UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES CRISWELL, et al., Plaintiffs, v. MICHAEL BOUDREAUX, in his official capacity as Sheriff of Tulare County, Defendant.	No. 1:20-cv-01048-DAD-SAB ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT (Doc. Nos. 92, 93)

This matter came before the court on November 29, 2021 and December 7, 2021 for a hearing on the unopposed motion for final approval of a class action settlement and for an award of attorneys' fees and costs filed on behalf of plaintiffs Charles Criswell, Levi Johnson, Samuel Camposeco, Adam Ibarra, and California Attorneys for Criminal Justice, (collectively "plaintiffs"). (Doc. No. 92.) Attorneys Ariel Teshuva of Munger, Tolles & Olson LLP and Emilou H. MacLean and Ryann Rae McMurry of the American Civil Liberties Union of Northern California appeared by video on behalf of plaintiffs and the putative class. Attorneys Christopher M. Pisano and Emily S. Chaidez of Best, Best & Krieger LLP appeared by video for defendant Michael Boudreaux, in his official capacity as Sheriff of Tulare County. For the reasons set forth below, the court will grant final approval of the class action settlement and will award attorneys' fees and costs.

BACKGROUND

The court previously summarized plaintiffs' allegations in its September 2, 2020 order granting plaintiffs' application for provisional class certification and motion for a temporary restraining order. (Doc. No. 26 ("TRO").) The court will not repeat that factual background in this order.

On September 29, 2021, the court granted conditional class certification and preliminary approval of the parties' class action settlement. (Doc. No. 88.) Following the grant of preliminary approval, on November 1, 2021, plaintiffs filed the pending unopposed motion for final approval of the parties' class action settlement. (Doc. No. 92.)[1] In support of their pending motion, plaintiffs have submitted several declarations from eight inmates confined at the Tulare County Jails ("the Jails"), as well as a declaration from Robert B. Greifinger, M.D., an expert witness regarding health care in jails and prisons. (Doc. Nos. 92-21–92-29.)

/////

[1] Plaintiffs also filed a request for leave to file a memorandum of points and authorities in support of their motion for final approval that exceeds the page limitation by five pages so that the issues presented could be adequately briefed. (Doc. No. 93.) The court finds good cause to grant plaintiffs' request and has considered all thirty pages of their supporting memorandum. However, to the extent plaintiffs' memorandum described and outlined alleged non-compliance by defendant with the terms of the settlement agreement, the court did not find such factual narrative to be relevant to its analysis and resolution of the pending motion for final approval. Although defendant sought to file a response under seal to address plaintiffs' allegations and purported evidence of his non-compliance, i.e., "to clear the factual record," the court denied defendant's request to seal and encouraged defendant to reconsider his filing in light of the court's view that the competing factual narratives are not relevant to the court's consideration of the pending motion. (*See* Doc. No. 98.) Defendant did not thereafter file a response. Despite the fact that the court expressed its view with regard to the irrelevance of any current alleged non-compliance, on November 22, 2021, plaintiffs filed a reply in support of their motion for final approval, in which plaintiffs again list several purported instances of defendant's failure to comply with the settlement agreement and urge the court to grant final approval as soon as possible because they intended to file a motion to enforce the settlement agreement within three days of the court's order granting final approval of the parties' settlement. (Doc. No. 99.) As the court explained at the first hearing on November 29, 2021, such an expedited resolution of any motion for enforcement is "very unrealistic given the extreme and long-time lack of judicial resources that the District Court in the Eastern District of California has suffered under for almost two years now." (Doc. No. 102 at 29.) At the second hearing on December 7, 2021, plaintiffs' counsel informed the court that they no longer intend pursue the litigation strategy of immediately filing an emergency motion for enforcement of the settlement agreement following the issuance of this order.

