UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	LA CV02-05662 JAK	Date	November 13, 2023
Title	Katie A., et al. v. Diana Bonta, et al.		

Present: The Honorable	JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE
T. Jackson-Terrell	Not Reported
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None	None

Proceedings: **(IN CHAMBERS) ORDER RE FINAL APPROVAL OF SETTLEMENT AGREEMENT; AND**

MOTION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES PURSUANT TO SETTLEMENT AGREEMENT (DKT. 1084)

I. Introduction

In 2002, five minors in foster care brought this class action against Los Angeles County, the Los Angeles County Department of Children and Family Services ("DCFS"), the Director of DCFS (together with Los Angeles County and DCFS, the "County Defendants"), the Director of the California Department of Health Services ("DHS") and the Director of the California Department of Social Services ("CDSS," together with the Director of DHS, the "State Defendants"). Dkt. 1. Plaintiffs alleged that Defendants were not providing to youth in foster care mental health services as required by California and federal law. *Id.*

In 2003, Plaintiffs and the County Defendants entered a settlement agreement (the "2003 Settlement Agreement"). Dkt. 46. As part of that agreement, the parties agreed to appoint a panel of experts in child welfare (the "Advisory Panel") to monitor the compliance of the County Defendants with the settlement terms, including their implementation. *Id.* In July 2003, Judge Matz, who was then presiding over this action, approved the 2003 Settlement Agreement. Dkt. 128 (the "Consent Decree"). Since that time, the County Defendants have remained under judicial supervision. In light of the impending retirement of Judge Matz, in March 2013, this action was transferred to this bench officer. Dkt. 844. Many proceedings followed with respect to compliance with the Consent Decree.

In August 2019, the County Defendants filed a Motion to Vacate the Consent Decree pursuant to Fed. R. Civ. P. 60(b)(5). Dkt. 975 (the "Rule 60(b)(5) Motion"). They argued that "there are no ongoing violations of federal law that could support continued enforcement of the 2003 Consent Decree." *Id.* at 2. Rather than litigate the Rule 60(b)(5) Motion, Plaintiffs and the County Defendants entered into a new settlement agreement, which was executed in September 2020. Dkt. 1036-1 (the "2020 Settlement Agreement").

On December 4, 2020, the parties filed a Joint Motion for Preliminary Approval of Class Action

Settlement. Dkt. 1036 (the "Preliminary Approval Motion"). On January 11, 2021, the Panel filed an opposition to the Motion. Dkt. 1040 (the "Preliminary Approval Opposition"). On February 1, 2021, the County Defendants and Plaintiffs each filed a reply in support of the Motion. Dkt. 1043 (the "Plaintiffs' Preliminary Approval Reply"); Dkt. 1044 (the "County's Preliminary Approval Reply").

A hearing on the Preliminary Approval Motion was held on June 7, 2021. Dkt. 1050. At that time, the County Defendants and the Advisory Panel were directed to file supplemental briefing as to certain issues. *Id.* On June 14, 2021, the supplemental briefing was filed. Dkts. 1052, 1053. On June 21, 2021, replies were filed. Dkts. 1056, 1057, 1058.

On December 10, 2021, the parties filed a Joint Status Report (Dkt. 1071), as to the status of the proceedings, in which they sought "further guidance from the Court as to the pending Motion for Preliminary Approval of the Settlement." Dkt. 1071 at 4. On July 18, 2022, the Advisory Panel responded, stating that it "still opposes" the Motion. Dkt. 1073 at 2. On July 21, 2022, the Preliminary Approval Motion was **GRANTED** because it was determined on a preliminary basis that the class representatives had adequately represented the settlement class, the settlement was negotiated at arm's length, the relief provided for the settlement class is adequate, and the proposal treats class members fairly relative to each other. Dkt. 1075 at 9-13 (the "Preliminary Approval Order"). It was also determined that the proposed notice was adequate after certain language was added to the proposed Long Form Notice. *Id.* at 15. At that time, the Rule 60(b)(5) Motion was deemed moot. *Id.*

On September 8, 2022, Plaintiffs moved for an award of attorney's fees. Dkt. 1084 (the "Motion"). On October 17, 2022, the Advisory Panel filed a brief opposing final approval of the settlement agreement but not addressing Plaintiffs' request for attorney's fees. Dkt. 1085 (the "Opposition"). On October 31, 2022, Plaintiffs replied to the Opposition. Dkt. 1086 ("Plaintiffs' Reply"). That same day, the County Defendants also filed a reply. Dkt. 1087 (the "County's Reply"). On November 30, 2022, Plaintiffs and the County Defendants filed a status report summarizing a November 17, 2022 discussion among Plaintiffs, the County Defendants, and the Advisory Panel. Dkt. 1089 (the "November 30 Report").

A hearing was held on December 5, 2022, and this matter was taken under submission. *See* Dkt. 1091. On January 13, 2023, it was determined that supplemental briefing was required on whether it would be appropriate to impose "certain ongoing reporting obligations . . . on the County Defendants to enable Plaintiffs and/or the Advisory Panel to help identify and remediate any future alleged violations of law that may occur." Dkt. 1092. On September 18, 2023, the parties' filed a report containing their respective positions as to this issue. Dkt. 1111 (the "Joint Report"). On September 21, 2023, the parties filed certain errata to the Joint Report. Dkt. 1112 (the "Errata"). According to the Joint Report, the County Defendants and Plaintiffs have reached agreement on a set of proposed reporting obligations, but the Advisory Panel contends that additional reporting obligations are necessary.

For the reasons stated in this Order, the 2020 Settlement Agreement is **APPROVED**; provided, however, approval is conditioned on the adoption of the additional reporting obligations described in the Joint Report. *See* Dkt. 1111-5 at 199-200. Plaintiffs' request for attorney's fees and costs is **GRANTED** in the amount of $1,411,408.56.

II. Factual and Procedural Background

A. 2003 Settlement Agreement and Implementation

The 2003 Settlement Agreement established certain objectives for the County Defendants. Dkt. 499 ¶ 5. Specifically, the County Defendants agreed to ensure that members of the settlement class shall:

(a) promptly receive necessary, individualized mental health services in their own home, a family setting or the most homelike setting appropriate to their needs;
(b) receive the care and services needed to prevent removal from their families or dependency or, when removal cannot be avoided, to facilitate reunification, and to meet their needs for safety, permanence, and stability;
(c) be afforded stability in their placements, whenever possible, since multiple placements are harmful to children and are disruptive of family contact, mental health treatment and the provision of other services; and
(d) receive care and services consistent with good child welfare and mental health practice and the requirements of federal and state law.

Id.

As part of fulfilling these general objectives, the County Defendants agreed to certain, specific obligations. *Id.* ¶ 6. Further, to ensure compliance with both the general objectives and specific obligations, the parties agreed to create the Advisory Panel. *Id.* ¶ 7. The Advisory Panel was to monitor the compliance by the County Defendants with the 2003 Settlement Agreement, and to present regular written reports to the parties and the Court regarding its findings and recommendations. *Id.*

The Consent Decree certified a settlement class under Fed. R. Civ. P. 23(b)(2). Dkt. 128 ¶ 2. The settlement class was subsequently modified, and defined as follows:

The class members include children and young adults who:

(a) are in the custody of [DCFS] in foster care or are at imminent risk of foster care placement by DCFS; and
(b) are eligible for services under the Early and Periodic Screening Diagnosis and Treatment (“EPSDT”) program of the Medicaid Act, as defined in 42 U.S.C. § 1396 et seq.; and
(c) have a mental illness or condition that is documented or, had an assessment been completed, could have been documented; and
(d) need individualized mental health services, including but not limited to professionally acceptable assessments, behavioral support and case management services, family support, crisis support, therapeutic foster care, and other medically necessary services in the home or in a home-like setting, to treat or ameliorate their illness or condition.

