.S.C. § 1229a(b)(4)(A-B).

5 The parties have vigorously litigated this action for nearly two and a half years. *See*
6 Complaint (Dkt. 1) (filed December 19, 2013). The Court originally certified a class on April 16,
7 2014, of immigration detainees held by ICE in Contra Costa, Sacramento, and Yuba Counties.
8 *See* Order Granting Motion for Class Certification (Dkt. 31) When Defendants contracted with a
9 new detention facility in Kern County and began to transfer detainees from the existing three
10 counties into this new facility, Plaintiffs successfully moved to supplement their complaint and
11 amend the class definition to include immigrants detained in Kern County. *See* Order Granting
12 Plaintiffs' Motion to Supplement the Complaint and Amend the Class Definition (Dkt. 98).

13 The Parties have engaged in extensive and thorough fact and expert witness discovery.
14 Mass Decl. ¶ 5. From July 2014 to November 2015, Plaintiffs' counsel took the depositions of 19
15 individuals, including local and headquarters-level ICE officials, administrators at the detention
16 facilities, and telephone service providers.² Plaintiffs served four sets of document requests, 25
17 interrogatories, and 235 requests for admissions on Defendants, and conducted a Rule 34
18 inspection of relevant areas of the Facilities. *Id.* Plaintiffs served document subpoenas on third
19 party Facility witnesses and telephone service providers. Plaintiffs' counsel also responded to
20 Defendants' requests for admissions, requests for production of documents, and interrogatories
21 directed to the named Plaintiffs and to Defendants' document subpoenas served on two of
22 Plaintiffs' three expert witnesses. Plaintiffs defended the depositions of the named Plaintiffs,
23 several class member and attorney fact witnesses, and two expert witnesses. *Id.* Plaintiffs also
24 served written discovery on Defendants' original expert witness and deposed and served written

25 Sacramento County, and Mesa Verde Detention Facility ("Mesa Verde") in Kern County
26 (collectively, "Facilities").

27 ² Plaintiffs also deposed their own witness, J.H., to preserve his testimony for trial on March 23,
28 2016.

1 discovery on Defendants' substitute expert witness. *Id.*

2 Throughout the litigation, Plaintiffs engaged in regular communications with Class
3 Members to identify potential witnesses for trial and to track changes to telephone access for
4 Class Members during the course of litigation. Mass Decl. ¶ 6. Class counsel maintains a free
5 phone line from the detention facilities for Class Members and regularly communicated with
6 Class Members by phone, mail, and in-person visits. *Id.* On several occasions, counsel made day-
7 long visits to the Facilities to interview Class Members. During these interviews, counsel
8 investigated the level of telephone access provided, its impact on class members' claims, and
9 what would facilitate class members' access to counsel and ability to gather evidence and petition
10 the government. *Id.* Through this investigation Plaintiffs' counsel identified 30 class member
11 witnesses and 13 immigration attorney witnesses. Counsel also identified and retained three
12 expert witnesses. Mass Decl. ¶¶ 6-8.

13 Following extensive fact and expert discovery, the parties briefed and argued cross-
14 motions for summary judgment and the Court issued a decision on March 18, 2016, granting
15 Defendants' motion for summary judgment in part, denying it in part, and denying Plaintiffs'
16 motion. (Dkt. 167). On March 22, 2016, Plaintiffs requested leave to file a motion for
17 reconsideration of one aspect of the Court's Order on Summary Judgment, namely the Court's
18 application of *Turner v. Safley*, 82 U.S. 78 (1987), to Plaintiffs' due process claims. (Dkt. 175).
19 The motion was later denied without prejudice in light of this settlement. (Dkt. 260).

20 On June 17, 2014, the parties engaged in the first of a series of settlement conferences
21 before Magistrate Judge Donna M. Ryu. Civil Conference Minute Order (Dkt. 43). During this
22 first round of settlement talks, the parties agreed to stay discovery from August 2014 to
23 October 2014 to allow them to focus exclusively on settlement discussions. Joint Case
24 Management Statement (Dkt. 72). The parties jointly conducted in-person visits to the detention
25 facilities with Judge Ryu and counsel for both parties, and Plaintiffs' counsel separately
26 conducted three days of interviews with class members on their telephone access needs and
27 positions on settlement. Mass Decl. ¶ 4. This effort further informed Plaintiffs' counsel of the
28

1 alternatives that were needed to effectuate the asserted rights of the Class, as well as alternatives
2 that would be inadequate or problematic for members of the Class. *Id.* Although the first round of
3 settlement talks stalled in February 2015, the parties again attempted to resolve the case in the
4 weeks before trial was set to begin. Mass Decl. ¶¶ 4, 9. This effort included an in-person
5 settlement conference with Judge Ryu on May 2, 2016, and several telephonic conferences with
6 Defendants' counsel and Judges Ryu and Beeler between May 2 and May 16. One week before
7 trial, the parties reached a detailed agreement in principle that provides substantial relief to the
8 Class. The parties then added further detail to the agreement in principle and signed the final
9 Agreement submitted as Exhibit 1 to the Declaration of Julia Harumi Mass in support of this
10 Motion. Mass Decl. ¶ 9, 10.

11 **III. SUMMARY OF SETTLEMENT TERMS**

12 The Settlement resolves all claims that Plaintiffs asserted on behalf of the Class. There
13 are no differences between the class represented in the Settlement and the class certified by this
14 Court for litigation purposes (Dkt. 31, 98).

15 In return for Plaintiffs' release of claims, the Settlement provides substantially increased
16 telephone access for members of the Class by requiring that ICE modify its contracts with the
17 four Facilities to retain certain existing communication options in the Facilities—such as Phone
18 Rooms created after this action was filed—and to institute a number of critical changes. Those
19 critical changes include expanding free calling from Housing Unit Phones and Phone Rooms,
20 eliminating technical barriers for certain calls, adding privacy protections for calls made inside
21 housing units, appointing facilitators at each Facility to coordinate legal calls from enclosed
22 Phone Rooms in a timely manner. The Settlement also requires ICE to ensure the delivery of
23 legal messages in a timely manner, and to make additional accommodations to facilitate legal
24 calls for indigent detainees and language minorities. The Settlement includes significant
25 monitoring and enforcement provisions and has a term of five years.

1 **A. Telephone Access to Be Provided to Class Members.**

2 **1. Improvements to the Housing Unit Phones.**

3 Plaintiffs alleged that the Housing Unit Phones are inadequate because (1) calls from the
4 three county Facilities (Contra Costa, Sacramento, and Yuba) are unreasonably and prohibitively
5 expensive; (2) at all Facilities, the telephones are located in common areas of the housing unit
6 where conversations can easily be overheard by other detainees, facility staff, and (at the county
7 facilities) prisoners in criminal justice custody; (3) at all Facilities, calls require “positive
8 acceptance” from the recipient, which automatically blocks any attempts to leave voicemails or
9 dial extensions; (4) at Yuba and RCCC, calls automatically cut off after 15 minutes (extended to
10 20 minutes after the case was filed); and (5) in all Contra Costa housing units and some housing
11 units at other Facilities, class members are prevented from using the telephones except during
12 limited out-of-cell time and cannot reliably access the telephones during business hours. *See*
13 *Complaint* (Dkt. 1) at ¶¶ 41-47; *Supplemental Complaint* (Dkt. 99) at ¶¶ 49-52.

14 The Settlement addresses each of these limitations. First, the three county facilities will
15 use technology from their existing telephone contractors to add free, unmonitored speed-dial
16 numbers with no “positive acceptance” requirement for government agencies (such as police,
17 public defenders, and state and federal courts), rehabilitation centers, and attorneys who provide
18 at least some pro bono representation and agree to be added. Agreement § III.A.1. At Mesa
19 Verde, the same numbers will be added to a database to ensure that calls to those numbers are
20 unmonitored and do not require positive acceptance.³ Agreement, § III.A.2. In addition, at all
21 four facilities, attorneys who do not provide pro bono services can request to be added to a
22 database of paid but unmonitored numbers without a positive acceptance requirement, thus
23 allowing Class Members to have unmonitored calls with and navigate automated answering
24 systems to leave voicemail messages for attorneys. Agreement, § III.A.2.

25 ³ The Settlement also requires ICE to make these calls free to the caller and call recipient if
26 technically feasible to do so, but in any event phone rates at Mesa Verde are much lower than at
27 the county facilities and Mesa Verde does not charge per-connection fees, which makes the cost
28 of calls a much smaller barrier. The Settlement further requires ICE to ensure accommodations in
the form of phone credit or extra phone room time to indigent members of the class.

1 In response to Plaintiffs' privacy concerns, Defendants will install enclosed phone booths
2 in the housing units that prevent others from overhearing class members' legal calls. Agreement,
3 § III.C.