As summarized by the court in its order granting preliminary approval of the parties' settlement, the Settlement Agreement provides for the following substantive relief: (1) injunctive relief requiring defendant to implement, or continue to implement, a wide variety of policies to guard against the spread of the COVID-19 virus in the Jails; and (2) injunctive relief for monitoring the implementation of the settlement agreement, including providing for three unannounced site visits to the Jails by an independent expert monitor and regular public reporting by defendant. (Doc. No. 88 at 2.) The Settlement Agreement requires defendant to maintain policies consistent with the TRO and CDC guidance with regard to masks, social distancing, quarantine/isolation, testing and screening, contact tracing, out-of-cell time, attorney visitation, vaccines and vaccine education, and chronic care for medically vulnerable class members. (Doc. No. 92-2 at 3–8.) The parties' Settlement Agreement also provides for monitoring of defendant's compliance by requiring defendant to post weekly updates and to notify class counsel regarding class members who test positive for COVID-19 or who have been exposed to COVID-19. (*Id.*) Although the Settlement Agreement provides that Michael Brady would serve as the independent expert monitor and make three unannounced visits to the Jails before December 31, 2021 to ensure compliance with the parties' Settlement Agreement, the parties have agreed to two material modifications of the settlement in this regard because Mr. Brady has experienced unforeseen health circumstances and is currently unable to serve as the monitor. (Doc. No. 92 at 23–24.) First, the parties have stipulated that Julian Martinez, a highly qualified senior consultant at Mr. Brady's firm who has served as a monitor in other cases involving jails and prisons, will act as Mr. Brady's proxy during his incapacitation. (*Id.* at 23.) Second, in light of Mr. Brady's current health issues, the parties have agreed that unannounced expert visits to the Jails may continue for an additional month, until January 31, 2022. (*Id.* at 24.)

In their pending motion, plaintiffs explain that in early October 2021, the Jails experienced an outbreak of COVID-19, with at least 95 class members testing positive for the virus as of November 1, 2021, including one class member who died on October 8, 2021 and another class member who was hospitalized. (*Id.* at 13.) According to plaintiffs, defendant failed to take steps to prevent such an outbreak and also failed to react quickly and effectively in

response to that outbreak. (*Id.*) In particular, plaintiffs contend that defendant and the Tulare County Sheriff's Department ("TCSD") "delayed testing and isolating symptomatic class members, delayed implementing surveillance testing outside of the modules where there were known COVID-19 infections, failed to consistently isolate COVID-positive class members, and . . . house[s] COVID-positive and COVID-negative individuals in shared cells against clear public health guidance and the express terms of the Settlement Agreement." (*Id.* at 8.)

Plaintiffs maintain that "[i]f effectively implemented, the terms of the parties' Settlement Agreement . . . ensure that class members are meaningfully protected from the risk that COVID-19 poses to their health and safety." (*Id.* at 20.) Plaintiffs contend that defendant has not been fully complying with the terms of the Settlement Agreement, as shown by defendant's response to the recent COVID-19 outbreak in the Jails in October 2021. (*Id.* at 12–20, 31–35.) Nevertheless, plaintiffs urge the court to expeditiously grant final approval of the parties' settlement because the Settlement Agreement's terms remain adequate and fair, and defendant's alleged non-compliance is further cause for the court to approve the settlement and order defendant to comply with its terms. (*Id.* at 35–36.) In other words, the sooner the court grants final approval of the settlement, the sooner the parties can timely request any modifications (as contemplated by the Settlement Agreement) or bring any disputes regarding enforcement of the agreement to the court's attention, if necessary. (*Id.*) Plaintiffs stress that time is of the essence in this regard because defendant's compliance with the substantive terms of the Settlement Agreement is essential for the settlement to provide meaningful protection to class members from the spread of COVID-19 in the Jails. (*Id.*)

In addition, plaintiffs note that although a few class members filed objections with the court (Doc. Nos. 89–91), none of those objections support denying final approval of the settlement. (Doc. No. 92 at 31–37.) The substance of those objections pertains to defendant's failure to comply with the Settlement Agreement, for example, by allegedly not testing symptomatic inmates who requested COVID-19 testing, by allegedly denying access to out-of-cell time, and by allegedly not offering vaccines to inmates. (*Id.*) Indeed, one objector, plaintiff Camposeco, subsequently withdrew his objection, declaring that he does "not trust the

[defendant] and think[s] that TCSD has carelessly and vindictively handled this COVID-19 outbreak, but [he] think[s] the Settlement Agreement will force TCSD to properly protect incarcerated people in the Tulare Jails," and he "would like the Settlement Agreement to go into full effect so that the plaintiffs can bring TCSD into compliance with it," noting that his "objection, at heart, was [] venting [his] frustrations at TCSD's non-compliance with the Settlement Agreement." (Doc. No. 92-23 at ¶ 18.)