Dkt. 149 at 1-2.

In 2005, the Advisory Panel issued a two-year report in which it found that the County Defendants had not complied with the 2003 Settlement Agreement. Dkt. 499 ¶ 9. Subsequently, the County Defendants

developed a plan to achieve full compliance with the 2003 Settlement Agreement. *Id.* ¶ 10. In 2006, Judge Matz ordered the County Defendants to amend that plan to address certain shortcomings. *Id.* ¶ 121. In 2008, the Los Angeles County Board of Supervisors approved a strategic plan (the "Strategic Plan"), which was modified in 2009. Dkt. 688 at 4-5. Plaintiffs, County Defendants and the Advisory Panel all supported the Strategic Plan as modified, and it was approved by Judge Matz. *Id.* at 5; Dkt. 689.

In 2011, Plaintiffs, the County Defendants and the Advisory Panel stipulated to specific exit conditions (the "Exit Conditions"), which were approved by Judge Matz. Dkt. 773; Dkt. 776. The parties and the Advisory Panel agree that, although the County Defendants have made progress in implementing the Strategic Plan, they have not met all of the Exit Conditions. Dkt. 1036-3 at 13-14; Dkt. 1040 at 8-9.

B. Rule 60(b)(5) Motion

On February 19, 2019, counsel for the County Defendants informed counsel for Plaintiffs that the County Defendants intended to file the Rule 60(b)(5) Motion. Dkt. 1036-4 ¶ 5. The next day, counsel for the County Defendants sent a letter to the three members of the Advisory Panel informing them that the County was suspending the operations of the Advisory Panel. *Id.* ¶ 6; *see also* Dkt. 1040 at 36. Marty Beyer, a member of the Advisory Panel, declares that the County Defendants terminated quarterly retreats they had held with the Advisory Panel, "blocked the [Advisory] Panel's access to personnel from DCFS and [the Department of Mental Health ("DMH")], and withheld from the [Advisory] Panel the relevant data the [Advisory] Panel needed to continue to evaluate the County's compliance with the Strategic Plan and the exit conditions." Dkt. 1040 at 39. Beyer declares that the Advisory Panel "has not been permitted to update its knowledge of most of the County's activities to meet the needs of the class members since the [Advisory] Panel's last meeting with the County in December of 2018." *Id.* at 37.

In August 2019, the County Defendants filed the Rule 60(b)(5) Motion, which sought to have the Consent Decree vacated. Dkt. 975. In support of the Motion, the County Defendants argued that, under *Horne v. Flores*, 557 U.S. 433, 451 (2009), "[f]ederal courts only have jurisdiction to enforce consent decrees so long as there is a federal violation to remedy." Dkt. 975 at 19. The County Defendants argued that they are not presently acting in violation of federal law as to their relevant obligations. *Id.* at 23-30. With respect to the three Exit Conditions to which the parties previously agreed, the County Defendants argued that two have been "substantially achieved." *Id.* at 17. As to the other Exit Condition, in support of the Rule 60(b)(5) Motion, the County stated:

> The [other] Exit Condition is for the County Defendants to achieve a passing score on each component of a Qualitative Service Review ("QSR")—a case review tool that attempts to score the child and family's progress and the effectiveness of care and services provided to children in DCFS' care. [FN3] [Citation omitted]. The QSR is not part of, and is not required by, federal law.

Id. (emphasis removed).

Robert D. Newman, counsel for Plaintiffs, declares that, after the County Defendants filed the Rule 60(b)(5) Motion, Plaintiffs propounded three sets of requests for production. Dkt. 1036-4 ¶ 11. Newman declares that, in response, the County Defendants produced -- and Plaintiffs' counsel reviewed --

15,000 pages of documents. *Id*. Plaintiffs also conducted the depositions of three Los Angeles County employees who submitted declarations in support of the Rule 60(b)(5) Motion. *Id.* ¶ 12. Newman declares that Plaintiffs "arranged to take at least ten more depositions." *Id.* Each of the three County Defendants propounded a set of interrogatories to Plaintiffs, and Los Angeles County served document requests on Plaintiffs. *Id.* ¶ 13.

C. Negotiation and Submission for Approval of 2020 Settlement Agreement

Newman declares that, in January 2020, the parties began discussing a potential settlement. *Id.* ¶ 14. In support of their Preliminary Approval Motion, the parties stated: "Plaintiffs wanted additional benefits for the class. The County Defendants wanted certainty on when this case would end." Dkt. 1036 at 8.

Newman declares that the parties participated in two full-day mediations with Judge Jay Gandhi (Ret.): the first on May 6, 2020, and the second on May 28, 2020. Dkt. 1036-4 ¶¶ 15-16. Newman declares that, over a period of five months, there were "at least twelve settlement conferences between counsel, in addition to numerous exchanges of proposals and counter-proposals." *Id.* ¶ 16. A declaration by counsel for the County Defendants confirms these statements. *See* Dkt. 1036-11. Newman declares that the negotiations were "adversarial" and "[m]ost issues were the subject of intense bargaining with considerable give and take by both sides." Dkt. 1036-4 ¶ 17. Newman further declares that "Plaintiffs' counsel devoted hundreds of hours, if not more than one thousand hours, to these settlement negotiations." *Id.*

Newman also declares that "Plaintiffs' counsel did not make a proposal on attorneys' fees and costs until the parties had reached settlement on nearly all the substantive parts of the settlement agreement." *Id.* ¶ 18. Newman declares that Plaintiffs' counsel calculated a lodestar figure of approximately $2.2 million in attorney's fees, offered to settle for approximately $2 million in attorney's fees and costs, and ultimately agreed to $1.4 million in attorney's fees and costs. *Id.*

In September 2020, Plaintiffs and the County Defendants executed the 2020 Settlement Agreement. Dkt. 1036-1 (copy of the agreement).

Beyer declares that "the [Advisory] Panel was frozen out of [s]ettlement discussions." Dkt. 1040 at 40. He declares:

> 17. On August 13, 2020, the [Advisory] Panel expressed significant reservations on a call requested by the Plaintiffs' counsel regarding six draft settlement proposals that had been provided to the Panel on August 10, 2020. On August 18, 2020, the County asked the [Advisory] Panel to discuss the draft settlement. The [Advisory] Panel continued to request a copy of the new Settlement Agreement before preparing comments for the parties.
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> 18. The [Advisory] Panel received the final signed Settlement Agreement from the County on September 18, 2020, after the County Board of Supervisors had voted in favor of the proposed settlement. On October 27, 2020, the [Advisory] Panel provided comments on the Settlement Agreement to the parties. The County did not initiate a call with the [Advisory] Panel to discuss the [Advisory] Panel's concerns until November 30,

2020. On December 4, 2020, the parties jointly submitted the unchanged Settlement Agreement to the Court for preliminary approval.

Dkt. 1040 at 37-38.

On September 23, 2020, Plaintiffs and the County Defendants filed a Joint Stipulation Re: Class Action Settlement. Dkt. 1031 (the "Stipulation"). Among other things, the Stipulation provided:

- The Rule 60(b)(5) Motion would be taken off calendar;
- The County's obligations under certain prior agreements -- including the 2003 Settlement Agreement, Strategic Plan and Exit Conditions -- would be stayed;
- The Advisory Panel would no longer perform its then current responsibilities;
- The parties would begin implementing the 2020 Settlement Agreement; and
- Plaintiffs may file a motion to enforce the 2020 Settlement Agreement following the dispute resolution process outlined therein.

