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10 ELVETA LOUISE FRANCIS, et al.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

ELVETA LOUISE FRANCIS,  
individually, and as class representative,

Plaintiffs,

vs.

STATE OF CALIFORNIA;  
CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION, et al.

Defendants.

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

AUG 23 2012

John A. Clarke, Executive Officer/Clerk

BY Cristina Grijalva Deputy  
Cristina Grijalva

Case No. BC302856

[Hon. Steven J. Kleinfeld]

**JOINT MOTION FOR FINAL  
APPROVAL OF CLASS SETTLEMENT**

Filed Concurrently with Notice of Joint  
Motion for Final Approval of Class  
Settlement; Declaration of Paul J. Estuar,  
Exhibits; Declaration of Dennis E. Raglin.

[Proposed] Final Order Lodged Concurrently

Date: September 27, 2012

Time: 8:30 A.M.

Dept.: 53

Complaint Filed: September 22, 2003

JOINT MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT

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1 **I. INTRODUCTION**

2 This is a class action matter originally filed in California state court, removed to federal  
3 court, then remanded back to this Court. It involves two certified classes stemming from  
4 Plaintiff Elveta Francis' allegations relating to inmate accounting and employment expense  
5 reimbursement practices maintained for inmates who resided at the former California  
6 Department of Corrections and Rehabilitation ("CDCR") "Region III" "restitution centers" in  
7 Los Angeles, California. The California Community Correctional Center (the "4Cs") was the  
8 initial restitution center operated by the CDCR until August, 2001. At that time, CDCR entered  
9 into contracts with Defendant Volunteers of America ("VOA") and the 4Cs ceased operation.  
10 VOA assumed certain administrative control of restitution center inmates. Male inmates from the  
11 4Cs were transferred to a VOA building on South La Cienega in Los Angeles (referred to herein  
12 as "La Cienega"). Female inmates were transferred to a facility at West 18th Street in Los  
13 Angeles (referred to herein as "Pico Union"). *See Declaration of Paul J. Estuar in Support of*  
*Joint Motion for Final Approval of Class Action Settlement ("Estuar Decl."), ¶1.*

14 The restitution centers operated under authority bestowed by the Legislature in Penal  
15 Code §§6220-6236. These centers were designed to allow low-level offenders the ability to work  
16 during their incarceration. Penal Code §6231 required that restitution center inmate earnings be  
17 divided in equal thirds between: 1) payment to the inmates' victims; 2) payment to the State for  
18 costs associated with the inmates' incarceration, and; 3) payment to the inmates' personal  
19 accounts, known as "inmate trust accounts."

20 The CDCR maintained accounting records and recorded certain inmate transactions in a  
21 stand-alone computer program called "Access." In this litigation, the parties have come to refer  
22 to this Access accounting program as the "Access Database." It reflects data in spreadsheet  
23 format listing inmate debits and credits in their inmate trust accounts. The CDCR accountant in  
24 Region III hand-keyed inmate data into the Access program after inmate paychecks were  
25 submitted by the inmates and any requests for reimbursements or payments the inmates  
26 submitted were reviewed and approved. The records reflecting direct payment to victims on  
27 behalf of restitution center inmates were also tabulated. These records were sent to an accountant  
28 at CDCR headquarters in Sacramento and hand recorded. They were not integrated into the main  
CDCR databases that recorded and tracked restitution payments for the CDCR inmate population

1 outside of the restitution centers. *See Estuar Decl.*, ¶3; *see also Declaration of Dennis E. Raglin*  
2 *in Support of Joint Motion for Final Approval of Class Action Settlement* (“*Raglin Decl.*”), ¶4.