FINAL CERTIFICATION OF CLASS ACTION

The court has addressed and evaluated the standards for class certification in the TRO and the order granting preliminary approval of the settlement and has found certification warranted. (Doc. Nos. 26 at 26; 88 at 4–5.) The court will not repeat its prior analysis here. Because no additional issues concerning class certification have been raised, the court finds no basis to revisit any of the analysis contained in those prior orders. Final class certification in this case is appropriate. The following class is therefore certified for settlement purposes: "All people who are currently incarcerated in the Tulare County Jails or will be incarcerated in the Tulare County Jails at any point before the Termination Date of the Settlement Agreement." (Doc. No. 92-2 at 9.)

In addition, plaintiffs Ibarra and Camposeco are confirmed as class representatives.[2] Plaintiffs' counsel Munger, Tolles & Olson LLP and the American Civil Liberties Union of Northern California are confirmed as class counsel.

FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Class actions require the approval of the district court prior to settlement. Fed. R. Civ. P. 23(e) ("The claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of settlement—may be settled, voluntarily dismissed, or compromised only with the court's approval."). "Approval under 23(e) involves a two-step process in which the Court first

[2] As the court noted in its order granting preliminary approval of the parties' settlement, plaintiffs Criswell and Johnson are no longer incarcerated in the Jails, and thus did not seek to represent the class in connection with the parties' settlement agreement. (Doc. No. 88 at 2, n.2; *see also* Doc. No. 92 at 9 (noting that Levi Johnson and Charles Criswell [] are no longer in Defendant's custody").

determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004). Rule 23 requires that: (i) notice be sent to all class members; (ii) the court hold a hearing and make a finding that the settlement is fair, reasonable, and adequate; (iii) the parties seeking approval file a statement identifying the settlement agreement; and (iv) class members be given an opportunity to object. Fed. R. Civ. P. 23(e)(1)–(5). The settlement agreement in this action was filed on the court's docket (*see* Doc. No. 118-8), and class members have been given an opportunity to object thereto (*see* Doc. Nos. 82-3 at 10; 88 at 9.) The court now turns to the adequacy of notice and its review of the settlement following the final fairness hearing.

A. Notice

"Adequate notice is critical to court approval of a class settlement under Rule 23(e)." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998), *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011). "Notice is satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (quoting *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir. 1980)). It is important for class notice to include information concerning the attorneys' fees to be awarded from the settlement because it serves as "adequate notice of class counsel's interest in the settlement." *Staton v. Boeing Co.*, 327 F.3d 938, 963 n.15 (9th Cir. 2003) (quoting *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993)) (noting that where the notice references attorneys' fees only indirectly, "the courts must be all the more vigilant in protecting the interests of class members with regard to the fee award").

The court previously reviewed the class notice that was proposed when the parties sought preliminary approval of the settlement and found the notice to be satisfactory. (Doc. No. 88 at 8–9.) Consistent with the court's approval of that notice plan, defendant posted the approved notice in the Jails on September 30, 2021, in both the English and Spanish languages, and the notices were also posted on the ACLU's website. (Doc. No. 92 at 24.) Moreover, as noted above, in

response to receiving this notice, a few class members did file objections to the Settlement Agreement with the court, and one class member even filed a letter expressing his interest and support for the settlement. (*See* Doc. Nos. 89–91, 94.)

Given the above, the court concludes that "appropriate notice" was provided to the class here. *See* Fed. R. Civ. P. 23(c)(2)(A) (providing that for injunctive-relief only classes certified under Rule 23(b)(2), "the court may direct appropriate notice to the class").