4 In response to Plaintiffs' concerns about physical access, Housing Unit Phones will be
5 made available to Class Members during facility waking hours at all times other than count and
6 lockdown. Agreement, § III.D. In particular, the Settlement specifies that "free time" restrictions
7 at Contra Costa cannot defeat Class Member access to telephones. Agreement, § I.W. Class
8 Members that are physically restricted from accessing the Housing Unit Phones (such as
9 individuals in segregation) shall receive access to a phone booth within two waking hours of
10 making the request.⁴ Agreement, § D.2. Automatic cut-offs for calls from Yuba and RCCC will
11 be extended to forty minutes and automatic cut-offs for calls on ICE's Pro Bono Platform will be
12 extended to 60 minutes in all Facilities. Agreement, § III.B.

13 **2. Improvements to the Private Phone Rooms.**

14 In their Complaint, Plaintiffs alleged that there was no way to make a private telephone
15 call in the Facilities. *See* Complaint (Dkt. 1) at ¶¶ 2, 52. After Plaintiffs filed this action,
16 Defendants made certain rooms at Yuba, Contra Costa, and the newly-opened Mesa Verde
17 available for class members to make free, purportedly direct calls for their immigration cases.
18 *See* Supplemental Complaint, (Dkt. 99) at ¶¶ 49-51, 57-58. Plaintiffs alleged in response,
19 however, that no Phone Room existed at RCCC, Class Members experienced unreasonably long
20 delays in obtaining access to the Phone Rooms that existed, access to Phone Rooms was limited
21 to attorney calls only, and the Yuba Phone Room lacked privacy and required positive
22 acceptance, among other concerns. *Id.* Plaintiffs further contended Defendants had not
23 committed to continue providing access to Phone Rooms and could cease providing the Phone
24 Rooms access at any time.

25 Under the Settlement, all the Facilities, including RCCC, will provide a Phone Room or

26 ⁴ For Class Members in disciplinary segregation where telephone access restrictions are imposed
27 as discipline, this provision applies only to personal and family emergencies, legal calls, and other
28 calls based on compelling need. Agreement, § III.D.3.

1 equivalent private space for legal calls, including non-attorney calls to gather evidence or contact
2 friends or family assisting with the Class Member's immigration case when the Housing Room
3 Phones have not sufficed. Agreement, §§ II.O, III.E.1. Phone Room calls will not automatically
4 cut off and will not require positive acceptance. *Id.* Calls will be scheduled for thirty minutes,
5 but longer calls will be accommodated upon request. Agreement, § III.E.6. Each Facility will
6 have a facilitator whose primary responsibility is responding to requests for legal calls, including
7 requests by attorneys to schedule calls in the Facility Phone Room. Agreement, § III.G. The
8 Facilities will grant Phone Room requests within 24 hours, unless a longer delay is justified by
9 extraordinary circumstances. Agreement, § III.E.5. Although calls from the Phone Room are
10 expected to remain free, if demand overwhelms availability, ICE may charge non-indigent class
11 members a nominal fee to use the Phone Room and may impose time limits of no shorter than
12 twenty minutes based on demonstrated need in individual circumstances. Agreement, § III.E.6.

13 **3. Messaging and Three-Way Calling.**

14 Plaintiffs' claims also highlighted the difficulties that attorneys and others face in
15 contacting Class Members at the Facilities, due to the combination of the phone systems' inherent
16 inability to accept incoming calls and Plaintiffs' allegations that the Facilities' messaging systems
17 are unavailable or unreliable. Plaintiffs emphasized how this impacts Class Members' ability to
18 represent themselves or communicate with counsel. *See* Supplemental Complaint (Dkt. 99) at ¶
19 52. The Settlement ensures that, at a minimum, messages related to a Class Member's legal case
20 will be delivered within 24 hours and emergency messages will be delivered as soon as possible,
21 but in no case more than six waking hours after receipt. Agreement § III.F.

22 Plaintiffs also raised concerns that restrictions on three-way calling prevent Class
23 Members from being able to accommodate an interpreter or to facilitate a conference call between
24 a Class Member's attorney and witness or family member. These issues will also be addressed
25 under the Settlement. Upon request based on a stated need, ICE shall facilitate three-way calls in
26 the Facility where the Class Member is housed or at the nearest ICE field office if the Facility
27 cannot accommodate three-way calling. Settlement Agreement § III.J.

1 4. **Notice to Class Members of Telephone Access Options; International**
2 **Calls and Language Accommodations.**

3 Plaintiffs alleged existing telephone systems were confusing and Facilities and ICE failed
4 to effectively notify Class Members of options to request legal calls. *See* Pls.' Mot. for Summary
5 Adjudication (Dkt. 120) at 17. This problem is heightened for Class Members who cannot read
6 English or Spanish. *Id.* at 18.

7 The Settlement uses multiple means to improve the instructions for all Class Members and
8 make them more accessible to language minorities. Under the Settlement, Defendants will post
9 detailed instructions for all Class Member telephone access options in English and Spanish.
10 Agreement, § K.2. They will also post a notice in the 10 written languages most commonly used
11 in the San Francisco Immigration Court directing Class Members to ask for interpretation of the
12 instructions if needed. Agreement, § L.2. Additionally, Plaintiffs' counsel have agreed to produce
13 a video that complies with the Americans with Disabilities Act to orient class members to
14 telephone access and messaging options. The Facilities shall show this video regularly, such that
15 any newly arrived Class Member will have an opportunity to view the video within one week.
16 Agreement, § K.3.

17 The Settlement also improves access for international calls and calls to non-English
18 speakers. Any Class Member who is unable to complete a call from the Housing Unit Phone due
19 to the call recipient's difficulty understanding the recorded prompts from these phones will have
20 access to a Facility Phone Room. Agreement, § L.3. ICE will accommodate Class Member
21 requests for international calls for legal purposes within 72 hours, or sooner if such calls can be
22 made from the Facility Phone Rooms. Agreement, § I.4. Although such calls will generally take
23 place during Facility waking hours, ICE also agrees to make reasonable accommodations outside
24 of those hours based on compelling need, such as when the Facility waking hours do not
25 correspond to business hours in the country a Class Member seeks to call. Agreement, § I.5.

26 **B. Monitoring and Enforcement Provisions.**

27 The Settlement contains provisions to ensure the implementation of its provisions and
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1 requires Defendants to regularly produce records and other documents, as well as permit class
2 counsel to access the facilities to interview class members annually. The Court will retain
3 jurisdiction for enforcement purposes for five years from the Effective Date of the Settlement.
4 *See* Agreement § VI. Before invoking the Court’s jurisdiction, the parties must participate in
5 informal and formal dispute resolution. *Id.* Should the parties need to invoke the Court’s
6 jurisdiction to enforce the Settlement, the parties agreed that the Court in such a proceeding will
7 have the power to award such relief and issue such judgments as the Court deems proper and
8 appropriate. *Id.*

9 Additionally, the Settlement strengthens ICE’s internal monitoring of compliance with its
10 detention standards, by requiring that the agency’s weekly and annual auditing documents be
11 amended to specifically evaluate compliance with the ICE detention standards that address the
12 issues in this case. *See* Settlement Agreement § IV.D.

13 **C. Attorneys’ Fees and Costs.**

14 As part of the Settlement, Defendants have agreed to pay \$405,000 to Class Counsel to
15 settle claims for attorneys’ fees and costs incurred in this litigation. *See* Agreement § XI.
16 Plaintiffs plan to submit a fee motion that will be available to Class Members upon the Court’s
17 preliminary approval of the Settlement, as required by Federal Rule of Civil Procedure 23(h)(1).
18 As will be set forth in detail in that fee motion, the negotiated amount is much smaller than
19 Plaintiffs’ lodestar and is well-justified given the work that went into this case and the results
20 achieved through the Settlement. *See* Mass Decl. ¶ 12.

21 **D. Release of Claims.**

22 Under the Settlement, Plaintiffs have agreed to release the claims that were brought in this
23 case. *See* Settlement Agreement §§ I.G (defining “Settled Claims”). The release of the Settled
24 Claims includes any claims for declaratory or injunctive relief that could have been brought on
25 behalf of the class prior to the effective date of the settlement. *See* Settlement Agreement § II.A
26 (defining release). Claims that accrue after the Settlement term are unaffected. *See id.*
27 Additionally, any individual damages claims and arguments made in immigration proceedings by
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1 anyone other than the Named Plaintiffs are unaffected. Settlement Agreement § II.B (clarifying
2 certain categories of likely concern to Class Members). *See also Pride v. Correa*, 719 F.3d 1130,
3 1137-38 (9th Cir. 2013) (independent claim for denial of medical treatment may proceed because
4 it is not duplicative of or addressed conclusively by class action settlement governing entire
5 system of prison medical care); *Krug v. Lutz*, 329 F.3d 692, 696 (9th Cir. 2003) (individual
6 defendant is permitted to litigate an “independent constitutional action” where the “specific
7 issues” raised “[have] not already been addressed conclusively by the decrees”); *Crawford v. Bell*,
8 599 F.2d 890, 893 (9th Cir. 1979) (where individual complaint overlapped with class action, it
9 was error for district court to dismiss “those allegations of [the individual] complaint which go
10 beyond the allegations and relief prayed for in [the class action]”).

