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 11 *on the next page)*

12 UNITED STATES DISTRICT COURT
 13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 MICHAEL GARCIA, an individual on
 15 behalf of himself and all others similarly
 16 situated,

17 Plaintiffs,

18 v.

19 LOS ANGELES COUNTY SHERIFF'S
 20 DEPARTMENT, a public entity, *et al.*,

21 Defendants.

Case No. : CV 09-08943 DMG (SHx)
CLASS ACTION

**NOTICE OF MOTION AND
 MOTION FOR ORDER:
 (1) GRANTING PRELIMINARY
 APPROVAL OF CLASS ACTION
 SETTLEMENT WITH
 CALIFORNIA DEPARTMENT OF
 EDUCATION; (2) DIRECTING
 NOTICE TO THE CLASS; AND (3)
 SCHEDULING A FAIRNESS
 HEARING**

[Proposed] Order Filed Concurrently

Hearing Date: July 20, 2018
 Time: 9:30 AM
 Court: United States Courthouse, 350
 West 1st Street,
 Los Angeles, CA, 90012
 Courtroom: 8C
 Judge: Hon. Dolly M. Gee

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 20, 2018, at 9:30 a.m. or as soon thereafter as the matter may be heard, in Courtroom 8C on the 8th Floor of the United States District Court for the Central District, located at 350 W. 1st Street, Los Angeles, CA 90012, before the Honorable Dolly M. Gee, Plaintiff Michael Garcia, on behalf of himself and the certified class (collectively, "Plaintiffs"), will and hereby do move this Court to issue an order as follows: (1) granting preliminary approval of the class action settlement between Plaintiffs and Defendants California Department of Education and Tom Torlakson, in his official capacity as Superintendent of Public Instruction for the State of California, as fair, reasonable, and adequate; (2) granting approval of the proposed notice to the Class and directing provision of Class Notice in accord with the Plan for Class Notice; and (3) setting a schedule for the Fairness Hearing and related filings consistent with the time frame set forth in this Motion.

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1 This motion is based upon this Notice of Motion and Motion; the
2 accompanying Memorandum of Points and Authorities; the Declaration of Anna
3 Rivera and the exhibits attached thereto; the pleadings and papers on file in this
4 action; and any other oral and documentary evidence as this Court permits.
5

6 Dated: June 22, 2018

Respectfully submitted,

7
8 DISABILITY RIGHTS LEGAL CENTER

9 /s/ Anna Rivera

10 Anna Rivera
11 Maronel Barajas

12 —and—

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15 UNITED STATES DISTRICT COURT
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 MICHAEL GARCIA, an individual on
18 behalf of himself and all others similarly
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22 LOS ANGELES COUNTY SHERIFF'S
23 DEPARTMENT, a public entity, *et al.*,

24 Defendants.
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Case No. : CV 09-08943 DMG (SHx)
Honorable Dolly M. Gee

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT TO
PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR:
(1) PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
WITH CALIFORNIA
DEPARTMENT OF EDUCATION;
(2) ORDER DIRECTING NOTICE
TO THE CLASS; AND
(3) SCHEDULING A FAIRNESS
HEARING**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Through this motion, Plaintiff Michael Garcia (“Plaintiff”) on behalf of himself and others similarly situated (collectively, “Plaintiffs”) seek as described further below (1) preliminary approval of a settlement between Plaintiffs and the California Department of Education as fair, reasonable, and adequate; (2) approval of a proposed form of class notice and the method for distribution thereof; and (3) approval of a hearing date and briefing schedule for a fairness hearing.

In December 2009, Plaintiffs filed this lawsuit (“Lawsuit”) seeking injunctive relief against Defendants Los Angeles County Sheriff’s Department (the “Sheriff’s Department”), County of Los Angeles (the “County”), Los Angeles County Office of Education (“LACOE”), Los Angeles Unified School District (“LAUSD”), California Department of Education (the “CDE”), and Hacienda La Puente Unified School District (collectively, “Defendants”) to ensure that eligible students detained in the Los Angeles County Jail (“LACJ”) receive the special education and related services to which they are entitled—and need.

Prior to Plaintiffs’ Lawsuit, although all Defendants agreed that eligible inmates were entitled to special education services, none were provided. After more than seven years of hard-fought litigation—including extensive discovery, multiple summary judgment motions, and an appeal to the Ninth Circuit on a related case—Plaintiff achieved a settlement with Defendants California Department of Education and Tom Torlakson, in his official capacity as Superintendent of Public Instruction for the State of California (collectively, “CDE Defendants”) (together “Parties”) (“Settlement”).

The Settlement follows several years of contested litigation, extensive discovery and motion practice and multiple mediation sessions under the supervision of Judge Terry J. Hatter Jr. and neutral Phyllis Cheng. The Settlement

1 also follows class action settlements with LACOE, LAUSD, and County of Los
2 Angeles that created coordinated systems to enforce the rights of Plaintiffs to
3 obtain special education services while in Los Angeles County Jail. (*See* Dkt Nos.
4 390, 407 and 452.) These systems continue to exist today. (*Id.*)

5 In light of the above system changes with regard to the delivery of special
6 education services, CDE Defendants' role to keep the parties informed of their
7 obligation to provide special education training is critical to resolving this Lawsuit.
8 The Settlement, among other things, does the following: (i) mandates the
9 dissemination of information and guidance to special educational local plan areas,
10 local educational agencies and CDE staff who assist in the provision of special
11 education services to eligible students in the Los Angeles County Jail and
12 throughout California and (ii) requires the CDE to invite the Los Angeles County
13 Sheriff's Department to subscribe to any Listserv that the CDE uses to
14 communicate information about special education to and amongst stakeholders.
15 As a result, the Parties expect that provision of special education services to
16 Class Members will be better monitored and enforced.

17 The proposed Settlement is fair, adequate, and reasonable. It satisfies all of
18 the criteria for preliminary approval under Rule 23 of the Federal Rules of Civil
19 Procedure. Plaintiffs respectfully request that the Court grant the relief requested
20 in this Motion.

21 **II. BACKGROUND**

22 On December 4, 2009, Plaintiff Michael Garcia, on behalf of himself and
23 others similarly situated, filed this class action complaint for declaratory and
24 injunctive relief alleging against Defendants, asserting claims under the Individuals
25 with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.* ("IDEA"), Title II of the
26 Americans with Disabilities Act, 42 U.S.C. §§ 12131 *et seq.* (the "ADA"),
27 Section 504 of the Rehabilitation Act of 1973, 29 U.S.C § 794 ("Section 504"); the

1 Due Process and Equal Protection Clauses of the Fourteenth Amendment of the
2 United States Constitution, the California Constitution, and California law
3 (“Lawsuit”). (Dkt. No. 1.) The Lawsuit sought injunctive relief against
4 Defendants for failing to ensure that eligible students detained in the LACJ receive
5 special education and related services. (See Dkt. No. 1 at ¶¶ 1, 16-18.)

6 Plaintiff alleged that no special education services were available or
7 provided to him during his detention in LACJ facilities. Further, as a result of
8 Defendants’ failure to provide these services, eligible students were denied
9 meaningful access to the high school education program. At the time of filing, no
10 school district provided special education services at any LACJ facility in plain
11 violation of both state and federal law. Plaintiff’s experience was by no means
12 unique. It illustrated the struggle of students who sought and needed special
13 education services while detained in the LACJ and highlighted the need for a
14 coordinated solution in LACJ facilities. Defendants denied the allegations, both as
15 to the individual Plaintiff and as to the class as a whole.

16 On April 29, 2010, the District Court granted Plaintiffs’ motion for class
17 certification pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.
18 Dkt. No. 135. The certified class for purposes of injunctive and declaratory
19 consisted of:

20 All students who are or were eligible for special education
21 and related services under 20 U.S.C. § 1400 *et seq.* while
22 detained in any Los Angeles County Jail (“LACJ”) facility, and who:
23 (a) are currently detained at any LACJ facility;
24 (b) are detained at any LACJ facility in the future.

25 *Id.* at 2.

26 The Parties engaged in extensive discovery regarding the provision of
27 special education and related services to class members while at LACJ facilities,

1 including the CDE's efforts to comply with the IDEA, ADA, Section 504, and the
2 Due Process and Equal Protection Clauses of the Fourteenth Amendment of the
3 United States Constitution. Plaintiff deposed two CDE officials pursuant to
4 Federal Rule of Civil Procedure 30(b)(6). The CDE deposed Plaintiff as well as
5 Plaintiff's expert witness. (Rivera Decl. ¶5.) In total, the Parties propounded and
6 responded to 24 interrogatories, 59 requests for production of documents, 13
7 substantive requests for admission. (*Id.*) With regard to the CDE alone, Plaintiff
8 propounded 3 interrogatories, 48 requests for production of documents and 13
9 substantive requests for admissions. This resulted in over 1,300 pages of
10 documents and review of same. (*Id.*)

11 On November 22, 2010, Plaintiffs and the CDE Defendants filed
12 cross-motions for summary judgment. (Dkt. Nos. 188 and 208, respectively.) On
13 January 19, 2011, the District Court entered an Order granting in part CDE
14 Defendants' Motion for Summary Judgment as to Plaintiffs' claims under the ADA
15 and Section 504. (Dkt. Nos. 305 and 306). Accordingly, the only remaining claims
16 against the CDE Defendants were claims alleged under the IDEA and
17 U.S. Constitution. (*Id.* at 18). In addition, because trial was set for November 8,
18 2011 (Dkt. Nos. 325), significant trial preparation continued, including the
19 submission of witness and exhibits lists and contentions of law and fact. (Dkt. Nos.
20 333-44.)

21 While actively litigating the matter, the Parties were at the same time
22 participating in good faith settlement negotiations. Beginning in the summer
23 of 2010, the Parties participated in extensive arms-length settlement negotiations,
24 which included extensive written negotiations, multiple in-person meetings,
25 telephonic settlement negotiations, and at least three in-person settlement
26 conferences with Judge Terry J. Hatter Jr., who acted as a settlement officer in this
27 case. (Rivera Decl. ¶7.) These negotiations were time and resource intensive for
28

1 both Parties.

2 On November 27, 2012, this Court stayed the Lawsuit pending the review of
3 a companion case by the California Supreme Court and the Ninth Circuit Court of
4 Appeals, (the “Related Case”). (*See* Dkt. No. 357.) Concurrently with the Lawsuit,
5 LAUSD commenced the Related Case, a civil action in the United States District
6 Court for the Central District of California, Case No. 2:09-cv-09289-VBF-CT to
7 appeal an order of the California Office of Administrative Hearings
8 (“OAH”) finding that, pursuant to California Education Code section 56041,
9 LAUSD was the entity legally responsible for providing Plaintiff Michael Garcia
10 with a free appropriate public education while he was incarcerated in the LACJ.
11 The District Court in the Related Case affirmed the OAH decision. *See* USDC
12 Case No. 2:09-cv-09289-VBF-CT; Dkt. 27. LAUSD appealed the District Court’s
13 order to the United States Court of Appeals for the Ninth Circuit. *See* USDC Case
14 No. 2:09-cv-09289-VBF-CT; Dkt. 28. After oral arguments, the Ninth Circuit
15 certified the following question to the California Supreme Court:

16 Does California Education Code section 56041 - which
17 provides generally that for qualifying pupils between the
18 ages of eighteen and twenty-two, the school district where
19 the child’s parent resides is responsible for providing
20 special education and related services – apply to children
who are incarcerated in county jails?