B. Final Fairness Hearing

On November 29, 2021 and December 7, 2021, the court held a final fairness hearing, at which class counsel and defense counsel appeared. In addition, named plaintiffs Adam Ibarra and Samuel Camposeco and class member Jorge Rivera appeared at the hearing in support of the pending motion for final approval of the settlement. Objectors Pedro Sanchez and Joe Anaya-Casarez also appeared at the hearing, but withdrew their objections to the Settlement Agreement at the December 7, 2021 hearing, after receiving clarification from plaintiffs' counsel and defense counsel regarding the settlement agreement's provisions for out-of-cell time. For the reasons explained below, the court now determines that the settlement reached in this case is fair, adequate, and reasonable. *See* Fed. R. Civ. P. 23(e)(2).

At the final approval stage, the primary inquiry is whether the proposed settlement "is fundamentally fair, adequate, and reasonable." *Lane v. Facebook, Inc.*, 696 F.3d 811, 818 (9th Cir. 2012); *Hanlon*, 150 F.3d at 1026. "It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness." *Hanlon*, 150 F.3d at 1026 (citing *Officers for Justice v. Civil Serv. Comm'n of S.F.*, 688 F.2d 615, 628 (9th Cir. 1982)); *see also Lane*, 696 F.3d at 818–19. Having already completed a preliminary examination of the agreement, the court reviews it again, mindful that the law favors the compromise and settlement of class action suits. *See, e.g.*, *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008); *Churchill Vill., L.L.C.*, 361 F.3d at 576; *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Officers for Justice*, 688 F.2d at 625. Ultimately, "the decision to approve or reject a settlement is committed to the sound discretion of the trial judge because he [or she] is exposed to the litigants and their strategies, positions, and proof." *Staton*, 327 F.3d at

953 (quoting *Hanlon*, 150 F.3d at 1026).

In assessing the fairness of a class action settlement, courts balance the following factors:

> (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

Churchill Vill., L.L.C., 361 F.3d at 575; *see also In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015); *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 964–67 (9th Cir. 2009). These settlement factors are non-exclusive, and each need not be discussed if they are irrelevant to a particular case. *Churchill Vill., L.L.C.*, 361 F.3d at 576 n.7.

1. Strength of Plaintiffs' Case

When assessing the strength of a plaintiff's case, the court does not reach "any ultimate conclusions regarding the contested issues of fact and law that underlie the merits of th[e] litigation." *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp. 1379, 1388 (D. Ariz. 1989). The court cannot reach such a conclusion because evidence has not been fully presented. *Id*. Instead, the court "evaluate[s] objectively the strengths and weaknesses inherent in the litigation and the impact of those considerations on the parties' decisions to reach these agreements." *Id*.

The relative success that plaintiffs have had thus far litigating this action speaks to both the strengths and weaknesses of their case. In the TRO, the court concluded that plaintiffs had established that they were likely to succeed on the merits of their claims of deliberate indifference to serious medical needs in violation of the Eighth and Fourteenth Amendment, their right-to-access claims brought under the First, Sixth, and Fourteenth Amendments, and their claim brought under California's Bane Act. (Doc. No. 26 at 31–41.) In light of plaintiff's successful effort to obtain the TRO, plaintiffs' case was certainly strong at that time. However, the court evaluated defendant's subsequent actions after issuance of the TRO in connection with plaintiffs' motion for a preliminary injunction and concluded at that time that plaintiffs had not shown that those actions were objectively unreasonable. (Doc. No. 55 at 30–32.) Because plaintiffs had

failed to show a likelihood of success on the merits of their deliberate indifference claims at that time, the court denied plaintiffs' motion for a preliminary injunction. (*Id.*) Thus, the relative strength of plaintiff's claims is not static; it fluctuates given the ever-evolving and changing conditions brought about by the COVID-19 pandemic, including the rise and arrival of variants of the virus, the availability and reliability of COVID-19 tests, and the availability and efficacy of COVID-19 vaccinations and antibody treatments.