11 **IV. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED**

12 “If the proposal would bind class members, the court may approve it only after a hearing
13 and on finding that it is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). The Ninth
14 Circuit sets forth the following factors for a district court to consider in determining the fairness
15 of a settlement at *final* approval: (1) the strength of the plaintiffs’ case; (2) the risk, expense,
16 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
17 throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed
18 and the stage of the proceedings; (6) the experience and views of the counsel; (7) the presence of
19 a governmental participant; and (8) the reaction of the class members to the proposed settlement.
20 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); *accord Churchill Vill., L.L.C. v.*
21 *Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). These factors are “non-exclusive” and the court
22 should only consider the relevant factors. *Churchill Vill.*, 361 F.3d at 576 n.7.

23 At *preliminary* approval, the court “need only ‘determine whether the proposed settlement
24 is within the range of possible approval.’” *Murillo v. Pac. Gas & Elec. Co.*, 266 F.R.D. 468, 479
25 (E.D. Cal. 2010) (quoting *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982)). Further,
26 “strong judicial policy . . . favors settlements.” *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,
27 1276 (9th Cir. 1992). Here, the proposed Settlement provides substantial relief addressing all of
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1 the telephone access limitations that Plaintiffs complained of in this action and meets the relevant
 2 *Hanlon* factors. The Settlement, therefore, is “fundamentally fair, adequate, and reasonable” and
 3 well within the range of possible approval. *Hanlon*, 150 F.3d 1011 at 1026; Fed. R. Civ. P. 23(e).

4 **A. The Relief Provided by the Settlement Compared to the Strength of Plaintiffs’**
 5 **Case and Risk of Further Litigation.**

6 Although Plaintiffs believe they would likely have prevailed at trial on their procedural
 7 due process and First Amendment claims, Plaintiffs move for preliminary approval of the
 8 Settlement because it provides near-total relief to Class Members and allows the parties to avoid
 9 the expense and inherent uncertainties of trial.

10 The strength of Plaintiffs’ claims derives from the weighty interests all individuals have in
 11 avoiding deportation and remaining free from prolonged detention. To support these claims,
 12 Plaintiffs planned to present evidence of the significant obstacles to communication Class
 13 Members experience in the Facilities and the impact of those obstacles on Class Members’ ability
 14 to communicate with counsel and gather evidence for their immigration cases and requests for
 15 release on bond. Plaintiffs contend that many of the telephone access restrictions in the Facilities
 16 violated Defendants’ own detention standards and were prepared to present expert witness
 17 testimony that the restrictions were not justified by legitimate government interests. *See*, Mass
 18 Decl. ¶ 13; *see also, e.g.*, Summary Judgment Order (Dkt. 167) at 38-40; Exh. A to Berg Decl.
 19 (Dkt. 120-23) at 17-29.⁵

20 Notwithstanding Plaintiffs’ confidence in the facts, ongoing uncertainty about the
 21 governing legal standard added an element of risk. This case advances a novel legal theory. In
 22 its Order on the parties’ Motions for Summary Judgment, the Court ruled that both the *Mathews*
 23 *v. Eldridge* balancing test and the *Turner v. Safley* test governed Plaintiffs’ due process claims.

24 _____
 25 ⁵ In agreeing not to oppose the instant motion, Defendants represented to Plaintiffs that they
 26 disagree with Plaintiffs’ analysis of the strength of their claims and of their evidentiary
 27 presentation at trial, and in particular were confident in their likelihood of successfully defending
 28 against Plaintiffs’ claims at trial or on appeal. Nevertheless, Defendants recognize the cost of a
 lengthy trial, that the outcome of trial is uncertain, and the benefits of resolution through
 settlement.

1 Although the Court granted Plaintiffs’ request for leave to file a motion for reconsideration of this
 2 aspect of the Order, that motion remained pending before trial and limited guidance available
 3 from existing case law made it difficult to predict how the Court would ultimately weigh any
 4 credible governmental interests against the Plaintiffs’ interests.⁶

5 Further, the Settlement provides substantial relief addressing all of the telephone access
 6 limitations that Plaintiffs challenged. Mass Decl. ¶ 14. Plaintiffs maintain that before this action
 7 was filed, Class Members were held in three county jails with *no* private calling options. The
 8 Housing Unit Phones are expensive, have technical obstacles that largely prevent Class Members
 9 from dialing extensions or leaving voicemail messages, and, with few exceptions, paid calls from
 10 those phones are recorded and monitored. Contra Costa’s Housing Unit Phones allow only
 11 collect calls, preventing Class Member from calling anyone—including government agencies—
 12 who did not accept the charges for calls identified as coming from “inmates” of the Facility.⁷ See
 13 Complaint (Dkt. 1) at ¶¶ 41-47. Under the Settlement, the expanded capabilities for Housing Unit
 14 Phones will provide Plaintiffs with greatly improved access to free, private, and direct calling to
 15 attorneys and to government agencies and courts that were previously out of reach. In addition,
 16 the access to free, direct, unmonitored calls from Phone Rooms that were installed after Plaintiffs
 17 filed this action will be significantly expanded to include legal calls to non-attorneys—a vitally
 18 important capability. Requests to use the rooms will be granted within firmly-established time
 19 frames, the technical deficiencies of the Phone Room in Yuba will be eliminated, and privacy for
 20 Phone Room calls will be assured at Yuba and RCCC, which have not provided truly private calls
 21 even through the alternatives that were added in response to this litigation. Thus, although

22 _____
 23 ⁶ Plaintiffs’ motion for reconsideration argued that the *Mathews* test is flexible enough to consider
 24 the “function involved” and give any deference owed detention center administrators in the
 25 application of its balancing test. See *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). See
 26 Plaintiffs’ Motion to Reconsider (Dkt. 175). The motion was never resolved on the merits, but
 27 rather was denied without prejudice in light of this proposed settlement. See Dkt. 260.

28 ⁷ There were two exceptions for this system at the time the lawsuit was filed: ICE’s Free Call
 Platform, which Plaintiffs maintain is difficult to use and provided access to only a small group of
 overburdened non-profits who were unable to represent most Class Members, and county lines
 that to local offices relevant to criminal pretrial detainees such as the county public defender. *Id.*;
 Joint Supplemental Statement of Amended Undisputed Facts (Dkt. 237) ¶¶ 69, 98, and 124.

1 Plaintiffs believe they were likely to succeed on the merits, the Settlement provides near-
2 complete relief to the Class and negotiation of a settlement in this manner allowed Plaintiffs to
3 shape the nature and substance of the relevant policies, as well as to secure robust monitoring to
4 ensure compliance with the terms of the Settlement. As such, this relief is in the best interests of
5 the Class, particularly given the scope and detail of the relief provided.

6 Moreover, even if Plaintiffs had achieved the same relief through a trial, it is likely that
7 the relief will be implemented more quickly through this Settlement than through an injunction.
8 Had Plaintiffs prevailed at trial, the Court presumably would have given Defendants the
9 opportunity to respond with an implementation plan, followed by objections and arguments from
10 Plaintiffs, with any disagreements resolved by the Court. *See Lewis v. Casey*, 518 U.S. 343, 362-
11 63 (1996) (approving of such a process). Depending on the nature and extent of such
12 disagreements, this process could be lengthy. Additionally, Defendants would have the right to
13 appeal an adverse final order, and any such appeal would further delay the date on which the
14 Class would achieve relief.

15 Further, the parties agree that it would be expensive and time-consuming to litigate this
16 case through a lengthy trial, that the outcome of a trial is uncertain, and that resolution of this
17 action through settlement is appropriate. The parties thus recognize that there was much more to
18 be gained through reasonable settlement discussions than through protracted litigation, trial, and
19 possible appeal.