21 *LAUSD v. Garcia*, United States Court of Appeals for the Ninth Circuit Case No.
22 10-55879; Dkt. No. 44. The California Supreme Court accepted the certified
23 question, and on December 12, 2013, issued a seminal decision, holding that the
24 assignment of responsibility for providing special education to eligible county jail
25 inmates between the ages of 18 and 22 years is governed by the terms of California
26 Education Code Section 56041, which states, in pertinent part, that “the last district
27 of residence in effect prior to the pupil’s attaining the age of majority shall become

1 and remain as the responsible local educational agency.”

2 On January 28, 2014, the Related Case was fully resolved when the Ninth
3 Circuit affirmed the District Court’s decision affirming the 2009 OAH decision,
4 finding that the District Court’s ruling in the Related Case was consistent with the
5 California Supreme Court’s answer to the certified question. *LAUSD v. Garcia*,
6 United States Court of Appeals for the Ninth Circuit Case No. 10-55879; Dkt. No.
7 73-1.

8 Since the Ninth Circuit’s decision in 2014, the Parties renewed and
9 continued with the litigation. On September 14, 2015 this Court approved the class
10 action settlement between Plaintiffs and LACOE. (Dkt. No. 390.) On May 20,
11 2016, this Court approved the class action settlement between Plaintiffs and
12 LAUSD. (Dkt. No. 407.) And on July 28, 2017, this Court approved the class
13 action settlement between Plaintiffs and the County of Los Angeles. (Dkt. 452.)

14 After reaching an agreement with the County of Los Angeles, the litigation
15 with the CDE Defendants intensified. This Court granted Plaintiffs’ request to
16 conduct additional discovery for the purpose of obtaining updated evidence from
17 CDE Defendants as to CDE Defendants’ involvement in (whether directly or
18 indirectly) and/or responsibility for, the provision of special education services in
19 the Los Angeles County Jail and policies and procedures for provision of special
20 education and related services and/or reasonable modifications and
21 accommodations to eligible students in the Los Angeles County Jail. (*See* Dkt. 435,
22 438, 439, 439-1.) This action was set for trial on December 15, 2017. (*See* Dkt.
23 No. 438.)

24 During this period wherein discovery was re-opened, Plaintiffs conducted
25 informal discovery as well as propounded three interrogatories and fifteen requests
26 for production of documents. (Rivera Decl. ¶13.) Plaintiff also deposed three CDE
27 officials pursuant to Fed. R. Civ. P. 30(b)(6). The Parties also relied on the

1 evidence produced through the extensive discovery among the all parties in this
2 action. (*Id.*) In total, throughout the litigation, Plaintiffs propounded six
3 interrogatories, sixty-three requests for production of documents, thirteen
4 substantive requests for admission. (*Id.* at ¶14.) This resulted in over 1,300 pages
5 of documents and review of same. Plaintiffs also deposed four CDE officials
6 pursuant to Fed. R. Civ. P. 30(b)(6). As to CDE Defendants alone, five
7 depositions of four individuals were conducted. Collectively, during the course of
8 the Lawsuit over sixteen depositions were taken. (*Id.*)

9 While conducting additional discovery, the Parties also participated in
10 another round of time and resource intensive negotiations over the next five
11 months that eventually culminated in an agreement. After multiple telephonic
12 settlement negotiations and, under the supervision of neutral Phyllis Cheng, two
13 all-day mediations, and at least three settlement calls, the Parties ultimately
14 achieved the Settlement that is the subject of this motion. (*Id.* at ¶15.)

15 **III. SUMMARY OF PROPOSED SETTLEMENT**

16 The proposed Settlement, attached in full as Exhibit A to the Declaration of
17 Anna Rivera, includes the following negotiated and agreed-upon terms:

18 **A. Electronic Mailing List Program for Stakeholders**

19 Under the Settlement, CDE agrees to invite the Los Angeles Sherriff's
20 Department to subscribe to any of its Listservs that it uses to provide information
21 to key stake holders in special education. (Rivera Decl., Exhibit A, Settlement
22 Agreement at IV.A.) As an initial matter, CDE administers and maintains
23 Listservs to communicate information about special education among key
24 stakeholders throughout California. As educational agencies, LAUSD and
25 LACOE are already subscribed to these Listservs. However, the Los Angeles
26 County Sheriff's Department – a key player needed to ensure that special
27 education services continue to be provided to class members – is not a member of

1 these Listservs. As such, inviting the Los Angeles County Sheriff’s Department to
2 join these Listservs will enable Sheriff’s personnel to be informed about special
3 education and become connected with other special education stakeholders which
4 will, in turn, help to ensure that Class Members receive appropriate special
5 education services. (Rivera Decl. ¶22.)

6 **B. Guidance to Educational Agencies**

7 In light of this Court’s previous rulings and the California Supreme Court’s
8 subsequent decision resolving the issue of which entity is responsible for providing
9 special education services as, generally speaking, the last district of residence of
10 the student before entering into the LACJ, the Settlement mandates that CDE
11 disseminate a Guidance Letter to all special education local plan areas (“SELPA”)
12 and local educational agencies (“LEA”) in California informing them of their
13 obligations to provide special education and related services to eligible students in
14 county jails in compliance with California and federal law. In addition, the
15 Guidance Letter must also include CDE’s contact information, should any
16 questions arise. Further, the Guidance Letter must also be posted on the CDE’s
17 website for at least two years. (Rivera Decl., Exhibit A, Settlement Agreement at
18 IV.B.)

19 **C. Mandatory Discussions with California Department of Education**
20 **Personnel**

21 Under the Settlement, the CDE must within two years conduct at least three
22 discussions with all CDE personnel within the Special Education Division with
23 responsibilities for complaint investigations and/or monitoring regarding the legal
24 obligations of SELPAs and LEAs to provide special education and related services
25 to students detained in county jails (“CDE Complaint and Monitoring Units”).
26 (Rivera Decl., Exhibit A, Settlement Agreement at IV.C.) In Plaintiffs’ view, the
27 discussions within the CDE’s Complaint and Monitoring Units is a necessary and

1 important component of the Settlement in order to ensure that any complaints filed
2 with the CDE by Class Members or other key stakeholders that contain allegations
3 that Class Members are not receiving special education and related services while
4 in Los Angeles County Jail are properly investigated by individuals. (Rivera
5 Decl. ¶23.) This will help to ensure that all efforts of responsible entities for the
6 provision of special education services for Class Members are maintained, and any
7 errors promptly corrected. (*Id.*)

8 Under the Settlement, after each discussion, CDE must provide
9 Class Counsel with the job titles of CDE personnel who attended as well as an
10 outline of the topics discussed. (Rivera Decl., Exhibit A, Settlement Agreement at
11 IV.C.)

12 **D. Release of Claims**

13 In exchange for the injunctive relief proposed in the Settlement, Plaintiff
14 have agreed to release any injunctive or equitable claim against CDE that were the
15 subject of or arise from the Lawsuit, including federal and state law claims under
16 the IDEA, the Equal Protection and Due Process Clause of the Fourteenth
17 Amendment of the United States Constitution, the Due Process Clause of the
18 Fourteenth Amendment of the United States Constitution, Section 11135 of the
19 California Government Code, the California Constitution, and California
20 Education Code §§ 56000 *et seq.* (Rivera Decl., Exhibit A, Settlement Agreement
21 at VIII.)

22 **E. Attorney Fees and Costs**

23 As part of the Settlement, the CDE Defendants agree to pay attorneys' fees
24 and costs to Class Counsel in the amount of \$90,000. (Rivera Decl., Exhibit A,
25 Settlement Agreement at V.) The \$90,000 in fees and costs represents only a
26 fraction of the actual hours and costs expended by Class Counsel over the course
27 of 8 years that this case has been litigated. (Rivera Decl. ¶24.) In order to reach

1 this settlement, which Class Counsel believe to be in the best interest of the Class,
2 Class Counsel made significant concessions as to their fees. (*Id.*) If the Court
3 grants preliminary approval, Plaintiffs will move separately for attorneys’ fees,
4 costs, and expenses.

5 **IV. LEGAL ARGUMENT**

6 **A. The Proposed Settlement Agreement is Fair and Reasonable and**
7 **Should Be Granted Preliminary Approval.**

8 Judicial approval of a class action settlement under Rule 23 generally
9 involves three steps. First, at the preliminary approval hearing, the parties “submit
10 the proposed terms of settlement and the judge makes a preliminary fairness
11 evaluation.” Federal Judicial Center, Manual for Complex Litigation (4th ed.
12 2004), § 21.632 (“Manual”). Second, if preliminary approval is granted, the class
13 representatives must disseminate notice of the proposed settlement to affected class
14 members. *Id.* § 21.633. Third, the court conducts a final approval hearing, at
15 which class members may be heard regarding the settlement, and at which
16 evidence and argument concerning fairness, adequacy, and reasonableness of the
17 settlement are presented. *Id.* § 21.634. This procedure safeguards class members’
18 procedural due process rights and enables the court to fulfill its role as the guardian
19 of class interests. *See Newberg on Class Actions*, § 13.39 (5th ed. 2016)
20 (“Newberg”).

21 The law favors compromise and settlement of class action lawsuits. *See*,
22 *e.g.*, *Churchill Vill. L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004);
23 *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Officers for*
24 *Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). The Ninth
25 Circuit recognizes the “overriding public interest in settling and quieting litigation .
26 . . . particularly . . . in class action suits” *Van Brokhorst v. Safeco Corp.*, 529
27 F.2d 943, 950 (9th Cir. 1976); *see also In re Synacor ERISA Litig.*, 516 F.3d 1095,

1 1101 (9th Cir. 2008) (“There is a strong judicial policy that favors settlements,
2 particularly where complex class action litigation is concerned.”).

3 “[T]he decision to approve or reject a settlement is committed to the sound
4 discretion of the trial judge because he is exposed to the litigants and their
5 strategies, positions, and proof.” *Hanlon*, 150 F.3d at 1026 (internal citations and
6 quotations omitted). This determination involves a balancing of several factors,
7 including: the strength of the plaintiff’s claims; the likely risks and expenses
8 involved in further litigation; the extent of discovery and other litigation
9 completed; the experience and views of counsel; and the views of class members
10 toward the settlement. *See True v. Am. Honda Motor Co.*, 749 F. Supp. 2d 1052,
11 1063 (C.D. Cal. 2010) (citing *Class Plaintiffs*, 955 F.2d at 1291).

12 At the preliminary approval stage, the Court need only find that the proposed
13 settlement is within the “range of reasonableness” such that it is appropriate to
14 disseminate notice to the class and schedule a fairness hearing. 5 Newberg § 13.15;
15 *see also True*, 749 F. Supp. 2d at 1063; *Carter v. Anderson Merchs., LP*, Nos.
16 EDCV 08-00025-VAP (OPx), EDCV 09-0216-VAP (OPx), 2010 WL 144067, at
17 *4 (C.D. Cal. Jan. 7, 2010); *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078,
18 1079-80 (N.D. Cal. 2007). Preliminary approval of a proposed class action
19 settlement is appropriate where the settlement “appears to be the product of
20 serious, informed, non-collusive negotiations, has no obvious deficiencies, [and]
21 does not improperly grant preferential treatment to class representatives or
22 segments of the class” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d
23 at 1079; *see also* Manual § 21.62 (preliminary approval involves an initial
24 evaluation of the reasonableness and adequacy of settlement; reasonableness turns
25 on “analysis of the class allegations and claims and the responsiveness of the
26 settlement to those claims,” while adequacy involves a “comparison of the relief

1 granted to what class members might have obtained without using the class action
2 process”).