Accordingly, the court finds that consideration of this factor weighs moderately in favor of granting final approval of the parties' settlement in this action.

2. Risk, Expense, Complexity, and Likely Duration of Further Litigation

"[T]here is a strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *In re Syncor ERISA Litig.*, 516 F.3d at 1101 (citing *Class Plaintiffs*, 955 F.2d at 1276). As a result, "[a]pproval of settlement is preferable to lengthy and expensive litigation with uncertain results." *Johnson v. Shaffer*, No. 2:12-cv-1059-KJM-AC, 2016 WL 3027744, at *4 (E.D. Cal. May 27, 2016) (citing *Morales v. Stevco, Inc.*, No. 1:09-cv-00704-AWI-JLT, 2011 WL 5511767, at *10 (E.D. Cal. Nov. 10, 2011)).

In the pending motion for final approval, plaintiffs "recognize that they did not win every motion before this Court and that a trial date may not be set until the COVID-19 pandemic is no longer as severe, or even after the pandemic is over," and that "[t]he changing landscape of the pandemic and the increasing availability of three safe and effective vaccines also make future litigation uncertain." (Doc. No. 92 at 29.) The plaintiffs contend that "the Settlement Agreement provides adequate relief, particularly given the costs, risks, and delay associated with extensive litigation, including trial and appeal," and the settlement "mitigates the need for further litigation on Defendant's COVID-19 policies and helps protect class members from the virus for the next critical period of time." (*Id.* at 29–30.)

The court finds that consideration of this factor weighs in favor of granting final approval.

3. Risk of Maintaining Class Action Status Throughout Trial

Plaintiffs did not address this factor in their pending motion. Nonetheless, the court previously granted provisional and conditional class certification in connection with plaintiffs'

motion for a temporary restraining order and motion for preliminary approval of their class action settlement, respectively. (Doc. Nos. 26, 88.) There does not appear to be any risk that plaintiffs would be unable to maintain class action status throughout trial.

Accordingly, the court finds this factor also weighs in favor of final approval.

4. Amount Offered in Settlement

The parties' settlement provides injunctive relief and attorneys' fees and costs, not monetary relief, so this factor is not at issue in this case.

5. Extent of Discovery Completed and Stage of the Proceedings

"In the context of class action settlement, 'formal discovery is not a necessary ticket to the bargaining table' where the parties have sufficient information to make an informed decision about settlement." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1239 (9th Cir. 1998) (quoting *In re Chicken Antitrust Litig.*, 669 F.2d 228, 241 (5th Cir. 1982)). Approval of a class action settlement thus "is proper as long as discovery allowed the parties to form a clear view of the strength and weaknesses of their case." *Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 454 (E.D. Cal. 2013). A settlement is presumed fair if it "follow[s] sufficient discovery and genuine arms-length negotiation." *Adoma v. Univ. of Phx., Inc.*, 913 F. Supp. 2d 964, 977 (E.D. Cal. 2012) (quoting *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 528). The court must consider whether the process by which the parties arrived at their settlement is truly the product of arm's length bargaining, rather than collusion or fraud. *Millan v. Cascade Water Servs., Inc.*, 310 F.R.D. 593, 613 (E.D. Cal. 2015).

As detailed in the court's order granting preliminary approval, the court is quite satisfied that the parties' negotiations constituted genuine and informed arm's length bargaining. (Doc. No. 88 at 6.) The parties' negotiations followed extensive discovery and involved four separate settlement conferences with a neutral magistrate judge during which the parties discussed and debated variations of thirty-four injunctive relief terms. (*Id.*; Doc. No. 92 at 25, 28.)

Accordingly, the court concludes that consideration of this factor weighs in favor of granting final approval.