20 **The Settlement Is the Product of Serious, Informed, Non-Collusive**
21 **Negotiations Conducted by Experienced Class Counsel and with the**
22 **Participation of Magistrate Judges Ryu and Beeler.**

23 Where a “proposed settlement appears to be the product of serious, informed, non-
24 collusive negotiations, has no obvious deficiencies, does not improperly grant preferential
25 treatment to class representatives or segments of the class and falls within the reasonable range of
26 approval, preliminary approval is granted.” *Bourlas v. Davis Law Assocs.*, 237 F.R.D. 345, 355
27 (E.D.N.Y. 2006) (internal citations omitted). Further, the Ninth Circuit has recognized that

1 “[p]arties represented by competent counsel are better positioned than courts to produce a
2 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enters.*
3 *Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). “The weight accorded to the recommendation of
4 counsel is dependent on a variety of factors; namely, length of involvement in the litigation,
5 competence, experience in the particular type of litigation, and the amount of discovery
6 completed. Usually, a consideration of the criteria involved leads the court to the conclusion that
7 the recommendation of counsel is entitled to great weight following arm’s-length settlement
8 negotiations.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* §11:47 (4th ed.
9 2002).

10 This Court has already found that Plaintiffs’ counsel is sufficiently experienced and
11 suitable to represent the class. *See* Order Granting Class Certification (Dkt. 31) at 10.⁸ Counsel
12 and the Named Plaintiffs have been involved in active, adversarial litigation for nearly 2.5 years
13 (except for Named Plaintiff Neria-Garcia, who became a Named Plaintiff in July 2015). During
14 this time, counsel for both parties had two rounds of settlement negotiations, the first from August
15 2014 to February 2015 and the second from March 2016 to May 2016. In the second round of
16 negotiations, the parties convened for an all-day settlement conference with Magistrate Judge
17 Ryu, followed by numerous additional telephonic conferences and email discussions. Mass Decl.
18 ¶ 9. During those settlement conferences, the parties discussed in detail every element of the
19 Settlement and considered alternative proposals, before arriving at the terms of the present
20 settlement. *Id.* Prior to arriving at the Settlement, Class Counsel also completed extensive and
21 thorough discovery and were prepared to go to trial on May 23, 2016---one week before the
22 principles of the Settlement were finally agreed upon by both parties. Class Counsel was also in
23 frequent and regular communication with class members during both rounds of settlement

24 ⁸ The Court’s Order Granting Plaintiffs’ Motion for Class Certification found attorneys from the
25 ACLU of Northern California and Orrick to be adequate, but did not explicitly appoint Class
26 Counsel. *See* Order Granting Plaintiffs’ Motion for Class Certification (Dkt. 31) at 10. For these
27 reasons, and for the purpose of including attorneys from the ACLU National Prison Project and
28 Van Der Hout, Brigagliano & Nightingale (who had not appeared as attorneys for Plaintiffs at the
time of the original class certification motion) as Class Counsel, Plaintiffs concurrently file an
Administrative Motion to Appoint Class Counsel.

1 negotiations. *See* Mass Decl. ¶¶ 4, 9.

2 In light of the fact that Class Counsel wholeheartedly recommends this settlement after
3 years of active, adversarial litigation and complete discovery, there is simply no evidence “to
4 suggest that the settlement was negotiated in haste or in the absence of information illuminating
5 the value of plaintiffs’ claims” and thus the decision to settle was unreasonable. *Hanlon*,
6 150 F.3d at 1027. The sheer amount of time and effort that counsel for both parties put into
7 settlement negotiations (and litigating the case), in addition to the mediation efforts of Judges Ryu
8 and Beeler, demonstrates that counsels’ recommendation of the settlement is entitled to great
9 weight.

10 **C. The Settlement Is Fair Because It Establishes a Baseline Level of Access for**
11 **All Class Members.**

12 In terms of fairness among the Class Members, it is true that the Settlement’s provisions
13 vary slightly by facility. *See* Agreement at III.A.2 (Mesa Verde free call database will be
14 provided only if technologically feasible); B.1 (extending automatic cut-offs at Yuba and RCCC
15 to 40 minutes); C.4 (providing different numbers of phone booths at each Facility based on the
16 need/layout at each facility); D.2 and 3 (Class Members in segregation and other restricted
17 housing will be able to access phone booths within two hours of request, rather than all waking
18 hours and distinctions for certain Class Members in disciplinary segregation); E.2 (RCCC shall
19 create a Phone Room or other enclosed private space for legal calls); F.1 and F.2 (Mesa Verde
20 shall continue to deliver messages three times per day, while Yuba, RCCC, and Contra Costa
21 shall deliver messages within 24 hours unless urgent).

22 These variations reflect various practical obstacles, including the different physical plants
23 of the Facilities and differences in the security needs for Class Members housed in segregation
24 compared to those housed in general population units. Because Plaintiffs’ asserted rights to
25 telephone access are measured against legitimate government interests, any injunctive relief
26 ordered by a court would also need to take different operational and security concerns into
27 consideration. Further, despite these slight differences, the Settlement provides a baseline level

1 of access to *all* class members through expanded pro bono lines, phone booths, and Phone
2 Rooms. All Facilities will accommodate indigent detainees with 30 minutes of phone credit or
3 extra Phone Room access upon request. Agreement, § III.H. At all Facilities, Class Members will
4 be able to make unmonitored legal calls without being overheard by other detainees or staff
5 within at least 24 hours of requesting access to a Phone Room. Agreement, § III.E. Similarly, all
6 Facilities will deliver non-urgent legal messages within 24 hours and urgent attorney messages
7 within at least six waking hours, absent extraordinary circumstances. Agreement, § III.F.

8 **D. Presence of Government Participants.**

9 Defendants are all governmental officials sued in their official capacities and are using
10 limited public resources. This Settlement preserves those public resources by rendering further
11 litigation unnecessary, properly balances the concerns of the Department of Homeland Security
12 and ICE with the interests of the Class, avoids the time and expense of further litigation, and
13 results in a benefit to the public as a whole.

14 **E. Reaction of Class Members to the Settlement.**

15 Class Counsel will discuss this factor further in the motion for final approval. Named
16 Plaintiffs have been apprised of the terms of the Settlement and approve of the Settlement. *See*
17 Mass Decl. ¶ 11; and Declaration of Audley Barrington Lyon, Jr., Declaration of José Elizandro
18 Astorga-Cervantes, and Declaration of Nancy Neria-Garcia in support of Plaintiffs' Motion for
19 Preliminary Approval, filed herewith.

20 **V. THE COURT SHOULD APPROVE THE CLASS NOTICE AND NOTICE PLAN**
21 **UNDER RULE 23(E)(1)**

22 Rule 23(e)(1) of the Federal Rules of Civil Procedure requires that, prior to final approval
23 of a class settlement, “[t]he court must direct to class members the best notice that is practicable
24 under the circumstances,” and notice to class members must be “clearly and concisely state[d] in
25 plain, easily understood language.” Fed. R. Civ. P. 23(c)(2)(B). “Notice is satisfactory if it
26 ‘generally describes the terms of the settlement in sufficient detail to alert those with adverse
27 viewpoints to investigate and to come forward and be heard.’” *Churchill Vill., LLC*, 361 F.3d at
28

1 575 (quoting *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir. 1980)). The
2 proposed Class Notice and Notice Plan accomplish this. See * at VII (Notice Plan); Ex. * to the
3 Settlement (proposed notice). The Class Notice provides a summary description of the case and
4 Settlement, as well as the Class definition, in plain language readable by laypersons. The
5 headings are in bold and plainly describe the different topics covered by the Notice. A summary
6 of the telephone access to be provided is listed in bullet points. Class Members who wish to read
7 a complete copy of the Agreement or Plaintiffs' Motion for Attorneys' Fees may request copies
8 from ICE agents that regularly visit the Facilities or by contacting Class Counsel by telephone or
9 mail.

10 The proposed notice plan is also reasonably calculated to reach current class members.
11 See Fed. R. Civ. P. 23(e)(1); Settlement Agreement § VII. In similar cases involving prisoners
12 and detainees, courts have held that providing notice by postings in the detention facilities,
13 postings on government websites, and dissemination through organizations that work with class
14 members is sufficient when supplemented by hand delivery for certain subsets of the class, and
15 that individual mailed notice to the entire class is not required. See, e.g., *Van Horn v. Trickey*,
16 840 F.2d 604, 606 (8th Cir. 1988) (holding that flyers posted on the walls at correctional facility
17 was sufficient notice); *Alfaro-Garcia v. Johnson*, No. 4:14-cv-01775-YCR (N.D. Cal. Aug. 20,
18 2015) (approving notice to immigration detainee class by posting notice in detention facilities
19 where class members may be housed and on websites of government agency defendant and class
20 counsel organizations and by distributing to network of community-based and non-profit
21 organizations that provide advice and assistance to immigrants); *Hall v. County of Fresno*, No.
22 1:11-cv-02047-LJO-BAM, 2015 WL 5916741, at *3, *8 (E.D. Cal. Oct. 7, 2015) (approving
23 notice to prisoner class by posting notice in English and Spanish in all housing units and hand-
24 delivering to prisoners in lockdown and restricted housing units); *Hernandez v. County of*
25 *Monterey*, No. 5:13-cv-002354-PSG (N.D. Cal. May 15, 2015) (approving notice to prisoner class
26 by posting notice throughout jail, providing copies in law library, providing individual copies
27 upon prisoner request, and providing by mail or hand-delivery to prisoners in satellite facilities).