3 **1. The Settlement Is Entitled to a Presumption of Fairness**

4 Where a settlement is the product of arms-length negotiations conducted by
5 experienced class counsel, the Court begins its analysis with a presumption that the
6 settlement is fair and reasonable. *See* 5 Newberg § 13.45; *Fernandez v. Victoria*
7 *Secret Stores, LLC*, No. CV 06-04149 MMM (SHx), 2008 WL 8150856, at *4
8 (C.D. Cal. July 21, 2008); *Nat’l Rural Telecomm’s Coop. v. DIRECTV, Inc.*, 221
9 F.R.D. 523, 528 (C.D. Cal. 2004). Thus, at this stage, so long as the settlement
10 falls into the range of possible approval—giving deference to the result of the
11 parties’ arms-length negotiations and the judgment of experienced counsel
12 following sufficient investigation and discovery—the presumption applies and the
13 settlement should be preliminarily approved.

14 First, the parties reached the Settlement after the second round of
15 negotiations, which included two formal in-person mediation sessions and several
16 telephonic settlement negotiations under the supervision of neutral Phyllis Cheng,
17 and numerous telephone negotiations between counsel. (Rivera Decl. ¶25.) The
18 Parties had also previously participated in first round of negotiations that consisted
19 of at least three in-person settlement conferences with Judge Terry J. Hatter Jr.,
20 who acted as a settlement officer in this case, and multiple rounds of negotiations
21 between the Parties. (*Id.* at ¶7.)

22 Second, Class Counsel have extensive experience litigating and settling
23 disability rights class actions and other complex matters. (*Id.* at ¶26.) They have
24 investigated the factual and legal issues raised in this action and diligently litigated
25 Plaintiffs’ claims for over eight years. (*Id.* at ¶27.) As noted above, extensive
26 discovery and motion practice have allowed the Parties to assess the strengths and
27 weaknesses of the claims herein and the benefits of the proposed Settlement

1 Agreement. (*Id.*) Prior to reaching an agreement, Plaintiffs had obtained enough
2 evidence through discovery to file a motion for summary judgment (Dkt. No. 188)
3 and were preparing to go to trial on their other claims. (Rivera Decl. ¶28.)
4 However, Class Counsel are confident that the relief achieved by the proposed
5 Settlement is sufficient to address all of the concerns identified in the complaint,
6 thereby eliminating the need to proceed to engage in the time, expense, and added
7 risk of a trial. (*Id.* at ¶29.)

8 Thus, the fact that qualified, well-informed counsel endorse the Settlement
9 as being fair, reasonable, and adequate weighs in favor of preliminary approval.
10 *See True*, 749 F. Supp. 2d at 1078-79; *Nat'l Rural Telecomm's Coop.*, 221 F.R.D.
11 at 528.

12 **2. The Settlement Is Fair Given the Benefits to the Class and
the Risks Associated with Continued Litigation.**

13 The benefits that the class will enjoy under the Settlement, considered in
14 light of the risks of litigation, support preliminary approval. “Estimates of what
15 constitutes a fair settlement figure are tempered by factors such as the risk of
16 losing at trial, the expense of litigating the case, and the expected delay in recovery
17 (often measured in years).” *Schaffer v. Litton Loan Servicing, LP*, No.
18 CV 05-07673 MMM (JCx), 2012 WL 10274679, at *11 (C.D. Cal. Nov. 13, 2012).

19 “Courts judge the fairness of a proposed compromise by weighing the
20 plaintiff’s likelihood of success on the merits against the amount and form of relief
21 offered in the settlement . . . They do not decide the merits of the case or resolve
22 unsettled legal questions.” *Carson v. American Brands, Inc.*, 450 U.S. 79, 88 n. 14,
23 101 S.Ct. 993, 998 (1981) (internal citation omitted). Plaintiffs believe that they
24 would have likely prevailed at trial based on their claims and supporting evidence
25 that special education services were not being provided. (Rivera Decl. at ¶17.)

26 However, the injunctive relief in the proposed Settlement, such as the
27 guidance to all SELPAs and LEAs in California and the invitation to the Los

1 Angeles County Sheriff’s Department to CDE’s Listservs, is in the best interest of
2 the Class, particularly given the previous class settlements that establish the
3 systems to ensure collaboration among parties and the California Supreme Court’s
4 seminal decision holding that the assignment of responsibility for providing special
5 education to eligible county jail inmates between the ages of 18 and 22 years is
6 governed by the terms of California Education Code Section 56041. As stated in
7 Plaintiffs’ complaint, the CDE Defendants are the single State agency responsible
8 for ensuring that all education agencies within the state provide special education
9 in compliance with state and federal laws. (Dkt. No. 26.) The Settlement will help
10 to ensure that all SELPAs and LEAs, who under the oversight of the CDE, as well
11 as the Los Angeles County Sheriff’s Department will have access to information
12 and guidance for ensuring special education services are appropriately provided to
13 students in the LACJ.

14 Further, while Plaintiffs’ claims and allegations are disputed, the Parties
15 agree that it would be expensive and time-consuming to litigate this case through
16 trial, that the outcome of the trial is uncertain, and that resolution of this action
17 through settlement is appropriate. (*Id.* at ¶19.) The potential risks attending
18 further litigation support preliminary approval. “Estimates of what constitutes a
19 fair settlement figure are tempered by factors such as the risk of losing at trial, the
20 expense of litigating the case, and the expected delay in recovery (often measured
21 in years).” *Schaffer v. Litton Loan Servicing, LP*, No. CV 05- 07673 MMM (JCx),
22 2012 WL 10274679, at *11 (C.D. Cal. Nov. 13, 2012). Here, proceeding to trial,
23 along with possible appeals, could delay resolution of this matter by several years.
24 (Rivera Decl. at ¶20.) Such a trial is unnecessary where CDE Defendants have
25 agreed to the relief that Plaintiff seeks. (*Id.*)

26 The Parties thus recognized that there was much more to be gained through
27 reasonable settlement discussions than through continued litigation and trial in this

1 matter. (Rivera Decl. at ¶17.) Indeed, at the April 21, 2010 hearing on
2 Class Certification, Judge Valerie Baker Fairbank noted the value of a settlement
3 that could fashion “more creative” relief than a trial judge:

4 . . . as you know, being experienced trial counsel very,
5 often a settlement discussion reached between the parties
6 is preferable to a trial for a number of obvious reasons:
7 you avoid the significant cost of litigation, including trial;
8 you avoid the uncertainty of litigation. Additionally, with
9 a settlement judge *you can craft a resolution in more
10 creative ways than you can in most cases before the trial
11 judge.*

9 *See*, Rivera Decl. at ¶18, Exhibit B [April 21, 2010 Hearing on Class Certification]
10 at 5:24-6:6.

11 Thus, the proposed Settlement will provide the injunctive relief that is
12 reasonably calculated to ensure that the needed policies, procedures and
13 monitoring to effectuate the systems for the provision of special education services
14 to eligible students at the Los Angeles County Jail remain in place and are adhered
15 to. This is an excellent result for the Class, and it is unlikely that this Court would
16 order great relief. (Rivera Decl. ¶21) Accordingly, the benefits to the class and the
17 risks of continued litigation weigh in favor of preliminary approval.

18 **B. The Proposed Notice Satisfies Due Process and Should Be**
19 **Approved.**

20 Rule 23(e) of the Federal Rules of Civil Procedure provides that “notice of
21 the proposed dismissal or compromise shall be given to all members of the class in
22 a manner that the court directs.” Due process requires that interested parties be
23 provided with notice reasonably calculated under the circumstances to apprise
24 them of the pendency of the action and afford them an opportunity to present their
25 objections. *See Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314
26 (1950). Notice is satisfactory “if it generally describes the terms of the settlement
27 in sufficient detail to alert those with adverse viewpoints to investigate and to come

1 forward and be heard.” *Churchill Vill.*, 361 F.3d at 575. Additionally, notice must
2 be reasonably calculated to reach interested parties. *Mullane*, 339 U.S. at 318.

3 The notice standard is satisfied here. First, the proposed notice informs
4 members of the Class of the relevant aspects of the litigation and the settlement,
5 including: (i) a brief statement of this action, the settlement embodied and the
6 claims released by the Class; (ii) the date and time of the hearing on final approval;
7 (iii) the deadline and process for submitting objections to the proposed Settlement
8 Agreement; and (iv) the web page and mailing addresses that may be used to
9 obtain a copy of the notice of settlement. *See* Rivera Decl. Agreement, Exhibit A.
10 Moreover, the proposed Class Notice provides this information in simple English
11 that is easy to read and understand. *See, Id.*

12 Additionally, the Parties have developed a Plan for Class Notice to the
13 Class. (Rivera Decl., Exhibit A, Settlement Agreement at III.A.2.c.) Specifically,
14 the notice and settlement materials shall be posted to Disability Rights Legal
15 Center’s website. CDE Defendants will also post the notice on CDE’s website. In
16 addition, the notice will be provided by the CDE to no fewer than seven
17 community organizations that provide services to young adults who are or were
18 recently detained with a request that such organizations disseminate the notice to
19 staff and consumers. The notice will further be distributed by the CDE to each
20 public defender or juvenile public defender office in Los Angeles County, with a
21 request to disseminate to staff. (*Id.*) All postings shall remain posted for no less
22 than thirty (30) days. (Rivera Decl., Exhibit A, Settlement Agreement at III.A.2.)

23 The proposed notice plan here, like the plans approved in the above cases, is
24 designed to reach a substantial number of class members and will amply ensure
25 awareness of the settlement by “representative class members” who will be able to
26 inform the Court of any perceived deficiencies in the settlement.

1 **C. The Court Should Approve the Proposed Scheduling Order,**
2 **Including Setting a Date for the Fairness Hearing**

3 Once a court grants preliminary approval and notice is provided, the court
4 conducts a “fairness hearing,” at which all interested parties have an opportunity to
5 be heard. At such a hearing, the court conducts a substantive evaluation of the
6 proposed settlement to determine whether it is “fundamentally fair, adequate, and
7 reasonable.” *See Officers for Justice*, 688 F.2d at 625; *Spann v. J.C. Penney Corp.*,
8 314 F.R.D. 312, 319 (C.D. Cal. 2016).

9 The Parties propose that upon receipt of preliminary approval of the class
10 settlement from the Court, the Parties will publish the notice for thirty (30) days in
11 the manner outlined above. Class members will have thirty (30) days to respond to
12 the proposed notice. Upon expiration of the thirty (30) days, counsel will file with
13 the Court any objections or comments received. Thereafter, Plaintiff will file the
14 motion for final approval, to be set on the Court’s next available hearing day as a
15 regularly scheduled motion.

16 Accordingly, Plaintiffs propose the following schedule, assuming that
17 preliminary approval is granted:

18 **July 20, 2018:** Hearing re Preliminary Approval of Settlement;

19 **July 27, 2018:** Deadline to complete posting of Class;

20 **August 10, 2018,** Named Plaintiffs to file a Motion for Attorneys’ Fees;

21 **August 26, 2018:** Last day for Class Members to object to the Settlement;

22 **August 31, 2018:** Parties to file a Summary of Objections and Responses
23 with the Court;

24 **September 7, 2018:** Named Plaintiffs to file a Motion for Final Approval;

25 **September 14, 2018:** Fairness Hearing
26
27
28

1 **V. CONCLUSION**

2 For the reasons discussed above, Plaintiff respectfully requests that the Court:

- 3 1) grant preliminary approval of the class action settlement;
4 2) approve and direct the publication of the class notice proposed by the
5 Parties; and
6 3) approve a schedule for related filings and schedule a fairness hearing for
7 final approval of the Settlement.

