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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

JENNY LISETTE FLORES, *et al.*,

Plaintiffs,

- vs -

LORETTA E. LYNCH, Attorney

General of the United States, *et al.*,

Defendants.

) Case No. CV 85-4544 DMG (AGR_x)

)

) NOTICE OF MOTION AND MOTION TO

) ENFORCE SETTLEMENT AND APPOINT A

) SPECIAL MONITOR

)

) Date: June 17, 2016.

) Time: 9:30 a.m.

) Dept: Courtroom 7

) [HON. DOLLY M. GEE]

1 *Plaintiffs' counsel, continued*

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///

1 To defendants and their attorneys of record:

2 PLEASE TAKE NOTICE that on June 17, 2016, at 9:30 a.m. or as soon thereafter as
 3 counsel may be heard, plaintiffs will and do hereby move the Court for an Order (1)
 4 requiring defendants to comply with the settlement filed herein on January 17, 1997
 5 (“Settlement”)¹ and this Court’s Orders of July 24, 2015 [Doc. # 177] and August 21,
 6 2015 [Doc. # 189], (2) appointing a Special Monitor, and (3) for such further relief as
 7 the Court deems appropriate.

8 This motion is based upon the annexed memorandum of points and authorities
 9 and upon all other matters of record herein, and is brought following several meetings
 10 of counsel pursuant to Local Rule 7-3 and ¶ 37 of the Settlement.²
 11

12 Dated: May 19, 2016.

Respectfully submitted,

13
 14 CENTER FOR HUMAN RIGHTS &
 15 CONSTITUTIONAL LAW
 16 Carlos Holguín
 Peter A. Schey

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 19 T. Wayne Harman
 Elena García

20 LA RAZA CENTRO LEGAL, INC.
 21 Michael Sorgen
 22 Maria Victoria Castro
 Amanda Alvarado Ford

23
 24 ¹ See Plaintiffs’ First Set of Exhibits in Support of Motion to Enforce Settlement, Exh.
 25 1 [Doc. # 101.]

26 ² This motion is made following conferences of counsel pursuant to L.R. 7-3 that took
 27 place on March 11, 2016. Further conferences were held on March 17, 2014, and March
 28 25, 2016. Plaintiffs communicated concerns regarding Defendants’ breaches of the
 Settlement in correspondence dated February 20, 2016. The parties have been unable to
 resolve their disagreement over Defendants’ compliance with the Settlement and this
 Court’s Orders. Plaintiffs’ Exhibit 1 ¶ 16.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION¹

On February 2, 2015, Plaintiffs filed a motion to enforce the parties' consent decree ("Settlement"). The Court granted Plaintiffs' motion on July 24, 2015, finding that Defendants were in material breach of the Settlement. In Chambers Order re Plaintiff's Motion to Enforce Settlement of Class Action and Defendant's Motion to Amend Settlement Agreement [Doc. # 177] ("July 24, 2015 Order"). The Court ordered Defendants to release Class Members subject to specific provisions of the Agreement, while they await the results of removal proceedings. *Id.* at 24-25. The Court also gave Defendants an opportunity to respond to the Court's six-point remedy. *Id.*

On August 21, 2015 the Court issued its remedial Order requiring Defendants to comply in all regards with the Settlement. Order re Response to Order to Show Cause [Doc. # 189] ("August 21, 2015 Order"). The Court ruled that "Defendants must

¹ This Court retains subject matter jurisdiction to make the requested further Orders for two reasons: (1) Each issue currently under consideration by the Ninth Circuit would "remain[] unchanged" by the Proposed Orders; and (2) the Proposed Orders will "protect plaintiffs' rights in direct response to defendants' repeated and willful non-compliance with [the Court's] earlier orders." *Armstrong v. Brown*, 732 F.3d 955, 959 fn. 6 (9th Cir. 2013), *cert denied*, 134 S. Ct. 2725 (2014) (Affirming the district court's authority to issue modified orders requiring near immediate action by California state prison officials pending appeal of its judgment, which determined the rights of disabled prisoners and obligations of state officials).

1 implement the Court's remedies ... by October 23, 2015." *Id.* at 3.

2 Defendants did not seek a stay of this Court's August 21, 2015 Order. Instead,
3
4 they filed a Notice of Appeal of the July and August Orders. Notice of Appeal [Doc. #
5 191]. The thrust of the appeal is that "the District Court erred in holding that the
6 Agreement applies to accompanied ... minors ..." Bf for Appellants, Cir. Doc. #10-3
7
8 at 34-56.²

9 The evidence filed herewith shows that in violation of this Court's Orders and
10 the Settlement, conditions for children at CBP detention facilities remain deplorable
11
12 with children forced to sleep in over-crowded cells on cold concrete floors with no
13 mattresses or blankets, no change of clothes, no soap, towels or washing facilities, and
14
15 entirely inadequate food and dirty drinking water. The evidence also shows that in
16 violation of this Court's Orders and the Settlement, *inter alia*, Class Members are not
17
18 advised of their rights; continuous efforts are not made and recorded regarding the
19 release of accompanied Class Members; accompanied Class Members are not placed

20 ² On May 13, 2015, ICE announced that it would "discontinue invoking general
21 deterrence as a factor in custody determinations in all cases involving families." DHS
22 Press Release, Doc. # 153-1 at 2 (RE at 154). Homan Decl. Doc. # 184-1 at 4 (RE at
23 160-161 ¶7) ("ICE no longer uses deterrence as a factor in individual custody
24 determinations . . .") Having "considered in detail the evidence Defendants presented
25 of the deterrent effect of the detention policy," this Court concluded that "Defendants
26 [failed to] proffer *any* competent evidence that ICE's detention of a subset of class
27 members in secure, unlicensed facilities has deterred or will deter others from
28 attempting to enter the United States." July 21, 2015 Order at 23 (emphasis added). In
the Court of Appeals Defendants make a *volte face* and resurrect "deterrence" as
"essential ... to signal to potential illegal entrants that individuals who do not make
meritorious claims for relief will not be permitted to remain in the United States." Brief
for Appellants, Ninth Circuit Doc. # 10-3 at 22.

1 with family members or in non-secure facilities licensed for the care of dependent
2 children without unnecessary delay; and Defendants persistently interfere with Class
3 Members' right to counsel.³

4
5 The harm caused to children by Defendants' detention policy has been
6 explained to Defendants by child-welfare experts,⁴ leaders of Congress,⁵ faith-based
7 leaders,⁶ the American Bar Association,⁷ children's advocacy groups⁸ and this
8
9

10
11 ³ A *pro bono* coordinator with the American Immigration Lawyers Association
12 observes: "Since the October 23, 2015 deadline set by the Court for the Government to
13 come into compliance with its August 2015 Order, as documented in a letter to ICE
14 and USCIS from AILA, CLINIC, RAICES, the Council and Human Rights First dated
15 December 24, 2015 ... practitioners and advocates in all three family detention
16 facilities have witnessed practices that have entirely short-circuited the *Flores*
17 settlement and class members' right to due process and access to counsel." Dec. of
18 Karen Lucas Ex. 13 ¶21 (March 25, 2016).

19 ⁴ See, e.g., Declaration of Dr. Luis Zayas, Exhibit 24 ¶¶ 1-6 [Doc. # 101-7];
20 Declaration of Genevra Berger, Exhibit 25 ¶¶ 25, 28 [Doc. # 101-8]; American
21 Academy of Pediatrics (AAP) Letter to Sec. Johnson, Ex. 97.1 [Doc. # 187-7];
22 Declaration of Laurie Cook Heffron, LMSW, Ex. 109.2 [Doc. # 187-10]; Declaration
23 of Professor Nestor Rodriguez, Ex. 109.4 [Doc. # 187-10].

24 ⁵ See, e.g., 136 U.S. Representatives Respond to Sec. Johnson, Ex. 70 [Doc. # 187-2];
25 33 U.S. Senators Respond to Sec. Johnson, Ex. 71 [Doc. # 187-2]; Comment of
26 Senator Patrick Leahy (D-Vt.) on Changes to the Administration's Family Detention
27 Practices, Ex. 72 [Doc. # 187-2]; Senator Reid Statement On Administration's
28 Decision To Reform Family Detention Policies, (Ex. 74 [Doc. # 187-2]; "Democratic
Members Say Reforming Family Immigrant Detention Isn't Enough", Ex. 78 [Doc. #
187-2].

⁶ See, e.g., Faith leaders representing churches, synagogues, and faith-based
organizations in the United States letter to President Obama, Ex.81 [Doc. # 187-2]; 96
NGOs and Faith-Based Organizations respond to Sec. Johnson, Ex. 79 [Doc. # 187-2];
LIRS Statement regarding proposed DHS reforms to family immigration detention
policies, Ex. 80 [Doc. # 187-2]; Lutheran Immigration and Refugee Service (LIRS)
"LIRS Urges Administration to Abandon Symbolic Reforms and End Family
Detention," Ex. 69 [Doc. # 187-2].

1 Court.⁹ Defendants have nevertheless ignored their obligation to treat children “with
2 dignity, respect and special concern for their particular vulnerability as minors”
3 (Settlement ¶ 11) and have continued to violate the Settlement and this Court’s Orders
4 enforcing the Settlement. Plaintiffs now seek Orders from this Court in the form
5 lodged herewith (1) requiring Defendants to promptly comply with the Settlement and
6 this Court’s Order of August 21, 2015, and (2) appointing a Special Monitor to
7 oversee Defendants’ remedial efforts and compliance with the Settlement going
8 forward.
9
10
11

12 II. STATEMENT OF FACTS

13 **1. Defendants continue to detain children in deplorable and unsanitary** 14 **conditions in CBP facilities in violation of the Settlement and this** 15 **Court’s Orders**

16 After reviewing the evidence, this Court’s July 24, 2015 Order held that
17 Defendants “*wholly failed*” to meet even the “minimal standard[s]” of the Settlement,
18 tolerating “overcrowded and unhygienic conditions” in CBP detention facilities. July
19

20
21 ⁷ Letter from William C. Hubbard, President, American Bar Association to DHS
Secretary Jeh Johnson, Exhibit 64 [Doc. # 136.]

22 ⁸ See, e.g., American Immigration Lawyers’ Association (AILA), “Little Meaningful
23 Change in ICE Announcement on Family Detention,” Ex. 82 [Doc. # 187-2]; American
24 Immigration Council “Government Shows No Signs of Backing Down on Family
25 Detention,” Ex. 83 [Doc. # 187-2]; “Texas advocates throw cold water on ICE’s
26 promises to ‘fix family detention,’” Ex. 84 [Doc. # 187-2]; Human Rights First
27 “Reforms to Family Detention System Are Insufficient,” Ex. 85 [Doc. # 187-2];
Refugee and Immigrant Center for Education and Legal Services (RAICES), “Obama
28 Administration Policy on Family Detention Continues to Violate the Law & Flores
Settlement,” Ex. 86 [Doc. # 187-2].

⁹ July 24, 2015 Order [Doc. # 177]; August 29, 2015 Order [Doc. #189.]

24, 2015 Order at 18 (emphasis added).¹⁰

During the period from October 21, 2015 to December 3, 2015, the CARA Project conducted 228 screenings of individuals recently held at CBP facilities and “virtually all of them experienced abysmal conditions in CBP custody.” Declaration of Alexander Mensing, Ex. 19 at ¶6.¹¹

(A) *Flores* Class Member children in CBP facilities suffer from inadequate access to food

Food provided to those detained at CBP facilities remains inadequate for *Flores* Class Members, both in quantity and quality. Many *Flores* Class Members were only fed semi-frozen, cold sandwiches once or twice per day rather than the two hot meals and three total meals per day required by CBP standards.¹²

¹⁰ In its August 21, 2015, Order, the Court again found that “[n]one of Defendants’ declarations challenged or contradicted the deplorable conditions Plaintiffs’ declarants described” in CBP detention cells. *Id.* at 13. The Court ordered Defendants to comply with and monitor compliance with the Settlement. *Id.* at 15.