3 This litigation was, in part, spawned by Plaintiff discovering a discrepancy in her inmate  
4 account printout after meeting with her parole officer in connection with her discharge from one  
5 of the restitution centers. Plaintiff alleges that on August 13, 2002, Plaintiff’s parole agent  
6 obtained a statement of her account which did not properly reflect her earnings or that restitution  
7 to her victim had been paid on her behalf in the amount of \$6,323.80. Plaintiff then demanded  
8 that her records be fixed to reflect an accurate accounting of her restitution obligation. Plaintiff  
9 alleges that when no change was made by the CDCR, Plaintiff filed her injunctive relief lawsuit  
10 on behalf of herself and a class of similarly situated individuals. While incarcerated in a  
11 restitution center and working in the private sector, Plaintiff alleges that she was never  
12 reimbursed for employment-related expenses such as bus fare. After filing of the lawsuit, the  
13 CDCR corrected Plaintiff’s records. Beginning in November, 2004, the CDCR changed the  
14 method for handling restitution payments so that all payments were handled through the CDCR  
15 Inmate Trust Accounting division. *Estuar Decl.*, ¶4.

16 Penal Code §6231(b) mandates that before the inmates’ paychecks were divided into  
17 thirds, CDCR was to first reimburse the inmates for any out-of-pocket employment-related  
18 expenses including transportation, uniforms, and meals. *Id.* After a policy change made by  
19 CDCR in 2004, this reimbursement process was performed and accounted for on a consistent  
20 basis. *Estuar Decl.*, ¶4.

21 The restitution centers ceased operation in the Fall of 2008. Plaintiff’s lawsuit focuses on  
22 former inmates between January 1, 1999, and the closure of the facilities with respect to the  
23 Credit Class, and between January 1, 1999 and 2004 – as set forth below – with respect to the  
24 Reimbursement Class. (Both classes are further defined below.) *Estuar Decl.*, ¶5.

25 Plaintiff filed her class action complaint naming VOA and the State of California, CDCR,  
26 the Office of Victim Services and Restitution, Terry Boehme, Edward S. Alameida, Steven  
27 Cambra, Jr., Teresa Rocha and Sandi Menefee (hereinafter referred to collectively as the “State  
28 Defendants”)<sup>1</sup> on September 22, 2003 – *Elveta Louise Francis v. State of California, et al.*, Los

<sup>1</sup> Plaintiff dismissed the individually-named State Defendants on September 14, 2011, as part of  
the settlement in this matter.

1 Angeles County, Superior Court Case No. BC302856 (hereinafter referred to as "the Action.")  
2 Following various amendments, Plaintiff filed her Fifth Amended Complaint, the operative  
3 pleading in this case. Plaintiff alleges negligence, and seeks declaratory and injunctive relief  
4 against Defendant VOA. Plaintiff asserts seven causes of action against the State Defendants,  
5 including: (1) Takings (Cal. Const. art I §19); (2) Due Process (Cal. Const. art. I §17); (3) Cal.  
6 Gov't Code §815.6 "Mandatory Duty"; (4) Negligence; (5) Negligent Supervision; (6) Breach of  
7 Fiduciary Duty; (7) Declaratory & Injunctive Relief (CCP §526a).

8 The matter was certified as a class action on July 14, 2008, creating two injunctive relief  
9 classes: the "Credit Class" and the "Reimbursement Class." The Credit Class is defined as those  
10 inmates for whom CDCR allegedly did not properly credit inmate accounts regarding restitution  
11 paid to their victims. The Reimbursement Class is defined as those inmates who incurred  
12 employment expenses, and were entitled under the Penal Code to reimbursement while housed at  
13 the restitution centers between January 1, 1999, and April 1, 2004, but who allegedly did not  
14 receive such reimbursements. *Estuar Decl.*, ¶6.

15 VOA and the State Defendants dispute liability in this matter. However, VOA and the  
16 State Defendants wish to fully and finally resolve the claims and equitable rights and obligations  
17 arising in the Action and arising or in any way related to Plaintiffs' claims for injunctive relief.

18 In July 2011, the parties reached a settlement agreement, which provides equitable relief  
19 to the Credit Class and the Reimbursement Class, and which would fully and finally resolved the  
20 claims and equitable rights and obligations arising from this Action. The settlement agreement  
21 also separately provides for attorneys' fees and costs to be paid to Plaintiffs' counsel. The  
22 Settlement Agreement and Mutual Release ("Agreement") is signed by all parties and is attached  
23 to the *Estuar Decl.* as Exhibit A.