8
9 Dated: June 22, 2018

Respectfully submitted,

10
11 **DISABILITY RIGHTS LEGAL CENTER**

12 /s/ Anna Rivera
13 Anna Rivera
14 Maronel Barajas

15 —and—

16 **MILBANK TWEED HADLEY & McCLOY, LLP**
17 Daniel M. Perry
18 Samir L. Vora
19 *Attorneys for Plaintiff MICHAEL GARCIA and*
20 *Plaintiff Class*

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Attorneys for PLAINTIFF MICHAEL GARCIA and the Plaintiff Class

15 UNITED STATES DISTRICT COURT
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 MICHAEL GARCIA, an individual on
18 behalf of himself and all others similarly
19 situated,

20 Plaintiffs,

21 v.

22 LOS ANGELES COUNTY SHERIFF'S
23 DEPARTMENT, a public entity, *et al.*,

24 Defendants.
25
26

Case No. : CV 09-08943 DMG (SHx)
Honorable Dolly M. Gee

**DECLARATION OF ANNA
RIVERA IN SUPPOSE OF
PLAINTIFFS' MOTION FOR:
(1) PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
WITH CALIFORNIA
DEPARTMENT OF EDUCATION;
(2) ORDER DIRECTING NOTICE
TO THE CLASS; AND
(3) SCHEDULING A FAIRNESS
HEARING**

1 I, Anna Rivera, declare as follows:

2 1. I am a member of the Bar of this Court and the Managing Attorney at the
3 Disability Rights Legal Center (“DRLC”). I am counsel of record together with
4 Milbank, Tweed, Hadley & McCloy LLP (“Milbank”). I am one of the primary
5 attorneys handling this matter at DRLC. I have person knowledge of the facts set
6 forth below and, if called as a witness, would testify competently thereto.

7 2. This declaration is submitted in support of Plaintiff’s Motion for: (1)
8 Preliminary Approval Of Class Action Settlement With California Department of
9 Education; (2) Order Directing Notice To The Class; And (3) Scheduling A
10 Fairness Hearing. The purpose of this declaration is to show that the settlement is
11 fair and reasonable and that the Court should preliminary approve the class
12 settlement in this case. The proposed settlement agreement is attached hereto as
13 Exhibit A.

14 **History of the Case and Settlement Negotiations**

15 3. Plaintiff filed his Class Action Complaint for Declaratory and
16 Injunctive Relief on December 4, 2009, alleging violations of, *inter alia*, the
17 Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.* (“IDEA”),
18 Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131 *et seq.* (the
19 “ADA”), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C §§ 794 (“Section
20 504”); the Due Process and Equal Protection Clauses of the Fourteenth
21 Amendment of the United States Constitution, the California Constitution, and
22 related California law.

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1 4. On or about April 29, 2010, the District Court entered an Order
2 granting Plaintiff's Motion for Class Certification for a class defined pursuant to
3 Rule 23(b)(2) of the Federal Rules of Civil Procedure for purposes of injunctive
4 and declaratory relief as follows:

5 All students who are or were eligible for special
6 education and related services under 20 U.S.C. §§ 1400
7 *et seq.* while detained in any Los Angeles County Jail
8 ("LACJ") facility, and who: (a) are currently detained at
9 any LACJ facility; b) are detained at any LACJ facility in
10 the future.

11 5. I understand that the Parties engaged in extensive discovery regarding
12 the provision of special education and related services to class members while at
13 LACJ facilities. Plaintiff deposed two CDE officials pursuant to Federal Rule of
14 Civil Procedure 30(b)(6). The CDE deposed Plaintiff as well as Plaintiff's expert
15 witness. In total, the Parties propounded and responded to 24 interrogatories, 59
16 requests for production of documents, 13 substantive requests for admission. With
17 regard to the CDE alone, Plaintiff propounded 3 interrogatories, 48 requests for
18 production of documents and 13 substantive requests for admissions. This resulted
19 in over 1,300 pages of documents and review of same.

20 6. Plaintiff and Defendants California Department of Education and Tom
21 Torlakson, in his official capacity as Superintendent of Public Instruction for the
22 State of California (collectively, "CDE Defendants") filed cross-motions for
23 summary judgement. After full briefing, on January 19, 2011, the Court entered an
24 Order granting in part CDE Defendants' Motion for Summary Judgment as to
25 Plaintiffs' claims under the ADA and Section 504.

26 7. I understand that the Parties began settlement negotiations in the
27 summer of 2010. The Parties participated in extensive arms-length settlement
28 negotiations, which included extensive written negotiations, multiple in-person
meetings, telephonic settlement negotiations, and multiple in-person settlement

1 conferences with Judge Terry J. Hatter Jr., who acted as a settlement officer in this
2 case.

3 8. Concurrently with the Lawsuit, Los Angeles Unified School District
4 commenced a civil action (“Related Case”) in the United States District Court for
5 the Central District of California, Case No. 2:09-cv-09289-VBF-CT appealing the
6 decision of the California Office of Administrative Hearings (“OAH”) which
7 found that, pursuant to California Education Code section 56041, the LAUSD was
8 the entity legally responsible for providing Plaintiff Michael Garcia with a free
9 appropriate public education (“FAPE”) while he was incarcerated in the LACJ.
10 The District Court in the Related Case subsequently entered orders affirming the
11 OAH decision.

12 9. LAUSD appealed the District Court’s order to the United States Court
13 of Appeals for the Ninth Circuit. *See* USDC Case No. 2:09-cv-09289-VBF-CT;
14 Dkt. 28. After oral arguments, the Ninth Circuit certified the following question to
15 the California Supreme Court:

16 Does California Education Code section 56041 - which
17 provides generally that for qualifying pupils between the
18 ages of eighteen and twenty-two, the school district where
19 the child’s parent resides is responsible for providing
20 special education and related services – apply to children
21 who are incarcerated in county jails?

22 *LAUSD v. Garcia*, United States Court of Appeals for the Ninth Circuit Case No.
23 10-55879; Dkt. No. 44. The California Supreme Court accepted the certified
24 question, and on December 12, 2013, issued a seminal decision, holding that the
25 assignment of responsibility for providing special education to eligible county jail
26 inmates between the ages of 18 and 22 years is governed by the terms of California
27 Education Code Section 56041, which states, in pertinent part, that “the last district
28 of residence in effect prior to the pupil’s attaining the age of majority shall become
and remain as the responsible local educational agency.”

1 10. On January 28, 2014, the Related Case was fully resolved when the
2 Ninth Circuit affirmed the District Court's decision affirming the 2009 OAH
3 decision, finding that the District Court's ruling in the Related Case was consistent
4 with the California Supreme Court's answer to the certified question. *LAUSD v.*
5 *Garcia*, United States Court of Appeals for the Ninth Circuit Case No. 10-55879;
6 Dkt. No. 73-1.

7 11. Since the Ninth Circuit's decision, the Parties renewed and continued
8 with litigation. After Plaintiffs reached an agreement with the County of Los
9 Angeles, the litigation with the CDE Defendants intensified.

10 12. This Court granted Plaintiffs' request to conduct additional discovery
11 for the purpose of obtaining updated evidence from CDE Defendants as to CDE
12 Defendants' involvement in (whether directly or indirectly) and/or responsibility
13 for, the provision of special education services in the Los Angeles County Jail and
14 policies and procedures for provision of special education and related services
15 and/or reasonable modifications and accommodations to eligible students in the
16 Los Angeles County Jail. (*See* Dkt. 435, 438, 439, 439-1.).

17 13. During this period wherein discovery was re-opened, Plaintiff
18 conducted informal discovery as well as propounded three interrogatories and
19 fifteen requests for production of documents. Plaintiff also deposed three CDE
20 officials pursuant to Fed. R. Civ. P. 30(b)(6). The Parties also relied on the
21 evidence produced through the extensive discovery among the all parties in this
22 action.

23 14. In total, throughout the litigation, Plaintiffs propounded six
24 interrogatories, sixty-three requests for production of documents, thirteen
25 substantive requests for admission. This resulted in over 1,300 pages of
26 documents and review of same. Plaintiffs also deposed four CDE officials
27 pursuant to Fed. R. Civ. P. 30(b)(6). As to CDE Defendants alone, five
28

1 depositions of four individuals were conducted. Collectively, during the course of
2 the Lawsuit over sixteen depositions were taken.

3 15. While conducting additional discovery, the Parties also participated in
4 another round of time and resource intensive negotiations over the next five
5 months that eventually culminated in an agreement. After multiple telephonic
6 settlement negotiations and, under the supervision of neutral Phyllis Cheng, two
7 all-day mediations, and at least three settlement calls, the Parties ultimately
8 achieved the Settlement that is the subject of this motion.

9 **Strength of the Settlement and Benefit to the Class**

10 16. Plaintiffs' counsel believes that as a result of this settlement, the
11 provision of special education services to Class Members will be better monitored
12 and enforced.

13 17. Plaintiffs believe that they would have likely prevailed at trial based
14 on their claims and supporting evidence that special education services were not
15 being provided. However, in Plaintiffs' counsel's estimation, the injunctive relief
16 in the settlement likely exceeds that which the Court would have ordered following
17 a trial on the merits, particularly given the scope and detail of relief, and the
18 Plaintiffs' ability to participate in fashioning of the relief, and subsequent
19 monitoring. The Parties thus recognized that there was much more to be gained
20 through reasonable settlement discussions than through continued litigation and
21 trial in this matter.

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1 18. At the April 21, 2010 hearing on Class Certification, District Court
2 Judge Valerie Baker Fairbank noted the value of a settlement that could fashion
3 “more creative” relief than a trial judge:

4 . . . as you know, being experienced trial counsel very,
5 often a settlement discussion reached between the parties
6 is preferable to a trial for a number of obvious reasons: you
7 avoid the significant cost of litigation, including trial; you
8 avoid the uncertainty of litigation. Additionally, with a
9 settlement judge *you can craft a resolution in more
creative ways than you can in most cases before the trial
judge.*

10 April 21, 2010 Hrg Transcript (attached hereto as Exhibit B) at 5:24-6:6 (emphasis
11 added).

12 19. Furthermore, while Plaintiffs’ claims and allegations are disputed, the
13 Parties agree that it would be expensive and time-consuming to litigate this case
14 through trial, that the outcome of the trial is uncertain, and that resolution of this
15 action through settlement is appropriate.

16 20. Here, proceeding to trial, along with possible appeals, could delay
17 resolution of this matter by several years. Such a trial is unnecessary where CDE
18 Defendants have agreed to the relief that Plaintiff seeks.

19 21. In my and my co-counsel’s estimation, this is an excellent result for
20 the Settlement Class, and it is unlikely that this Court would order greater relief.

21 22. Under the Settlement, CDE agrees to invite the Los Angeles Sherriff’s
22 Department to subscribe to any of its Listservs that it uses to provide information
23 to key stake holders in special education. Inviting the Los Angeles County
24 Sheriff’s Department to join these Listservs will enable Sheriff’s personnel to be
25 informed about special education and become connected with other special
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1 education stakeholders which will, in turn, help to ensure that Class Members
2 receive appropriate special education services.

3 23. The Settlement also mandates also that the CDE must within two
4 years conduct at least three discussions with all CDE personnel within the Special
5 Education Division with responsibilities for complaint investigations and/or
6 monitoring regarding the legal obligations of SELPAs and LEAs to provide special
7 education and related services to students detained in county jails (“CDE
8 Complaint and Monitoring Units”). In Plaintiffs’ view, the discussions within the
9 CDE’s Complaint and Monitoring Units is a necessary and important component
10 of the Settlement in order to ensure that any complaints filed with the CDE by
11 Class Members or other key stakeholders that contain allegations that
12 Class Members are not receiving special education and related services while in
13 Los Angeles County Jail are properly investigated by individuals. This will help to
14 ensure that all efforts of responsible entities for the provision of special education
15 services for Class Members are maintained, and any errors promptly corrected.