¹¹ *Flores* class counsel and volunteer attorneys interviewed mothers and children at CBP facilities in early 2016 well after Defendants October 2015 deadline to come into compliance with the Settlement and this Court’s August 29, 2015 Order. Mothers and children uniformly reported being held for one to three nights in extremely cold holding cells, not being provided dry clothes, being held in severely overcrowded cells, having to sleep on cold concrete floors, not being provided mats or blankets, often having insufficient space to lay on the floor to sleep, having bright lights kept on all day and night, inadequate food, dirty drinking water, one cup for 30-40 people to share, no soap or paper towels to wash their hands, lack of privacy and cleanliness in toilet facilities, lack of access to medical treatment, no access to information regarding detainees’ rights, and verbal abuse by some guards. Declaration of Class Counsel Peter Schey (“Dec. Peter Schey”), Ex. 1 ¶ 5.

¹² CBP National Standards on Transport, Escort, Detention, and Search, October 2015, Ex. 20 ¶ 5.6 (“Juveniles ... will be offered a snack upon arrival and a meal at

1 Walter Axxxxxxx xxxxxxxx, a thirteen-year old class member from El
2 Salvador was detained by CBP on or about November 9, 2015 for two days at the
3 Texas border: “The only food we got was sandwiches of 2 pieces of dry bread and one
4 thin slice of ham and a small box of juice. We were fed three times over the two days
5 we were there ... We were hungry, very cold, scared, and unable to sleep.”

6
7
8 Declaration of Walter Axxxxxxx xxxxxxxx, Ex. 22 ¶ 6.¹³

9 The evidence shows that CBP’s provision of inedible and inadequate food to
10 detained class member children is systemic and widespread.¹⁴

11
12 **(B) Flores Class Member children in CBP facilities continue to suffer**
13 **from inadequate access to clean drinking water**

14 *Flores Class Members and their mothers report that drinking water provided to*

15
16 least every six hours thereafter, at regularly scheduled meal times. At least two of those
17 meals will be hot. Juveniles ... detainees must have regular access to snacks, milk, and
18 juice.”) See <https://www.cbp.gov/sites/default/files/documents/cbp-teds-policy-20151005.pdf> (last checked May 11, 2016).

19 ¹³ Sara Exxxxxxx xxxxxx and her Class Member daughter Nathaly Mxxxxxxx
20 xxxxxxxxxx-xxxxxx were apprehended on or about December 14, 2015, and detained at
21 a CBP station in Welasco, Texas, for about two days and two nights: “We were fed a
22 sandwich two times a day with some juice. My daughter refused to eat anything but the
23 one slice of cold meat inside the sandwich. She was very hungry but we were not
24 served any food other than the cold sandwiches.” Declaration of Sara Exxxxxxx
25 xxxxxx Ex. 24 ¶ 6; Victor Rxxxxxx xxxxxxxx, a fifteen-year old national of El Salvador,
26 was detained on or about October 14, 2015. He reported that he was only fed twice
27 during the entire day and night that he was held in CBP detention and the food was
28 frozen: “We had arrived at this station around 9 AM and were transferred out around 1
AM the next morning. While at this location we were fed twice, both times we were
given a sandwich consisting of two frozen pieces of bread and one thin cold slice of
ham.” Declaration of Victor Rxxxxxx xxxxxxxx, Ex. 21 ¶ 4.

¹⁴ See Ex. 2, pp. 1-3 (excerpts of numerous declarations filed herewith regarding
inadequate food and children’s hunger at CBP facilities since October 2015).

1 them in CBP detention facilities is dirty or often tastes so strongly chlorinated that the
2 families are afraid to drink it. “We did not drink any water because it was right near
3 the bathroom and the container was disgusting. Instead, I would ration the small bags
4 of juice for my son.” Declaration of Karen Zxxxxxx xxxxxxxx, Ex. 39 ¶5.

6 *Flores* Class Members and their mothers report that they did not have any cups
7 to drink water or that they had to share the same cups with numerous strangers held in
8 their cells. *See, e.g.* Declaration of Katerin Yxxxxxxx xxxxxxxx Ex. 34 ¶9. Class
9 member Nathaly Mxxxxxxx xxxxxxxxxxxx-xxxxx’ mother, Sara Exxxxxxxx xxxxx, was
10 afraid to have her daughter drink the water: “The water tasted like bleach so we were
11 scared to drink it.” Declaration of Sara Exxxxxxxx xxxxx, Ex. 24 ¶6.

14 The evidence shows that CBP’s failure to provide clean drinking water to
15 children detained for one to three days is routine and pervasive.¹⁵

17 **(C) *Flores* Class Member children are held in CBP facilities that are**
18 **unsanitary and unfit for human habitation**

19 *Flores* Class Members and their mothers describe sleeping on hard cement
20 floors covered in mud and littered with used sanitary napkins. Class Members are not
21 allowed to shower, wash their hands with soap, or brush their teeth.

23 Alexander Mensing interviewed numerous *Flores* Class Members detained at
24 CBP facilities and their mothers after October 2015:

27 ¹⁵ *See* Exhibit 2 pp. 3 (excerpts of numerous declarations filed herewith regarding
28 inadequate and dirty drinking water).

1 In addition to the families lying near the toilets [to sleep], mothers recounted
2 that detained men in the opposite cell had a clear view into the toilet area of the
3 women's cells. The guards also had a view into this area; one mother reported
4 that "we would ask someone to stand in front of us while we went to the
5 bathroom with their hands in the air so that the officers their [sic] wouldn't
6 watch us go to the bathroom."...Families arrived with mud caked on their shoes
7 and thus the cell floors were covered with mud and dirt. Women and children
8 had to sit and lie down in dirt floors. Families generally spent one to several
9 days in a CBP station. Class members and their mothers had no opportunity to
10 bathe during the time they were held at the hielera and the perrera. One ...
11 woman ... was held for eight days without showering or bathing. Another
12 mother reported that there was no garbage can, so used sanitary pads piled up
13 on the floor by the toilets, and the mothers and children had to sleep next to the
14 garbage, on the floor due to overcrowding.

11 Declaration of Alexander Mensing, Ex. 19 ¶¶12(8) and 12(12)

12 Mirna Mxxxxxxx xxxxxx describes the unsanitary conditions as follows:

13
14 The bathroom situation was very unsanitary. My youngest son and I got
15 diarrhea and we didn't receive any medical attention. We weren't provided with
16 any toiletries, and I wasn't able to bathe. The conditions were so bad that when
17 I later arrived at Karnes, they found that I had fleas, which I hadn't had before
18 being detained. Also, the bathrooms were not private there was only a little wall
19 separating them from the cell, which anyone could look over.

18 Declaration of Mirna Mxxxxxxx xxxxxx, Ex. 25 ¶ 6.

19
20 Yessenia Exxxxxxxxx xxxxxxxx, a twelve-year old national from Guatemala, was
21 detained at a CBP facility on or about January 21, 2016:

22
23 At this place we were kept in a very crowded cell. The cell was all concrete. ...
24 For three days we were given no soap to wash, no toothbrushes to brush our
25 teeth, no paper towels to dry our hands when we washed our hands, nothing to
26 brush our hair, no change of underwear or clothes, no pillows or blankets and
27 no beds to sleep in.
28

Declaration of Yessenia Exxxxxxx xxxxxxxx, Ex. 27 ¶6. 16

The problems of sanitation at CBP facilities described above are systemic and widespread.¹⁷

(D) Flores Class Member children continue to suffer from extremely cold temperatures in CBP detention facilities

The temperature in the CBP detention facilities remains extremely cold and both children and mothers complain of suffering from the cold. At night children are sometimes provided a thin mylar sheet, which does little to mitigate the cold.

Yessenia Exxxxxxx xxxxxxxx declares:

The cell was all concrete ... We had to try to sleep in the freezing cold cell on the concrete floor. We were exhausted physically and emotionally. On the third day I was finally given a silver foil to cover myself at night.

Declaration of Yessenia Exxxxxxx xxxxxxxx, Ex. 27 ¶6.

Nine-year old Class Member Yeslin Lxxxx xxxxxxxx described cold conditions,

¹⁶ Evelin Jxxxxx xxxxxxxx, a national of El Salvador came to the United States with her Class Member son, Jeferson Axxxxx xxxxxx xxxxxxxx (DOB xx/xx/2013). She and her son were apprehended on or about January 30, 2016: "There was a bathroom in the CBP station cell, but it did not have a door. There were no diapers there. On Saturday Jeferson used the bathroom and his pants were wet. He still does not have pants to put on." Declaration of Evelin Jxxxxx xxxxxxxx, Ex. 42 ¶ 7. Class member Yessenia Exxxxxxx xxxxxxxx declares: "The Border Patrol agents took us to a border station close to the border. We spent that day and night in this location ... Our clothes were wet and muddy but they didn't give us any dry clothes. They didn't let us shower or give us towels or soap to wash." Dec of Yessenia Exxxxxxx xxxxxxxx (12 yrs old), Ex. 27 ¶¶ 6, 9. Mothers reported that they and their children were forced to sleep on or under the toilets, which were often the warmest place in the cell. One mother reported that the smell was horrible and that the other families used the toilets as she and her son lay next to it. Declaration of Alexander Mensing, Ex. 19 ¶12(7).
¹⁷ See Ex. 2, pp. 4-6 (numerous excerpts of declarations filed herewith regarding overcrowded and uninhabitable CBP detention cells since October 2015).

1 lack of dry clothing and over-crowded cells:

2 The Border Patrol agents took us to a border station ... The first night we were
3 there, we had to sleep sitting up on a bench because there were so many people
4 there that there was no room to lay down. The next night, we slept on the floor.
5 They did not give us any blankets and we were all wet and they didn't give us
6 any dry clothes. I could only sleep a tiny bit because ... the floor was cold and
7 hard... In the middle of Sunday night, they took us to another place. We spent
8 two nights in this place. It was very cold again and they only gave us aluminum
9 blankets to cover ourselves...

10 Declaration of Yeslin Lxxxx xxxxxxxx (age 9), Ex. 23 ¶¶ 4, 8.

11 Numerous Class Members and their mothers attest to the unnecessarily cold and
12 unhealthy temperatures in CBP detention facilities.¹⁸

13 **(E) Flores Class Member children are held in inhumane overcrowded CBP**
14 **detention facilities and are forced to endure sleep deprivation.**

15 Due to the inhumane crowded conditions in CBP detention facilities, Class
16 Members and their mothers often cannot lie down at night to sleep and must sit or
17 stand in close proximity to strangers. Some cells are packed with up to 40 adults and
18 children. Due to the overcrowding, some children are forced to sit up all night long.

19 Kenia Yxxxxx xxxxxxxx, a national of Honduras, was detained with her
20 daughter, Brijana Bxxxxxx-xxxxx. They entered the in Texas on or about December
21 18, 2015. She describes the crowded CBP cell where they were held:

22 This facility was very crowded the whole time we were there. There [were]
23 about 40 people in one room the size of a bedroom. There was no space to do
24 anything. Every time we tried to stand up, they just kept yelling that we should
25 sit or lay down, but there was barely any space.
26

27
28 ¹⁸ See Ex. 2, pp. 6-8 (numerous excerpts of declarations regarding freezing cold
temperatures in CBP detention cells).

1 Declaration of Kenia Yxxxxxx xxxxxxxx, Ex. 36 ¶ 8.

2
3 Yessenia Exxxxxxxx xxxxxxxx, a twelve-year-old national from Guatemala
4 detained at a CBP station on or about January 21, 2016, declares:

5
6 On the third day I was finally given a silver foil to cover myself at night. At
7 times the cell was so crowded that it wasn't possible to lay down to try to sleep
8 because there wasn't enough room. I was terrified by the whole experience.

9 Declaration of Yessenia Exxxxxxxx xxxxxxxx, Ex. 27 ¶ 6.

10 The experiences of Class Members described above are typical of the
11 inhumanely overcrowded conditions in CBP detention facilities.¹⁹

12
13 **2. Flores Class Member children are routinely not advised of Flores rights by**
14 **CBP or ICE officers as required by the Settlement**

15 The evidence shows that *Flores* Class Members are routinely not advised of
16 rights by CBP or ICE as required by the Settlement.

17 Victor Rxxxxxx xxxxxxxx, a fifteen-year-old national of El Salvador, crossed the
18 border with his mother near Piedras Negras, Texas on or about October 14, 2015.
19 They were apprehended by CBP and then detained at the Karnes facility for
20 approximately three weeks before both were transferred to Berks, PA.²⁰ Victor
21 declares: "At no time while we were detained at Karnes did any official tell me about
22 the Flores case, give me any advisal of rights about the Flores case, or interview me
23
24
25

26 ¹⁹ See Ex. 2, pp. 8-11 (excerpts of numerous declarations regarding overcrowding and
27 sleep deprivation in CBP cells).