1 Similar to the notice plans approved in *Van Horn, Hall, Hernandez, and Alfaro-Garcia*, the
2 Notice will be posted in prominently visible areas of the housing units where Class Members are
3 held, as well as on ICE and the ACLU of Northern California websites and sent to immigration
4 attorneys through local list serves used by immigration attorney associations. *Id.* Class Members
5 held in segregation and other restricted units will receive individual copies of the Notice. *Id.*

6 The Notice also describes the process for raising objections and provides the addresses to
7 which objections must be mailed. *See* Agreement, Exhibit B. The objection procedure itself is
8 simple: the Class member may submit an objection to the Court in writing, and the Notice
9 includes a form on which Class Members can write their objections to the Court. Class Members
10 can request copies of the objection form from visiting ICE agents. For Class Members who do
11 not wish to use the form and prefer to file other written papers or briefs with the Court, the Notice
12 instructs that those papers must clearly identify the case name and number; provide the Class
13 Member's full name and current detention facility or address, a signed declaration that the
14 objector is a member of the Class, the specific grounds for objection, all documents or writings
15 the objector desires the Court to consider, and whether the objector intends to appear at the
16 Fairness Hearing; and be submitted by mail to the Class Action Clerk or filed in District Court for
17 the Northern District of California by a date certain (to be determined by the Court). Agreement,
18 Exhibit B, p. 5.

19 The parties propose that within 10 business days of preliminary approval of the Settlement
20 by the Court, the parties will publish the notice in the manner outlined above until the Court
21 issues an order finally approving or rejecting the settlement. Class members will have 45 days to
22 respond to the proposed notice by submitting objections to the Court. Twenty-one days after
23 expiration of the objections period, counsel will file the motion for final approval, to be set on the
24 Court's next available hearing day as a regularly scheduled motion. *See* Proposed Order
25 Preliminarily Approving Settlement, filed herewith.

26 **VI. CONCLUSION**

27 For the foregoing reasons, Plaintiffs request that the Court issue an order: (1) granting
28

1 preliminary approval of the Settlement; (2) approving the proposed Class Notice and ordering
2 compliance with the process for distribution of the Notice set forth in the Agreement; and (3) set a
3 date and time for the Fairness Hearing.

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Dated: June 13, 2016

/s/ Robert P. Varian
ROBERT P. VARIAN
ORRICK HERRINGTON & SUTCLIFFE LLP

EXHIBIT A

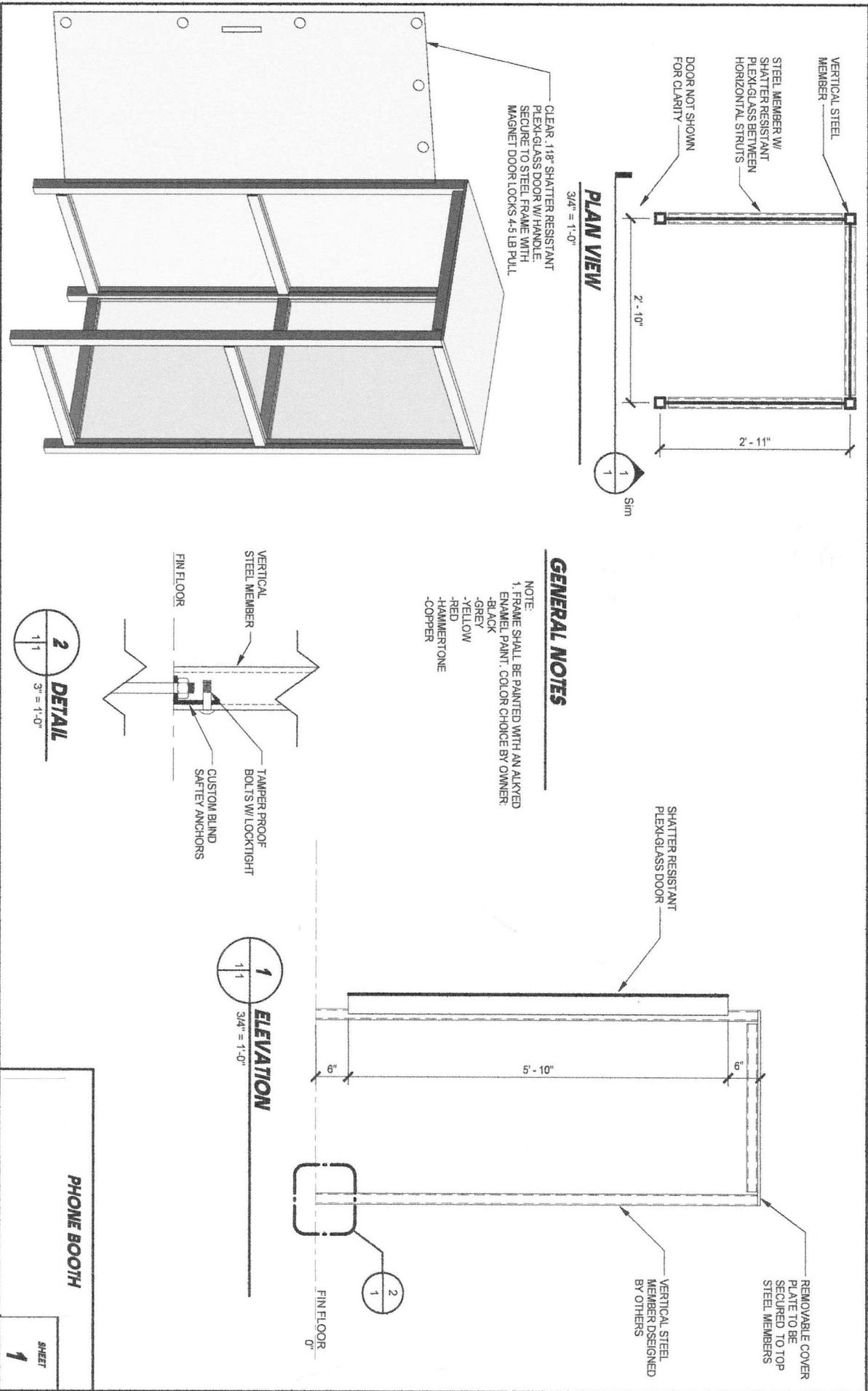


EXHIBIT B

**NOTICE OF PROPOSED SETTLEMENT REGARDING TELEPHONE ACCESS IN
IMMIGRATION DETENTION**

LYON, ET AL. V. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT ET AL.,

Case No. 3:13-cv-05878-EMC

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

TO: All current and future adult immigration detainees who are or will be held by ICE in Contra Costa County, Kern County, Sacramento County, or Yuba County.

Purpose of this Notice

This notice has three purposes: 1) to tell you about the proposed settlement and the fairness hearing in this class-action lawsuit; 2) to tell you how to obtain more information, including a copy of the full proposed settlement agreement; and 3) to explain how you may object to the proposed settlement if you disagree with it.

Background on the Lawsuit

This class action lawsuit asserts that U.S. Immigration and Customs Enforcement (ICE) does not provide adequate telephone access for immigration detainees housed in Contra Costa West County Detention Facility, Yuba County Jail, Rio Cosumnes Correctional Center (RCCC), and Mesa Verde Detention Facility (collectively, the Facilities). Specifically, the lawsuit asserts that ICE is violating the statutory and constitutional rights of immigration detainees because the telephone access conditions in the Facilities: (1) prevent detainees from retaining and communicating effectively with lawyers, and (2) prevent detainees from gathering evidence to present in immigration-related proceedings. The lawsuit seeks changes to ICE and Facility policies; it does not ask for money damages.

Class Counsel (representing the interests of detainees in the Facilities) and ICE's attorneys have negotiated a settlement. The Court has given preliminary approval to this settlement, and the next step is for the Court to consider any comments and objections from class members. A hearing has been scheduled for _____, 2016, at _____.m. before the Honorable Edward M. Chen of the United States District Court for the Northern District of California in Courtroom 5 – 17th Floor at the San Francisco Courthouse, 450 Golden Gate Ave., San Francisco, California. At this hearing, the Court will consider whether the proposed settlement is fair, reasonable, and adequate. The Court will then either approve the settlement or order the parties to continue litigating.

Description of the Proposed Settlement Agreement

Below is a summary of the key points in the settlement agreement. To get a copy of the full agreement, see the section entitled "For Further Information" after this summary.