## 24 **II. TERMS OF THE SETTLEMENT**

25 The principal Settlement terms, as further delineated in Exhibit A (the Agreement) are as  
26 follows:

### 27 **1. The Reimbursement Class**

- 28 a. Within 10 days of the entry of an order of Final Approval of the class action  
settlement that has become final (i.e., the appeals period has run without an appeal  
having been filed, or an appeal was filed and the final order has been approved

1 and no further appeals are available) (hereafter "Final Approval"), the State  
2 Defendants shall pay to counsel for Plaintiff the sum of Sixty-Nine Thousand,  
3 Two Hundred Twenty-Three Dollars and Seventy One Cents (\$69,223.71) to  
4 settle the claims of the named Plaintiff and all other class members. The check  
5 will be made payable to the class administrator, Kurtzman Carson Consultants,  
6 LLC ("KCC"), and will represent payment for the Reimbursement Class.

- 7 b. Counsel for CDCR will forward a letter of instruction to counsel for Plaintiff  
8 doing the following: (a) confirming CDCR's review of employment  
9 reimbursement data from the Access Database for class members prior to  
10 CDCR's change in the employment reimbursement policy that dictates payment  
11 for owed reimbursement; (b) specifying which class members are to receive this  
12 employment expense reimbursement; and (c) specifying the amount of  
13 reimbursement due to each class member. The amount due for each class member  
14 shall be determined by dividing \$69,223.71 by the total number of months in  
15 custody for all class members, which is 9,674 months, and then multiplying that  
16 quotient by the number of months each class member was in custody at a  
17 restitution center. Each Reimbursement Class member shall receive \$7.156 for  
18 each month he or she was in custody during the class period. Counsel for CDCR  
19 will include with this letter a check made payable to Plaintiffs' counsel (or to a  
20 claims administrator designated by Plaintiffs' counsel) as specified above.
- 21 c. Upon receipt of the letter of instruction and check from counsel for CDCR,  
22 Plaintiffs' counsel will undertake the process of written notification to the  
23 individual class members of their specific reimbursements, and will also enclose  
24 with the letter the individual checks owing to these inmates. CDCR agrees to pay  
25 the postage for these letters, at \$.50 per letter, within forty-five (45) days of  
26 receiving a written request from Plaintiffs' counsel for such payment. Plaintiffs'  
27 counsel has the right to have this notification process performed by a third party  
28 class action administrator proposed by Plaintiffs' counsel and appointed by the  
Court. Plaintiffs' counsel and/or the class action administrator will utilize the  
inmates' last known addresses as provided by the State Defendants in discovery in



1 this Action, and for "bad" addresses, any expenses incurred by Plaintiffs' counsel  
2 and/or the claims administrator in locating correct addresses will be deducted  
3 from the specific inmates' reimbursement amount. Should Plaintiffs' counsel  
4 and/or the claims administrator require inmates' social security numbers to assist  
5 in locating correct addresses, the State Defendants will provide those, pursuant to  
6 the Protective Order in this Action, to the extent such records are available.

- 7 d. Each letter shall advise, and each check shall have language to the effect that the  
8 inmate's acceptance and negotiation of the check shall constitute a full waiver of  
9 all claims against the State Defendants and VOA in connection with the facts of  
10 this Action, and shall be a full and final release of such claims. Class members  
11 who execute such checks shall have thereby provided a full and final release of  
12 any claims the class members may have for reimbursement of costs incurred by  
13 that class member while engaged in outside employment at a CDCR Restitution  
14 Center.
- 15 e. The Agreement as to the Reimbursement Class resolves only the reimbursement  
16 claims of inmates incarcerated in a restitution center between January 1, 1999 and  
17 April 1, 2004, and whose records contained in the Access Database show a work  
18 history during that time period. The Agreement does not resolve reimbursement  
19 claims of any inmates incarcerated in a restitution center prior to January 1, 1999,  
20 which is prior to the class period, or on or after April 1, 2004, when CDCR's  
21 financial records show regularly occurring employment expense reimbursements.  
22 For purposes of this Action and the Agreement, the class definition of the  
23 Reimbursement Class shall be amended to include only inmates who were  
24 incarcerated in a restitution center between January 1, 1999 and April 1, 2004,  
25 and whose records contained in the Access Database show work history during  
26 that time period.
- 27 f. The parties agree that any uncashed checks or checks returned as undeliverable  
28 shall be handled as unclaimed property pursuant to California's Unclaimed  
Property Law under Code of Civil Procedure §1500, et seq. KCC shall destroy all  
mail including checks, returned as undeliverable within 48 hours of receipt. The