28 ²⁰ At the time of his interview on or about February 19, 2016 he had been at Berks for around three months and wanted to reunite with his Aunt in New York.

1 about being placed with a relative or adult designated by my mother or about being
2 transferred to a licensed facility for minors.” Declaration of Victor Rxxxxxx xxxxxxxx,
3
4 Ex. 21 ¶ 7.²¹

5 **3. DHS fails to make and record ongoing efforts aimed at release or**
6 **placement of *Flores* Class Members as required by the Court’s Orders**
7 **and the Settlement**

8 The evidence shows that in violation of this Court’s Orders and the Settlement,
9 Defendants refuse to make and record continuous efforts aimed at the release of Class
10 Member children and children are not released to relatives or friends under Paragraph
11 14 without unnecessary delay or placed in non-secure licensed facilities under
12 Paragraph 19 within five days or as expeditiously as possible.²²

13
14
15 Walter Axxxxxxxx xxxxxxxxx, a thirteen-year-old national of El Salvador, was

16
17 ²¹ “Not one of the *Flores* class members or mothers that I interviewed while
18 volunteering at Dilley had received any information from CBP, ICE or Dilley staff
19 about the rights class members have under the *Flores* case.” Declaration of Natalia
20 Ospina, Ex. 7 ¶8; Karen Zxxxxxx xxxxxxxx and her son, nationals of El Salvador, were
21 apprehended in Texas on or about August 29, 2015 and then detained at Dilley, TX.
22 On or about October 28, 2015 they were transferred to the detention center at Berks,
23 PA. Ms. Zxxxxxx xxxxxxxx declares: “The officials and staff at the detention center in
24 Dilley never advised me of my son’s rights under the *Flores* case.” Dec. of Karen
25 Zxxxxxx xxxxxxxx, Ex. 39 ¶ 11. Walter Axxxxxxxx xxxxxxxxx, a thirteen-year-old
26 national of El Salvador, was detained on or about November 9, 2015 at the Texas
27 border. He declares that during several weeks of detention at Dilley “no officer told me
28 anything about the Flores case or my rights under the Flores case.” Declaration of
Walter Axxxxxxxx xxxxxxxxx Ex. 22 ¶ 9. After three weeks of further detention at
Berks “no official has explained any rights I may have under the Flores case.” *Id.* ¶12.
See also Ex. 2, pp. 11-12 (excerpts of numerous declarations showing almost no Class
Members are provided advisals of their rights as required by the Settlement).
²² *See* Ex. 2, pp. 13-15 (excerpts of numerous declarations showing no ongoing efforts
to release Class Members to relatives or place them in non-secure licensed programs).

1 detained on or about November 9, 2015 at the Texas border. He declares: “No one
2 asked me about relatives or family friends who may be willing to take care of me here
3 in the U.S. No official told me that any decision had been made about releasing or
4 detaining me ...” Declaration of Walter Axxxxxxx xxxxxxxxx, Ex. 22 ¶9.²³

5
6 Karen Zxxxxx xxxxxxx, detained with her Class Member son since on or about
7 August 29, 2015, and still detained with her son eight months later, declares: “No
8 official questioned me about relatives or friends in the U.S. able to care for my son.
9 No one asked me if I wanted my son transferred to a licensed facility for children.”
10 Declaration of Karen Zxxxxx xxxxxxx, Ex. 39 ¶ 11.

11
12 Sara Exxxxxxx xxxxx, mother of Class Member Nathaly Mxxxxxx
13 xxxxxxxxx-xxxxx, fled to the U.S. after Sara’s life was threatened in Guatemala and
14 arrived in the U.S. on or about December 14, 2015. They were transferred to the
15 Karnes detention facility on or about December 17, 2015. On February 3, 2016, about
16 six weeks after being detained, Sara declared: “No one has talked to me about whether
17 my daughter can be released to a friend or relative in the United States.” Declaration
18 of Sara Exxxxxxx xxxxx, Ex. 24 ¶ 9.²⁴

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24 ²³ After three weeks of further detention at Berks, Walter declared: “As best I am
25 aware no steps have been taken to evaluate me for release to my father or any other
26 relative living in the U.S. ... To the best of my knowledge no official here has
27 discussed my release with my mother.” *Id.* ¶12.

28 ²⁴ Pro bono attorney Leanne Purdum declares: “In none of the cases in which I
interviewed Flores class members or their mothers did it appear that CBP or ICE or
facility staff had taken any steps, let alone continuous and ongoing steps, to release

1 **4. Flores Class Member children are routinely commingled with unrelated**
2 **adults for extended periods of time in violation of this Court's Orders and**
3 **the Settlement**

4 Raquel Axxxxxx xxxxxx fled Honduras with her daughter to escape threats of
5 violence. Raquel and her daughter were held at a border patrol station for about two
6 days and had been detained at the Karnes facility for 44 days when she declared: "We
7 are detained with hundreds of other unrelated women and their children. Many people
8 must share rooms and many of the children are sick because of the close quarters we
9 share." Declaration of Raquel Axxxxxx xxxxxx, Ex. 26 ¶ 11.²⁵
10
11
12

13 minors as expeditiously as possible to close relatives or friends in the United States or
14 to place them in licensed programs if release to relatives or friends was not possible." Declaration of Leanne Purdum, Ex. 8 ¶12 (March 1, 2016); Allison Mxxxx xxxxx is a
15 14 year old citizen of El Salvador in ICE custody for several months with her sister and
16 mother. She declares: "There was no need for me [or] my sister ... to be placed in
17 detention. Our father, Elias Mxxxxxx xxxxxx, lives in Dallas, Texas. He has been here
18 for about 12 years. My mother also has a sister ... who lives in Maryland and is a
19 Legal Permanent Resident ... My mom also has an aunt in Maryland who is a U.S.
20 citizen ... Immigration knows that we have family willing to care for us, and they have
21 denied our release for the last 8 months." Dec. of Allison Mxxxx xxxxx, Ex. 40 ¶12
22 (2/19/16). Celina Sxxxxxx-xxxx is the mother of class member Jefferson Axxx xxxxxx
23 xxxxxxxx detained at the Berks detention center. They had been detained for about five
24 months (since on or about November 10, 2015) when Ms. Sxxxxxx-xxxx declared:
25 "During my time detained ... no one has attempted to assess whether my son could be
26 released to relatives in the United States. No officer questioned me about this or asked
27 me for information of who could care for my son if he was released from detention."
28 Dec. of Celina Sxxxxxx-xxxx, Ex. 28 ¶ 20. Jefferson's father lives in Virginia and is
willing to care for his son unlawfully held in detention. *Id.* ¶ 23. Cesia Vxxxxxxxx-
xxxx is a 13-year-old class member detained for about six months when she declared:
"No official here has questioned me to determine if I have a close family member to
whom I could be released or whether I am willing to be placed in a licensed home if no
relative is found to be capable of caring for me." Dec. of Cesia Vxx-xxxx, Ex. 29 ¶19.
²⁵ Karen Zxxxxxx xxxxxxxx fled El Salvador with her 5-year old son and is afraid to
return. Karen and her son spent about two months at the Dilley facility and had been

The evidence shows that Defendants routinely commingle Class Member children with unrelated adults in violation of Paragraph 12A of the Settlement.²⁶ Young girls may even be detained with unrelated men.²⁷

5. *Flores* Class Member children are routinely detained for weeks or months in secure facilities in violation of this Court’s Orders and the Settlement

While Defendants have advised Class Counsel that they have reduced the “average” length of stay of Class Members in secure facilities to less than two weeks, as the declarations cited above show, many Class Members are detained in secure facilities (also not licensed for the care of dependent children) for weeks and months on end.²⁸ It is uncontested that the detention centers in Dilley and Karnes are fully secure. The evidence indicates that the facility in Berks is also secure.²⁹

detained at the Berks facility for three months when Karen made her declaration: “Detained men here are commingled with detained mothers and children and this makes the children and woman very uncomfortable.” Declaration of Karen Zxxxxxx xxxxxxxx, Ex. 39 ¶23. Attorney Robert Doggett discusses a case in which a 12-year-old Class Member was recently sexually abused by an unrelated adult and the abuser remains in the same detention facility as the abused Class Member. Ex. 18, ¶ 22.

²⁶ See Ex. 2, p. 17-18 (excerpts of numerous declarations showing class member children are routinely commingled for extended periods with unrelated adults).

²⁷ See, e.g. Dec. of Carol Anne Donohoe, Ex. 4 ¶ 4 (Accompanied *Flores* class member children are routinely commingled with unrelated men and women, including in sleeping quarters. “Concerned about the safety of some of my *Flores* clients, especially young girls sharing sleeping rooms with unrelated teenage and adult males, on or about October 16, 2015, I sent an email to Immigration and Customs Enforcement, Enforcement and Removal Operations (ICE-ERO) to express my concern about an eight year old girl made to share a room with her father and two unrelated adult males.” She received no response.)

²⁸ See Ex. 2, pp. 30-31 (excerpts of declarations); Class Counsel’s inspection and interviews at ICE detention facilities disclosed that since October 23, 2015, ICE has reduced what it calls the “average” detention length of Class Members to around 7-10

The detention facilities are also not licensed as required by the Settlement.³⁰

6. Defendants routinely interfere with Class Members' right to counsel adversely impacting their rights under the Settlement

Pro bono coordinator Karen Lucas observes that "ICE has consistently frustrated the ability of dedicated lawyers and legal assistants to access their clients and has systematically disregarded the attorney-client relationship." Dec. of Karen Lucas Ex. 13 ¶4.³¹

Pro bono attorney Jocelyn Dyer declares: "At the Dilley facility ... legal representatives are forced to prepare clients for their credible or reasonable fear interviews in a minimal amount of time (sometimes as little as twenty minutes) and

days, however Defendants have not provided Class Counsel with the data relied upon to arrive at various "averages." In any event, inspections disclosed Class Member children who had been detained for weeks or months in violation of the Settlement, regardless of the "average" length of detention of Class Members. Dec. of Peter Schey, Ex. 1 ¶ 9.

²⁹ See Declaration of Peter Schey, Ex. 1 ¶ 9 ("While facility staff at Berks claim all doors to the exterior are kept unlocked, they also clearly stated during Class Counsel's recent inspection that anyone who tried to leave would be promptly arrested.")

³⁰ See Pennsylvania Dept of Human Services letter to Berks County dated January 27, 2016, Ex. 60 ("The Department is ... revoking the certificate of compliance effective from February 21, 2016 ... [because Defendants'] Berks County Residential Center is not operating as a child residential facility ... Instead ... [its residents] include[e] adults."); Declaration of Robert Doggett, Esq., Ex. 18 , ¶¶ 18-28 (details Defendants' to date unsuccessful efforts to obtain a license for their Dilley facility and the Texas Court's intention to review the propriety of a license obtained for their Karnes facility).

³¹ *Flores* Class Member children and their mothers are not afforded access to counsel at Border Patrol detention facilities even though they often spend at least 72 hours and sometimes longer in these facilities before being transferred to ICE detention. CARA staff and volunteers have served over 7,000 families since March 2015 but have yet to encounter any child or family who met with an attorney or secured representation at a CBP facility. Dec. of Lindsay Harris, Ex. 16 ¶13.

1 with virtually no access to outside sources such as legal treatises, country condition
2 experts, and medical or psychological experts who could perform forensic
3 examinations. This was a stark departure from my normal practice ...” Dec. of
4 Jocelyn Dyer, Ex. 6 ¶7. Defendants have also transferred Class Members to distant
5 locations without advance notice to their counsel as required by Paragraph 27 of the
6 Settlement.³²

7
8
9 The attached declarations establish an ongoing pattern and practice of
10 interference with Class Members’ right to counsel that frustrates some Class
11 Members’ ability to obtain immigration relief and impedes their ability to realize and
12 protect their rights under the Settlement.³³

13 14 15 **III. ARGUMENT**

16 Detained children retain the essence of human dignity inherent in all persons. A
17 detention system that deprives detained children of decent food, water and sanitary
18

19
20 ³² See, e.g., Declaration of Ed McCarthy, Ex. 11 ¶10 (March 2, 2016) (“I notified my
21 clients’ deportation officer that we planned to file a request for reconsideration with the
22 asylum office. The deportation officer told me to submit the reconsideration request
23 within the next few days ... Three days after this conversation, I traveled to Karnes to
24 ... submit the reconsideration request. When I arrived, I was informed that my clients
25 had been transferred to an ICE family detention facility in Berks Pennsylvania, without
26 any notice to me, their attorney. I could no longer meet with or even communicate with
27 my clients. The same thing happened with another mother and *Flores* class member
28 who I was representing. These transfers to Berks completely interfered with both the
mothers’ and the *Flores* class members’ right to counsel.”). See also Ex. 2 pp. 26-31
(excerpts of *pro bono* attorney declarations regarding the transfer of Class Members
without prior notice to their counsel as required by the Settlement).