1. **There will be more ways to make legal calls from housing unit phones and new phone booths for privacy in housing units.**
 - a. **ICE will add speed-dials to make free, direct, unmonitored calls to more government offices and some attorneys from the housing unit phones.** ICE will set up more speed-dial numbers (similar to ICE's pro bono platform) that will connect without needing a live person to answer and accept the call, that will not be recorded or monitored, and that will be cost-free for the caller and recipient. These numbers will include police departments, probation departments, state and federal courts, and rehabilitation centers as well as attorneys who provide a mix of paid and pro bono immigration representation and have requested to be added to the platform.
 - b. **ICE will create a list of attorneys who can be called without needing a live person to answer.** ICE will allow attorneys (including those who only provide paid representation) to receive calls from the housing unit phones without needing a live person to answer the telephone. These calls will not be recorded or monitored.
 - c. **ICE will install phone booths in and around housing units for case-related telephone calls.** ICE has agreed to install a total of 40 phone booths that will be distributed among the four Facilities. These phone booths will operate like the housing unit phones, but with more privacy.
 - d. **ICE will ensure access to phone booths.** Except during count and lockdowns, detainees will be able to use phone booths any time during waking hours (including non-free time at Contra Costa). Detainees who are housed in places where they need staff to escort them to a phone booth, such as segregation, will receive access within two waking hours of making a request, absent extraordinary circumstances (which must be reported to ICE). For detainees in disciplinary segregation whose discipline includes limits on telephone access, these requirements apply only to personal or family emergencies, Legal Calls, or calls that are otherwise justified by a compelling need.
 - e. **ICE will extend automatic cut-offs for telephone calls.**
 - i. *Yuba:* Cut-offs for the housing unit phones will be extended from 20 minutes to 40 minutes, and there will be no automatic cut-off in the Yuba phone room.
 - ii. *RCCC:* Cut-offs for the housing unit phones will be extended from 20 minutes to 40 minutes.
 - iii. *All Facilities:* The automatic cut-off for calls from ICE's pro bono platform will be extended to 60 minutes.
 - iv. Based on demonstrated need in individual circumstances, ICE may impose time limits on telephone calls to ensure everyone has access.

2. **There will be more ways to make legal calls from private phone rooms.**
 - a. **Immigration detainees will be allowed to use private phone rooms for legal calls, including calls to non-attorneys.**
 - i. *In general:* These calls will not be recorded or monitored, and will not require a live person to answer. When connecting the call, Facility staff or ICE personnel can check the call recipient's name and ask if the call recipient agrees to speak to the caller, but cannot announce the detainee is calling from a jail or detention facility. If nobody answers, the caller will be able to leave voicemail messages and navigate automated answering systems that require dialing an extension.
 - ii. *Calls to attorneys:* Immigration detainees will be able to call attorneys from these phones for long calls or calls that need extra privacy. Also, attorneys may request calls be scheduled at particular times.
 - iii. *Calls to non-attorneys:* Immigration detainees will be able to call non-attorneys from these phones if the call is case-related (for example, to request a supportive letter or to get help obtaining documents) and the detainee has already tried and been unable to contact the person using a housing unit phone.
 - iv. *RCCC and Yuba:* A phone room, phone booth, or other enclosure will be added to meet this requirement at RCCC, which currently has no private phone room. Privacy will be improved in the Yuba phone room.
 - b. **Phone room calls will be generally limited to 30 minutes but immigration detainees can request longer calls.** However, in periods of high demand, ICE may limit call lengths to ensure everyone has access.
3. **On-site facilitators at each Facility will process telephone requests and provide timely access to phone rooms.** Calls will ordinarily be provided within 8 waking hours, and (except in extraordinary circumstances) always within 24 hours of a request.
4. **Each Facility will take and deliver non-confidential phone and/or email messages related to immigration detainees' immigration cases within 24 hours.**
5. **For detainees who cannot afford to pay for phone calls, ICE will provide extra phone room access or phone credit.** This will be available to detainees who have had less than \$15 on their commissary account for 10 consecutive days at the time of the request.
6. **ICE will make accommodations for international legal calls and three-way calling for legal calls.** There will be a system for requesting international legal calls even if international calls cannot be dialed from housing unit phones or phone rooms. Upon request and statement of a need, such as needing an interpreter to join a call, ICE will facilitate 3-way calls in the Facility (if possible) or at the nearest field office.

7. **ICE will assist people who do not read English or Spanish.** ICE will post a notice in 10 common written languages telling detainees to ask Facility staff for translations of telephone access materials and assistance with telephone access. On request, if local interpretation is not adequate or available, ICE will use a telephone-based “language line” interpreter to provide further explanations. Additionally, if a detainee is trying to call a person who does not speak English and cannot understand the automatic prompts to accept a call, the detainee can use the Phone Room to call that person for case-related calls.
8. **ICE will require training of all local ICE officers with duties related to detention and Facility staff whose duties include supervising detainees or providing telephone access.** ICE will also add detail to the inspection forms it uses in detention facilities across the country to evaluate compliance with detention standards regarding privacy for legal calls, timeliness in responding to telephone requests, availability of message delivery systems, availability of translation and interpretation services, and access to telephones for detainees in segregation.
9. **Five Year Agreement.** ICE will have one year after the Court finally approves the Settlement to make the required changes. The Settlement will be in effect for four years after that. During this time, ICE must provide information to Class Counsel to monitor and enforce the Settlement, including providing various documents and allowing Class Counsel to visit the Facilities to interview detainees.
10. **The Court can enforce the agreement if there are any violations.** The Court will retain jurisdiction over the case to enforce the terms of the Settlement Agreement.
11. **Attorneys’ fees and costs.** The Government will pay \$405,000 to Class Counsel in settlement of all claims for fees and expenses. See below for how to obtain more information about the attorneys’ fees settlement.
12. **Release of claims.** Class Members will release the government from all claims for declaratory or injunctive relief that were brought on behalf of Class Members based on the facts and circumstances alleged in the lawsuit.

For further information:

THIS IS A SUMMARY OF THE AGREEMENT. TO UNDERSTAND IT FULLY, YOU SHOULD READ THE ENTIRE AGREEMENT. You can get copies of the final settlement agreement, Class Counsel’s motion seeking the Court’s approval of the attorneys’ fees provision of the settlement, and copies of this Notice from: 1) Visiting ICE agents; 2) ICE’s website (www.ice.gov); 3) the ACLU of Northern California website (www.aclunc.org/our-work/legal-docket/lyon-v-ice-telephone-access-immigration-detainees); 4) by calling Class Counsel by using speed dial number **#9160** through ICE’s pro bono call platform or by calling (415) 621-2493, ext. 329; 5) the

electronic docket in this case (Case No. 13-cv-05878 EMC), available at <https://ecf.cand.uscourts.gov>; or 6) by writing to Class Counsel at the address listed below:

Class Counsel
Lyon v. ICE Class Action Settlement
c/o ACLU Foundation of Northern California
39 Drumm Street
San Francisco, CA 94111

If calling or writing to Class Counsel, please indicate in your message or letter what you are asking for (a copy of the settlement agreement, the attorneys' fee motion, or the Notice), your name, and how to get in touch with you. If you are in custody, say the detention center where you are currently in custody. If you are out of custody, please provide your address and telephone number.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.

Procedures for Objecting to the Proposed Settlement:

You can ask the Court to deny approval of the settlement by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or deny the settlement. If the Court denies approval, the settlement provisions will not be implemented and the lawsuit will continue. If that is what you want to happen, you must object.

If you object to the proposed settlement, you should do it in writing and must submit the written objection to the Court. Attached to this notice is a sample objection form that you may use to file a written objection. You can request additional copies of this form from ICE agents that visit your detention facility. If you file an objection, you may also choose to appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney if required.

All written objections and supporting papers must:

- (a) Clearly identify the case name and number (*Lyon v. ICE*, Case No. 13-cv-05878 EMC);
- (b) Provide: (i) the Class Member's full name and current detention facility or address, (ii) a signed declaration that the Class Member is a member of the Class, (iii) the specific grounds for the objection, (iv) all documents or writings the Class Member wants the Court to consider, and (v) whether the Class Member intends to appear at the Fairness Hearing.
- (c) Be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, or by filing them in person at any location of the United States District Court for the Northern District of California;
- (d) **Be filed or postmarked on or before _____, 2016.**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AUDLEY BARRINGTON LYON, JR., et al.,)	Case No. 3:13-cv-05878-EMC
<i>Plaintiffs,</i>)	
v.)	
UNITED STATES IMMIGRATION AND)	OBJECTION TO PROPOSED
CUSTOMS ENFORCEMENT, et al.,)	SETTLEMENT
<i>Defendants.</i>)	Hon. Edward. M. Chen
_____)	

To the Honorable Court:

I believe I am a Class Member because I am currently detained by ICE at (check one):

- West County Detention Facility in Contra Costa County
- Yuba County Jail in Yuba County
- Rio Cosumnes Correctional Center in Sacramento County
- Mesa Verde Detention Facility in Kern County

I object to the proposed settlement because: _____

_____ [attach additional sheets if necessary]

I intend to appear at the Court for the Fairness Hearing: Yes No

My signature verifies that everything I have stated above is true.