Dkt. 1031 at 4-5.

The Stipulation was approved. Dkt. 1033. The parties were then ordered to submit a joint report stating whether there are any non-parties with a substantial interest in the terms of the 2020 Settlement Agreement who should be provided notice of the opportunity to file an amicus brief regarding whether it should be approved. *Id.* at 3. On October 19, 2020, the parties filed a joint report identifying 50 potentially interested non-parties (the "Interested Non-Parties"). Dkt. 1034.

On October 20, 2020, the parties were ordered to file a motion for preliminary approval of the 2020 Settlement Agreement by December 4, 2020. Dkt. 1035 (the "Briefing Order"). The parties were ordered to serve the Interested Non-Parties on or before December 11, 2020, with a copy of the 2020 Settlement Agreement, the motion for preliminary approval and the Briefing Order. *Id.* The Briefing Order invited any of the Interested Non-Parties to file an amicus brief regarding the motion for preliminary approval and/or the 2020 Settlement Agreement or, in lieu of an amicus brief, a less formal comment regarding the motion for preliminary approval and/or the Settlement Agreement. *Id.* Any amicus brief or less formal comment was to be filed by January 11, 2021. *Id.* The Advisory Panel was also ordered to file any response to the motion for preliminary approval or before January 11, 2021. *Id.*

On December 14, 2020, the parties filed a joint report stating that they had served the Interested Non-Parties on December 11, 2020, by overnight mail and, with one exception, by email, with a copy of the Motion, the 2020 Settlement Agreement and the Briefing Order. Dkt. 1038. The joint report stated that the parties also served an additional organization identified by the Advisory Panel. *Id.* Notwithstanding the opportunity that had been provided, no amicus brief or less formal comment was filed by any Interested Non-Party.

D. Terms of 2020 Settlement Agreement

The 2020 Settlement Agreement sets forth five principal objectives:

(a) increase the number of Class members who receive [Intensive Care Coordination

> ("ICC")] and [Intensive Home Based Services ("IHBS")], when medically necessary, in a timely manner and in appropriate amount and duration, (b) prevent the unnecessary psychiatric hospitalization, placement in [a] [Short Term Residential Therapeutic Program ("STRTP")] or group home and multiple placements of Class members, (c) provide [Therapeutic Foster Care ("TFC")] to Class members for whom this mental health service is medically necessary, (d) allow the County to exit this litigation by the Expiration Date, and (e) allow the Parties to avoid the risk and expense of litigating the County's Motion.

Dkt. 1036-1 at 14 ¶ 56.

In its Preliminary Approval Opposition, and in its Current Opposition, the Advisory Panel states it "wholeheartedly endorses" the first three objectives, and that these "broad objectives were the goals of the original *Katie A.* settlement, the exit conditions, and the Panel's advisory work with the County." Dkt. 1040 at 16; Dkt. 1085 at 16-17. In furtherance of these objectives, the 2020 Settlement Agreement identifies and details seven agreements. Dkt. 1036-1 at 14-25 ¶¶ 57-64. These agreements provide that the County Defendants will implement certain practices, provide certain training to their staff and report to Plaintiffs on the implementation of the 2020 Settlement Agreement and about certain data. *Id.* "County Work Plans" are appended to the 2020 Settlement Agreement. *Id.* at 39-49. These work plans correspond to six of the seven agreements identified and detailed in the 2020 Settlement Agreement. *Id.*

The 2020 Settlement Agreement also provides that, upon a final approval, it will supersede the 2003 Settlement Agreement and every subsequent agreement, including the Strategic Plan and Exit Conditions. *Id.* at 14 ¶ 55. It further provides that those prior agreements will become null and void upon the Expiration Date. *Id.* The Expiration Date is defined as June 30, 2021, or the date that the Court grants final approval to the 2020 Settlement Agreement, whichever is later. *Id.* at 13 ¶ 54. The 2020 Settlement Agreement also provides that, on the Expiration Date, the jurisdiction of the Court over the matter will expire. *Id.* It further provides that this date for the expiration of jurisdiction shall not be extended for any reason. *Id.* The 2020 Settlement Agreement states that its terms "are not exit conditions and no provision of the Agreement, agreement to make corrective measures or any Court order entered in connection therewith . . . will be enforceable beyond the expiration date." *Id.*

The 2020 Settlement Agreement also includes the following release:

> In consideration of the covenants and promises contained herein, Plaintiffs and their successors, assigns, agents and representatives hereby release, absolve and discharge the County of Los Angeles, DCFS, DMH, the Directors of DCFS and DMH from all rights, claims, demands, obligations, causes of action and suits of all kinds and descriptions that seek declaratory and/or injunctive relief on a class-wide basis based on acts or omissions that occurred prior to the Effective Date and that arise from the identical factual predicate as the claims at issue in the *Katie A.* litigation (the "Released Claims"). The Released Claims do not include individual or class claims for damages.

Id. at 27-28 ¶ 76.

The Effective Date of the Settlement Agreement is September 18, 2020. *Id.* at 11 ¶ 47, 32-38. The County Defendants also agreed to pay Plaintiffs' counsel $1.4 million in attorney's fees and $12,095 in costs. *Id.* at 26 ¶ 68.

III. <u>Analysis</u>

A. Final Approval of the Settlement Agreement

1. <u>Legal Standards</u>

Rule 23(e) requires a two-step process in considering whether to approve the settlement of a class action. Fed. R. Civ. P. 23(e).

First, in the preliminary approval process, a court must make a preliminary determination as to whether the proposed settlement "is fundamentally fair, adequate, and reasonable." *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003)). At this stage, "the settlement need only be potentially fair." *Id.*

Second, if preliminary approval is granted, class members are notified and invited to make any objections. Upon reviewing the results of that notification, a court makes a final determination as to whether an agreement is "fundamentally fair, adequate, and reasonable." *See Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004).

In evaluating fairness, a court must consider "the fairness of a settlement as a whole, rather than assessing its individual components." *Lane v. Facebook, Inc.*, 696 F.3d 811, 818-19 (9th Cir. 2012). A court is to consider and evaluate several factors as part of its assessment of a proposed settlement. The following non-exclusive factors, which originally were described in *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998), are among those that may be considered during both the preliminary and final approval processes:

(1) the strength of the plaintiff's case;
(2) the risk, expense, complexity, and likely duration of further litigation;
(3) the amount offered in settlement;
(4) the extent of discovery completed and the stage of the proceedings;
(5) the experience and views of counsel;
(6) any evidence of collusion between the parties; and
(7) the reaction of the class members to the proposed settlement.

See In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 458-60 (9th Cir. 2000).

Each factor does not necessarily apply to every settlement, and other factors may be considered. For example, courts often consider whether the settlement is the product of arms-length negotiations. *See Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution."). As noted, in determining whether preliminary approval is warranted, a court is to decide whether the proposed settlement has the potential to be deemed fair, reasonable and adequate in the final approval process. *Acosta*, 243 F.R.D.

at 386.

Amended Fed. R. Civ. P. 23(e) provides further guidance as to the requisite considerations in evaluating whether a proposed settlement is fair, reasonable and adequate. A court must consider whether:

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> (iv) any agreement required to be identified under Rule 23(e)(3);[1] and
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

The factors set forth in Fed. R. Civ. P. 23(e) distill the considerations historically used by federal courts to evaluate class action settlements. *See* Advisory Committee Comments to 2018 Amendments to Rule 23, Subdivision (e)(2). As the comments of the Advisory Committee explain, "[t]he goal of [the] amendment [was] not to displace any factor" that would have been relevant prior to the amendment, but rather to address inconsistent "vocabulary" that had arisen among the circuits and "to focus the court and the lawyers on the core concerns" of the fairness inquiry. *Id*.