16 24. The \$90,000 in fees and costs represents only a fraction of the actual
17 hours and costs expended by Class Counsel over the course of 8 years that this case
18 has been litigated. In order to reach this settlement, which Class Counsel believe
19 to be in the best interest of the Class, Class Counsel made significant concessions
20 as to their fees.

21 25. The parties reached the Settlement after the second round of
22 negotiations, which included two formal in-person mediation sessions and several
23 telephonic settlement negotiations under the supervision of neutral Phyllis Cheng,
24 and numerous telephone negotiations between counsel.

25 26. Class Counsel have extensive experience litigating and settling
26 disability rights class actions and other complex matters.
27

1 27. Class Counsel has investigated the factual and legal issues raised in
2 this action and diligently litigated Plaintiffs' claims for over eight years. Extensive
3 discovery and motion practice have allowed the Parties to assess the strengths and
4 weaknesses of the claims herein and the benefits of the proposed Settlement
5 Agreement.

6 28. Prior to reaching an agreement, Plaintiffs had obtained enough
7 evidence through discovery to file a motion for summary judgment (Dkt. No. 188)
8 and were preparing to go to trial on their other claims.

9 29. Class Counsel are confident that the relief achieved by the proposed
10 Settlement is sufficient to address all of the concerns identified in the complaint,
11 thereby eliminating the need to proceed to engage in the time, expense, and added
12 risk of a trial.

13
14
15 I declare under penalty of perjury under the laws of California and the
16 United States that the foregoing is true and correct to the best of my knowledge
17 and belief.

18 Executed this 22nd of June 2018 in Whittier, California.

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21 _____
22 Anna Rivera
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Exhibit A

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 10 the Plaintiff Class

11 For additional counsel please see next page

12 IN THE UNITED STATES DISTRICT COURT
 13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 14

15 MICHAEL GARCIA on behalf of	2:09-cv-08943-DMG-SH
himself and others similarly situated,	
16 Plaintiff,	
17 v.	
18	
19 LOS ANGELES COUNTY	CLASS ACTION SETTLEMENT BETWEEN PLAINTIFFS AND DEFENDANT CALIFORNIA DEPARTMENT OF EDUCATION
20 SHERIFF'S DEPARTMENT, a	
21 public entity, ET AL.,	
22 Defendants.	

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1 **I. RECITALS**

2 A. On December 4, 2009, Plaintiff Michael Garcia (hereinafter "Named
3 Plaintiff") commenced a civil class action in the United States District Court for the
4 Central District of California, Case No. CV09-8943-DMG (SH) (the "Lawsuit"),
5 against Defendants, as defined below, alleging, *inter alia*, that Defendants were
6 violating the Individuals with Disabilities Education Act codified at 20 U.S.C.
7 §§ 1400 *et seq.* ("IDEA") and other related federal and state laws by allegedly
8 failing to provide and/or ensure the provision of special education and related
9 services to eligible students detained in the Los Angeles County Jail ("LACJ").

10 B. The defendants named in the Lawsuit are the Los Angeles County
11 Sheriff's Department ("Sheriff's Department"), the County of Los Angeles, and
12 Sheriff Leroy Baca, in his official capacity (together, the "County Defendants"); the
13 Los Angeles County Office of Education ("LACOE") and Superintendent Darline
14 P. Robles, in her official capacity (together, the "LACOE Defendants"); the Los
15 Angeles Unified School District ("LAUSD") and Superintendent Ramon Cortines,
16 in his official capacity (together, the "LAUSD Defendants"); Hacienda La Puente
17 Unified School District ("Hacienda La Puente") and Superintendent Barbara
18 Nakaoka (together, the "Hacienda Defendants"), in her official capacity; and the
19 California Department of Education ("CDE") and Superintendent Jack O'Connell,
20 in his official capacity (together, the "CDE Defendants").¹

21 C. On April 29, 2010, the District Court in the Lawsuit entered an Order
22 granting Plaintiffs' Motion for Class Certification for a class (the "Class") defined
23 pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure for purposes of
24 injunctive and declaratory relief as follows:

25
26 "All students who are or were eligible for special education and related

27 ¹ Tom Torlakson has succeeded Jack O'Connell as California's
28 Superintendent of Public Instruction as of January 2011. See, Fed. Rules Civ.
Proc., Rule 25(d) [Successor public officer or official automatically substituted as
party].

1 services under 20 U.S.C. §§ 1400 *et seq.* while detained at any Los Angeles
2 County Jail ("LACJ") facility, and who:

- 3 (a) are currently detained at any LACJ facility;
4 (b) are detained at any LACJ facility in the future."

5 **D.** The named Plaintiff, the Class ("collectively Plaintiffs"), and CDE
6 Defendants now seek to resolve their differences and disputes in the Lawsuit by
7 settling such claims, disputes and controversies under the terms set forth in this
8 Settlement Agreement (hereinafter "Agreement").

9 **E.** Plaintiffs and the Defendants seek to resolve their disputes by settling
10 this Lawsuit in such a manner as to ensure that Class members are timely provided
11 with appropriate special education and related services in accordance with the
12 IDEA and state law.

13 **F.** This Agreement is entered into by the Parties for the purpose of
14 compromising and settling all claims and issues related to the subject matter of the
15 Lawsuit through the date of execution of this Agreement. It does not constitute, nor
16 shall it be construed, as an admission of liability by the CDE Defendants.

17 **II. DEFINITIONS.**

18 As used in this Agreement and Release, the following terms shall have the
19 meaning ascribed to them in this Section and in the Recitals. Except to the extent
20 clearly required to the contrary by the context of its usage in this Agreement, any
21 term not expressly defined in this Section or elsewhere in the Agreement that has an
22 expressly defined meaning in the IDEA and the regulations promulgated there
23 under shall have the meaning ascribed to it by the IDEA and its implementing
24 regulations. All other terms shall be interpreted according to their plain and
25 ordinary meaning.

26 **A. Agreement.**

27 "Settlement Agreement" "Settlement," and "Agreement" mean and refer to
28 this document and any exhibits incorporated herein.

1 **B. Class.**

2 “Class” shall mean the class as defined in the district court’s April 29, 2010
3 Order, ECF No. 135, as stated above and as understood in recital “c” above.

4 **C. Class Counsel.**

5 “Class Counsel” shall mean the Disability Rights Legal Center (“DRLC”) and
6 Milbank Tweed Hadley & McCloy, LLP, including the lawyers and employees
7 therein. For purposes of enforcement of this Agreement, “Class Counsel” shall
8 mean the DRLC, including the lawyers and employees therein.

9 **D. Class Members.**

10 “Class Members” shall mean individuals who meet the definition of the Class.

11 **E. Defendants.**

12 “Defendants” shall mean the CDE Defendants.

13 **F. District of Residence.**

14 “District of Residence” shall mean the school district responsible for providing
15 Special Education and Related Services to the Eligible Student in the LACJ
16 pursuant to California Education Code Section 56041.

17 **G. Effective Date.**

18 “Effective Date” of the Agreement is the date on which the District Court
19 issues an Order granting final approval of the Settlement Agreement. If objections
20 are filed to the settlement, the Effective Date is the date of the final resolution of
21 any appeal of the Final Approval of this Settlement Agreement, or, if no such
22 appeal is filed, the expiration of the deadline for filing a Notice of Appeal.

23 **H. Eligible Student.**

24 “Eligible Student” shall mean a student eligible to receive special education
25 and related services under IDEA and related California law detained in Los Angeles
26 County Jail.

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1 **I. LACJ.**

2 “LACJ” shall mean any Los Angeles County Jail facility in which an eligible
3 student is housed, but does not include the Mira Loma Detention Center or any
4 station jail.

5 **J. Local Educational Agency**

6 “Local Educational Agency” shall have the meaning ascribed to it by 34
7 C.F.R. §300.28 and California Education Code §56026.3.

8 **K. Named Plaintiff.**

9 “Named Plaintiff” shall mean Michael Garcia.

10 **L. Notice.**

11 “Notice,” refers to notice to the Class, which shall be effectuated as set forth in
12 the plan for providing class notice, which will be submitted to the Court as part of
13 the Motion for Preliminary Approval of this Settlement (which is discussed in
14 greater detail below).

15 **M. Parties.**

16 “Parties” refers to the CDE Defendants, Named Plaintiff, and Class Members
17 together.

18 **N. Plaintiffs.**

19 “Plaintiffs” refers to the Named Plaintiff and Class Members together.

20 **O. Related Services.**

21 “Related Services” shall have the meaning ascribed to it by the Individuals
22 with Disabilities Education Act, 20 U.S.C. §1401(26), 34 C.F.R. § 300.34 and
23 California Education Code §§56363.

24 **P. Settlement Period.**

25 The “Settlement Period” shall be two (2) years from the Effective Date of the
26 Agreement or upon demonstration of full compliance with the obligations of this
27 Agreement after the Effective Date, whichever occurs first.

28 ///

1 **Q. Special Education.**

2 “Special Education” shall have the meaning ascribed to it by the Individuals
3 with Disabilities Education Act, 20 U.S.C. §1401(29), 34 C.F.R. §300.39 and
4 California Education Code §56031.

5 **III. APPROVAL AND NOTICE TO CLASS.**

6 **A. Notice.**

7 **1. Approval.**

8 **a.** Within 45 days of the Parties’ circulating the fully
9 executed Agreement, Plaintiffs and CDE Defendants will
10 jointly submit a request to the District Court for an order
11 preliminarily approving (“the Preliminary Approval
12 Order”) this Agreement and requesting a hearing for final
13 approval (“Final Approval”) of this Agreement, allowing
14 for notice as set by the Court.

15 **b.** After notice is provided to the Class as detailed below, the
16 Court will hold a hearing to establish the fairness of the
17 Agreement and to decide whether there will be Final
18 Approval. The hearing will take place at a date to be set
19 by the Court, allowing for a period of notice to the
20 Plaintiff Class. Notice to the Plaintiff Class will be
21 effectuated as detailed in the Notice Plan which will be
22 submitted to the Court as an attachment to the Motion for
23 Preliminary Approval.

24 **2. Form of Notice.**

25 **a.** CDE Defendants have agreed to bear the costs of notice to
26 the Class of the Agreement in connection with the court
27 approval process and fair hearing. CDE Defendants also
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agree to provide all notices required by the Class Action Fairness Act.

b. Notice to the Plaintiff Class submitted to the Court for Approval shall be as set forth in Exhibit 1, attached hereto. To the extent the Court determines that any modifications to the notice are required, the Parties will make such modifications prior to distribution.

c. This notice shall be: (1) Posted on the Disability Rights Legal Center's ("DRLC") websites; (2) posted on Defendant's website; (3) shall be additionally provided to no fewer than seven community organizations that provide services to young adults who are detained/incarcerated or who were recently detained/incarcerated, as identified by DRLC, with a request that such organizations disseminate to staff and consumers; and (4) shall be distributed to each public defender or juvenile public defender office in Los Angeles County, with a request that such offices disseminate to staff.

d. As set forth in the Notice to Class, any Class Member may object to the proposed Agreement by (1) filing with Class Counsel a written objection; or (2) contacting Class Counsel at a toll free number that Class Counsel will establish. Class counsel will provide the Court and CDE Defendants' Counsel with any such objections received prior to the Court's consideration of Final Approval of this Agreement. Any objections via mail must be postmarked no later than thirty (30) days after the original Class Action Settlement Between Plaintiffs and CDE

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date of posting the Notice to Class. Any objections via phone must be left on the toll free line no later than thirty (30) days after the original date of posting Notice to the Class. Only such objecting Class Members will have the right, if they seek it in their objections, to present objections at the fairness hearing.

e. While this Agreement resolves claims for declaratory and injunctive relief against the CDE Defendants, it does not provide damages for any individual Class Member or the Named Plaintiff, nor does it release any claims that the Named Plaintiff or any individual Class Member may have for damages. Similarly, this Agreement does not provide compensatory education for any individual Class Member or the Named Plaintiff or individual special education or related service programming for any individual Class Member or the Named Plaintiff. Thus, this Agreement does not release any individual claims that a Class Member may have for prospective special education or related services, or compensatory education.