Dated: _____

Signature: _____

Name: _____

“A number”: _____

Address: _____

EXHIBIT C

1 ROBERT P. VARIAN (SBN 107459)
 CHARLES J. HA (*pro hac vice*)
 2 ALEXIS YEE-GARCIA (SBN 277204)
 ORRICK, HERRINGTON & SUTCLIFFE LLP
 3 The Orrick Building
 405 Howard Street
 4 San Francisco, California 94105-2669
 Telephone: (415) 773-5700
 5 Facsimile: (415) 773-5759
 Email: rvarian@orrick.com

6 AMERICAN CIVIL LIBERTIES UNION
 7 FOUNDATION OF NORTHERN CALIFORNIA
 JULIA HARUMI MASS (SBN 189649)
 8 ANGELICA SALCEDA (SBN 296152)
 CHRISTINE P. SUN (SBN 218701)
 9 MICHAEL T. RISHER (SBN 191627)
 39 Drumm Street
 10 San Francisco, CA 94111
 Telephone: (415) 621-2493
 11 Facsimile: (415) 255-8437
 Email: jmass@aclunc.org
 12 Attorneys for Plaintiffs

13 [Additional Counsel appear on following page]

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN FRANCISCO DIVISION

17 AUDLEY BARRINGTON LYON, JR., et al.,
 on behalf of themselves and all others similarly
 18 situated,

19 Plaintiffs,

20 v.

21 UNITED STATES IMMIGRATION AND
 22 CUSTOMS ENFORCEMENT, et al.,

23 Defendants.

Case No.: 13-cv-05878-EMC

**FINAL ORDER APPROVING
 SETTLEMENT AND DISMISSING
 CASE**

Hon. Edward M. Chen

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1 AMERICAN CIVIL LIBERTIES UNION
2 NATIONAL PRISON PROJECT
3 CARL TAKEI (SBN 256229)
915 15th Street N.W., 7th Floor
4 Washington, DC 20005
Telephone: (202) 393-4930
5 Facsimile: (202) 393-4931
Email: ctakei@aclu.org

6 VAN DER HOUT, BRIGAGLIANO, & NIGHTINGALE, LLP
7 MARC VAN DER HOUT (SBN 80778)
MEGAN SALLOMI (SBN 300580)
8 180 Sutter Street, Suite 500
San Francisco, CA 94104
9 Telephone: (415) 981-3000
10 Facsimile: (415) 981-3003
Email: msal@vblaw.com

11 Attorneys for Plaintiffs
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1 WHEREAS Plaintiffs Audley Barrington Lyon, Jr., José Elizandro Astorga-Cervantes,
2 and Nancy Neria-Garcia, on behalf of themselves and all class members (collectively, “Plaintiff
3 Class”), by and through their counsel of record, have asserted claims for declaratory and
4 injunctive relief against Defendants U.S. Immigration and Customs Enforcement (“ICE”); Sarah
5 Saldaña in her official capacity as Director of ICE; the U.S. Department of Homeland Security;
6 Jeh Johnson in his official capacity as Secretary of Homeland Security, and Adrian Macias in his
7 official capacity as Acting Field Office Director for ICE’s San Francisco Field Office
8 (collectively “Defendants”), alleging violations of the Immigration and Nationality Act, 8 U.S.C.
9 § 1101 *et seq.* and the First and Fifth Amendments to the U.S. Constitution; and

10 WHEREAS on April 16, 2014, the Court certified a class of “[a]ll current and future
11 immigration detainees who are or will be held by ICE in in Contra Costa, Sacramento, and Yuba
12 Counties” (ECF No. 31);

13 WHEREAS on July 27, 2015, the Court granted Plaintiffs’ motion to modify the certified
14 class to include “[a]ll current and future adult immigration detainees who are or will be held by
15 ICE in Contra Costa County, Kern County, Sacramento County, or Yuba County” (“Plaintiff
16 Class”) (ECF No. 98);

17 WHEREAS on March 18, 2016, the Court granted in part and denied in part Defendants’
18 motion for summary judgment and denied Plaintiffs’ motion for summary judgment (ECF No.
19 167);

20 WHEREAS the Court found that Plaintiffs’ Counsel are adequate to represent the Plaintiff
21 Class under Federal Rule of Civil Procedure 23(g)(1) and (4), and appointed Plaintiffs’ Counsel
22 as Class Counsel under Rule 23(g) in an Order dated _____, 2016; and

23 WHEREAS the Plaintiff Class and Defendants entered into a settlement of the above-
24 captioned matter (“Settlement”) and executed a Settlement Agreement and Release (“Settlement
25 Agreement”), which has been filed with the Court; and

26 WHEREAS the Court preliminarily approved the Settlement in an Order dated
27 _____, 2016; and
28

1 WHEREAS the Court held a hearing on _____, 2016, where the Court found the
2 Settlement reasonable and fair; and

3 WHEREAS it appears notice of the Settlement has been adequately provided to the Class
4 as provided for by the Court's Order Granting Preliminary Approval; and

5 WHEREAS the Plaintiff Class has filed with the Court a Motion for Final Approval of the
6 Settlement, together with supporting documents; and

7 WHEREAS the Court held a hearing on _____, 2016 to
8 consider the final approval of the Settlement, and any objections to the foregoing filed before or at
9 the time of the hearing;

10 WHEREAS the Court has considered the Settlement between the Plaintiff Class and the
11 Defendants, and the pleadings and documents submitted in connection with the parties' request
12 for final approval of the Settlement, and good cause appearing therefore,

13 **WHEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:**

14 1. The Court has jurisdiction over the subject matter of this action. The Court has
15 personal jurisdiction over the Plaintiff Class (as defined in the Court's orders granting Plaintiffs'
16 motions for class certification and for modification of the class certification order, ECF Nos. 31
17 and 98) and Defendants.

18 2. Under Federal Rule of Civil Procedure 23(e), the Settlement as set forth in the
19 Settlement Agreement is approved as fair, reasonable, adequate, and in the best interests of the
20 Plaintiff Class. The Court finds that the Settlement appears to have resulted from arm's length
21 negotiations by and among counsel for the parties who were reasonably skilled and prepared and
22 who represented the best interests of their respective clients in negotiating the Settlement. The
23 settlement negotiations that led to the Settlement took place in mediations sessions supervised by
24 Magistrate Judge Donna Ryu, with assistance from Magistrate Judge Laurel Beeler. This provides
25 the Court with further assurance that the negotiations leading to the Settlement were good faith,
26 arm's length negotiations, based on a sufficiently developed record, and which appropriately
27 considered the risks of trial, the potential resolution, and all other relevant factors leading to
28 Settlement.

1 3. The Court further finds that the settlement of attorneys' fees and costs in Section
2 XI of the Settlement Agreement was the result of arm's length and good faith negotiations
3 supervised by Magistrate Judges Ryu and Beeler. The attorney's fees and costs provision appears
4 to have taken into consideration the right of Plaintiffs to seek an award of fees that would be
5 substantially higher than the amount agreed to, the risks of trial, and all other relevant factors. The
6 Court therefore approves the award of the Attorneys' Fee Settlement Amount contained in the
7 Settlement Agreement and orders that that the Attorneys' Fee Settlement Amount be paid in
8 accordance with the Settlement Agreement.

9 4. The Court further finds the Notice to the Class was reasonably calculated to
10 apprise the Class of the pendency of this action and all material elements of the proposed
11 settlement, constituted the best notice practicable under the circumstances, and constituted due and
12 sufficient notice.

13 5. This Final Order adopts and incorporates herein by reference in its entirety the
14 Settlement Agreement submitted as Exhibit 1 to the Declaration of Julia Harumi Mass, filed with
15 Plaintiffs' Unopposed Motion for Preliminary Approval of the Class Action Settlement (ECF No.
16 ____). The parties are directed to implement the Settlement Agreement in accordance with its terms
17 and provisions.

18 6. In accordance with Section XII.A of the Settlement Agreement, this action is
19 hereby dismissed with prejudice. Without in any way affecting the finality of this Final Order, this
20 Court retains jurisdiction for the purpose of enforcing the Settlement Agreement and as to all
21 matters relating to the interpretation and enforcement of the Settlement Agreement.