³³ See Ex. 2, pp. 26-31 (excerpts of numerous declarations re interference with right to
counsel and due process).

1 conditions, and forces them to sleep on a concrete floor, is incompatible with the
2 concept of human dignity and has no place in a civilized society.

3
4 **1. The Settlement is construed and enforced as a contract or injunction**

5 The Settlement is a contract, *Rufo v. Inmates of Suffolk County Jail*, 502 U.S.
6 367, 378; 112 S. Ct. 748; 116 L. Ed. 2d 867 (1992), and is therefore generally
7 construed and enforced as such. *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir.
8 1989).³⁴ Whether enforced as a contract or consent decree, the Court's task is largely
9 the same. *City of Las Vegas v. Clark County*, 755 F.2d 697, 702 (9th Cir. 1985) ("A
10 consent decree, which has attributes of a contract and a judicial act, is construed with
11 reference to ordinary contract principles."). As this Court has noted, "[w]here the
12 contract is clear, the plain language of the contract governs." July 24, 2015 Order at 3
13 (citation omitted). If breached, the Court should issue orders "commanding or
14 enjoining particular conduct." *TNT Marketing, Inc. v. Agresti*, 796 F.2d 276, 278 (9th
15 Cir. 1986).³⁵

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21 ³⁴ With limited exceptions, "federal law controls the interpretation of a contract
22 entered pursuant to federal law when the United States is a party." *Kennewick*
23 *Irrigation Dist. v. United States*, 880 F.2d 1018, 1032 (9th Cir. 1989). The Settlement
24 is also an order of the Court and therefore a consent decree. *Buckhannon Board &*
25 *Care Home v. West Virginia Dep't of Health and Human Resources*, 532 U.S. 598, 604
26 n.7; 121 S. Ct. 1835; 149 L. Ed. 2d 855 (2001); *Rufo, supra*, 502 U.S. at 378
27 (settlement "a judicial decree that is subject to the rules generally applicable to other
28 judgments and decrees.").

³⁵ Defendants have consistently violated the Settlement since the summer of 2014 and
this Court's Orders since August 2015. Their conduct is lawless and contemptuous.
United States v. Powers, 629 F.2d 619, 626, fn. 6 (9th Cir. 1980). Nevertheless,
Plaintiffs do not at this time seek a contempt ruling against Defendants believing that it

2. This Court should Order Defendants to comply with the Settlement

The Court has already found that the consent decree's language clearly and unambiguously applies to accompanied minors. July 24, 2015 Order at 4-7. The terms of the Settlement are clear and must be enforced.³⁶

Regarding conditions in Defendants' CBP detention facilities, this Court made clear that "to the extent any Border Patrol station is out of compliance with the Agreement, those stations must comply with the Agreement and Defendants' own acknowledged standards and procedures." *Id.* at 13. Paragraph 12 of the Settlement requires that "[f]ollowing arrest, [Defendants] shall hold minors in facilities that are safe and sanitary and that are consistent with the [Defendants'] concern for the particular vulnerability of minors." *Id.*³⁷ The evidence overwhelmingly shows Defendants' CBP facilities are neither safe nor sanitary. Conditions in CBP detention cells are overcrowded and deplorable.

Paragraph 18 of the Settlement provides: "Upon taking a minor into custody, the [Defendants] ... shall make and record the prompt and continuous efforts on its

would be more constructive to appoint a Special Monitor to help bring Defendants into compliance with the Settlement and this Court's Orders.

³⁶ The Court has already rejected Defendants' argument that compliance with the Settlement and this Court's prior Orders would somehow contravene their obligations under federal law. August 21, 2015 Order at 9 [Doc. # 189]. The Court has also made clear that compliance with the Settlement will not hamper Defendants' legitimate enforcement efforts. *Id.* at 11.

³⁷ Safe and sanitary conditions includes but are not limited to access to toilets and sinks, safe drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, and adequate temperature control and ventilation. *Id.*

1 part toward family reunification and the release of the minor pursuant to Paragraph 14
2 above. Such efforts at family reunification shall continue so long as the minor is in
3 [Defendants'] custody.” *Id.* ³⁸ The evidence makes clear that Defendants routinely
4 fail to make and record required steps to release children as promptly as possible.³⁹
5

6 Paragraph 12A of the Settlement provides that “[i]f there is no one to whom
7 [Defendants] may release the minor pursuant to Paragraph 14 ... the minor may be
8 placed in a[] ... detention facility having separate accommodations for minors
9 ...”⁴⁰ Minors not subject to detention or placed with a family member under
10 Paragraph 14 must be placed in a facility that “shall be non-secure” and licensed under
11
12
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14

15 ³⁸ The Settlement further requires that children *not* released pursuant to Paragraph 14
16 be placed in a licensed program provided for by ICE. Settlement ¶ 19. ICE does not
17 have a single contract Class Counsel is aware of to place children pursuant to
18 Paragraph 19 of the Settlement.

19 ³⁹ While Defendants may have the statutory discretion to place certain Class Member
20 children in “expedited” proceedings, “[i]t is uncontroverted that, prior to June 2014,
21 ICE generally released children and parents upon determining that they were neither a
22 significant flight risk nor a danger to safety.” Order of July 24, 2015 at 9 [Doc. #177.]
23 The statutory discretion to place children in expedited proceedings was enacted in
24 1996 well *before* the Settlement was finally executed by all parties and approved by
25 the Court in 1997. Defendants may not now rely on that discretion to circumvent the
26 terms of the Settlement requiring the prompt release of Class Member children and the
27 prohibition against detaining them in secure facilities. At the same time, “[a] *de*
28 *minimis* extension of the five-day requirement [for moving Class Member children out
of secure detention facilities] *under individualized circumstances* will not necessarily
result in a breach of the Agreement or contravene the INA ...” Order of August 21,
2015 at 10-11 [Doc. #189] (emphasis supplied).

⁴⁰ If a Class Member cannot be placed under Paragraph 14 or a licensed facility under
Paragraph 19, with limited exceptions the child may be held for five days in secure
facilities with “separate accommodations for minors ...” Settlement ¶ 12A.

1 state law. Paragraph 6.⁴¹ This Court has reiterated that accompanied Class Members
2 are not to be housed in “unlicensed or secure facilities.” August 21, 2015 Order at 14.
3
4 The evidence shows that many Class Members are detained for weeks or months in
5 secure facilities in violation of the Settlement.

6 Paragraph 24D of the Settlement provides that “[t]he [defendants] shall
7 promptly provide each minor not released with (a) INS Form 1-770, (b) an
8 explanation of the right of judicial review as set out in Exhibit 6, and (c) the list of
9 free legal services available in the district pursuant to INS regulations (unless
10 previously given to the minor).” Settlement ¶24D.⁴² The evidence shows that
11 Defendants ignore the Settlement’s requirements regarding Class Member advisals.
12
13

14 Paragraph 27 of the Settlement provides that except in unusual and compelling
15 circumstances “[n]o minor who is represented by counsel shall be transferred without
16 advance notice to such counsel ...” The evidence shows that Defendants have
17 routinely ignored ¶ 27 of the Settlement and have in a range of ways persistently
18 interfered with Class Members’ right to counsel, impeding Class Members’ ability to
19 enjoy the above-described rights under the Settlement.
20
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23
24 ⁴¹ The Settlement defines the exceptional circumstances in which Class Members may
25 be held in “secure” facilities. *See, e.g.* ¶ 21 (charged with a crime); ¶ 22 (escape risks).
26 Not passing a credible fear interview is *not* a recognized basis for secure detention.

27 ⁴² The Settlement makes clear that “[i]n order to permit judicial review of Defendants’
28 placement decisions as provided in this Agreement, Defendants shall provide minors
not placed in licensed programs with a notice of the reasons for housing the minor in a
detention or medium security facility.” Settlement ¶24C.

1 The harms being suffered by children as a result of Defendants' ongoing
2 violations of the Settlement⁴³ strongly support the issuance of a further Order
3 regarding compliance without waiting for the several months involved in appointment
4 of a Special Monitor and the work that Monitor will engage in before s/he can report
5 to the Court. A proposed Order lodged herewith seeks to clarify Defendants' clear
6 obligations under the Settlement and requires that Defendants now take prompt steps
7 to comply.
8

9
10 **3. This Court should appoint a Special Monitor to oversee and monitor**
11 **DHS's compliance with the Settlement and this Court's Orders**

12 The Supreme Court has noted in the context of a California overcrowding
13 prison case that "[c]ourts faced with the sensitive task of remedying ...
14 unconstitutional prison conditions must consider a range of available options,
15 including appointment of special masters or receivers ..." *Brown v. Plata*, 563 U.S.
16 493, 511, 131 S.Ct. 1910 (2011). Courts appointing monitors responsible for
17 overseeing implementation of orders or settlements rely upon their equitable powers
18 to enforce settlements, decrees and Orders, or Fed. R. Civ. P. 53.
19

20 In *Franco-Gonzalez v. Holder*, Docket No. CV-10-02211-DMG (DTBx) (C.D.
21 Calif. 2015), this Court entered an Order appointing a monitor to oversee the DHS.
22 *Franco-Gonzalez* involves a class of immigration detainees who have been
23 determined to be incompetent to represent themselves by reason of mental disability.
24

25
26
27
28 ⁴³ See Ex. 2, pp. 1-33.

1 Defendants' unsafe treatment of children continues unabated. The challenged
2 conduct has in no significant way been voluntarily ceased. Rather than signaling a
3 willingness to end their breach of the Settlement, Defendants have indicated to their
4 private contractors that operate detention facilities a readiness to increase the
5 detention of mothers and their children.⁴⁴
6
7

8 Because of the complexities of the Settlement and because of the importance of
9 Defendants' compliance with the Settlement, pursuant to Fed. R. Civ. P. 53 and this
10 Court's inherent powers to enforce its Orders, the Court should now appointment a
11 Special Monitor to ensure compliance with the Settlement and this Court's Orders.
12

13 Plaintiffs' propose in an Order lodged herewith:
14

- 15 • Appointment of a Special Monitor for twenty-four months to oversee compliance
16 with the Settlement and this Court's July and August 2015 Orders. The Special
17 Master should have broad discretion regarding how to exercise her authority. Her
18 authority should be subject to oversight by the Court.
- 19 • The Special Monitor should have the authority to gather information and
20 documentation from all parties in furtherance of her monitoring function.
- 21 • The Monitor should have the authority to receive from Class Members or their
22 detained mothers or representatives communications regarding alleged violations

23 ⁴⁴ In 2015 the GEO Group, which operates the Karnes detention facility, announced
24 on a 2015 Earnings Conference Call that by "December 1, [2015,] we expect to
25 complete a \$36 million 626 bed expansion to the Karnes, Texas, Residential Center ...
26 The new facility capacity will be 1,158 beds and will result in a new fixed monthly
27 payment estimated to take place on December 1 of this year." *See* Dkt. #85-04544
28 Exhibit 88. GEO's leadership "remains committed to returning value to our
shareholders by targeting a 75% to 80% dividend payout." *Id.* "[T]otal revenue for the
year is expected to be approximately \$1.86 billion ..." *Id.*

1 of the Settlement and this Court's Orders and to investigate those claims, obtain
2 Defendants' and Class Counsels' views, and recommend remedial action. The
3 Special Monitor will advise all parties and the Court if her recommended remedial
4 steps are not implemented.

- 5 • The Special Monitor should have the authority to mediate Plaintiffs' claims of
6 non-compliance to reduce entanglement of the Court in future motions to the
7 enforce the Settlement.
- 8 • The Special Monitor should not have the authority to issue orders or impose any
9 sanctions, but may recommend to the Court various orders, including any contempt
10 sanction.
- 11 • The Special Monitor's fees, costs and expenses, including with respect to the
12 assistance of other experts or specialists, should be paid by Defendants.⁴⁵

13 This litigation's history underscores that the mandated rights of vulnerable
14 children will be best protected if the Government's behavior is monitored.⁴⁶

15 ⁴⁵ See Declaration of Peter Schey, Ex. 1, ¶ 11 ("Plaintiff Class Members are indigent
16 detained children and have no ability to share in the cost of a Special Monitor.")