IV. EQUITABLE RELIEF.

The Parties hereby agree that, conditioned upon entry of Final Approval by the District Court, CDE Defendants shall do the following:

A. Electronic Mailing Program for Stakeholders

1. Within 30 days of the Effective Date, the CDE shall invite the Los Angeles County Sheriff's Department to subscribe to any Listserv that the CDE uses to communicate information about special education to and amongst stakeholders.

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B. Guidance

1. The CDE shall, within 30 days of the Effective Date, disseminate a "Guidance Letter" to all Special Education Local Plan Areas and Local Educational Agencies informing them of their obligation to provide for Special Education and Related Services to eligible inmates in county jails in compliance with state and federal law including California Education Code Section 56041. Such guidance shall include, at a minimum, the obligations of each SELPA and LEA to serve students with disabilities pursuant to federal and state law. The "Guidance Letter" will, at a minimum, contain: (a) a summary of the legal obligations of the LEA to provide for Special Education and Related Services to Eligible Students detained in county jails; (b) a statement describing the obligations of the LEAs to provide Special Education and Related Services to Eligible Students detained in county jails; and (c) the contact information for the CDE.

2. The CDE shall, within 30 days of the Effective Date, post on the CDE's website the "Guidance Letter" issued to SELPAs and LEAs described in Section 1 above for a period of two years. During the posting period, CDE may include changes to the Guidance Letter to reflect changes or updates to the law.

3. CDE Defendants shall provide Class Counsel with a copy of the guidance letter and communication of the guidance letter to each SELPA and LEA within 15 days after its distribution.

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C. Discussion

1. Using the "Guidance Letter" referenced above in Section IV(B)(1), CDE Defendants shall conduct discussions with all CDE personnel within the Special Education Division with responsibilities for complaint investigations and/or monitoring regarding the legal obligations of SELPAs and LEAs to provide special education and related services to students detained in county jails. CDE Defendants shall conduct the discussions at least three times within two years from the Effective Date.

2. Within five (5) days of each discussion, CDE will provide Class Counsel with: (a) job titles of CDE personnel who attended the discussion, and (b) an outline of topics discussed.

V. ATTORNEYS' FEES AND COSTS.

Defendants shall pay Class Counsel \$90,000 in attorneys' fees and costs. Payment shall be made within 30 days from the date all necessary approvals have been obtained from control agencies, but in any event no later than 60 days from the Effective Date. No attorney's fees or costs shall be sought for monitoring compliance with this agreement.

VI. DISPUTE RESOLUTION

A. The Parties will negotiate in good faith to resolve any dispute relating to the interpretation or implementation of this Agreement.

B. In the event Plaintiffs believe that CDE Defendants are not in compliance with the terms of this Agreement, Plaintiffs will notify the CDE Defendants in writing of the alleged noncompliance.

C. The CDE Defendants will have thirty (30) days following receipt of the notification to respond to Plaintiffs concerning the alleged violations or noncompliance.

///
///

1 **D.** Following Plaintiffs' receipt of CDE Defendants' response, if any, to any
2 alleged violations or noncompliance, the Parties will negotiate in good faith for at
3 least fifteen (15) days to resolve their difference.

4 **E.** Plaintiffs agree not to file any motion to enforce this Agreement until this
5 dispute resolution process has been completed and then only if the alleged
6 violations or noncompliance have not been corrected as a result of the dispute
7 resolution effort by the Parties. Any motion to enforce this Agreement will be
8 brought in the court in which this action is currently pending.

9 **F.** In the event it becomes necessary for Plaintiffs or anyone acting on their
10 behalf to incur costs and/or attorneys' fees to enforce the provisions of this
11 Agreement, the prevailing party in any enforcement litigation will be entitled to
12 reasonable attorneys' fees and costs, in accordance with the law.

13 **G.** Notices to the Parties will be sent to the follow individuals and locations:

14 For Plaintiffs:
15 Legal Director
16 Disability Rights Legal Center
17 350 S. Grand Ave, Suite 1520
18 Los Angeles, CA 90071
19 Telephone: (626) 389-8277
20 Facsimile: (213) 736-1428

21 For CDE Defendants:
22 Office of the General Counsel
23 California Department of Education
24 1430 N Street, Suite 5319
25 Sacramento, CA 95814

26 **VII. MODIFICATION OF THE AGREEMENT.**

27 **A.** If the U.S. District Court, Ninth Circuit Court of Appeals, or any other
28 Court issues binding precedent regarding the issues covered by this settlement, the
parties shall meet and confer to address any changes that need to be made in the
context of this Agreement to comport with any such subsequent decision.

B. If, following their meeting under Paragraph A, the Parties are in
agreement that the Agreement needs to be modified, the Parties shall document
their meeting in a Joint Status Report to the Court no later than 10 days following

1 their meeting. No later than 20 days thereafter, the Parties shall file a request with
2 the Court for approval to modify the Agreement.

3 C. The Agreement may not be modified unless all Parties agree to the
4 modification in writing, and upon a showing of good cause, the Court approves the
5 modification.

6 **VIII. RELEASES.**

7 A. In return for the consideration provided for in this Agreement, the
8 adequacy of which is hereby acknowledged, on the Effective Date of the
9 Agreement, all Class Members, both individually and as a Class, and including the
10 Named Plaintiff, shall be deemed to release and shall have released the Defendants
11 and their trustees, officers, directors, employees, attorneys, agents, and insurers, and
12 their successors and assignees, and each of them ("Released Parties") from any and
13 all equitable or injunctive relief claims that are the subject of, included within,
14 and/or arise from the Lawsuit, including the Individuals with Disabilities Education
15 Act, 20 U.S.C. §§ 1400 *et seq.*, the Equal Protection Clause of the Fourteenth
16 Amendment of the United States Constitution, the Due Process Clause of the
17 Fourteenth Amendment of the United States Constitution, Section 11135 of the
18 California Government Code, the California Constitution, and California Education
19 Code §§ 56000 *et seq.* that were brought against Released Parties.

20 B. Nothing in this Agreement releases any damages claims or claims for
21 compensatory or any other compensatory equitable relief to which any Class
22 Member may be entitled. Nor does this Agreement release any individual claims
23 that Class Members may have regarding prospective provision of Special Education
24 and Related Services.

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1 **IX. ORDERS AND DISMISSAL.**

2 **A. Duration of the Agreement.**

3 This Agreement, including all of its obligations will be in effect for two (2)
4 years, and no longer, or for a shorter period upon demonstration of full compliance
5 with the obligations of this Agreement after the Effective Date.

6 **B. Dismissal.**

7 Within 45 days of the Effective Date of this Agreement, Class Counsel shall
8 provide to counsel for CDE a signed form for request for dismissal of the litigation.
9 The dismissal will expressly incorporate the terms of the Agreement, and the Court
10 will expressly retain jurisdiction for purpose of enforcing the Agreement as stated
11 above.

12 **X. MISCELLANEOUS.**

13 **A. Entire Agreement.**

14 This Agreement expresses and constitutes the complete and final
15 understanding of the Parties with respect to the subject matter of this Agreement.
16 The parties hereto understand and agree that the terms of this Agreement supersede
17 any prior discussions, understandings, or agreements, whether orally or in writing,
18 between them related to the subject matter hereof.

19 **B. Counterparts.**

20 This Agreement may be executed in counterparts, each of which shall be
21 considered an original, but all of which, taken together, shall constitute one and the
22 same instrument.

23 **C. Interpretation.**

24 The language of this Agreement shall be construed as a whole according to its
25 fair meaning, and not strictly for or against any of the Parties. The headings in this
26 Agreement are solely for convenience and shall not be considered in its
27 interpretation. Where required by context, the plural includes the singular and the
28 singular includes the plural, and the terms "and" and "or" shall mean "and/or."

1 This Agreement is the product of negotiation and joint drafting so that any
2 ambiguity shall not be construed against any party.

3 **D. Severability.**

4 In the event any portion of this Agreement is deemed to be unenforceable, or
5 is in conflict with applicable law, the remainder of this Agreement will be enforced
6 and will remain in full force and effect. Nothing in this Agreement shall be
7 construed to require the Defendants to act contrary to state or federal laws,
8 regulations or guidelines.


9 **E. Additional Documents.**

10 To the extent any documents are required to be executed by any of the Parties
11 to effectuate this Agreement, each party hereto agrees to execute and deliver such
12 and further documents as may be required to carry out the terms of this Agreement.

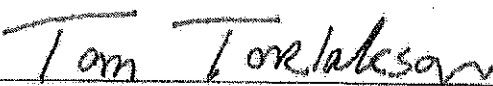
13 **F. Authority to Bind.**

14 Each signatory to this Agreement certifies that it, he or she is fully authorized
15 by the party it, he or she represents to enter into the Agreement, to execute it on
16 behalf of the party represented, and to legally bind that party thereto.

17
18 Dated: 2/19, 2018

19 _____
20 
21 Plaintiff MICHAEL GARCIA on
22 behalf of himself and the Class

23
24 Dated: 2/23, 2018

25 _____
26 
27 TOM TORLAKSON CALIFORNIA
28 SUPERINTENDENT OF PUBLIC
INSTRUCTION, in his official capacity

1 Dated: 2/22, 2018

2
3 Michelle Zumot
4 MICHELLE ZUMOT, CHIEF
5 DEPUTY SUPERINTENDENT ON
6 BEHALF OF THE CALIFORNIA
7 DEPARTMENT OF EDUCATION

8
9 **APPROVED AS TO FORM:**
10 For Plaintiff Michael Garcia and the Class:

11 Dated: 2/19, 2018.

12 DISABILITY RIGHTS LEGAL CENTER
13 MILBANK TWEED HADLEY &
14 MCCLOY LLP

15 A.R.
16 ANNA RIVERA
17 Attorney for Plaintiff Class

18 For CDE Defendants:

19 OFFICE OF THE ATTORNEY
20 GENERAL

21 Dated: 2/26, 2018

22 Ismael A. Castro
23 ISMAEL A. CASTRO
24 Supervising Deputy Attorney General

25 SA2017106839
26 12880134.docx

Exhibit 1

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Garcia v. Los Angeles County Sheriff's Department, et al.,

Case No. CV 09-8943-MMM (SHx)

To: All Inmates and Potential Inmates of the Los Angeles County Jail Who Are Eligible For Special Education and Related Services.

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.

This Notice is being given by Order of the Court to individuals who may be members of a class of inmates and potential inmates of the Los Angeles County Jail affected by the settlement of a class action lawsuit called *Michael Garcia v. Los Angeles County Sheriff's Department, et al.* Case Number CV 09-8943-MMM (SHx).