22 7. The Court finds this Final Order adjudicates all of the claims, rights, and liabilities
23 of the Parties to the Settlement, and is intended to be a final judgment within the meaning of Rule
24 54 of the Federal Rules of Civil Procedure.

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IT IS SO ORDERED.

Dated _____

Hon. Edward M. Chen
U.S. District Court Judge

EXHIBIT D

**NOTICE OF FINAL SETTLEMENT REGARDING TELEPHONE ACCESS IN
IMMIGRATION DETENTION**

LYON, ET AL. V. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT ET AL.,

Case No. 3:13-cv-05878-EMC

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

TO: All current and future adult immigration detainees who are or will be held by ICE in Contra Costa County, Kern County, Sacramento County, or Yuba County.

You are hereby notified that on _____, 2016, the Honorable Edward M. Chen of the United States District Court for the Northern District of California approved a settlement of the claims that were brought on your behalf in this lawsuit.

Background on the Lawsuit

This class action lawsuit asserted that U.S. Immigration and Customs Enforcement (ICE) does not provide adequate telephone access for immigration detainees housed in Contra Costa West County Detention Facility, Yuba County Jail, Rio Cosumnes Correctional Center (RCCC), and Mesa Verde Detention Facility (collectively, the Facilities). Specifically, the lawsuit asserted that ICE is violating the statutory and constitutional rights of immigration detainees because the telephone access conditions in the Facilities: (1) prevent detainees from retaining and communicating effectively with lawyers, and (2) prevent detainees from gathering evidence to present in immigration-related proceedings. The parties reached a settlement that the Court has approved.

Description of the Settlement Agreement

Below is a summary of the key points in the settlement agreement. To get a copy of the full agreement, see the section entitled “For Further Information” after this summary.

1. **There will be more ways to make legal calls from housing unit phones and new phone booths for privacy in housing units.**
 - a. **ICE will add speed-dials to make free, direct, unmonitored calls to more government offices and some attorneys from the housing unit phones.** ICE will set up more speed-dial numbers (similar to ICE’s pro bono platform) that will connect without needing a live person to answer and accept the call, that will not be recorded or monitored, and that will be cost-free for the caller and recipient. These numbers will include police departments, probation departments, state and federal courts, and rehabilitation centers as well as attorneys who provide a mix of paid and pro bono immigration representation and have requested to be added to the platform.

- b. **ICE will create a list of attorneys who can be called without needing a live person to answer.** ICE will allow attorneys (including those who only provide paid representation) to receive calls from the housing unit phones without needing a live person to answer the telephone. These calls will not be recorded or monitored.
 - c. **ICE will install phone booths in and around housing units for case-related telephone calls.** ICE has agreed to install a total of 40 phone booths that will be distributed among the four Facilities. These phone booths will operate like the housing unit phones, but with more privacy.
 - d. **ICE will ensure access to phone booths.** Except during count and lockdowns, detainees will be able to use phone booths any time during waking hours (including non-free time at Contra Costa). Detainees who are housed in places where they need staff to escort them to a phone booth, such as segregation, will receive access within two waking hours of making a request, absent extraordinary circumstances (which must be reported to ICE). For detainees in disciplinary segregation whose discipline includes limits on telephone access, these requirements apply only to personal or family emergencies, Legal Calls, or calls that are otherwise justified by a compelling need.
 - e. **ICE will extend automatic cut-offs for telephone calls.**
 - i. *Yuba:* Cut-offs for the housing unit phones will be extended from 20 minutes to 40 minutes, and there will be no automatic cut-off in the Yuba phone room.
 - ii. *RCCC:* Cut-offs for the housing unit phones will be extended from 20 minutes to 40 minutes.
 - iii. *All Facilities:* The automatic cut-off for calls from ICE's pro bono platform will be extended to 60 minutes.
 - iv. Based on demonstrated need in individual circumstances, ICE may impose time limits on telephone calls to ensure everyone has access.
2. **There will be more ways to make legal calls from private phone rooms.**
- a. **Immigration detainees will be allowed to use private phone rooms for legal calls, including calls to non-attorneys.**
 - i. *In general:* These calls will not be recorded or monitored, and will not require a live person to answer. When connecting the call, Facility staff or ICE personnel can check the call recipient's name and ask if the call recipient agrees to speak to the caller, but cannot announce the detainee is calling from a jail or detention facility. If nobody answers, the caller will be able to leave voicemail messages and navigate automated answering systems that require dialing an extension.

- ii. *Calls to attorneys*: Immigration detainees will be able to call attorneys from these phones for long calls or calls that need extra privacy. Also, attorneys may request calls be scheduled at particular times.
 - iii. *Calls to non-attorneys*: Immigration detainees will be able to call non-attorneys from these phones if the call is case-related (for example, to request a supportive letter or to get help obtaining documents) and the detainee has already tried and been unable to contact the person using a housing unit phone.
 - iv. *RCCC and Yuba*: A phone room, phone booth, or other enclosure will be added to meet this requirement at RCCC, which currently has no private phone room. Privacy will be improved in the Yuba phone room.
 - b. **Phone room calls will be generally limited to 30 minutes but immigration detainees can request longer calls.** However, in periods of high demand, ICE may limit call lengths to ensure everyone has access.
3. **On-site facilitators at each Facility will process telephone requests and provide timely access to phone rooms.** Calls will ordinarily be provided within 8 waking hours, and (except in extraordinary circumstances) always within 24 hours of a request.
4. **Each Facility will take and deliver non-confidential phone and/or email messages related to immigration detainees' immigration cases within 24 hours.**
5. **For detainees who cannot afford to pay for phone calls, ICE will provide extra phone room access or phone credit.** This will be available to detainees who have had less than \$15 on their commissary account for 10 consecutive days at the time of the request.
6. **ICE will make accommodations for international legal calls and three-way calling for legal calls.** There will be a system for requesting international legal calls even if international calls cannot be dialed from housing unit phones or phone rooms. Upon request and statement of a need, such as needing an interpreter to join a call, ICE will facilitate 3-way calls in the Facility (if possible) or at the nearest field office.
7. **ICE will assist people who do not read English or Spanish.** ICE will post a notice in 10 common written languages telling detainees to ask Facility staff for translations of telephone access materials and assistance with telephone access. On request, if local interpretation is not adequate or available, ICE will use a telephone-based "language line" interpreter to provide further explanations. Additionally, if a detainee is trying to call a person who does not speak English and cannot understand the automatic prompts to accept a call, the detainee can use the Phone Room to call that person for case-related calls.
8. **ICE will require training of all local ICE officers with duties related to detention and Facility staff whose duties include supervising detainees or providing telephone access.** ICE will also add detail to the inspection forms it uses in detention facilities across

the country to evaluate compliance with detention standards regarding privacy for legal calls, timeliness in responding to telephone requests, availability of message delivery systems, availability of translation and interpretation services, and access to telephones for detainees in segregation.

9. **Five Year Agreement.** ICE will have one year after the Court approved the Settlement to make the required changes. The Settlement will be in effect for four years after that. During this time, ICE must provide information to Class Counsel to monitor and enforce the Settlement, including providing various documents and allowing Class Counsel to visit the Facilities to interview detainees.
10. **The Court can enforce the agreement if there are any violations.** The Court will retain jurisdiction over the case to enforce the terms of the Settlement Agreement.
11. **Attorneys' fees and costs.** The Government will pay \$405,000 to Class Counsel in settlement of all claims for fees and expenses. See below for how to obtain more information about the attorneys' fees settlement.
12. **Release of claims.** Class Members will release the government from all claims for declaratory or injunctive relief that were brought on behalf of Class Members based on the facts and circumstances alleged in the lawsuit.

For further information:

THIS IS A SUMMARY OF THE AGREEMENT. TO UNDERSTAND IT FULLY, YOU SHOULD READ THE ENTIRE AGREEMENT. You can get copies of the final settlement agreement from: 1) Visiting ICE agents, 2) ICE's website (www.ice.gov); 3) the ACLU of Northern California website (www.aclunc.org/our-work/legal-docket/lyon-v-ice-telephone-access-immigration-detainees); 4) by calling Class Counsel by using speed dial number **#9160** through ICE's pro bono call platform or by calling (415) 621-2493, ext. 329; or 5) by writing to Class Counsel at the address listed below:

Class Counsel
Lyon v. ICE Class Action Settlement
c/o ACLU Foundation of Northern California
39 Drumm Street
San Francisco, CA 94111

If calling or writing to Class Counsel, please indicate in your message or letter that you are asking for a copy of the settlement agreement, the name of the case (*Lyon v. ICE*), your name, and how to get in touch with you. If you are in custody, say the detention center where you are currently in custody. If you are out of custody, please provide your address and telephone number.