1 funds returned and uncashed checks shall be reported and remitted to the State  
2 Controller's Office as unclaimed property 90 days after the issue date.. After such  
3 checks are reported and remitted to the State Controller, Reimbursement Class  
4 members who did not receive their checks but who wish to claim them shall  
5 follow the State Controller's proscribed procedures for obtaining unclaimed  
6 property.

7 2. The Credit Class

- 8 a. The parties agree that the State Defendants shall continue and complete their  
9 review of the existing records maintained by CDCR for former inmates for the  
10 purpose of determining the total restitution paid on their behalf while they were  
11 housed in a restitution center. The State Defendants anticipate this review being  
12 completed within 90 days of this Agreement's execution. CDCR, through a good  
13 faith and exhaustive search, acknowledges that it does not have restitution records  
14 for all former restitution center inmates.
- 15 b. The State Defendants shall forward statements reflecting the amount of restitution  
16 paid on behalf of those inmates whose CDCR records the State Defendants  
17 reviewed and which showed a restitution obligation for the inmate, and counsel  
18 for the State Defendants will forward these statements to the Class Administrator.
- 19 c. Upon receipt of the letter and statements from counsel for CDCR, Plaintiffs'  
20 counsel will undertake the process of notifying by letter the individual inmates  
21 and provide them their individual statements of restitution. CDCR agrees to pay  
22 the postage for these letters, at \$.50 per letter. Plaintiffs' counsel has the right to  
23 have this notification process performed by the same outside Class Administrator  
24 appointed by the Court as addressed above. Plaintiff's counsel and/or the Class  
25 Administrator will utilize the inmates' last known addresses as provided by State  
26 Defendants in discovery in this Action and/or as contained in the Access Database  
27 provided to Plaintiffs' counsel.

28 3. Attorneys' Fees and Costs

- 1 a. The parties agree that Plaintiff's' counsel, as class counsel, shall be entitled to  
2 request, subject to Court's approval, \$255,776.29 in attorneys' fees and costs,  
3 separate and apart from any benefits to the Class.  
4 b. VOA and State Defendants do not oppose this request, and all parties agree that  
5 this is a substantial discounting of Plaintiffs' counsel's fees in this case.  
6 c. Within 10 days of Final Approval, State Defendants shall forward a check in the  
7 sum of Two Hundred Thirty Thousand Seven Hundred Seventy-Six Dollars and  
8 Twenty-Nine Cents (\$230,776.29) payable to Litt, Estuar & Kitson, LLP. This  
9 check shall represent payment by State Defendants toward Plaintiffs' attorneys'  
10 fees and costs. Prior to any payment, Plaintiffs' counsel shall provide an executed  
11 Form W-9 to State Defendants in order to process payment.  
12 d. Within 10 days of Final Approval, VOA's insurance carrier shall forward a check  
13 in the sum of Twenty-Five Thousand Dollars (\$25,000.00) made payable to Litt,  
14 Estuar & Kitson, LLP. This check shall represent payment toward Plaintiffs'  
15 attorneys' fees and costs. Plaintiffs' counsel shall provide an executed Form W-9  
16 in order for VOA to process payment.  
17 4. As part of administering the settlement, the CDCR will provide a mechanism for  
18 handling questions from class members in the form of an e-mail address and a physical  
19 address to field written inquiries, if any, from former inmates who may have queries upon  
20 receipt of either a reimbursement check or the statement of restitution paid. That  
21 mechanism shall remain in place for ninety (90) days from the earlier of the first date of  
22 mailing statements to the Credit Class, or for ninety (90) days from the first date of  
23 mailing checks to the Reimbursement Class. All mailings to class members shall describe  
24 the mechanism for handling inquiries from class members, including providing a mail  
25 and an e-mail address at CDCR for inquiries.  
26 As provided for in the Agreement, Plaintiffs' counsel has elected to have the notification  
27 process performed by a third-party class administrator. *Estuar Decl.* ¶8. Plaintiffs' counsel  
28 proposes that Kurtzman Carson Consultants LLC ("KCC") be appointed as class administrator.  
*Estuar Decl.* ¶8. A copy of KCC's qualifications and proposal is attached to the *Estuar Decl.* as  
Exhibit B. The cost of retaining KCC will be paid by Plaintiffs' counsel out of the \$255,776.29