/////

6. Experience and Views of Counsel

Class counsel from the ACLU and Munger, Tolles & Olson LLP have filed declarations in support of plaintiffs' pending motion for final approval, in which they detail their extensive experience in litigating complex civil litigation, including federal class actions, and emphasize their experience since March 2020 in investigating and filing "actions relating to COVID-19 in other detention facilities throughout California." (Doc. Nos. 92-1 at ¶ 6; 92-20 at ¶ 2.) Therein, class counsel also state their belief in the merits of plaintiffs' case and their belief based on their own investigation and evaluation that "the proposed Settlement Agreement is fair, reasonable, and adequate, and is in the best interests of the proposed Settlement Class in light of all of the known facts and circumstances and risks inherent in litigation," which "are heightened here because of the constantly changing nature of the COVID-19 pandemic, which has been made even more uncertain by widespread vaccine reluctance and the development of more contagious variants such as the Delta variant." (Doc. No. 92-1 at ¶ 5.) Based on their experience and qualifications, class counsel have concluded that this settlement is fair and reasonable.

Thus, consideration of class counsel's experience and expressed opinions in this regard also weighs in favor of final approval of the settlement.

7. Presence of a Governmental Participant

As Sheriff of Tulare County, defendant is a governmental participant, which weighs in favor of final approval of the settlement. *See Moreno v. S. F. Bay Area Rapid Transit Dist.*, No. 3:17-cv-02911-JSC, 2019 WL 343472, at *5 (N.D. Cal. Jan. 28, 2019) ("BART is a governmental agency, and as such, its participation and consent to the injunctive relief weighs in favor of approving the settlement."); *Garcia v. Los Angeles Cnty. Sheriff's Dep't*, No. 2:09-cv-8943-MMM-SHX, 2015 WL 13646906, at *11 (C.D. Cal. Sept. 14, 2015) (concluding that because defendant county office of education was a government participant, consideration of this factor weighed in favor of settlement); *San Francisco NAACP v. San Francisco Unified Sch. Dist.*, 59 F. Supp. 2d 1021, 1031 (N.D. Cal. 1999) (concluding that the fact that "[t]he State and Local Defendants are all governmental participants" weighs in favor of granting approval).

/////

8. Reaction of the Class Members

"It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 529 (citing cases). The presumption that a settlement is fair, reasonable, and adequate is particularly strong when there is an absence of a single objection to a proposed class action settlement. *See id.*; *Barcia v. Contain-A-Way, Inc.*, No. 07-cv-938-IEG-JMA, 2009 WL 587844, at *4 (S.D. Cal. Mar. 6, 2009). Nevertheless, "[a] court may appropriately infer that a class action settlement is fair, adequate, and reasonable when few class members object to it." *Cruz v. Sky Chefs, Inc.*, No. 4:12-cv-02705-DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (citing *Churchill Village*, 361 F.3d at 577).

As plaintiffs note in the pending motion, there are approximately 1,246 people currently incarcerated in the Jails, and only 3 of them submitted objections to the Settlement Agreement with the court. (Doc. Nos. 92 at 31; 89–91.) As noted above, one of those objectors subsequently filed a declaration in which he withdrew his objection and encouraged the court to grant final approval of the settlement. (Doc. No. 90.) Plaintiffs contend that "the very low number of objections counsels in favor of concluding that the settlement is fair and adequate." (Doc. No. 92 at 31, n. 18.) Plaintiffs also note that these few objections arose in large part only due to defendant's alleged failure to comply with the terms of the parties' Settlement Agreement, not due to the objectors' dissatisfaction with the terms agreed upon therein. (*Id.*) Indeed, at the final approval hearing, objector Anaya-Casarez explained that he was not objecting to the terms of the settlement agreement but rather to defendant's alleged non-compliance with the terms of that agreement. Objector Sanchez's written objections express his concern that due to the spike in COVID-19 cases, the Settlement Agreement's termination date of March 31, 2022 is premature and too early. (Doc. No. 91 at 4.) Plaintiffs contend that while this objection is understandable, it should be disregarded because the Settlement Agreement actually contemplates the possibility of extension and provides for further extensions beyond March 31, 2022. (Doc. No. 92 at 36.) As for objector Sanchez's concern that the settlement does not provide individuals being held in