17 ⁴⁶ See, e.g. *Melendres v. Arpaio*, 784 F.3d 1254 (9th Cir. 2015), *cert. denied sub nom.*
18 *Maricopa Cty., Ariz. v. Melendres*, 136 S. Ct. 799, 193 L. Ed. 2d 711 (2016)
19 (injunctive relief to class of Latino persons against sheriff based on allegations of racial
20 profiling; Court of Appeals affirmed: "In context, most of the provisions dealing with
21 the scope of the Monitor's assessment authority are aimed at eliminating the
22 constitutional violations found by the district court and therefore do not constitute an
23 abuse of discretion"); *Plata v. Schwarzenegger*, 603 F.3d 1088, 1095 (9th Cir. 2010)
24 (monitor to oversee remedies re California prison overcrowding); *Nat'l Org. for*
25 *Reform of Marijuana Laws v. Mullen*, *supra*, 828 F.2d 536 (affirmed preliminary
26 injunction and appointment of Special Master; neither a final determination of a
27 constitutional violation nor a determination of intentional disregard required to justify
28 appointment of a master under Fed. R. Civ. P. 53(b)); *Labor/Community Strategy Ctr.*
v. Los Angeles County Metro. Trans. Auth., 263 F.3d 1041, 1045 (9th Cir. 2001), *cert.*
denied, 535 U.S. 951 (2002); *Ruiz v. Estelle*, 679 F.2d 1115 (5th Cir. 1982)
(overcrowding threatened prisoners health and safety; affirmed appointment of a
Special Monitor); *Floyd v. City of New York*, 959 F. Supp. 2d 668, 2013 U.S. Dist.
LEXIS 113205, 2013 WL 4046217 (S.D.N.Y. 2013) (permanent injunction as to
defendant's unconstitutional stop-and-frisk policies; "It is within the power of a district

IV. CONCLUSION

It is obviously not the case that ICE must detain families together to keep them together. As the Supreme Court observed some 22 years ago:

In the case of arrested alien juveniles, however, the INS cannot simply send them off into the night ... The ... Service must assure itself that someone will care for those minors ... *That is easily done when the juvenile's parents have also been detained and the family can be released together ...*

Reno v. Flores, 507 U.S. 292, 295 (292) (citations omitted; emphasis added).

For all of the reasons stated above, the District Court should Order Defendants to promptly comply with the Settlement's terms and appoint a Special Monitor to oversee Defendants' compliance with the Settlement and this Court's Orders.

Dated: May 17, 2016
PETER A. SCHEY
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/s/ PETER SCHEY
ATTORNEYS FOR PLAINTIFFS

court to order the appointment of a monitor to oversee judicially ordered reforms"); *Balla v. Idaho State Bd. of Corr.*, 2011 U.S. Dist. LEXIS 1864, 2011 WL 108727 (D. Idaho Jan. 6, 2011) (prison litigation reform: "The Court agrees with Plaintiffs that the most cost-effective and efficient route to resolving the unique challenges posed by this difficult case is through the appointment of a special master").

CERTIFICATE OF SERVICE

I, Peter Schey, declare and say as follows:

I am over the age of eighteen years of age and am not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 256 S. Occidental Blvd., Los Angeles, CA 90057, in said county and state.

On May 19, 2016, I electronically filed the following document(s): NOTICE OF MOTION AND MOTION TO ENFORCE SETTLEMENT AND FOR APPOINTMENT OF SPECIAL MASTER WITH SUPPORTING EXHIBITS with the United States District Court, Central District of California by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/Peter Schey
Attorney for Plaintiffs

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Attorneys for plaintiffs (listing continues on following page)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

JENNY LISETTE FLORES, *et al.*,

Plaintiffs,

- vs -

LORETTA E. LYNCH, Attorney

General of the United States, *et al.*,

Defendants.

) Case No. CV 85-4544 DMG (AGRx)

)

) [PROPOSED] ORDER RE COMPLIANCE

) WITH SETTLEMENT

)

) Date: June 17, 2016.

) Time: 9:30 a.m.

) Dept: Courtroom 7

) [HON. DOLLY M. GEE]

)

Plaintiffs' counsel, continued:

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1 The original complaint in this action was filed on July 11, 1985. [Doc. # 1.] On
2 January 28, 1997, the Court approved a class-wide settlement of this action pursuant to
3 Fed. R. Civ. P. 23. (See Plaintiffs' First Set of Exhibits in Support of Motion to
4 Enforce Settlement ("Ps' First Set"), Exh. 1 ("Settlement").)

5
6 Plaintiffs filed a motion to enforce the Settlement on February 2, 2015.¹ [Doc. #
7 100.] Defendants filed an opposition to Plaintiffs' motion. [Doc. # 121.] On February
8 27, 2015, Defendants filed a motion to amend the Settlement. [Doc. # 120.] On March
9 6, 2015, Plaintiffs filed an opposition. [Doc. # 122.] A hearing on the motions was held
10 on April 24, 2015.
11
12

13 On July 24, 2015, this Court issued its Order Re Plaintiffs' Motion To Enforce
14 Settlement Of Class Action And Defendants' Motion To Amend Settlement ("Order of
15 July 24, 2015"). [Doc. # 177.] After further briefing, on August 21, 2015, this Court
16 issued its Order Re Response To Order To Show Cause ("Order of August 21, 2015").
17 [Doc. # 189.]
18

19
20 In its Order of August 21, 2015, the Court ordered Defendants to implement the
21 following remedies by October 23, 2015:

- 22 1. Defendants, upon taking an accompanied class member into custody, shall
23 make and record prompt and continuous efforts toward family reunification and
24 the release of the minor pursuant to Paragraph 14 of the Settlement.
25
26 2. Unless otherwise required by the Settlement or the law, Defendants shall
27 comply with Paragraph 14A of the Settlement by releasing class members
28

1 without unnecessary ... Class members not released pursuant to Paragraph
2 14 of the Settlement will be processed in accordance with the Settlement,
3 including, as applicable, Paragraphs 6, 9, 21, 22, and 23.
4

5 3. Subject to Paragraph 12A of the Settlement, accompanied class members
6 shall not be detained by Defendants in unlicensed or secure facilities that do
7 not meet the requirements of Paragraph 6 of the Settlement or, in appropriate
8 cases, as set forth in the Settlement, in facilities that do not meet the
9 requirements of Paragraphs 12A, 21, and 23 ...
10

11 4. ... [A] class member's accompanying parent shall be released with the
12 class member in accordance with applicable laws and regulations unless the
13 parent is subject to mandatory detention under applicable law or after an
14 individualized custody determination the parent is determined to pose a
15 significant flight risk, or a threat to others or the national security ...
16

17 5. As contemplated in Paragraph 28A of the Settlement, Defendants or their
18 Regional Juvenile Coordinator shall monitor compliance with their
19 acknowledged standards and procedures for detaining class members in
20 facilities that are safe and sanitary ... including access to adequate drinking
21 water and food, toilets and sinks, medical assistance if the minor is in need
22 of emergency services, temperature control, ventilation, adequate
23 supervision to protect minors from others, and contact with family members
24
25
26
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28

1 who were arrested with the minor. In the alternative, the parties may
2 stipulate to the appointment of a special monitor for this purpose.

3 6. Defendants shall monitor compliance with the Settlement and this Order
4 and shall provide Class Counsel on a monthly basis statistical information
5 collected pursuant to Paragraph 28A of the Settlement.
6

7 August 21, 2015 Order at 14-15 [Doc./ #189.]
8

9 The Court also again found that Customs and Border Protection (“CBP”)
10 stations were not complying but “must comply with the Settlement and Defendants’
11 own acknowledged standards and procedures.” *Id.* at 13. In its July 24, 2015 Order, the
12 Court found that conditions in CBP stations for Class Member children were
13 “widespread and deplorable.” Order of July 24, 2015 at 18. [Doc. # 177.]
14

15 On _____, 2016, Plaintiffs filed a motion again seeking to enforce
16 compliance with the Settlement and also seeking appointment of a Special Monitor. On
17 _____, 2016, Defendants’ filed an opposition. [Doc. # ____.] On _____,
18 2016, Plaintiffs filed a reply to Defendants’ opposition. [Doc. # ____].
19
20

21 Having duly considered the respective positions of the parties as presented in
22 their briefs [if applicable: and at oral argument held on _____, 2016], the Court
23 now renders its decision. Plaintiffs’ motion for appointment of a Special Monitor is
24 addressed in a separate Order. [Doc. # ____].
25

26 1. This Court retains subject matter jurisdiction to make the requested further
27 Orders because (1) each issue currently under consideration by the Ninth Circuit would
28

1 “remain[] unchanged” by the Proposed Orders, and (2) the Proposed Orders will
2 “protect plaintiffs’ rights in direct response to defendants’ repeated and willful non-
3 compliance with [the Court’s] earlier orders.” *Armstrong v. Brown*, 732 F.3d 955, 959
4 fn. 6 (9th Cir. 2013), *cert denied*, 134 S. Ct. 2725 (2014) (affirming the district court’s
5 authority to issue modified orders requiring near immediate action by California state
6 prison officials pending appeal of its judgment, which determined the rights of disabled
7 prisoners and obligations of state officials).
8
9

10 2. This Court has already ruled that “[t]he plain language of the Settlement
11 clearly encompasses accompanied minors.” Order of July 24, 2015, at 4. [Doc. # 177.]
12 *See also* Order of August 21, 2015 at 7 [Doc. #189] (“The consent decree’s language
13 clearly and unambiguously applies to accompanied minors.”)
14

15 3. The evidence establishes that Class Members in custody since October 23,
16 2015, have continued to experience deplorable conditions in CBP facilities. *Inter alia*,
17 Class Member children have been provided inadequate food, forced to sleep on cold
18 concrete floors with no blankets or mats or mattresses, bright lights are kept on all
19 night, cells are severely overcrowding making even sleeping on the floor difficult,
20 there are no washing facilities such as soap and towels, drinking water is dirty and
21 detainees must share cups, no toiletries are allowed or provided, no change of clothing
22 is provided when class members’ cloths are wet, and room temperatures are extremely
23 cold. These conditions are inconsistent with Paragraph
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1 4. The evidence establishes that upon taking accompanied Class Members into
2 custody since October 23, 2015, Defendants have not made and recorded prompt and
3 continuous efforts toward family reunification and the release of Class Member minors
4 pursuant to Paragraph 14A of the Settlement.
5

6 5. The evidence establishes that since October 23, 2015, Defendants have not as
7 expeditiously as possible placed Class Members not released under Paragraph 14A in
8 non-secure licensed facilities under Paragraph 19 of the Settlement.
9

10 6. The evidence establishes that since October 23, 2015, Defendants have not
11 processed Class Members not released under Paragraph 14A or placed under Paragraph
12 19 in accordance with the Settlement, including, as applicable, Paragraphs 6, 9 and 21-
13 23.
14

15 7. The evidence establishes that since October 23, 2015, Defendants have
16 continued to detain Class Members in unlicensed or secure facilities that do not meet
17 the requirements of Paragraph 6 of the Settlement or, in appropriate cases as set forth in
18 the Settlement, in facilities that meet the requirements of Paragraphs 12A, 21, and 23.
19 Pursuant to Paragraph 19 of the Settlement, if a Class Member is not promptly released
20 under Paragraph 14, then the minor shall be “temporarily” placed in a licensed program
21 until “release can be effected in accordance with Paragraph 14 ...” Under
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1 Paragraph 6 licensed programs “shall be non-secure” as required under state law. *Id.*¹
2 Defendants concede they are not holding Class Members in licensed “non-secure”
3 facilities.
4

5 8. Paragraph 12A of the Settlement provides that “Whenever the INS takes a
6 minor into custody, it shall expeditiously process the minor and shall provide the minor
7 with a notice of rights, including the right to a bond redetermination hearing if
8 applicable.” The evidence establishes that Defendants have not provided Class
9 Members with such notices.
10

11 9. The evidence establishes that Defendants have not brought Class Members
12 before Immigration Judges for review of their custody status in appropriate cases as
13 required by Paragraph 12A of the Settlement.
14

15 10. Paragraph 12A of the Settlement provides “If there is no one to whom the
16 INS may release the minor pursuant to Paragraph 14, and no appropriate licensed
17 program is immediately available for placement pursuant to Paragraph 19, the minor
18 may be placed in an INS detention facility, or other INS-contracted facility, *having*
19 *separate accommodations for minors ...*” (Emphasis added). Defendants concede they
20 have not held Class Members in facilities having separate accommodations for minors.
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27 ¹ The Settlement also defines the exceptional circumstances in which class members
28 may be held in “secure” facilities. *See, e.g.* Paragraph 21 (class member charged with
a crime); Paragraph 22 (escape risks).