1 designated as attorneys' fees and costs, and will not affect the recovery available to class  
2 members. *Estuar Decl.* ¶9. Although the Agreement provides that any costs associated with  
3 locating a valid mailing address for a Reimbursement class member may be deducted from that  
4 class member's recovery, given the added expense of cutting a new check to reflect the  
5 deduction, and providing an accounting to the class member explaining the deduction, Plaintiff's  
6 counsel has decided to pay out-of-pocket for the costs associated with locating a valid mailing  
7 address. *Estuar Decl.* ¶11. Neither the VOA nor State Defendants have objected to the proposed  
8 appointment of KCC as class administrators.

9 Because this is a class action for injunctive and declaratory relief, notice of this Joint  
10 Motion for Final Approval has not been sent to class members. Following the Final Approval, all  
11 class members for whom the CDCR has records will receive notice of the settlement. *Estuar*  
12 *Decl.* ¶14; *see Raglin Decl.* ¶7. Individuals who are members of the Credit Class, and for whom  
13 the CDCR has records, will receive an accounting of the total restitution paid on their behalf  
14 while they were housed in a restitution center. *Estuar Decl.*, ¶12; *Raglin Decl.*, ¶7. Individuals  
15 who are members of the Reimbursement Class will receive a check in the amount they are due as  
16 determined by CDCR under the terms of the Agreement. *Estuar Decl.* ¶13. Attached to the  
17 *Estuar Decl.* as Exhibit C is a copy of the letter to be sent to class members following Final  
18 Approval.

### 19 III. STANDARDS FOR FINAL APPROVAL

20 *California Rule of Court* 3.769 and *Civil Code* §1781(f) require Court approval of any  
21 settlement, compromise or dismissal of a class action. Because this Action is for equitable relief  
22 only, neither preliminary approval of the settlement, nor class notice of and opportunity to opt-  
23 out of the settlement is required. *Bell v. American Title Ins. Co.*, 226 Cal. App. 3d 1589, 1603  
24 (1991)(California follows the same rule as the federal courts when classes are certified under rule  
25 23(b)(1) or (b)(2)).<sup>2</sup> Even though not required, class members are receiving notice. Each class  
26 member for whom the CDCR has records, whether Reimbursement Class or Credit Class, will  
27 receive a letter identifying the case, detailing the nature of the action, and the terms of the  
28 settlement as it applies to each class member. Credit Class members will receive a statement

1 showing the amount of restitution paid on her behalf during the time she resided in a restitution  
2 center. That statement shall include an email address and a physical address where Credit Class  
3 members can send questions. Reimbursement Class members will receive a check, and a letter  
4 identifying the case, detailing the nature of the action, and the terms of the settlement as it  
5 applies to each class member. Included in Reimbursement Class letters will be language  
6 allowing members to opt-out of the settlement:

7 "If you accept the reimbursement by cashing the enclosed check, you will be  
8 waiving your right to claim any additional or different reimbursement for  
9 employment-related expenses in the future, and agreeing that this payment fully  
10 resolves any such claim you may have. Thus, cashing the check does affect your  
11 rights. Alternatively, you can choose not to accept the reimbursement funds and  
12 pursue any remedy you may have."