protective custody with out-of-cell time, class counsel and defense counsel clarified at the hearing on December 7, 2021—after meeting and conferring on this issue and reaching agreement following the November 29, 2021 hearing—that under the settlement agreement individuals in level 5 of protective custody (a designation level for inmates who are unable to program with other inmates) are entitled to forty-five minutes of out-of-cell time pursuant to section 3.7(b) of the settlement agreement, and that all other levels of protective custody are entitled to two hours of out-of-cell time pursuant to section 3.7(a) of the settlement agreement. At the December 7, 2021 hearing, counsel indicated their intention to file a stipulation memorializing their understanding and agreement in this regard on the docket as soon as possible. Thus, the court incorporates that forthcoming stipulation by reference here.

Finally, although class members were not invited to affirmatively opt-in or express support for the Settlement Agreement, the court notes that one class member, Jorge Rivera, filed a letter expressing his interest and support for the parties' class action settlement. (Doc. No. 94.)

In light of the few class members who objected to the settlement, their stated reasons for doing so, and their ultimate withdrawal of those objections, the court concludes that the overall reaction of the class has been positive and supportive of the settlement. Thus, consideration of this factor weighs in favor of granting final approval.

In sum, after considering all of the relevant factors, the court finds on balance that the settlement is fair, reasonable, and adequate. *See* Fed. R. Civ. P. 23(e).

ATTORNEYS' FEES AND EXPENSES

In their motion for final approval of the class action settlement, plaintiffs also request that the court award $95,000 to class counsel as reasonable attorneys' fees and expenses. (Doc. No. 92 at 30–31.) The Settlement Agreement provides for this award, as an agreed-upon sum of $95,000 to be paid to Munger, Tolles & Olson LLP within thirty days of the date that the court grants final approval of the class action settlement. (Doc. No. 92-2 at 3, 8.)

This court has an "independent obligation to ensure that the award [of attorneys' fees], like the settlement itself, is reasonable, even if the parties have already agreed to an amount." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011).

Plaintiffs argue that class counsel vigorously advocated for the class and litigated this case with the exclusive focus of obtaining injunctive relief, which they achieved with the TRO and with negotiating the Settlement Agreement. (Doc. No. 92 at 30.) Plaintiffs contend that given their successes throughout this case, "an award of $95,000 is a reasonable sum for their counsel's time and expense." (*Id.*) Further, given the caps on attorneys' fees under the Prison Litigation Reform Act ("PLRA"), this sum represents a significant reduction from plaintiffs' actual accrued fees of approximately $800,000 and expenses of approximately $53,000. (*Id.* at 30–31.)

Accordingly, the court is satisfied that the agreed-upon award of $95,000 for class counsel's attorneys' fees and expenses is reasonable under the circumstances of this case. The court will direct that payment of this award consistent with the terms of the Settlement Agreement.

CONCLUSION

For the reasons stated above:

1. Plaintiffs' request for leave to file a memorandum of points and authorities in support of their motion for final approval that exceeds the page limitation by five pages (Doc. No. 93) is granted;
2. Plaintiffs' motion for final approval of the class action settlement (Doc. No. 92) is granted and the court approves the settlement as fair, reasonable, and adequate;
3. The parties' request that the settlement be modified to reflect their stipulation that Julian Martinez serve as proxy for Mr. Brady as the independent expert monitor and to reflect their agreement that expert visits may continue until January 31, 2022 (Doc. No. 92 at 23–24) is granted;
4. Class counsel is awarded $95,000 as reasonable attorneys' fees and expenses, to be paid by defendant consistent with the terms of the Settlement Agreement;
5. The parties are directed to effectuate all terms of the Settlement Agreement and any deadlines or procedures set forth therein;

/////

/////

6. This action is dismissed with prejudice in accordance with the terms of the parties' settlement agreement, with the court specifically retaining jurisdiction over this action for the purpose of enforcing the parties' settlement agreement for the duration of its term, which is currently set to terminate on March 31, 2022; and

7. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: **December 7, 2021**

Dale A. Drozd
UNITED STATES DISTRICT JUDGE