1 11. Paragraph 24D of the Settlement provides that “[t]he [defendants] shall
2 promptly provide each minor not released with (a) INS Form 1-770, (b) an explanation
3 of the right of judicial review as set out in Exhibit 6, and (c) the list of free legal
4 services available in the district pursuant to INS regulations (unless previously given to
5 the minor).” The Settlement also makes clear that “[i]n order to permit judicial review
6 of Defendants' placement decisions as provided in this Settlement, Defendants shall
7 provide minors not placed in licensed programs with a notice of the reasons for
8 housing the minor in a detention or medium. security facility.” Settlement ¶24C. The
9 evidence shows that Defendants have not provided Class Members with the notices
10 required by Paragraphs 24C and 24D.
11

12 12. Paragraph 12C of the Settlement provides “In preparation for an
13 ‘emergency’ or ‘influx,’ as described in Subparagraph B, the [Defendants] shall have a
14 written plan that describes the reasonable efforts that it will take to place all minors as
15 expeditiously as possible. This plan shall include the identification of 80 beds that are
16 potentially available for ... placements ... The [defendants] shall update this listing of
17 additional beds on a quarterly basis and provide Plaintiffs' counsel with a copy of this
18 listing.” Defendants concede that such plans have not been provided to Plaintiffs’
19 counsel.
20

21 12. Defendants have not established that since October 2015 their Regional
22 Juvenile Coordinator has monitored compliance with the Settlement or Defendants’
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1 acknowledged standards and procedures for detaining Class Members in facilities that
2 are safe and sanitary.

3 Based on the foregoing, the Court finds that Defendants are in material breach of
4 the Settlement and GRANTS Plaintiffs' motion to enforce the Settlement.

5 The Court orders Defendants to implement the following remedies within thirty
6 (30) days of the date of this Order unless a different time period is specified below:
7

8 1. As required by Paragraph 18 of the Settlement, Defendants, including
9 CBP and ICE officials, upon taking an accompanied class member into custody,
10 shall make and record prompt and continuous individualized efforts toward
11 family reunification and the release of the minor pursuant to Paragraph 14 of the
12 Settlement. These efforts will include contacting a parent or other relatives or
13 adults identified in Paragraph 14A-D and F, determining whether placement
14 with such individuals is appropriate, and if not to make and record prompt
15 efforts to place the Class Member in a licensed program as required by
16 Paragraph 14E.
17

18 2. Defendants shall comply with and accurately record their compliance
19 with Paragraph 24C of the Settlement requiring that minors not placed in
20 licensed programs be provided with a notice of the reasons for housing the minor
21 in a detention or medium security facility and Paragraph 24D of the Settlement
22 which requires that Defendants promptly provide each minor not released with
23 (a) INS Form 1-770, (b) an explanation of the right of judicial review as set out
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1 in Exhibit 6, and (c) the list of free legal services available in the district
2 pursuant to INS regulations (unless previously given to the minor).

3 3. Unless otherwise required by the Settlement, Defendants shall comply
4 with Paragraph 14A of the Settlement by releasing class members as
5 expeditiously as possible and without unnecessary delay in first order of
6 preference to a parent, including a parent who either was apprehended with a
7 class member or presented herself or himself with a class member. As required
8 by Paragraph 12A3, Class Members not released pursuant to Paragraph 14 shall
9 be placed pursuant to Paragraph 19 as expeditiously as possible in a non-secure
10 licensed program unless the Settlement precludes such placement based on
11 Paragraphs 12 or 21. In *individualized* circumstances a *de minimis* extension of
12 the five-day requirement to place Class Members under Paragraph 14A will not
13 necessarily result in a breach of the Settlement. Defendants shall record the
14 individualized circumstances that give rise to a delay in releasing or placing an
15 accompanied Class Member pursuant to Paragraphs 14A and 19. Beyond a *de*
16 *minimis* period caused by *individualized* circumstances, Defendants may *not*
17 extend Class Members' detention for reasons not set forth in Paragraphs 21
18 (chargeable or convicted of certain crimes) or 22 (escape risks) of the
19 Settlement.
20

21 4. Accompanied Class Members shall not be detained by Defendants in
22 unlicensed or secure facilities in violation of Paragraph 6 of the Settlement, or in
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1 appropriate cases, as set forth in the Settlement, in facilities that do not meet the
2 requirements of Paragraphs 12A, 21, and 23. Defendants shall not selectively apply the
3 “influx” provision of Paragraph 12C of the Settlement to house class members
4 apprehended with a parent in facilities that do not comply with the Settlement.
5

6 5. To comply with Paragraph 14A of the Settlement and as contemplated in
7 Paragraph 15, a class member’s accompanying parent shall be released with the class
8 member in a non-discriminatory manner in accordance with applicable laws and
9 regulations unless after an individualized custody determination the parent is
10 determined to pose a significant flight risk, or a threat to others or the national security,
11 and the flight risk or threat cannot be mitigated by an appropriate bond or conditions of
12 release.
13
14

15 6. Commencing immediately pursuant to Paragraph 12A of the Settlement
16 whenever the Defendants take a minor into custody, they shall expeditiously process
17 the minor and shall provide the minor with a notice of rights, including the right to a
18 bond redetermination hearing if applicable.
19
20

21 7. Within 60 days of this Order Defendants and Plaintiffs shall file a joint
22 statement proposing standards, and procedures for monitoring compliance with such
23 standards, for detaining Class Members in facilities that are safe and sanitary,
24 consistent with concern for the particular vulnerability of minors, and consistent with
25 Paragraph 12 of the Settlement, including access to adequate drinking water and food,
26 toilets and sinks, medical assistance if the minor is in need of emergency services,
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1 temperature control, ventilation, adequate supervision to protect minors from others,
2 and contact with family members who were arrested with the minor.

3 8. Defendants shall not transfer Class Members to another facility without
4 advance notice to the Class Member's counsel of record as required by Paragraph 27 of
5 the Settlement.
6

7 9. Defendants shall monitor compliance with the Settlement and this Order and
8 shall continue to provide Class Counsel on a monthly basis statistical information
9 collected pursuant to Paragraph 28A of the Settlement.
10

11
12
13 IT IS SO ORDERED.

14 Dated: _____, 2016.

15 _____
16 Dolly M. Gee
United States District Judge

17 Presented by —

18 /s/
19 Peter A. Schey
20 Class Counsel for Plaintiffs

21
22 ///

CERTIFICATE OF SERVICE

I, Peter Schey, declare and say as follows:

I am over the age of eighteen years of age and am not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 256 S. Occidental Blvd., Los Angeles, CA 90057, in said county and state.

On May 19, 2016, I electronically filed the following document(s):

[PROPOSED] ORDER RE COMPLIANCE WITH SETTLEMENT with the United States District Court, Central District of California by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/Peter Schey
Attorney for Plaintiffs

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Attorneys for plaintiffs (listing continues on following page)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

JENNY LISETTE FLORES, <i>et al.</i> ,	)	Case No. CV 85-4544 DMG (AGRx)
	)	
Plaintiffs,	)	[PROPOSED] ORDER APPOINTING A
- vs -	)	SPECIAL MONITOR
	)	
LORETTA E. LYNCH, Attorney	)	
General of the United States, <i>et al.</i> ,	)	Date: June 17, 2016.
	)	Time: 9:30 a.m.
Defendants.	)	Dept: Courtroom 7
	)	[HON. DOLLY M. GEE]

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1 The original complaint in this action was filed on July 11, 1985. [Doc. # 1.] On
2 January 28, 1997, the Court approved a class-wide settlement of this action pursuant to
3 Fed. R. Civ. P. 23. (See Plaintiffs' First Set of Exhibits in Support of Motion to
4 Enforce Settlement ("Ps' First Set"), Exh. 1 ("Agreement").)

5
6 Plaintiffs filed a motion to enforce the Agreement on February 2, 2015.¹ [Doc. #
7 100.] Defendants filed an opposition to Plaintiffs' motion. [Doc. # 121.] On February
8 27, 2015, Defendants filed a motion to amend the Agreement. [Doc. # 120.] On March
9 6, 2015, Plaintiffs filed an opposition. [Doc. # 122.] A hearing on the motions was held
10 on April 24, 2015.
11
12

13 On July 24, 2015, this Court issued its Order Re Plaintiffs' Motion To Enforce
14 Settlement Of Class Action and Defendants' Motion To Amend Settlement Agreement.
15 [Doc. # 177.] After further briefing, on August 21, 2015, this Court issued its Order Re
16 Response To Order To Show Cause. [Doc. # 189.]
17

18 The Court ordered Defendants to implement the following remedies by October
19 23, 2015:
20

21 1. Defendants, upon taking an accompanied class member into custody, shall
22 make and record prompt and continuous efforts toward family reunification and the
23 release of the minor pursuant to Paragraph 14 of the Agreement.
24

25 2. Unless otherwise required by the Agreement or the law, Defendants shall
26 comply with Paragraph 14A of the Agreement by releasing class members without
27 unnecessary ... Class members not released pursuant to Paragraph 14 of the
28

1 Agreement will be processed in accordance with the Agreement, including, as
2 applicable, Paragraphs 6, 9, 21, 22, and 23.

3 3. Subject to Paragraph 12A of the Agreement, accompanied class members
4 shall not be detained by Defendants in unlicensed or secure facilities that do not meet
5 the requirements of Paragraph 6 of the Settlement or, in appropriate cases, as set forth
6 in the Agreement, in facilities that do not meet the requirements of Paragraphs 12A,
7 21, and 23...

8 4. ... [A] class member's accompanying parent shall be released with the class
9 member in accordance with applicable laws and regulations unless the parent is subject
10 to mandatory detention under applicable law or after an individualized custody
11 determination the parent is determined to pose a significant flight risk, or a threat to
12 others or the national security ...

13 5. As contemplated in Paragraph 28A of the Agreement, Defendants or their
14 Regional Juvenile Coordinator shall monitor compliance with their acknowledged
15 standards and procedures for detaining class members in facilities that are safe and
16 sanitary ... including access to adequate drinking water and food, toilets and sinks,
17 medical assistance if the minor is in need of emergency services, temperature control,
18 ventilation, adequate supervision to protect minors from others, and contact with
19 family members who were arrested with the minor. In the alternative, the parties may
20 stipulate to the appointment of a special monitor for this purpose.

1 6. Defendants shall monitor compliance with the Agreement and this Order and
2 shall provide Class Counsel on a monthly basis statistical information collected
3 pursuant to Paragraph 28A of the Agreement.
4

5 August 21, 2015 Order at 14-15 (emphasis added) [Doc./ #189.]

6 On _____, 2016, Plaintiffs filed a motion seeking appointment of a
7 Special Monitor and a further Order requiring Defendants to comply with the
8 Settlement and with this Court's Orders of July and August 2015. [Doc. # ____.] On
9 _____, 2016, Defendants' filed an opposition. [Doc. # ____.] On _____,
10 2016, Plaintiffs filed a reply to Defendants' opposition. [Doc. # ____].
11
12

13 Having duly considered the respective positions of the parties as presented in
14 their briefs [if applicable: and at oral argument held on _____, 2016], the Court
15 now renders its decision.
16

17 Because of the complexities of the Settlement, the history of non-compliance
18 with its terms, and because of the importance of Defendants' compliance with the
19 Settlement and this Court's Orders, the Court finds that the appointment of a Monitor
20 to ensure compliance with the Settlement for at least 24 months (the "Monitor") is
21 necessary pursuant to Fed. R. Civ. P. 53 and this Court's inherent powers to enforce its
22 Orders.
23
24

25 A. THE MONITOR

26 Appointment of Monitor. The Court hereby appoints _____ as the Monitor.
27
28

1 Authority of the Monitor. The Monitor shall have the authority to monitor
2 compliance with the Settlement and this Court's Orders [Doc. ## 177, 189 and ____ [if
3 a further Order issued]] (collectively, "Compliance Documents"). While the Monitor
4 shall have broad discretion regarding how to exercise her authority, her responsibilities
5 shall be limited to monitoring compliance with the Compliance Documents and shall
6 be subject to oversight by the Court. The Monitor shall have the authority to gather
7 information and documentation in furtherance of the monitoring function, as identified
8 herein. The Monitor shall have the duties, powers and responsibilities detailed in this
9 Order; provided that if to accomplish her monitoring duties the Monitor must
10 undertake necessary measures not specifically referred to herein or seek modifications
11 to this Order due to unforeseen circumstances, the Monitor is authorized to do so, as
12 long as she has informed the Court of the nature of, and need for, such measures or
13 modifications, and received the Court's written approval. Should the Monitor
14 determine that such measures or modifications are necessary, the Parties shall receive
15 notice and an opportunity to comment (or to submit a stipulation and proposed Order)
16 before the Court approves such measures.