The District Court has scheduling a hearing to consider the settlement on [DATE] at 9:30 a.m., at the Central District of California, United States Courthouse, Courtroom 8C, 350 W. 1st Street, Los Angeles, CA 90012. This hearing is referred to as the Final Settlement Approval Hearing.

SUMMARY OF THE LAWSUIT

In December 2009, Michael Garcia ("Plaintiff") filed a class action lawsuit in the United States District Court for the Central District of California (the "District Court"). Plaintiff, who was incarcerated at the Los Angeles County Jail ("LACJ"), claimed in the lawsuit that he did not receive the special education and related services he was entitled to while he was there. Plaintiff brought the lawsuit against the Los Angeles County Sheriff's Department ("Sheriff's Department"), County of Los Angeles, Los Angeles County Office of Education, Los Angeles Unified School District, California Department of Education (CDE), and Hacienda La Puente Unified School District. The Plaintiff sought injunctive and declaratory relief and attorneys' fees.

On April 29, 2010, the District Court ruled that the claims for injunctive and declaratory relief could go forward on behalf of a class defined as "All Students who are or were eligible for special education and related services under 20 U.S.C. §§ 1400 *et seq.* while detained in any Los Angeles County Jail facility, and who: (a) are currently detained at any LACJ facility; (b) are detained at any LACJ facility in the future" ("Class Members")."

The District Court also appointed Milbank, Tweed, Hadley & McCloy LLP and the Disability Rights Legal Center to serve as counsel to the class in this lawsuit ("Class Counsel").

DESCRIPTION OF THE PROPOSED SETTLEMENT AGREEMENT

The Settlement Agreement provides, in summary, that:

1. CDE will invite the Los Angeles County Sheriff's Department to subscribe to any listserve that the CDE uses to communicate information about special education to and amongst stakeholders;
2. CDE will distribute a Guidance Letter to all school districts, county offices of education, and charter schools regarding their obligations to provide special education services to eligible students in jail;
3. CDE will send to Class Counsel a copy of the Guidance Letter and communication of the Guidance letter that is sent to school districts, county offices of education, and charter schools;
4. CDE will post the Guidance Letter on CDE's website;

5. Using the Guidance Letter, CDE will have discussions with all CDE personnel within the Special Education Division with responsibilities for complaint investigations and/or monitoring regarding school districts, county offices of education, and charter schools' obligations to provide special education services to eligible students in jail. CDE will have the discussions at least 3 times within 2 years;
6. CDE will send Class Counsel the job titles of CDE personnel who attended the discussion and an outline of the topics discussed;
7. CDE will pay \$90,000 for attorneys' fees and costs to Class Counsel;
8. Plaintiff releases and settles all of his claims against CDE. Class Members release class claims for injunctive relief. Class Members do not release any future claims, claims for compensatory education or money damages claims.

OBJECTIONS OR COMMENTS TO PROPOSED SETTLEMENT

Class Members have a right to object to the terms of the Settlement Agreement. To be considered by the District Court, Class Member objections can be made via phone or in writing. Objections must be submitted to Class Counsel not later than 10 days after the close of the Notice Period at the contact information listed below:

DISABILITY RIGHTS LEGAL CENTER
350 S. Grand Avenue, Suite 1520
Los Angeles, California 90071
Telephone: (866) 752-6679
Email: DRLC@drlcenter.org

Objections must include all of the following information:

- 1) The objector's contact information (name, address, phone number and email);
- 2) An explanation of the basis for the objector's objection to the Settlement Agreement; and
- 3) Whether the objector intends to appear at the Final Settlement Approval Hearing on [DATE].

All information submitted to Class Counsel will be provided to counsel for CDE and the District Court. It is not necessary for Class Members to appear at the Final Settlement Approval Hearing. Any Class Member who has submitted a timely objection as provided above and who wishes to appear at the Final Settlement Approval Hearing must give notice, either in writing or by the phone number provided, to counsel for all Parties in his/her objection of his/her intention to do so. Objectors may withdraw their objections at any time.

HOW TO GET MORE INFORMATION

This is a summary of the Settlement Agreement. You can go to the Court any time during regular business hours to look at the pleadings in this case and the Settlement Agreement. The Court is the United States Courthouse, 350 West 1st Street, Los Angeles, CA, 90012. You can also contact Class Counsel for more information as follows:

DISABILITY RIGHTS LEGAL CENTER
350 S. Grand Avenue, Suite 1520
Los Angeles, California 90071
Telephone: (866) 752-6679
Email: DRLC@drlcenter.org

DO NOT CALL OR WRITE TO THE COURT REGARDING THIS CASE

Exhibit B

Page 1

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CENTRAL DIVISION
- - -
HONORABLE VALERIE BAKER FAIRBANK
UNITED STATES DISTRICT JUDGE
- - -

MICHAEL GARCIA,) CERTIFIED COPY
)
PLAINTIFF,)
) CR 09-8943-VBF (CTX)
VS.)
)
LOS ANGELES COUNTY SHERIFF'S,)
DEPARTMENT, ET AL.,)
)
DEFENDANT.)
_____)

HEARING ON MOTION FOR CLASS CERTIFICATION

LOS ANGELES, CALIFORNIA

WEDNESDAY, APRIL 21, 2010

ROSALYN ADAMS, CSR 11794
OFFICIAL COURT REPORTER
100 UNITED STATES COURTHOUSE
312 NORTH SPRING STREET, ROOM 410
LOS ANGELES, CALIFORNIA 90012
(213) 894-2665

Page 2

1 APPEARANCES:

2 ON BEHALF OF PLAINTIFF:

3 MILBANK, TWEED, HADLEY & MC COY LLP
4 BY: DELILAH VINZON
5 REVI-RUTH B. ENRIQUEZ
6 601 SOUTH FIGUEROA STREET
7 LOS ANGELES, CALIFORNIA 90017
8 (213) 892-4537

9 DISABILITY RIGHTS LEGAL CENTER
10 LOYOLA LAW SCHOOL
11 BY: ANDREA F. OXMAN
12 SHAWNA L. PARKS
13 919 ALBANY STREET
14 LOS ANGELES, CALIFORNIA 90015
15 (213) 736-8188

16 ON BEHALF OF DEFENDANT, COUNTY OF LOS ANGELES:

17 LAWRENCE BEACH ALLEN & CHOI
18 BY: JUSTIN W. CLARK
19 MATTHEW P. ALLEN
20 100 WEST BROADWAY
21 SUITE 1200
22 GLENDALE, CALIFORNIA 91210
23 (818) 545-1925

24 ON BEHALF OF DEFENDANT, DEPARTMENT OF EDUCATION AND JACK
25 O'CONNELL, SUPERINTENDENT:

DEPARTMENT OF JUSTICE
BY: GLENDA N. REAGER
13001 I STREET
P.O. BOX 944255
SACRAMENTO, CALIFORNIA 94244-2550
(916) 445-8220

ON BEHALF OF DEFENDANT, LOS ANGELES UNIFIED SCHOOL DISTRICT:

LITTLER MENDELSON, P.C.
BY: DANIEL L. GONZALEZ
BARRETT W. GREEN
2049 CENTURY PARK EAST
5TH FLOOR
LOS ANGELES, CALIFORNIA 90067-3107
(310) 772-7228

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Page 3

1 APPEARANCES (CONTINUED):

2 ON BEHALF OF DEFENDANT, LOS ANGELES UNIFIED SCHOOL DISTRICT:

3 ATKINSON, ANDELSON, LOYA, RUUD & ROMO

4 BY: MARLON WADLINGTON

5 12800 CENTER COURT DRIVE

6 SUITE 300

7 CERRITOS, CALIFORNIA 90703

8 (562) 653-3200

9

10 ON BEHALF OF DEFENDANT, HACIENDA LA PUENTE UNIFIED SCHOOL
11 DISTRICT:

12 BEST BEST & KRIEGER

13 BY: JACK B. CLARKE, JR.

14 3750 UNIVERSITY AVENUE

15 SUITE 400

16 RIVERSIDE, CALIFORNIA 92502

17 (951) 686-1450

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Page 4

1 LOS ANGELES, CALIFORNIA; THURSDAY, APRIL 21, 2010; 3:00 PM

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5 THE COURT: GOOD AFTERNOON. PLEASE BE SEATED. I

6 WOULD ASK MY CLERK TO CALL THE NEXT CASE.

7 THE CLERK: CALLING ITEM NUMBER TWO, CASE NUMBER CV

8 09-8943-VBF: MICHAEL GARCIA, ET AL. V. L.A. COUNTY SHERIFF'S

9 DEPARTMENT, ET AL.

10 COUNSEL, PLEASE STATE YOUR APPEARANCES FOR THE

11 RECORD.

12 THE COURT: BEGINNING WITH THE PLAINTIFF.

13 MS. VINZON: DELILAH VINZON FROM MILBANK, TWEED,

14 HADLEY AND MC COY ON BEHALF OF PLAINTIFF, MICHAEL GARCIA, AND

15 THE PUTATIVE CLASS.

16 MS. ENRIQUEZ: REVI-RUTH ENRIQUEZ ALSO ON BEHALF OF

17 PLAINTIFF, MICHAEL GARCIA, AND THE PUTATIVE CLASS, ALSO FROM

18 MILBANK TWEED.

19 MS. PARKS: GOOD AFTERNOON, YOUR HONOR. SHAWNA

20 PARKS FROM THE DISABILITY RIGHTS LEGAL CENTER, ALSO FOR THE

21 PLAINTIFF.

22 MS. OXMAN: GOOD AFTERNOON. ANDREA OXMAN ALSO FROM

23 THE DISABILITY RIGHTS LEGAL CENTER ON BEHALF OF PLAINTIFF.

24 MR. CLARK: GOOD AFTERNOON, YOUR HONOR. JUSTIN

25 CLARK AND MATTHEW ALLEN FOR THE COUNTY DEFENDANTS.

Page 5

1 MS. REAGER: GOOD AFTERNOON, YOUR HONOR. GLENDA
2 REAGER FOR THE DEPARTMENT OF EDUCATION AND ITS
3 SUPERINTENDANT, JACK O'CONNELL.

4 MR. GREEN: GOOD AFTERNOON, YOUR HONOR. BARRETT
5 GREEN AND DANIEL GONZALEZ FOR L.A. UNIFIED DEFENDANTS.

6 MR. WADLINGTON: GOOD AFTERNOON, YOUR HONOR.
7 MARLON WADLINGTON FOR LOS ANGELES COUNTY OF EDUCATION.

8 MR. CLARKE: GOOD AFTERNOON, YOUR HONOR. JACK
9 CLARKE, APPEARING ON BEHALF OF THE HACIENDA-LA PUENTE SCHOOL
10 DISTRICT.

11 THE COURT: THANK YOU. THIS IS A HEARING ON THE
12 MOTION FOR CLASS CERTIFICATION. AFTER READING THE PAPERS, I
13 ISSUED A TENTATIVE WITH SOME QUESTIONS AND PRELIMINARY
14 REMARKS ON APRIL 8TH; NOT REACHED A DECISION. I WOULD INVITE
15 ARGUMENT FROM ALL PARTIES, ESPECIALLY AS TO THE ISSUES I
16 UNDERSCORED IN THE TENTATIVE.

17 BEFORE I DO THAT, I WOULD STATE THAT I UNDERSTAND
18 THAT YOU HAD A SETTLEMENT CONFERENCE BEFORE JUDGE HATTER. AS
19 THE TRIAL JUDGE, I WILL NOT KNOW WHAT HAPPENS AT THE
20 SETTLEMENT CONFERENCE. HOWEVER, I DO KNOW THAT YOU HAD ONE;
21 IT WAS REPORTED TO ME. AND LOOKING AT THE MINUTE ORDER, IT
22 WOULD APPEAR THAT JUDGE HATTER WOULD BE AVAILABLE FOR FURTHER
23 DISCUSSIONS.