2. Application

The Preliminary Approval Order analyzed many of the relevant factors. Dkt. 88 at 15-19. None of the facts and circumstances as to any of them has changed since that time. However, because the Settlement Administrator has completed the notice process, the reaction of class members to the Settlement Agreement may now be considered in evaluating whether it is fair and appropriate.

a) Reaction of the Class Members and Noticed Interested Non-Parties

Of the 51,074[2] Class Members who received notice of the Settlement Agreement, none objected. Dkt. 1087-3 ¶¶ 9, 13. A low proportion of objections "indicates that the class generally approves of the

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[1] Fed. R. Civ. P. 23(e)(3) provides that "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal."

[2] This reflects that 52,418 Postcard Notices were mailed by the Settlement Administrator, that 5083 were returned as undeliverable of which 102 contained forwarding information (and only one of those was returned a second time), that for additional 1461 class members, address updates were obtained and Postcard Notices promptly mailed (and only 191 of those were returned a second time), and that for 267 class members, updated addresses were obtained from the County Defendants (and only 20 of those were returned as undeliverable). Dkt. 1087-3 ¶ 6. This also reflects additional text messages sent to certain telephone numbers received from the County Defendants. *Id.* ¶¶ 7-9.

settlement." *In re Toys R Us-Delaware, Inc. – Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 456 (C.D. Cal. 2014) (collecting cases); *see also In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) (quoting *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 528-29) ("It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members."). Therefore, this factor weighs in favor of final approval.

It remains noteworthy that none of the 50 Noticed Interested Non-Parties elected to submit an amicus brief or informal comment about the 2020 Settlement Agreement, either in connection with the preliminary approval process or in connection with the instant Motion.

b) Reaction of the Advisory Panel with Respect to the Adequacy of the 2020 Settlement Agreement

The Advisory Panel has renewed its objections to final approval. The reaction of the Advisory Panel is particularly relevant given the very substantial expertise of its members, their dedication to the well-being of the class, and their familiarity with the issues. Its objections to the 2020 Settlement Agreement warrant careful and serious consideration. There has been a showing that the 2020 Settlement Agreement would not provide adequate relief to the class members as originally drafted but would provide adequate relief if additional reporting obligations were imposed on the County Defendants.

The Advisory Panel first argues that the relief provided for the class is non-existent, rather than simply inadequate. According to the Panel, if the 2020 Settlement Agreement is approved, the class members will get no relief whatsoever because the 2020 Settlement Agreement would terminate the County Defendants' obligations under the 2003 Settlement Agreement and the 2020 Settlement Agreement once it is approved. These positions are not persuasive. During the period between the Effective Date and the Expiration Date of the 2020 Settlement Agreement, the County Defendants agreed to implement certain practices, provide certain training to their staff, and report to Plaintiffs regarding the implementation of the 2020 Settlement Agreement and provide certain data. Dkt. 1036-1 at 14-25 ¶¶ 57-64. And, absent the 2020 Settlement Agreement, the Rule 60(b)(5) Motion might have been granted, which would have terminated the County Defendants' obligations much earlier and without additional benefits to the class. Therefore, there is relief provided to Plaintiffs. The Advisory Panel's position is also unpersuasive because, even after the 2020 Settlement Agreement is approved, the class members would benefit if the additional reporting obligations described in the Joint Report are imposed on the County Defendants.

There is also a substantial probability that the reforms implemented due to the 2003 Settlement Agreement and 2020 Settlement Agreement will not end after jurisdiction terminates. The County Defendants are not released from individual or class claims for damages. *See* Dkt. 1036-1 at 27-28 ¶ 76. Moreover, the Settlement Agreement does not preclude individual class members from bringing a new action for declaratory and/or injunctive relief based on violations that occurred after September 18, 2020, i.e., ongoing violations. *Id.*

Anabel Rodriguez, the Deputy Director of the Child Welfare Division of the Los Angeles County Department of Mental Health, declared that "[t]he practices implemented as a result of the Settlement Agreement are now part of the County's fabric" and "[a]ll pertinent DMH staff and contractors are fully

trained on the practices." Dkt. 1087-2 ¶ 65. Anabel Rodriguez is the DMH "point person" for questions related to the 2020 Settlement Agreement, and she has "received no indications that any staff or providers do not understand that the practices required by the Settlement Agreement are mandatory and in place indefinitely." *Id.* ¶ 69. Christina Lee, a Children Services Administrator within the Office of the Senior Deputy Director of the Los Angeles County, offered similar testimony. Dkt. 1087-4 ¶ 1. Lee stated that "[t]he practices implemented as part of the Settlement Agreement are now a structural part of DCFS' service delivery" and "DCFS will keep these practices in place and build on them over time." *Id.* ¶ 7. She also states that "DCFS has communicated to its staff that they must be familiar with the Settlement Agreement's terms and that its terms are mandatory." *Id.* ¶ 8. To be sure, the County Defendants will no longer be bound by either the 2003 Settlement Agreement or the 2020 Settlement Agreement once jurisdiction terminates. However, the learning experience during the last 20 years that occurred due to this litigation, and that the employees of the County Defendants have been trained to abide by both agreements, provides class members with certain *de facto* protection.[3] In addition, although the Advisory Panel has raised reasonable concerns about whether the reforms adopted by the County Defendants will remain in place, these concerns can be mitigated by imposing the additional reporting obligations described in the Joint Report.

The Advisory Panel next objects that Plaintiffs and the County Defendants carefully negotiated exit conditions for the 2003 Settlement Agreement in 2011. The County Defendants concede that they have not yet satisfied those exit conditions, and the Advisory Panel contends that it is unfair for the County Defendants to avoid this aspect of the 2003 Settlement Agreement. However, given that courts are to apply a "flexible standard" in evaluating motions brought under Fed. R. Civ. P. 60(b)(5) in institutional reform cases, that the County Defendants have failed to meet some of the exit conditions in the 2003 Settlement Agreement does not, standing alone, make the 2020 Settlement Agreement inadequate.

It is also relevant that, according to the records of the County Defendants, they have satisfied most, but not all, of the safety and permanency indicators contained in the Exit Conditions. Dkt. 980 at 24-25.

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[3] Rodriguez's declaration also points to a letter sent to all DMH staff and providers of services to children. Dkt. 1087-2 ¶ 68. That letter directed staff and providers to "review and familiarize [them]selves with the practices that the County must implement in connection with the Settlement Agreement." *Id.* It stated that "trainings are mandatory for all DMH staff and Providers who have direct client contact." *Id.* It also stated that "**[i]t is the County's expectation that DMH staff and Providers attend the trainings and adhere to the terms of the Katie A. Settlement Agreement.**" *Id.* Lee's declaration points to a similar bulletin, which was sent to certain County staff. Dkt. 1087-4 ¶ 10. It stated that the "Settlement Agreement requires the County to take a number of actions and implement various practices." *Id.* It directed staff to "review and familiarize [themselves] with the practices the County must implement in the connection with the Settlement Agreement." *Id.* It stated that "trainings are mandatory for all Children's Social Workers, Supervising Children's Social Workers, and Assistant Regional Administrators . . . ." *Id.* Finally, the bulletin stated that it "**is Management's expectation that workers complete all the trainings and adhere to the terms of the Katie A. Settlement Agreement.**" *Id.* Although these directives are appropriate and significant, they do not provide certainty as to performance. Directing employees and providers to abide by the 2020 Settlement Agreement does not guarantee that the County Defendants will comply with the 2020 Settlement Agreement once it expires. By its own terms, the 2020 Settlement Agreement provides for no remedy to enforce compliance after it is approved. Nothing in the letter or bulletin states that the recipients are to abide by the 2020 Settlement Agreement going forward, or until alternative measures are shown to be improvements. However, it is reasonable to expect that the County Defendants' training program will carry forward the current policies, with future changes adopted only if appropriate to meet the goals of serving the members of the class, and those similarly situated in the future.