13 Thus, in practical effect, any right to opt-out of the settlement is preserved for the  
14 Reimbursement Class member. Here, however, because no notice is required, the Court need  
15 only consider whether the proposed settlement is fair and reasonable under the circumstances.

16 At the final approval hearing, the Court must conduct an inquiry into the fairness of the  
17 proposed settlement. *California Rule of Court* 3.769(g). In considering a class action settlement,  
18 this Court has broad powers to determine whether a proposed settlement is fair and reasonable  
19 under the circumstances. *Mallick v. Superior Court*, 89 Cal.App.3d 434, 438 (1979).

20 Traditionally, in granting final approval of a settlement, the court determines whether the  
21 proposed settlement is fair, adequate and reasonable. *Dunk v. Ford Motor Company*, 48  
22 Cal.App.4th 1794, 1800 (1996). In assessing the fairness of a proposed settlement, "[d]ue regard  
23 should be given to what is otherwise a private consensual agreement between the parties." *Id.* at  
24 1801. A settlement is presumed to be fair when: (1) the settlement is reached through arm's  
25 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to  
26 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of  
27 objectors is small. *Id.* at 1802. Where there is not extrinsic evidence of fraud or collusion, the

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28 <sup>2</sup> It is well established that, in the absence of relevant state precedents, courts are urged to follow  
the procedures prescribed in rule 23 of the Federal Rules of Civil Procedure for conducting class  
actions. *Frazier v. City of Richmond*, 184 Cal. App. 3d 1491, 1499 (1986).

1 Court should assume that settlement negotiations were conducted in good faith. *Newberg on*  
2 *Class Actions*, 4th Ed., §11.51 (2012).

3 **IV. THE PROPOSED SETTLEMENT MEETS THE STANDARDS FOR FINAL**  
4 **APPROVAL**

5 **A. THE SETTLEMENT RESULTED FROM ARMS-LENGTH BARGAINING**  
6 **AFTER EXTENSIVE INVESTIGATION AND DISCOVERY, AND IS**  
7 **FAVORABLE TO THE CLASS.**

8 This settlement was reached as a result of diligent and extensive litigation over the course  
9 of nearly 10 years of litigation, including several years in Federal District Court, appeals before  
10 the Ninth Circuit, and later to the California Court of Appeal and, ultimately proceedings before  
11 the Los Angeles County Superior Court. Significant written discovery was exchanged, and  
12 numerous depositions taken, including depositions of CDCR officials in Sacramento. The  
13 settlement agreement was reached after months of arms-length negotiations between counsel,  
14 followed by mediation before an experienced and well-regarded mediator, retired Supreme Court  
15 Justice Edward A. Panelli in San Francisco. A proposed settlement was reached in July 2011,  
16 after which the State Defendants obtained approval for the terms of the proposed agreement from  
17 the necessary state entities.

18 This settlement is fair and reasonable to members of both certified classes. Members of  
19 the Credit Class for whom the CDCR has been able to locate records, who were not due any  
20 monetary reimbursement resulting from the allegations in this Action, will receive an accounting  
21 of the total restitution paid on their behalf while they were housed in a restitution center, which  
22 will be full and complete equitable relief for those individuals. *Estuar Decl.* ¶¶12-14. Despite a  
23 diligent search by the CDCR, as is detailed in Mr. Raglin's declaration, the CDCR has only been  
24 able to locate records for approximately one-half of the 1,500 former restitution center inmates  
25 identified as members of the Credit Class. *Raglin Decl.*, ¶¶5-7. Members of the Reimbursement  
26 Class will also receive as close to full and complete equitable relief as possible given the data  
27 available. *Estuar Decl.* ¶13. Based on the average amount inmates housed in the restitution  
28 centers were reimbursed for employment expenses after April 1, 2004, members of the  
Reimbursement Class will be reimbursed at a rate of \$7.156 for each month they were housed in  
a restitution center between January 1, 1999 and March 31, 2004. *Estuar Decl.* ¶13. Because  
CDCR did not maintain electronic records of reimbursements prior to April 1, 2004, and paper