24 AND, AS YOU KNOW, BEING EXPERIENCED TRIAL COUNSEL
25 VERY, OFTEN A SETTLEMENT DISCUSSION REACHED BETWEEN THE

Page 6

1 PARTIES IS PREFERABLE TO A TRIAL FOR A NUMBER OF OBVIOUS
2 REASONS: YOU AVOID THE SIGNIFICANT COST OF LITIGATION,
3 INCLUDING TRIAL; YOU AVOID THE UNCERTAINTY OF LITIGATION.
4 ADDITIONALLY, WITH A SETTLEMENT JUDGE YOU CAN CRAFT A
5 RESOLUTION IN MORE CREATIVE WAYS THAN YOU CAN IN MOST CASES
6 BEFORE THE TRIAL JUDGE.

7 IS THERE ANY REASON THAT THE DECISION ON THIS
8 MOTION FOR CLASS CERTIFICATION OR A RULING ON THE MOTION
9 SHOULD BE POSTPONED FOR a SHORT PERIOD OF TIME SO YOU COULD
10 WORK WITH JUDGE HATTER TO SEE IF YOU COULD REACH A
11 RESOLUTION?

12 YES.

13 MS. VINZON: DELILAH VINZON ON BEHALF OF THE
14 PLAINTIFFS. I CAN SPEAK TO THAT ISSUE, YOUR HONOR. I THINK
15 THAT THE ISSUE THERE WITH POSTPONING CLASS CERTIFICATION FOR
16 THIS MATTER IS THAT MR. GARCIA IS CURRENTLY RESIDING IN THE
17 LOS ANGELES COUNTY JAIL. HE'S DETAINED THERE NOW. AS
18 EVERYBODY RECOGNIZES THAT A TIME PERIOD IN THE JAIL IS NOT
19 GOING TO LAST FOREVER. SO, THEORETICALLY, HE'S A PRETRIAL
20 DETAINED. HIS DATES WILL BE LIMITED AT SOME POINT AND IF WE
21 HOLD OFF ON CLASS CERTIFICATION, THE RISK OF ARGUMENTS THAT
22 WOULD DISQUALIFY MR. GARCIA AS A CLASS PLAINTIFF AFTER HE HAS
23 PARTICIPATED IN A GREAT DEAL OF PROCEEDINGS BEFORE THIS COURT
24 AND OTHERS IN ORDER TO REACH THE POINT THAT HE COULD GET
25 CLASS CERTIFICATION WOULD BE A SIGNIFICANT DETRIMENT TO THE

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1 ADDRESS THE ISSUES RAISED HERE. WITH REGARD TO LEE AND
2 NELSON, THOSE CASES INVOLVED PLAINTIFFS WHO NEVER HAD
3 STANDING. IT WASN'T AN ISSUE OF -- IT WAS AN ISSUE THERE IN
4 BOTH OF THOSE CASES WHERE THE COURT BASICALLY SAID THERE WAS
5 TOO MANY CONTINGENCIES THAT WOULD BE REQUIRED IN ORDER TO
6 REACH A POINT WHERE THEY COULD EVER HAVE THE STANDING TO COME
7 FORWARD. THEY'RE DISTINGUISHABLE CASES.

8 THE COURT: THANK YOU.

9 MS. VINZON: THANK YOU, YOUR HONOR.

10 THE COURT: IF THERE'S NOTHING FURTHER, I WILL TAKE
11 THE MATTER UNDER SUBMISSION AND YOU'LL HAVE A RULING IN A FEW
12 DAYS OR CERTAINLY NO LATER THAN ONE WEEK, AND IT WILL BE SENT
13 TO YOU.

14 IF THERE'S NO OBJECTION, I WOULD ORDER THAT COUNSEL
15 CONFER WITH EACH OTHER, NOW OR TELEPHONICALLY, AND CONTACT
16 JUDGE HATTER'S CLERK BY FRIDAY TO SEE IF YOU CAN GET A DATE
17 BEFORE HIM. THANK YOU VERY MUCH.

18 (END OF PROCEEDINGS.)

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MICHAEL GARCIA on behalf of
himself and others similarly situated,

Plaintiff,

vs.

LOS ANGELES COUNTY SHERIFF'S
DEPARTMENT, a public entity, et al.,

Defendants.

Case No. : CV 09-08943 DMG (SHx)
CLASS ACTION

**[PROPOSED] ORDER GRANTING
(1) PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
WITH CALIFORNIA
DEPARTMENT OF EDUCATION;
(2) DIRECTING NOTICE TO THE
CLASS; AND (3) SCHEDULING A
FAIRNESS HEARING**

ORDER

1
2 Plaintiffs have applied to the Court for an order preliminarily approving the
3 settlement of this action in accord with the Settlement Agreement (“Agreement”),
4 which sets forth the terms and conditions of a proposed settlement and dismissal of
5 the class action with prejudice. Having read the papers submitted and carefully
6 considered the arguments and relevant legal authority, and good cause appearing,
7 the Court GRANTS Plaintiffs’ Motion for Preliminary Approval of Class Action
8 Settlement.
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11 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

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13 1. The Court hereby preliminarily approves the Settlement Agreement.
14 The Court finds on a preliminary basis that the Settlement Agreement is fair,
15 adequate and reasonable to all potential Class Members. It further appears that
16 extensive evaluation of the merits has been conducted such that Counsel for the
17 Parties are able to reasonably evaluate their respective positions. It also appears to
18 the Court that settlement at this time will avoid substantial additional costs to all
19 Parties, as well as avoid the delay and the risks presented by further prosecution of
20 issues either in the current or separate litigation proceedings which are addressed
21 by the Agreement. It further appears that the Agreement has been reached as the
22 result of good faith, prolonged, serious, and non-collusive arms-length
23 negotiations, including several mediation sessions supervised by Judge Terry J.
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1 Hatter Jr. and neutral Phyllis Cheng, of ADR Services, Inc.

2 2. The Court hereby approves, as to form and content, the proposed
3 Notice, attached as Exhibit A to the Agreement. The Court finds that the
4 distribution of the Notice in the manner and form set forth in the Agreement meets
5 the requirements of due process and Federal Rules of Civil Procedure 23(c)(2) and
6 23(e). This Notice is the best practicable under the circumstances, and shall
7 constitute due and sufficient notice to all persons entitled thereto. The Parties shall
8 submit declarations to the Court as part of their Motion for Final Approval of the
9 Class Action Settlement confirming compliance with the notice provisions of the
10 Agreement.
11

12 3. A hearing on final approval of the Agreement shall be held before the
13 Court on a date to be set by the Court to determine all necessary matters
14 concerning the Agreement, including whether the proposed Settlement
15 Agreement's terms and conditions are fair, adequate, and reasonable, and whether
16 the Settlement Agreement should receive final approval by the Court, as well as to
17 rule on Class Counsel's motion requesting an award of reasonable attorneys' fees,
18 costs and expenses.
19

20 Objections by Class Members may be submitted to Class Counsel no
21 later than thirty (30) calendar days after notice has begun. Any Class Member who
22 wishes to object to the proposed Settlement Agreement may serve on Class
23 Counsel a written statement or telephonic statement of objection no later than
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1 thirty (30) calendar days after notice has begun (the “Objection Deadline”). Such
2 statement should include: (a) the objector’s contact information (full name and
3 address. And, if available, phone number, email, and inmate number); (b) a
4 statement of the Class Member’s objections; (c) a statement of his or her
5 membership in the Settlement Class, and (d) a statement whether he or she intends
6 to appear at the Fairness Hearing.
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9 4. The procedures and requirements for filing objections in connection
10 with the Fairness Hearing are intended to ensure the efficient administration of
11 justice and the orderly presentation of any Class Members’ objection to the
12 Agreement, in accordance with the due process rights of all Class Members.
13

14 5. Class Counsel shall provide copies of any objections to Defendants’
15 Counsel within seven (7) days of receipt. Class Counsel shall also file any
16 objections with the Court at such time as they file their Summary of Objections.
17
18

19 6. Pending the Fairness Hearing, all proceedings in this Action, other
20 than proceedings necessary to carry out and enforce the terms and conditions of the
21 Agreement and this Order, continue to be stayed. Additionally, the Court enjoins
22 all Class Members from asserting or maintaining any claims to be released by the
23 Agreement until the date of the Fairness Hearing.
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25 7. In accordance with the above, the Court adopts the following
26 schedule:
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28 a. Within seven (7) days after entry of the Order Granting

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Preliminary Approval, Notice in the form of Exhibit A to the Settlement Agreement shall be posted on Class Counsels' websites, and the CDE's website; Notice will also be provided by the CDE to no fewer than seven community organizations that provide services to young adults who are or were recently detained with a request that such organizations disseminate the notice to staff and consumers; and the Notice will further be distributed by the CDE to each public defender or juvenile public defender office in Los Angeles County, with a request to disseminate to staff. The notice shall remain posted for 30 days.

- b. Each Class Member shall be given a full opportunity to object to the proposed Settlement and Class Counsel's request for an award of reasonable attorneys' fees, costs and expenses. Any Class Member seeking to object to the proposed Settlement may submit an objection to Class Counsel in writing, via regular or electronic mail, or by leaving a message with their objection via telephone, on a toll free number established by Class Counsel.
- c. At least 14 days prior to the objection deadline, Plaintiffs shall file a Motion for an Award of Reasonable Attorneys' Fees, Costs, and Expenses. The hearing on that Motion shall be

1 concurrent with the Fairness Hearing.

2 d. Plaintiff shall file a Motion for Final Approval and respond to
3 objections, if any, no later than seven (7) days prior to the
4 Fairness Hearing. All parties shall file statements of compliance
5 with notice requirements.
6

7 e. The Fairness Hearing shall be held on September 14, 2018 at
8 9:30am in Courtroom 8C, 8th Floor of the United States
9 Courthouse, 350 W. 1st Street, Los Angeles, CA 90012.
10

11 8. In the event the Court does not grant final approval of the
12 Agreement, or for any reason the Parties fail to obtain a Final Judgment and Order
13 Approving Settlement as contemplated by the Agreement, or the Settlement
14 Agreement is terminated pursuant to its terms for any reason or the Effective Date
15 does not occur for any reason, then the Agreement and all orders and findings
16 entered in connection with the Agreement and the Settlement shall become null
17 and void and be of no further force and effect whatsoever, shall not be used or
18 referred to for any purpose whatsoever, and shall not be admissible or discoverable
19 in this or any other proceeding.
20

21 9. This Order shall not be construed or used as an admission,
22 concession, or declaration by or against the CDE Defendants of any fault,
23 wrongdoing, breach, or liability, and shall not be deemed to be a stipulation as to
24 the propriety of class certification, or any admission of fact or law regarding any
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1 request for class certification, in any other action or proceeding, whether or not
2 involving the same or similar claims. Nor shall this Order be construed or used as
3 an admission, concession, or declaration by or against Plaintiff or the other Class
4 Members that their claims lack merit or that the relief requested is inappropriate,
5 improper, or unavailable, or as a waiver by any Party of any defenses or claims he,
6 she, or it may have in the Action or in any other proceeding.
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10 **IT IS SO ORDERED.**

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12 Dated: _____
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15 _____
16 HON. DOLLY M. GEE
17 United States District Court Judge
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