With respect to the scores of the County Defendants on the Quality Service Review ("QSR"), the County Defendants were achieving passing scores with respect to "Overall Status" and had made significant improvements to the score with respect to "Overall Practice." Dkt. 983 at 10. Although the County Defendants had not satisfied the Exit Conditions, they had come close to doing so. As a result, the potential problems associated with terminating jurisdiction before the County Defendants have met the Exit Conditions are mitigated.

The Advisory Panel next argues that the 2020 Settlement Agreement is inadequate because it contains a fixed Expiration Date and no exit conditions. The duration of obligations under a settlement agreement, and whether that agreement has specific exit conditions, are material factors in evaluating the adequacy of the agreement. However, the Advisory Panel has not cited any precedent requiring that class action settlements in institutional reform cases contain exit conditions, and this Court is aware of no such precedent. Indeed, the 2003 Settlement Agreement did not contain any metrics or exit conditions. The exit conditions associated with the 2003 Settlement Agreement were not negotiated until 2011. *See* Dkts. 773; 776.

Several of the Advisory Panel's arguments pertain to alleged inadequacies in the provision of mental health services by the County Defendants. For example, the Advisory Panel argues that the 2020 Settlement Agreement is inadequate because it does not contain metrics that can be considered to ensure that services are provided to children that are sufficient in both their scope and duration. The Advisory Panel also argues that the 2020 Settlement Agreement is inadequate because more than 100 children, 10% of the placement changes monthly, continue to have placement disruptions due to removal requests by foster parents or due to the child's behavior. The Advisory Panel argues that placement disruptions like these can be prevented with intensive mental health services. The Advisory Panel also argues that the rate of these disruptions has not changed significantly over the last two years for which the Advisory Panel has reports.

As noted in the Preliminary Approval Order, the Advisory Panel's concerns were not sufficient to show, independently, that the 2020 Settlement Agreement was inadequate or plainly deficient. The Advisory Panel has not provided data that the number of placement changes has increased significantly, that insufficient mental health services are being provided to children in need, or that the County has not otherwise complied with the terms of the 2020 Settlement Agreement. Indeed, it appears that the number of monthly placement changes has decreased substantially over time. It also appears that Los Angeles County's rate of placement changes compares favorably with those of other counties in California and across the United States. For each annual period from July 2018 to June 2022, the number of placement moves in Los Angeles County per 1000 days was lower than the California state average and that of the other five most populous counties in California. Dkt. 1087-4 at 100. The data also reflects that Los Angeles County has improved on its own record year-over-year during each of the past four years. *Id.* As of June 2022, Los Angeles County had 2.45 placement moves per 1000 days of care. *Id.* ¶ 33. This is substantially less than the national benchmark, which is 4.48 moves per 1000 days of care. *Id.* at 93.

The County Defendants also had some probability of succeeding on the Rule 60(b)(5) Motion, and without additional conditions. "[I]n recognition of the features of institutional reform decrees . . . courts must take a 'flexible approach' to Rule 60(b)(5) motions addressing such decrees." *Horne v. Flores*, 557 U.S. 433, 450 (2009). This "flexible standard . . . seeks to return control to state and local officials

as soon as a violation of federal law has been remedied." *Id.* at 450–51. "If a durable remedy has been implemented, continued enforcement of the order is not only unnecessary, but improper." *Id.* at 450.

The 2003 Settlement Agreement has also been in effect for almost 20 years, and the Supreme Court has recognized that "injunctions issued in [institutional reform] cases often remain in force for many years, and the passage of time frequently brings about changed circumstances—changes in the nature of the underlying problem, changes in governing law or its interpretation by the courts, and new policy insights—that warrant reexamination of the original judgment." *Id.* at 447–48. The 2003 Settlement Agreement also affects one of the "areas of core state responsibility," i.e., caring for youths in foster care. *Id.* at 448. Further, the 2003 Settlement Agreement "has the effect of dictating . . . local budget responsibilities." *Id.* All these factors would weigh in favor of granting the Rule 60(b)(5) Motion.

On the other hand, the Advisory Panel argues persuasively that it is not at all clear that the County would prevail on the Rule 60(b)(5) Motion. In particular, the failure of the County Defendants to satisfy the Exit Conditions agreed upon in 2011 is evidence that some violation of federal law is ongoing and that the County Defendants have not implemented a durable remedy. Plaintiffs never submitted an Opposition to the Rule 60(b)(5) Motion, nor has this Court been provided with the information obtained by Plaintiffs in discovery. This is not a determination that the County Defendants have violated federal law. Instead, it is a recognition that there was a reasonable chance that Plaintiffs would have prevailed on the Rule 60(b)(5) Motion. The alternative, a settlement agreement reached through arm's length negotiations, would take that into account.

The Advisory Panel also makes the persuasive argument that continuing to litigate the Rule 60(b)(5) Motion would not be particularly costly because Plaintiffs have already conducted a great deal of discovery. Most of the discovery in question occurred between August 2019 and September 2020. *See* Dkts. 975, 1036. However, it would take relatively little additional discovery to update the discovery that occurred, especially given that the Advisory Panel as well as the Plaintiffs are involved in overseeing the implementation of the various settlement agreements.

The Advisory Panel argues that the views of Plaintiffs' counsel should be accorded less weight because they have a pecuniary interest in receiving attorney's fees due to the 2020 Settlement Agreement. As before, it is material that the County Defendants have agreed to pay Plaintiffs' counsel a large amount of attorney's fees, notwithstanding that class members will not receive any monetary payments. However, there is no evidence that the attorney's fees are not consistent with the extensive work Plaintiffs' counsel has performed in this action; indeed, they claim that the lodestar figure is substantially greater than the award. Nor is there any evidence that Plaintiffs' counsel, some of whom have been involved in this matter since its inception, would place their financial interests above the non-financial needs of those vulnerable minors whom they have represented for many years. Indeed, that is their ethical obligation, and there is no showing that any of the dedicated counsel have not fulfilled it. Further, Plaintiffs have previously proffered a declaration that "Plaintiffs' counsel did not make a proposal on attorneys' fees and costs until the parties had reached settlement on nearly all the substantive parts of the settlement agreement." Dkt. 1036-4 ¶ 18. Finally, there has been a showing that the 2020 Settlement Agreement would not provide adequate relief to the class members as originally drafted, but would provide adequate relief if additional reporting obligations were imposed on the County Defendants.

The County Defendants argue that no additional reporting obligations should be imposed because "hypothetical, speculative or other 'possible future' injuries do not count in the standing[] calculus." *Schmier v. U.S. Ct. of Appeals for Ninth Cir.*, 279 F.3d 817, 821 (9th Cir. 2002). However, this doctrine is not applicable because there is some evidence that some of the violations of federal law this action sought to remediate may be ongoing or that there is a risk that they may recur. When an ongoing violation of federal law is occurring, some of the harm flowing from that violation necessarily occurs in the future, but that does not mean the violation cannot be redressed.

Turning to the substance of the additional reporting obligations that could be imposed, the County Defendants and the Plaintiffs have agreed to the following proposal. *First*, the County Defendants will "continue to generate" the "monthly report regarding the 'Number of TA280 requests for out of home placements stop or change'" "for the next eighteen months." Dkt. 1111-5 at 199.