17 Term and Extensions. The Court appoints the Monitor for a term of 24 months
18 ("Initial Term") commencing 30 days from the date of this Order ("the Effective
19 Date"). The Initial Term may be extended ("Extended Term")¹ if, at least three weeks
20 before the expiration of the Initial Term, Plaintiffs file with the Court a Notice
21

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28 ¹ The Initial Term, together with any Extended Terms, shall collectively be referred to as "the Term."

1 requesting an extension of the Monitor's term for an additional term based on specific
2 and ongoing concerns regarding Defendants' compliance with the Compliance
3 Documents. The Notice shall identify an appropriate extension of time in order to
4 ensure that the goals of the monitoring are met.² Defendants shall have the right to
5 respond to any such Notice within 10 days after the Notice's filing before the Court
6 rules on the request for an extension. Plaintiffs may apply for additional extensions
7 under the same standard by filing a Notice requesting an extension no later than three
8 weeks before the end of any Extended Term. Absent a showing of serious, specific,
9 and ongoing concerns by Plaintiffs, the presumptive end of the Term shall be no later
10 than 36 months after the Effective Date.

14 Limitation on the Monitor's Powers. The Monitor may not issue any orders or
15 impose any sanctions, but may recommend to this Court various orders, including any
16 contempt sanction. The Monitor shall have no authority to intervene in or direct
17 Defendants' activities.

19 Diligence of Monitor. The Monitor is directed to proceed with all reasonable
20 diligence to carry out the duties assigned by the Court.

22 Ex Parte Communications. The Monitor shall be permitted to engage in ex parte
23 communications under the following circumstances:
24
25
26

27
28 ² The goals of the monitoring include ensuring Defendants' ongoing compliance with the Compliance Documents, and that such compliance will continue without the presence of a Monitor.

1 The Court. The Monitor shall be permitted to confer ex parte with the Court
2 regarding any issue arising under or relating to this Order. All such communications
3 shall be privileged and shall not be subject to discovery.
4

5 The Parties. The Monitor shall be allowed to engage in ex parte
6 communications with the Parties' counsel who has been designated as the "primary
7 contact," relating to Defendants' compliance with the Compliance Documents. Prior to
8 the Effective Date, each side shall designate its primary contact and notify the Monitor
9 of that person's contact information.
10

11 Class Members or their Qualified Representatives.³ The Parties shall meet and
12 confer with the Monitor regarding a Detention Facility Notice which shall be
13 disseminated to all detention centers where Class Members may be detained and which
14 will include contact information not only for Plaintiffs' Class Counsel, but also for the
15 Monitor in the event a Class Member or his or her Qualified Representative wishes to
16 report a problem with compliance with the Compliance Documents.
17

18 Notice of Ex Parte Communications. For all ex parte communications of a
19 substantive nature during the applicable Reporting Period (as defined *infra* in note 4),
20 except those with the Court, the Monitor shall provide a list of the parties involved and
21 the date of the ex parte communication in the Monitor's reports to the Court.
22

23 THE MONITOR'S ACCESS TO INFORMATION

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28 ³ Class Members for purposes of this Order include all minors in federal custody for immigration matters who were accompanied by a relative identified in Paragraph 14 of the Settlement at the time of their apprehension by DHS.

1 Class Member Information. The Monitor's authority to gather information and
2 documentation in furtherance of the monitoring function includes the following non-
3 exhaustive methods of obtaining information regarding Class Members:
4

5 Interviews. The Monitor may from time to time interview: (i) any individuals
6 responsible for implementing the Compliance Documents, including individuals
7 processing Class Members, individuals who are or who should be making efforts
8 aimed at the prompt release of Class Members from detention, individuals providing or
9 who should be providing Class Members with notices of their rights under the
10 Settlement, individuals assessing or who should be assessing the appropriateness of
11 custodians for Class Members, individuals making or who should be making decisions
12 regarding the release of Class Members, and individuals making or who should be
13 making decisions about the allocation of resources that may impact on the length of
14 detention of Class Members; (ii) any individuals acting in any supervisory capacity
15 over individuals implementing the Compliance Documents, including individuals
16 responsible for training or supervising Immigration Judges⁴, ICE officers, or detention
17 facility officials; (iii) any Qualified Representative; (iv) any Class Member or Class
18 Member's parent (provided that the Class Member, or her or his parent, or her or his
19 Qualified Representative or attorney, does not object to such an interview). Absent an
20 Order from this Court, the Monitor shall not be permitted to initiate ex parte
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28 ⁴ Because the Assistant Chief Immigration Judges (ACIJs) who conduct training of
other Immigration Judges also hear individual cases, such interviews shall be limited
to the ACIJ's role in training Immigration Judges regarding the Compliance
Documents.

1 communications with Immigration Judges; however, nothing in this Order shall
2 preclude an Immigration Judge from exercising his or her right to contact the Monitor
3 regarding Defendants' compliance with the Compliance Documents. Defendants shall
4 provide the Monitor points of contact from the Immigration and Customs Enforcement
5 (ICE), US Citizenship and Immigration Service (CIS), Customs and Border Protection
6 (CPB), and the Executive Office of Immigration Review who are involved in
7 implementing the Compliance Documents. The Monitor may from time to time confer
8 with those points of contact. If requested, Defendants shall provide suitable facilities
9 and arrangements for the conduct of such interviews under conditions satisfactory to
10 the Monitor. The Monitor may, at her discretion, invite the Parties' primary contacts to
11 attend such interviews.
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15 Requests for Documents. From time to time, the Monitor may serve requests for
16 any non-privileged information or document, or class of documents, created, received
17 or maintained by Defendants that is directly relevant to a determination of compliance
18 with the Compliance Documents. The Monitor must provide Defendants with a Notice
19 reasonably describing the documents sought and the reason for such request, and shall
20 make reasonable efforts to ensure that the requests are in accordance with Fed. R. Civ.
21 P. 26(b). Any such Notice shall be filed on the docket. The Monitor shall consider the
22 burden such requests for information or documentation will cause Defendants.
23 Defendants shall provide the documents sought unless the documents are not relevant
24 to any issue arising from their implementation of the Compliance Documents. Any
25 dispute regarding such a request shall be addressed to this Court. Plaintiffs shall have a
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1 right to participate in any proceedings regarding disputed requests for documents. Any
2 dispute between the Parties shall be presented to this Court [alternative: to this Court's
3 assigned Magistrate Judge] in a joint stipulation in conformity with Local Rule 37 and
4 this Court's prior orders.
5

6 The following documents shall be provided to the Monitor and Class Counsel:

7 Class Member IJ Hearings. Advance notice of hearings before Immigration
8 Judges to determine the custody status of Class Members. The Monitor may attend any
9 such hearings with or without advance notice to Defendants, except that the Monitor
10 may not attend if an affected Class Member, or his or her parent, or his or her Qualified
11 Representative or attorney of record objects to the Monitor's attendance.
12
13

14 Training by Defendants. Defendants shall provide the Monitor and Class
15 Counsel with the categories of individuals trained to implement the Compliance
16 Documents, including the individuals' titles and duty locations, the dates of trainings,
17 and all final training materials bearing upon implementation of the Compliance
18 Documents. The dates and locations of trainings shall be provided to the Monitor and
19 Class Counsel at least ten (10) days prior to the training dates and the Monitor and
20 Class Counsel may attend any such trainings.
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1 Class Members Statistics. Until the expiration of the Term,⁵ Defendants shall
2 provide to the Monitor and Class Counsel, in the form of a searchable electronic file
3 (such as an Excel), the following database information for all Class Members:
4

5 a. Identifying information and detention history: (i) Full name, (ii) Alien #, (iii)
6 date of birth, (iv) country of birth, (v) name and alien # of accompanying relative, (vi)
7 date of apprehension, (vii) date transferred to an ICE detention facility and name of
8 facility, (viii) the date and location of any transfers to other detention facilities, (ix)
9 date of release, (x) whether released alone or with an accompanying relative, (xi)
10 name, relationship and address of any adults to whom the Class Member was released,
11 (xii) if not released pursuant to Paragraph 14, the date placed in a non-secure licensed
12 facility under Paragraph 19 and the name and location of the facility, (xiii) if not
13 released under Paragraph 14 or placed pursuant to Paragraph 19 within five days of
14 apprehension, the reason why not released under Paragraph 14 or placed under
15 Paragraph 19, (xiv) if not released under Paragraph 14 or placed pursuant to Paragraph
16 19, the name and location of the facility where detained, length of time at that facility
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24 ⁵ The Initial Term will end four (4) months after the end of the Fourth Reporting
25 Period. The Monitor's Fourth Report will be due two (2) weeks before the end of the
26 Initial Term. To ensure that the Monitor is able to assess Defendants' compliance with
27 the Implementation Documents during the final four months of the Initial Term, by no
28 later than eight (8) weeks before the end of the Initial Term, Defendants shall provide
the Monitor with supplemental data for the period of time between the end of the
Fourth Reporting Period and the deadline for the Fourth Report ("Data Supplement"),
including but not limited to Class Member Statistics for the first month between the
end of the Fourth Reporting Period and the end of the Initial Term.

1 and reason why detained at that facility, (xv) whether the Class Member is detained
2 with unrelated adults at any facility identified in response to (xiv) above.

3 b. Information regarding CBP detention: (i) Number of hours spent in a CBP
4 facility following arrest, (ii) size of CBP cells were detained and largest number of
5 detainees held in the cell while the Class Member was detained in the cell, (iii) content
6 and number of meals and drinks provided to the Class Member while in CBP custody,
7 (iv) whether the Class Member was provided soap and towels while in CBP custody,
8 (v) temperature recordings taken while the Class Member was detained, (vi) whether
9 the Class Member was provided a blanket and mat or mattress to sleep on if held
10 overnight in a CBP facility, (vii) whether the Class Member was provided a notice of
11 her or his rights as required by the Agreement (unless provided pursuant to
12 subparagraph (h) below).

13 c. Continuous efforts at release pursuant to Paragraph 14 of the Settlement: (i)
14 The dates and nature of efforts made and recorded by CBP or ICE agents aimed at
15 release of the Class Member pursuant to Paragraph 14 of the Settlement, (ii) identities
16 of relatives, friends or licensed group homes contacted for release or placement of the
17 Class Member under Paragraph 14, (iii) the results of efforts aimed at release of the
18 Class Member pursuant to Paragraph 14 of the Settlement.

19 d. Continuous efforts at placement pursuant to Paragraph 19 of the Settlement:
20 (i) The dates of efforts made and recorded aimed at placement of the Class Member
21 pursuant to Paragraph 19 of the Settlement, (ii) name and location of licensed group
22 homes contacted for placement of the Class Member under Paragraph 19, (iii) the
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1 results of efforts aimed at release of the Class Member pursuant to Paragraph 19 of the
2 Settlement including the dates and locations of placements of Class Members under
3 Paragraph 19.
4

5 e. Placement of Class Members in Secure Facilities under Paragraph 21 of the
6 Settlement: (i) The dates Class Members were held in or transferred to a State or
7 county juvenile detention facility or a secure ICE detention facility or contracted
8 facility, (ii) reasons why they were transferred to a secure because less restrictive
9 facilities pursuant to Paragraph 23 were unavailable or inappropriate, (iii) names of
10 facilities they were transferred to, (iv) dates they were released (if no longer detained)
11 or transferred to non-secure placement.
12

13
14 f. Reviews of Custody Status by Immigration Judges: (i) Dates on which any
15 Class Members were notified of their right to an IJ review of their custody status
16 pursuant to Paragraph 12A of the Settlement, (ii) dates of hearings held before an IJ
17 pursuant to Paragraph 24A of the Settlement, (iii) results of hearings held before an IJ
18 including the written order and audio⁶ recording or transcript of hearing, if available;
19
20

21 g. Assessment of Special Needs: (i) Dates on which defendants assessed Class
22 Members to determine if they have special needs as required by Paragraph 7 of the
23 Settlement, (ii) the results of such assessments for each Class Member assessed, (iii)
24 actions taken as a result of such assessments (if any).
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⁶ All audio files may be provided to the Monitor in CD format.

