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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

13 ANGEL DE JESUS ZEPEDA RIVAS,
14 BRENDA RUBI RUIZ TOVAR, LAWRENCE
KURIA MWAURA, LUCIANO GONZALO
15 MENDOZA JERONIMO, CORAIMA
YARITZA SANCHEZ NUÑEZ, JAVIER
16 ALFARO, DUNG TUAN DANG, JUAN JOSE
ERAZO HERRERA, RAJNISH RAJNISH, and
WILLIAN MATIAS RAUDA,

17 Petitioners-Plaintiffs,

18 v.

19 DAVID JENNINGS, Acting Director of the San
20 Francisco Field Office of U.S. Immigration and
Customs Enforcement; TAE JOHNSON, Acting
21 Director of U.S. Immigration and Customs
Enforcement; U.S. IMMIGRATION AND
22 CUSTOMS ENFORCEMENT; GEO GROUP,
INC.; MICHAEL KNIGHT, Acting Warden of
23 Mesa Verde Detention Facility,

24 Respondents-Defendants.

CASE NO. 3:20-CV-02731

**PLAINTIFFS' SUPPLEMENTAL
FILING REGARDING FEES AND
COSTS IN SUPPORT OF THEIR
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
PROPOSED CLASS SETTLEMENT**

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SUPPLEMENTAL FILING REGARDING PLAINTIFFS’ ATTORNEYS’ FEES AND COSTS IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Pursuant to the Court’s order dated February 8, 2022 (ECF No. 1218), the Standing Order for Civil Cases Before Judge Vince Chhabria, ¶ 56, and the Northern District’s Procedural Guidance for Class Action Settlements, ¶ 6, Plaintiffs make this supplemental filing to provide further context regarding the agreed-upon attorneys’ fees and costs provided for in the settlement agreement and Motion for Preliminary Approval (“Motion”). *See* ECF No. 1205.

I. BACKGROUND ON ATTORNEYS’ FEES AND COSTS.

As set forth in the Motion, the proposed class-wide settlement agreement (“Agreement”) provides for \$4,000,000 in attorneys’ fees and up to \$112,000 in taxable costs. ECF No. 1205 at 7; Agreement, ECF No. 1205-1 at 17 (¶ VI-A).¹ During settlement negotiations, the parties did not negotiate fees until after resolving the substantive issues. After reaching an agreement in principle on the merits, the parties negotiated fees and costs over several months, which included the exchange of voluminous billing records and a fee-specific mediation. The parties ultimately compromised and agreed to a fee award that reflects approximately 59% of Plaintiffs’ claimed reasonable attorney fees and approximately 50% of the claimed costs incurred.

As will be demonstrated in further detail by declarations and other supporting materials in a forthcoming motion for approval of fees and costs, the agreed-upon fees and costs reflect a substantial discount from the actual fees and costs incurred. Prior to engaging in settlement negotiations, in a show of good faith, Plaintiffs excluded significant portions of billable time. These discounts included (but were not limited to):

- Removing over a dozen timekeepers from Cooley LLP who provided e-discovery support, assisted in filings, and contributed to bail applications;

¹ At the appropriate time, Plaintiffs intend to file a motion for approval of fees and costs, including Equal Access to Justice Act (“EAJA”) fees. However, in advance of the preliminary approval hearing, Plaintiffs provide an overview of relevant facts and preview their anticipated arguments for fee approval so that the Court may evaluate the reasonableness of the Agreement at the preliminary-approval phase.

- 1 • Excluding ACLU investigators who spent hundreds of compensable hours on bail applications;
- 2 • Omitting time from approximately 20 attorneys at the Office of the Public Defender who
- 3 contributed to bail applications and other filings;
- 4 • Declining to seek fees for several timekeepers from the Lawyers' Committee for Civil Rights
- 5 of the San Francisco Bay Area who contributed to fact investigation and drafting;
- 6 • Seeking only fees and costs incurred through early August 2021, notwithstanding that litigation
- 7 continues to this day; and
- 8 • Accepting reduced rates pursuant to EAJA for certain timekeepers, notwithstanding their likely
- 9 qualification for enhanced rates.

10 After applying these generous reductions, Plaintiffs' legal fees amounted to about \$6,836,000.

11 Fees at EAJA Rates	
12 Cooley Statutory Rates	\$859,333.78
13 Lawyers' Committee for Civil Rights Statutory Rates	\$124,357.74
14 ACLU of Southern California Statutory Rates	\$109,743.44
15 San Francisco Office of the Public Defender Statutory Rates	\$117,994.41
16 Fees at Non-EAJA Rates	
17 ACLU of Northern California Non-Statutory Rates	\$1,541,720.88
18 Cooley Non-Statutory Rates	\$680,370.00
19 Lawyers' Committee for Civil Rights Non-Statutory Rates	\$871,131.00
20 ACLU of Southern California Non-Statutory Rates	\$116,877.30
21 San Francisco Office of the Public Defender Non-Statutory	\$2,168,870.14
22 Rates	
23 Lakin & Wille LLP Non-Statutory Rates	\$258,330.00
24 Total	\$6,848,728.69 ²

25 Accordingly, the \$4,000,000 agreed-upon attorneys' fees amount to about 59% of the total

26
 27 ² This amount was further discounted to remove fees previously paid by Defendants pursuant to a
 28 Court-ordered discovery sanction. See ECF No. 765. After applying that discount, the final fees
 totaled \$6,836,390.68.

1 compensable amount billed. A true and accurate summary of the timekeepers, hours billed, and
2 prevailing rates is attached as Exhibit 1.