Second, the County Defendants will "prepare special reports on a quarterly basis for an eighteen-month period." *Id.* Each of these special reports would contain the following information:

- Whether IHBS/ICC services were provided to meet the child's mental health needs and to support the child's caregiver
    - (a) During the 30 calendar days prior to the child's reported placement change, and/or
    - (b) During the 30 calendar days after the child's reported placement change. and, if so,
    - (c) What IHBS/ICC services were provided;
    - (d) Start and end date of services provided (duration);
    - (e) Intensity of services (measured by amount of time receiving services).
    - (f) Whether the child had Child and Family Team (CFT) meetings and, if so, how frequently.
    - (g) If a child has had a prior placement change included in this reporting, an explanation of what services had been provided to the child and caregiver after that previous placement.
- [Demographic] information for each child, including date of birth, race/ethnicity, gender, DCFS office and total number of moves.

Id.

These special reports would be provided to the "Los Angeles County Board of Supervisors," the "Los Angeles County Commission for Children and Families and the Los Angeles County Mental Health Commission," and "[t]he public, by posting . . . on the DCFS and DMH websites (or the California Department of Social Services website)." *Id.* "The special reports would cover a random sample of 60 children per quarter" where the population from which the sample is drawn would consist of children who experienced a placement change due to "Child's Behavior." *Id.* The special reports would further "indicate what, if any, new measures the County has implemented or intends to implement based upon the findings in the immediately prior quarterly report." *Id.* at 200. The deadline for these reports would be 60 days after the end of the quarter. *Id.*

Third, there would be "one additional special report after six months on a random sample of 60

children" that experienced placement changes attributable to the categories "Other," "Foster Home/Agency Request," "Runaways," "Higher Level of Care Requested," "Incarcerated," and "Committed to State Hospital." *Id.* "This report would only determine the extent to which the Child's Behavior was in fact the underlying cause of the placement changes in these six categories." *Id.* These obligations would go into effect upon final approval of the parties' 2020 Settlement Agreement, at which point this action would end. *Id.* However, this Court would retain authority to enforce the obligation to deliver the reports. *Id.*

The Advisory Panel agrees to much of this proposal, but requests two additional requirements. *First*, the County Defendants' monthly reporting obligations should continue indefinitely. Joint Report at 24. *Second*, with respect to the special reports, they should be submitted monthly, for a two-year period, and should include 100 children sampled from the "Child's Behavior" and "Foster Home/Agency Request" categories. *Id.* at 25.

Although the changes requested by the Advisory Panel might be beneficial, it is only appropriate to evaluate whether the "the relief provided for the class is adequate." Fed. R. Civ. P. 23(e)(2)(C).In light of the obligations agreed upon by the Plaintiffs and County Defendants, the relief provided to the class is adequate. Because *Horne* concludes that courts must "return control to state and local officials as soon as a violation of federal law has been remedied," an indefinite reporting obligation would not be appropriate. *See* 557 U.S. at 450-51. Recently, approximately 90 children per quarter have been encountering a placement change attributed to the child's behavior. Dkt. 1111-3. Sampling 60 of those children at random would provide sufficient information about the adequacy of the services provided to these children. In addition, the special report that would be prepared by the County Defendants would help ensure that placement changes due to the child's behavior are not being incorrectly included in other categories. Nor does it appear that there is a material difference between 18 and 24 months of special reports. If problems are identified, appropriate, remedial action may be recommended, considered and perhaps adopted.

c) The Advisory Panel's Concerns with Respect to the Adequacy of the Notice Provided to Class Members

With respect to the adequacy of the notice provided to the class members, the Advisory Panel objects that the Postcard Notice and Long Form Notice describe the 2020 Settlement Agreement in "glowing" and "effusive" terms. This characterization is not compelling. The Postcard Notice states that "[t]he proposed settlement will help children and youth to get intensive mental health services at home or in their community." Dkt. 1085 at 48. It also states that "[t]he settlement makes reforms to the County's delivery of mental health and child welfare services." *Id.* at 49. It further states that "children can now get Intensive Home-Based Services and planning by a Child & Family Team when needed to improve their mental health and behavior." *Id.* These statements are neutral. It is accurate to say that the 2020 Settlement Agreement provided certain benefits to the class, and it is accurate to say that the increased availability of certain intensive mental health services is among those benefits.

The Long Form Notice makes similar statements. It states that "the County has agreed to make a number of additional reforms to the delivery of mental health services and its child welfare system for the benefit of the Class Members," and it goes on to list some of those reforms. Dkt. 1085 at 56. It adds that "[t]he County will make it easier for Class Members to receive ICC, IHBS and other mental health

services when medically necessary" and lists certain steps that the County Defendants have agreed to take. *Id.* It states that "[t]he County Department of Mental Health . . . and its providers will be required to provide ICC, IHBS and other mental health services as promptly as necessary," "Class Members who have been hospitalized for a psychiatric condition . . . will be automatically referred by the County to DMH or one of DMH's providers for a timely determination of the need for ICC, IHBS and other mental health services," "[t]he DCFS social worker or DMH will identify Class Members who lose their existing placement or are at risk of losing their placement . . . due to their mental health or behavior, and will work with the family/caretaker, the Class Member and providers," and so on. *Id.* This language is fact-based, and is not reasonably construed as a statement that would mislead or confuse class members.

The Advisory Panel argues that the Long Form Notice is misleading because it states that the County Defendants will be required to take certain actions, but the 2020 Settlement Agreement imposes no requirements on the County Defendants after the Expiration Date. However, this was adequately explained to the class members. The Long Form Notice explains that "[a]fter the Expiration Date, the County will not have any obligations under the Settlement Agreement except those that already exist under federal and state law." Dkt. 1085 at 59.

The Advisory Panel next argues that the notice was inadequate because the 2020 Settlement Agreement's Expiration Date was only mentioned on the seventh page of the Long Form Notice. This argument was previously rejected. The Postcard Notice did not have to mention the Expiration Date, because it is a short form notice that adequately balances providing notice of the settlement to class members with the constraints of a postcard. *See In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 567 (9th Cir. 2019) ("As for the short form notice, it was designed to be, as the name suggests, short. . . . This notice was more than adequate.").

The Advisory Panel also objects that the Long Form Notice did not bold and underline the critical language discussing the Expiration Date, which it argues was required by the Preliminary Approval Order. The Preliminary Approval Order determined that the parties' draft Long Form Notice did not adequately explain the Expiration Date. It concluded that "the Long Form Notice shall be revised to include the following bolded and underlined language[.]" Dkt. 1075 at 14. This text was followed by a paragraph in block quotes. *Id.* The portions of that paragraph that were not changed were neither bolded nor underlined. The portions of the paragraph that were affected by the Preliminary Approval Order were bolded and underlined. The Preliminary Approval Order was not entirely clear as to whether the added language was bolded and underlined to make clear what was being added or whether the added language was bolded and underlined so that it would be formatted that way in the final version of the Long Form Notice. However, the former reading comports with the intention of the Order. The Settlement Administrator and the County Defendants did not act in a manner that was inconsistent with the requirements in the Preliminary Approval Order.

B. Fee and Cost Award

1. Legal Standards

Attorney's fees and costs "may be awarded . . . where so authorized by law or the parties' agreement." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). However, "courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the

parties have already agreed to an amount.*"* *Id*. "If fees are unreasonably high, the likelihood is that the defendant obtained an economically beneficial concession with regard to the merits provisions, in the form of lower monetary payments to class members or less injunctive relief for the class than could otherwise have [been] obtained." *Staton*, 327 F.3d at 964. Thus, a district court must "assure itself that the fees awarded in the agreement were not unreasonably high, so as to ensure that the class members' interests were not compromised in favor of those of class counsel." *Id.* at 965.