1 records for the same time period were incomplete, the amount of reimbursement due can only be  
2 determined based on the post-April 1, 2004, average of \$7.156 per month of incarceration during  
3 the class period. *Estuar Decl.* ¶13. Given the completeness of the relief provided to class  
4 members, and the risks and significant delay for all parties associated with proceeding to trial,  
5 the terms of this settlement are fair, adequate and substantial.

6 ***B. CLASS COUNSEL IS EXPERIENCED AND ENDORSES THE SETTLEMENT***

7 Plaintiffs' counsel is experienced in civil rights class action litigation and, in particular, in  
8 litigation on behalf of inmates against public entities. *Estuar Decl.* ¶16. Litt, Estuar & Kitson,  
9 LLP and its predecessors have been named as class counsel, or co-lead counsel, in over one  
10 dozen class action lawsuits in California and elsewhere. *Estuar Decl.* ¶16. Thus, class counsel is  
11 sufficiently experienced and qualified to evaluate the class claims and viability of defenses.  
12 *Estuar Decl.* ¶16.

13 ***V. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE***

14 Plaintiffs' counsel's application for an award of attorneys' fees and costs of \$255,776.29  
15 is fair and reasonable. This amount is to be awarded, subject to the approval of the Court,  
16 separate and apart from any benefit to the Class, and is not being paid from a common fund.  
17 *Estuar Decl.* ¶17.

18 VOA and State Defendants do not oppose this request, and all parties agree that this is a  
19 substantial discounting of Plaintiffs' counsel's fees in this case.

20 If this action were to proceed to trial and Plaintiff was determined to be the prevailing  
21 party, Plaintiffs' counsel would be entitled to the full amount of their fees under *California Code*  
22 *of Civil Procedure* §1021.5 which, even absent a multiplier, would be for more than four times  
23 the amount of fees and costs agreed to as part of this settlement.<sup>3</sup> In that scenario, Plaintiffs'

24 <sup>3</sup> As of July 2011, Plaintiffs' counsel fees were approximately \$956,103.00. *Estuar Decl.* ¶18.  
25 This figure included substantial reductions of time which could arguably be considered parts of  
26 the case which did not survive the federal appeal. *Estuar Decl.* ¶18. Plaintiff also limited fees to  
27 time spent up to March 3, 2010, as well as further reductions in the exercise of billing judgment.  
28 *Estuar Decl.* ¶18. That reduction in time amounts to \$262,674.00. *Estuar Decl.* ¶18. Plaintiffs'  
counsel has since incurred additional fees negotiating the settlement, drafting the settlement  
agreement, and preparing the instant motion. *Estuar Decl.* ¶19.

counsel would seek at least the full amount of fees through March 3, 2010 (\$956,103.00), in addition to all fees incurred since March 3, 2010, which are significant and include preparing for attending the mediation in July 2011, preparing the settlement documents, and this motion. Plaintiff's counsel would also seek a multiplier under *Ketchum v. Moses*, 24 Cal. 4th 1122 (2001). Plaintiff's counsel would also seek costs, which as of March 2010, were approximately \$68,631.00. *Estuar Decl.* ¶20.

Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (citing *Zucker v. Occidental Petroleum Corp.*, 968 F.Supp. 1396, 1400 (C.D. Cal. 1997)). Under the lodestar approach, the lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly rate. *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986). The court may then enhance the lodestar with a multiplier, if appropriate, to arrive at a reasonable fee. *Blum v. Stenson*, 465 U.S. 886, 888 (1984); *Wershba*, supra, 91 Cal.App.4th at 254.