1 h. Provision of notices of rights: (i) Dates on which pursuant to Paragraph 12A
2 of the Settlement Class Members were provided a notice of their rights, (ii) dates on
3 which pursuant to Paragraph 24C Class Members were provided notices of the reasons
4 for housing the minor in a detention or a medium security facility, (iii) dates on which
5 pursuant to Paragraph 24D of the Settlement Class Members were provided (a) INS
6 Form 1-770, (b) an explanation of the right of judicial review as set out in Exhibit 6,
7 and (c) the list of free legal services available in the district pursuant to INS regulations
8 (unless previously given to the minor).
9

10 i. Notice to counsel of transfers: (i) Dates on which pursuant to Paragraph 27 of
11 the Settlement counsel of Class Members were provided advance notice of transfers of
12 Class Members, (ii) dates on which for unusual and compelling circumstances notice
13 was provided to counsel within 24 hours following transfer.
14

15 j. Released Main Class Members Statistics. For each Class Member who has
16 been released from detention, in addition to the information required above,
17 Defendants shall provide the following categories of information in the form of a
18 searchable electronic file (such as an Excel file): (i) Date of release, (ii) number of
19 days in detention prior to release, (iii) whether the Class Member was re-detained, (iv)
20 the date of re- detention, and (v) location of re-detention;
21

22 k. Current Advisal Forms. All forms advising Class Members of their rights used
23 at CBP or ICE immigration detention facilities. Defendants shall promptly provide
24 updated forms throughout the Term if they are changed in any way.
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1 Contracts with Service Providers and Licenses. Defendants shall provide the
2 Monitor and Class Counsel with copies of their current contract(s) with entities for the
3 detention of Class Members and licenses issued for the operation of such entities. If
4 entities with which Defendants have contracted have in turn sub-contracted with other
5 entities to perform detention functions for Class Members, Defendants shall provide
6 copies of current contracts. Defendants shall provide updates if any contracts or
7 licenses mentioned in this paragraph change during the Term or if there are proposed
8 amendments or renewals of such contracts or licenses.
9

10
11 Qualified Legal Representative Organizations. By the Effective Date, and once
12 every six (6) months thereafter until the expiration of the Term, Defendants shall
13 provide the Monitor and Class Counsel with a list of all organizations listed in the list
14 of free legal services provided to detained Class Members or their accompanying
15 relatives by CBP or ICE officials. Defendants shall provide updates if those lists change
16 during the Term.
17

18
19 Implementation of Juvenile Coordinator compliance: By the Effective Date, and
20 once every six (6) months thereafter until the expiration of the Term, Defendants shall
21 provide the Monitor and Class Counsel with documents showing pursuant to
22 Paragraph 28A of the Settlement that a designated official in the Office of the
23 Assistant Commissioner for Detention and Deportation or some other official has
24 maintained an up-to-date record of all minors who are placed in proceedings and
25 remain in Defendants' custody for longer than 72 hours.
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1 Notice of Implementation Materials. Defendants shall provide the Monitor and
2 Class Counsel with any non-privileged final copies of any regulations, policy
3 directives, or training materials used to implement or enforce any portion of the
4 Compliance Documents, and any other non-privileged guidance concerning rules or
5 procedures applicable to Class Members that relate in any way to the Compliance
6 Documents. Defendants shall also provide any such documents already in use at the
7 time of the Monitor's appointment.
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9

10 Data concerning emergencies or influxes: Defendants shall provide the Monitor
11 and Class Counsel with monthly statistics on (i) the number and location by CBP
12 station of Class Members who presented themselves for admission or were
13 apprehended, (ii) of these Class Members the number placed in expedited removal and
14 the number issued Notices to Appear (NTAs) in regular removal proceedings, (iii) of
15 these Class Members the number released before being transferred to ICE custody
16 because they were issued NTAs, (iv) of these Class Members the number released or
17 placed pursuant to Paragraph 14 or 19 of the Settlement prior to such Class Members
18 being transferred to ICE custody, and (v) the number of CBP agents assigned to the
19 stations where the apprehensions took place. Defendants shall provide the Monitor and
20 Class Counsel with monthly reports regarding emergencies described in Paragraph 12B
21 of the Settlement, including the nature of and response to the emergency.
22
23

24 Inspection of Facilities. The Monitor shall have the right to conduct reasonable
25 inspections of detention facilities used by, contracted with, or acting on behalf of CBP
26 and ICE to hold Class Members. Upon notice to Defendants of 24 hours or longer, the
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1 Monitor shall have the right to tour and inspect CBP and ICE detention facilities and
2 interview staff (including CBP and ICE employees) and Class Members and their
3 accompany relatives to assess compliance with the Compliance Documents. Class
4 Members and their accompanying relatives may elect not to be interviewed by the
5 Special Monitor. Class Counsel and counsel for Defendants may, at the discretion of
6 the Special Monitor, be present during site inspections and interviews.
7

8
9 B. SUPPORT AND COMPENSATION FOR THE MONITOR

10 Support. The Monitor may, as she deems necessary to carry out her monitoring
11 functions, seek assistance from others, including but not limited to independent experts
12 or specialists whose advice or assistance the Monitor deems important to resolving
13 questions concerning compliance with the Compliance Documents.
14

15 Compensation. All of the Monitor's fees, costs and expenses, including with
16 respect to the assistance of other experts or specialists, are to be paid by Defendants.
17 The Monitor shall be compensated at the hourly rate of \$225 during the first year of the
18 Term, \$235 during the second year, and, if necessary, \$250 during the third year. On a
19 monthly basis, the Monitor shall provide Defendants with a detailed record of hours
20 billed in the preceding month. If Defendants dispute a bill from the Monitor, they shall
21 have 15 days to review and submit objections to, and/or request additional clarifying
22 information or documentation from the Monitor, with a copy served on Class Counsel
23 and filed with the Court. If within 30 days of presentation of the Monitor's bill, there is
24 still a dispute, Defendants shall submit the dispute to the Magistrate Judge of this Court
25 for resolution. Defendants and the Monitor shall prepare a joint statement regarding the
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1 disputed payment for filing within 30 days after Defendants' receipt of the Monitor's
2 bill. If the Monitor anticipates that her annual compensation, costs and expenses shall
3 exceed \$200,000 per year, she shall notify the Parties and the Court, preferably within
4 six months after the Effective Date, and make a showing of good cause and provide an
5 estimate of the amount she anticipates will be required for her to properly perform the
6 duties and obligations set forth in this Order. Upon such notification, the Court shall
7 set a schedule which will permit the Parties to submit written comment.
8
9

10 C. REPORTING TO THE COURT AND PLAINTIFFS' COUNSEL; JUDICIAL
11 REVIEW; DISPUTE RESOLUTION

12 Reporting to the Court. The Monitor shall provide regular reports to the Court in
13 the following manner.
14

15 Starting no later than four (4) months from the effective Date of this Order and
16 every six (6) months thereafter until the expiration of the Monitor's Term or as
17 otherwise required by this Order, the Monitor shall file on the case docket a Report
18 regarding Defendants' compliance with and any suspected violations of the
19 Compliance Documents, as well as any recommendations for steps necessary to
20 improve Defendants' compliance. The Monitor shall append to the Report any
21 documents that the Monitor deems important for the conclusions in the Report
22 ("Appendix"). The Monitor may seek a reasonable extension of time, if necessary.
23
24

25 At least twenty-eight (28) days before filing the Report and Appendix on the
26 case docket, the Monitor shall serve the Parties with copies of each, and the Parties
27 shall have 14 days from the date of service to submit to the Monitor written comments
28

1 to the Report. In her discretion, the Monitor may modify the Report in any manner
2 suggested by a Party before filing it with the Court, although the Monitor has no
3 obligation to explain the response (or lack thereof) to any suggestions.
4

5 The Monitor shall file the Parties' written comments together with the Report.

6 If the Monitor has a good faith basis to believe that there is a significant
7 violation of the Compliance Documents that cannot reasonably be addressed through a
8 Report due to its exigency, the Monitor shall file on the case docket an interim report
9 ("Interim Report"), including any recommendations for steps necessary to improve
10 Defendants' compliance and the reason for urgency. Prior to filing the Interim Report,
11 the Monitor shall afford the Parties a reasonable opportunity to be heard and to
12 expeditiously cure any violation.
13
14

15 Nothing in this Order limits the Monitor's ability to notify the Parties jointly of
16 issues relating to Defendants' compliance with the Compliance Documents through
17 reasonable means, including in-person or telephonic meetings, status conferences, or
18 correspondence. Nor shall anything in this Order limit the Monitor's ability to
19 promptly notify the Parties of violations of the Compliance Documents that, due to
20 their exigency, should not be addressed on the normal timeline for Reports.
21
22

23 Judicial Review. The Court adopts the review procedures and time lines set forth
24 in Fed. R. Civ. P. 53(f) and incorporates them herein by this reference. Any Party
25 seeking review of any ruling, finding, or recommendation of the Monitor or Special
26 Master shall comply with Rule 53(f).
27
28

1 Dispute Resolution. In the event Plaintiffs' counsel allege that Defendants have
2 failed to comply with the Compliance Documents or the terms of this Order, the
3 following procedure shall apply:
4

5 Plaintiffs' counsel shall provide Defendants and the Monitor with a written
6 statement describing the alleged non-compliance and specifying the provision of the
7 Compliance Documents allegedly violated ("Notice of Non-Compliance"). Defendants
8 shall provide a written statement responding to the alleged violation within 14 calendar
9 days from receipt of the Notice of Non-Compliance and, within 21 calendar days from
10 the Notice of Non-Compliance, counsel for the Parties shall meet and confer in a good
11 faith effort to resolve their dispute informally.
12

13
14 In the event that the Notice of Non-Compliance cannot be resolved informally
15 within the time period set forth herein, counsel for the Parties shall request that the
16 Special Monitor mediate the dispute. If the dispute has not been resolved within 14
17 days of referral to the Special Monitor, Plaintiffs may request that the Court issue an
18 order requiring compliance. Thereafter, the Special Monitor may file her
19 recommendations concerning the dispute within a time frame to be established after
20 conferring with the Court.
21

22
23 In an emergency Plaintiffs' Class Counsel may request that the Special Monitor
24 and the Court waive the time periods set forth above.
25

26 D. MISCELLANEOUS PROVISIONS; RETENTION OF JURISDICTION

27 Confidentiality of Information. A protective order governing this litigation is
28 being filed and shall continue to apply to all information produced by Defendants

1 pursuant to this Order. Any individual who assists the Monitor must agree to be bound
2 by the terms of the protective order, and execute the Acknowledgement of Protective
3 Order.
4

5 Cooperation of Parties. The Parties shall cooperate in good faith with the
6 Monitor.
7

8 Preservation of Materials. The Monitor shall preserve and, where appropriate,
9 file those materials reflecting the essential activities she and any of her aides perform
10 in carrying out the monitoring duties. The Monitor shall file on the case docket all
11 requests for modification of this Order and all status reports.
12

13 Retention of Jurisdiction; Amendments. The Court retains jurisdiction to enforce
14 this Order and to amend it for good cause.
15

16 IT IS SO ORDERED.

17 Dated: _____, 2016.

18 _____
19 Dolly M. Gee
United States District Judge

20 Presented by —

21 _____
22 /s/
Peter A. Schey
23 Class Counsel for Plaintiffs
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CERTIFICATE OF SERVICE

I, Peter Schey, declare and say as follows:

I am over the age of eighteen years of age and am not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 256 S. Occidental Blvd., Los Angeles, CA 90057, in said county and state.

On May 19, 2016, I electronically filed the following document(s):

[PROPOSED] ORDER APPOINTING A SPECIAL MONITOR with the United States District Court, Central District of California by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/Peter Schey
Attorney for Plaintiffs