2. Application

a) Whether Plaintiffs Are Entitled to Attorney's Fees

Plaintiffs are entitled to a fee award on two grounds. *First*, Plaintiffs brought the action "under 42 U.S.C. § 1983 based on violations of the [class members'] rights under the Medicaid Act, 42 U.S.C. § 1396, *et seq.* . . . ." *Katie A., ex rel. Ludin v. Los Angeles Cnty.*, 481 F.3d 1150, 1152 (9th Cir. 2007). "In any action or proceeding to enforce a provision of section . . . 1983 . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." 28 U.S.C. § 1988. The Ninth Circuit has permitted fee awards in section 1983 cases alleging violations of the Medicaid Act. *See, e.g.*, *Dennis v. Chang*, 611 F.2d 1302, 1304 (9th Cir. 1980). Under section 1988, "a prevailing plaintiff 'should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust.'" *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) (citation and internal quotation marks omitted).

Second, Plaintiffs also brought the action "under the Americans with Disabilities Act . . . ." *Katie A., ex rel. Ludin v. Los Angeles Cnty.*, 481 F.3d 1150, 1152 (9th Cir. 2007). Like section 1988, the ADA also allows a fee award to a prevailing party. "In any action . . . commenced pursuant to [the ADA], the court . . . in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs . . . ." 42 U.S.C. § 12205. In light of the similarities between the fee-shifting provision in ADA and section 1983 cases, the Ninth Circuit has held that "a prevailing plaintiff under [the ADA] 'should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust.'" *Barrios v. California Interscholastic Fed'n*, 277 F.3d 1128, 1134 (9th Cir. 2002) (quoting *Hensley*, 461 U.S. at 429).

Plaintiffs are the prevailing parties. "Under applicable Ninth Circuit law, a plaintiff 'prevails' when he or she enters into a legally enforceable settlement agreement against the defendant[s] . . . ." *Barrios*, 277 F.3d at 1134.

Plaintiffs' efforts to monitor the County Defendants' compliance with the 2003 Settlement Agreement and the 2020 Settlement Agreement should not be excluded. The Supreme Court has recognized that, under section 1988, "post-judgment monitoring of a consent decree is a compensable activity for which counsel is entitled to a reasonable fee." *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 559 (1986), *supplemented*, 483 U.S. 711 (1987). Because the ADA's fee-shifting provision is almost identically worded, it is determined that Plaintiffs' post-judgment monitoring efforts were also incurred "in an[] action . . . commenced pursuant to" the ADA. *See* 42 U.S.C. § 12205.[4]

[4] The ADA's fee-shifting provision only refers to "actions" while section 1988 refers to both "actions" and "proceedings." However, this distinction is not a material one. The Supreme Court has recognized that "Congress use[s] the words 'action' and 'proceeding' interchangeably." *Delaware Valley*, 478 U.S. at 559. With respect to the

b) The Amount of the Fee Award

It was previously determined that "there is no evidence that the attorney's fees are not consistent with the extensive work Plaintiffs' counsel has performed in this action." Preliminary Approval Order 10. No new, contrary evidence has been presented.

Because this action has never sought monetary relief, the reasonableness of the fee award cannot be determined using the percentage-of-the-fund method. Instead, it is appropriate to evaluate the reasonableness of the fees requested by using the lodestar method. A court determines the lodestar by multiplying the number of hours reasonably expended on a particular matter by a reasonable hourly rate. *See Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). "Although the district court's calculation of an award need not be done with precision, some indication of how it arrived at its figures and the amount of the award is necessary." *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1211 (9th Cir. 1986).

Plaintiffs argue that the applicable lodestar figure is approximately $2.2 million, which significantly exceeds the $1.4 million fee cap contained in the 2020 Settlement Agreement. Collectively, Plaintiffs' counsel spent approximately 2850 hours on this matter. Those hours are summarized in the following table.

Firm	Attorney	Graduation Year	Hourly Rate	Total Hours	Total
Western Center	Newman	1977	$950	628	$596,600
Western Center	Himmelrich	1983	$920	79.4	$73,048
Western Center	Dozier	2006	$690	190.4	$131,376
Disability Rights	Bird	1978	$950	473.2	$449,540
Disability Rights	Borrelle	2013	$550	165.4	$90,970
National Health Law Program	Lewis	1989	$885	391.6	$346,566
Bazelon Center	Burnim	1977	$950	524.16[5]	$497,952

fee-shifting provision of the Clean Air Act, it was determined that "[t]he lack of the phrase 'or proceedings' on the face of [the statute] is not necessarily indicative of the intended scope of the section." *Id.* Indeed, because "the purposes behind both [the Clean Air Act's fee-shifting provision] and § 1988 are nearly identical . . . they should be interpreted in a similar manner." So too with the ADA's fee-shifting provision. Both statutes were designed to "insure that private citizens have a meaningful opportunity to vindicate their rights . . . ." *Id.*

[5] The Bazelon Center erroneously recorded 577.16 hours for this timekeeper. However, that amount is the total number of hours billed by the Bazelon Center, not just the hours billed by Burnim. Burnim billed 524.16 hours. *See* Dkt. 1084-3 at 14-15, 44.

Bazelon Center	Garrison	2017	$550	35.4	$17,169[6]
Akin Gump	Leader	2001	$1,115	57.8	$64,447
Akin Gump	Marder	1986	$1,175-$1,345	65.3	$76,923.50
Akin Gump	Rabbani	2007	$965	41.2	$39,758
Akin Gump	Tate	2019	$535-$625	162.9	$87,250.50
Total				**2,847.76**	**$2,471,600**
Total After Plaintiffs' Proposed 10% Reduction					**$2,224,440**

(1) Reasonable Hourly Rates

In determining the reasonable hourly rate for an attorney, courts must look to the "rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation." *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008); *see also Jordan v. Multnomah Cnty.*, 815 F.2d 1258, 1262 (9th Cir. 1987) ("The prevailing market rate in the community is indicative of a reasonable hourly rate."). A party seeking attorneys' fees must provide "satisfactory evidence . . . that the requested rates are in line with those prevailing in the community." *Blum v. Stenson*, 465 U.S. 886, 895-96 n.11 (1984). A declaration regarding the prevailing rate in the relevant community is sufficient to establish a reasonable hourly rate. *Widrig v. Apfel*, 140 F.3d 1207, 1209 (9th Cir. 1998). "When a fee applicant fails to meet its burden of establishing the reasonableness of the requested rates, however, the court may exercise its discretion to determine reasonable hourly rates based on its experience and knowledge of prevailing rates in the community." *Bademyan v. Receivable Mgmt. Servs. Corp.*, No. CV 8-519-MMM (RZx), 2009 WL 605789 at *5 (C.D. Cal. Mar. 9, 2009); *see Moreno v. Empire City Subway Co.*, No. Civ. 5-7768- LMM (HBP), 2008 WL 793605, at *7 (S.D.N.Y. Mar. 26, 2008) (stating that if fee applicant "has submitted no evidence of the prevailing market rate for attorneys of like skill . . . it is within [the court's] discretion to determine the reasonable hourly rate . . . based on [the court's] familiarity with . . . prevailing rates in the [relevant community]").

The Akin Gump attorneys charged their standard hourly rates. Marder has been practicing since 1986 and charged between $1175 and $1345 during the relevant period. Leader has been practicing since 2001 and charged $1115 during the relevant period. Rabbani has been practicing since 2007 and charged $965 during the relevant period. Tate has been practicing since 2019 and charged between $535 and $625 during the relevant period.