For Plaintiffs' counsel, the fees in this case were entirely contingent in nature. *Estuar Decl.* ¶22. Plaintiffs' counsel not only risked a great deal of time, but also a great deal of expense to ensure the successful litigation of this action on behalf of the class members. *Estuar Decl.* ¶22. Counsel has, for eight years, exerted substantial and creative efforts to litigate and settle this matter, including appeals to the Ninth Circuit and California Court of Appeal, preparation of and amendments to the Complaint, preparation of and responses to written discovery, review of document production, statistical analysis of reimbursement information, taking and defending depositions, preparing for mediation, working with State Defendants to finalize the settlement agreement, letters to class members, and preparation of this Motion. *Estuar Decl.* ¶23. Counsel has made a significant outlay of cash and personal resources by pursuing this case on a contingency basis. *Estuar Decl.* ¶24.

Although the settlement agreement does not delineate between attorneys' fees and costs, after Plaintiffs' counsel is reimbursed for its out-of-pocket expenses of \$68,631, approximately \$187,415 will remain to compensate Plaintiffs' counsel for the significant time it has put into this case. Plaintiffs' counsel has actually incurred \$956,103 in reasonable fees as of March 2, 2010, but have agreed to greatly discount their lodestar fee (with a reduction of about 80.4%) to settle



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6 this matter. *Estuar Decl.* ¶21. Furthermore, Plaintiffs' counsel has elected to retain a third-party  
7 class administrator, KCC, and with the exception of \$0.50 an envelope which will be paid by the  
8 State Defendants, the remaining cost of the class administrator, estimated to be approximately  
\$12,390, will be paid by Plaintiffs' counsel. *Estuar Decl.* ¶21.

9 **VI. CONCLUSION**

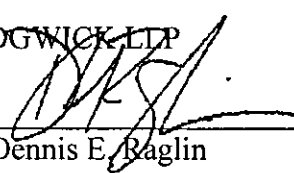
10 The proposed class settlement is fair, adequate, and reasonable. It will result in  
11 substantial equitable relief to class members; it is non-collusive; and it was achieved as the result  
12 of informed, extensive, and arms' length negotiations conducted by counsel who are experienced  
13 in class action litigation. For the foregoing reasons, the parties respectfully request that the  
14 Court grant final approval.

15 DATED: August \_\_, 2012

RESPECTFULLY SUBMITTED,  
LITT, ESTUAR & KITSON, LLP

16 By \_\_\_\_\_  
17 Paul J. Estuar  
Attorneys for Plaintiffs

18 DATED: August 23, 2012

19 SEDGWICK LLP  
20 By   
Dennis E. Raglin  
21 Attorneys for Defendant State of California, California  
22 Department of Corrections and Rehabilitation

23 DATED: August \_\_, 2012

KLINEDINST PC

24 By \_\_\_\_\_  
25 Hartford O. Brown  
26 Attorneys for Defendant Volunteers of America of Los  
27 Angeles

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13 By 

14 Paul J. Estuar  
Attorneys for Plaintiffs

15 DATED: August \_\_, 2012

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17 Dennis E. Raglin  
18 Attorneys for Defendant State of California, California  
19 Department of Corrections and Rehabilitation

20 DATED: August 17, 2012

KLINEDINST PC

21 By 

22 Hartford O. Brown  
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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1055 Wilshire Boulevard, Suite 1880, Los Angeles, California 90017.

On August 20<sup>3</sup>, 2012, I served true copies of the document described as **JOINT MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT** in sealed envelopes, addressed as stated below:

Hartford Brown  
KLINEDINST PC  
777 South Figueroa Street; Suite 4700  
Los Angeles, California 90017

Dennis E. Raglin  
Sedgwick, Detert, Moran & Arnold LLP  
333 Bush Street, 30<sup>th</sup> Floor  
San Francisco, California 94104

[XX] **BY MAIL** - I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully paid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Outgoing mail is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

[XX] **E-MAIL** - Previously served by e-mail on August 17, 2012 by Julia C. White in the form of pdf scans attached as electronic mail sent from jwhite@littlaw.com to the parties stated above.

Executed on August 20<sup>3</sup>, 2012, at Los Angeles, California.

  
Miguel A. Villafuerte