3 Additionally, Plaintiffs incurred at least \$112,000 in out-of-pocket costs. The parties agreed
4 in principle to reimbursing taxable costs not to exceed \$112,000, subject to the approval of the
5 Department of Treasury's Judgment Fund. Plaintiffs then reviewed invoices and submitted
6 \$56,033.58 in taxable costs. In doing so, Plaintiffs excluded non-taxable costs, e.g., e-discovery
7 platform costs, research platform costs, and expert fees, notwithstanding that such costs may be
8 recoverable under Federal Rule of Civil Procedure 23(h) and the EAJA.

Category	Amount
Deposition fees	\$30,889.48
Filing fees	\$688.00
Printing and copying fees	\$7,402.64
Service of process fees	\$1,868.73
Oral interpretation fees	\$7,925.30
Trial transcript fees	\$5,532.88
Document preparation fees	\$1,726.55
Total	\$56,033.58

19 The agreed-upon fees and costs reflect a steep discount to the actual fees and costs incurred.

20 II. LEGAL STANDARDS

21 "In a certified class action, the court may award reasonable attorneys' fees and nontaxable
22 costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). Under the
23 Northern District's procedural guidance, "class counsel should include information about the fees they
24 intend to request and their lodestar calculation in the motion for preliminary approval." *Procedural*
25 *Guidance for Class Action Settlements*, accessible at
26 <https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/>. When, as
27 here, the parties have reached an agreement on fees and costs, the Court must eventually determine
28 whether the agreed-upon amount is reasonable, using the fees potentially awardable under the relevant

1 fee-shifting statute or statutes as a benchmark. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 965-66
2 (9th Cir. 2003). The Court should find that the agreed-upon fees and costs are reasonable for at least
3 four reasons.

4 First, the Court should approve the parties' agreed-upon fees and costs as reasonable because
5 they reflect an arms-length compromise. *See, e.g., Wehlage v. Evergreen at Arvin LLC*, 2012 WL
6 4755371, at *1 (N.D. Cal. Oct. 4, 2012) (“[T]he agreed amounts for attorneys’ fees and expenses . . .
7 are presumed to be reasonable.”); *see also Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) (“A request
8 for attorney’s fees should not result in a second major litigation. Ideally, of course, litigants will settle
9 the amount of a fee.”); *In re Apple Comp., Inc. Derivative Litig.*, 2008 WL 4820784, at *3 (N.D. Cal.
10 Nov. 5, 2008) (citation omitted) (“A court should refrain from substituting its own value for a properly
11 bargained-for agreement.”).

12 Second, the agreed-upon fees and costs are reasonable—and indeed heavily discounted—when
13 compared to a lodestar. “The lodestar method [for calculating a reasonable attorneys’ fee] is most
14 appropriate where the relief sought is ‘primarily injunctive in nature,’ and a fee-shifting statute
15 authorizes ‘the award of fees to ensure compensation for counsel undertaking socially beneficial
16 litigation.’” *Laguna v. Coverall N. Am. Inc.*, 753 F.3d 918, 922 (9th Cir. 2014) (vacated following
17 settlement) (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011)).
18 A lodestar figure is “presumptively reasonable.” *Cunningham v. Cnty. of L.A.*, 879 F.2d 481, 488 (9th
19 Cir. 1988) (citation omitted). Here, Plaintiffs liberally applied the applicable EAJA rates to attorneys,
20 notwithstanding that certain additional attorneys would have likely qualified for enhanced rates based
21 on their practice specialty. And the parties accepted non-statutory rates at prevailing market rates for
22 select counsel that Plaintiffs assert have expertise in immigration and civil rights class action matters
23 that was essential to representing Plaintiffs in this matter. *See* Exhibit 1. The settlement amount,
24 \$4,000,000, reflects a fraction of the fees actually incurred by Class Counsel: over \$6,800,000. *See*
25 *id.* Accordingly, the award of \$4,000,000 reflects about a 40% discount to the reasonable fees
26 presented to Defendants. And the actual fees incurred were much greater given the write-offs provided
27 by Plaintiffs and the fact that Plaintiffs have not sought fees for the past seven months.

28

1 Third, for the reasons stated in the Motion, the injunctive relief achieved through the settlement
 2 is profound and meaningful. *See* ECF 1205 at 13-15. The parties litigated a hotly contested matter
 3 with multiple injunctions, expedited discovery, and several appeals. *Id.* The stakes were high and the
 4 consequences grave. The fees incurred reflect the thousands of hours of hard work that were necessary
 5 to achieve successful results for the Class.

6 Fourth, Plaintiffs assert that the costs agreed to under the settlement are modest and heavily
 7 discounted. Under Rule 23(h), Plaintiffs may recover “nontaxable costs that are authorized by law or
 8 by the parties’ agreement.” But Plaintiffs have compromised for only taxable costs.

9 **III. CONCLUSION.**

10 For the foregoing reasons, Plaintiffs submit this supplemental filing so that the Court may
 11 evaluate the agreed-upon fees and costs while reviewing the Motion. As set forth in the Motion,
 12 Plaintiffs respectfully request that the Court preliminarily approve the Agreement, preliminarily
 13 certify the proposed class, and approve the proposed notice form and notice plan.

14 Dated: February 17, 2022

Respectfully submitted,

/s/ Martin S. Schenker

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CERTIFICATE OF SERVICE

I, Martin S. Schenker, hereby certify that true and correct copies of the foregoing were served on counsel of record via ECF on this 17th day of February, 2022.

/s/ Martin S. Schenker

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