The other attorneys are not in private practice. However, "'reasonable fees' under § 1988 are to be

[6] The Bazelon Center indicated that this attorney had billed $17,169. This is less than the product of 35.4 hours and $550 hours, which would be $19,470. However, in the interest of conservatism, the Bazelon Center is construed to have "written off" certain of Garrison's hours.

calculated according to the prevailing market rates in the relevant community, regardless of whether plaintiff is represented by private or nonprofit counsel." *Blum*, 465 U.S. 886, 895 (1984). Newman has been practicing since 1977, Bird has been practicing since 1978, and Burnim has been practicing since 1977. Plaintiffs seek an hourly rate of $950 for their services. Himmelrich has been practicing since 1983, and an hourly rate of $920 is claimed. Lewis has been practicing since 1989, and an hourly rate of $885 is claimed. Dozier has been practicing since 2006, and an hourly rate of $690 is claimed. Borrelle and Garrison have been practicing since 2013 and 2017, respectively, and an hourly rate of $550 is claimed for their services.

The rates for the legal services attorneys are determined to be reasonable in light of their experience. Although the Akin Gump attorneys are skilled and experienced, modest reductions to their rates are appropriate in light of the work performed in this matter, which is of a different nature than their work in commercial areas. It is determined that an appropriate rate for Marder is $1175, an appropriate rate for Leader is $1050, an appropriate rate for Rabbani is $900, and an appropriate rate for Tate is $535.

(2) The Number of Hours Reasonably Expended on This Matter

The 2850 hours spent by Plaintiffs' counsel were reasonable. This case is complex. When the County Defendants filed their Rule 60(b)(5) Motion, they had developed a detailed factual record. They filed more than a thousand pages of material in support of the Motion. *See* Dkts. 975-86. Defendants had to review this material and provide a factual and corresponding legal response. Plaintiffs' counsel reviewed more than15,000 pages of documents and deposed three employees of the County Defendants. Dkt. 1084-5 at 6. They also prepared 120 pages of responses to the County Defendants' interrogatories. *Id.* at 8. The parties also had two full-day mediations and 12 other settlement conferences. *Id.* at 8-9. This process took more than a year. When the 2020 Settlement Agreement was reached, discovery was mostly complete.

Plaintiffs have not apportioned their time between the ADA and the Medicaid Act claims. However, apportionment is unnecessary. All the claims addressed in the Rule 60(b)(5) Motion have fee-shifting statutes. Plaintiffs' section 1983 claim is covered by 42 U.S.C. § 1988,[7] the ADA claim is covered by 42 U.S.C. § 12205, and their Rehabilitation Act claim is covered by 29 U.S.C. § 794a(b).

Plaintiffs have addressed potential issues as to inefficient staffing. Plaintiffs' lodestar calculation excludes all the attorneys and paralegals who worked fewer than 30 hours. Dkt. 1084-5 at 17. Plaintiffs' proposed lodestar has also already been reduced by 10% to account for any arguably unproductive or duplicative hours. Dkt. 1084-1 at 21.

After applying the reductions in hourly rates described above, the lodestar calculation is as follows.

Firm	Attorney	Graduation Year	Hourly Rate	Total Hours	Total
Western Center	Newman	1977	$950	628	$596,600
Western Center	Himmelrich	1983	$920	79.4	$73,048

[7] Plaintiffs' claims pertaining to violations of the Medicaid Act and of the Fourteenth Amendment were both brought under section 1983.

Western Center	Dozier	2006	$690	190.4	$131,376
Disability Rights	Bird	1978	$950	473.2	$449,540
Disability Rights	Borrelle	2013	$550	165.4	$90,970
National Health Law Program	Lewis	1989	$885	391.6	$346,566
Bazelon Center	Burnim	1977	$950	524.16	$497,952
Bazelon Center	Garrison	2017	$550	35.4	$17,169
Akin Gump	Leader	2001	$1,050	57.8	$60,690
Akin Gump	Marder	1986	$1,175	65.3	$76,727.50
Akin Gump	Rabbani	2007	$900	41.2	$37,080
Akin Gump	Tate	2019	$535	162.9	$87,151.50
Total				**2,847.76**	**$2,464,870**
Total After Plaintiffs' Proposed 10% Reduction					**$2,218,383**

Although modest further reductions in the hours billed could be appropriate, doing so would not be material. The lodestar would still be substantially greater than $1,400,000. This determination is consistent with a review of the time entries submitted in connection with this matter, and the general descriptions in Plaintiffs' briefing are sufficient given the nature of the legal and factual issues presented. Therefore, it is determined that a fee award of $1,400,000 is reasonable.

c) Plaintiffs' Request for Costs

Plaintiffs also request an award of costs. "Under § 1988, the prevailing party 'may recover as part of the award of attorney's fees those out-of-pocket expenses that 'would normally be charged to a fee paying client.''" *Dang v. Cross*, 422 F.3d 800, 814 (9th Cir. 2005) (quoting *Harris v. Marhoefer,* 24 F.3d 16, 19 (9th Cir.1994)).

Plaintiffs claim they incurred $18,297.67 in costs, which significantly exceeds the $12,095 cap on costs in the 2020 Settlement Agreement. Disability Rights California claims $3554.10 in expenses, of which approximately $3000 is attributable to obtaining deposition transcripts. Dkt. 1084-2 at 27-29. The other $500 is attributable to costs for legal research, shipping and case management software. *Id.* The Bazelon Center incurred $1012.50 in costs due to payments to Kimm Campbell, an expert retained by

the Bazelon Center, $1334.31 in travel costs for meetings with Plaintiffs' other counsel, and $1987.50 for the litigation expenses of the Western Center for Law and Poverty. Dkt. 1084-3 at 15. The National Health Law Program spent $1400 for the services of Human Service Collaborative to review the consent decree. Dkt. 1084-4 at 28. The Western Center on Law and Poverty incurred $29.20 on postage and shipping, $491.16 on copier costs, and $2238.19 on court transcripts, filing and shipping documents, meals and parking at depositions, and court reporter costs. Dkt. 1084-5 at 77-79. Akin Gump claims $6250.71 in costs, which is comprised of $124 in shipping costs, $214 in copying costs, $11.10 in PACER fees, $4121.38 in fees associated with Lexis' Courtlink, and $1780.23 for matters that have not been specified. Dkt. 1084-7 at 16-17.

Certain reductions in the amount requested are warranted. *First*, approximately 50% of the Bazelon Center's costs are attributable to payments made to the Western Center for Law and Poverty, which has also requested an award of costs. There is no showing that there is no overlap between the two requests. *Second*, Akin Gump seeks an award of $1780.23 for costs that have not been identified adequately. *Third*, there has not been an adequate showing that the entire amount of Akin Gump's costs related to Lexis Courtlink are reasonable. Although it was reasonable to track certain dockets, there has been no showing that it was reasonable to spend more than $4000 in doing so. In light of these issues, it is determined that $11,408.56 in costs is a reasonable award.

IV. Conclusion

For the reasons stated in this Order, the 2020 Settlement Agreement is **APPROVED**; provided, however, this approval is based on the adoption of the additional reporting obligations described in the Joint Report. *See* Dkt. 1111-5 at 199-200. Plaintiffs' request for attorney's fees and costs is **GRANTED** in the amount of $1,411,408.56, and the request for an award of costs is **GRANTED** in the amount of $11,408.56.

Within 14 days of the issuance of this Order, the Plaintiffs shall meet and confer with the County Defendants and Advisory Panel and lodge a proposed judgment consistent with this Order. At that time, Plaintiffs shall state whether the County Defendants and Advisory Panel agree to the form of that judgment. If the County Defendants or the Advisory Panel does not agree to the form of the judgment, each party may file a statement not to exceed three pages stating its position about the appropriate form of the judgment.

IT IS SO ORDERED.

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