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19 UNITED STATES DISTRICT COURT

20 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

22 CALIFORNIA COALITION FOR WOMEN  
PRISONERS et al.,

23 Plaintiffs,

24 v.

25 UNITED STATES OF AMERICA FEDERAL  
BUREAU OF PRISONS et al.,

26 Defendants.

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Case No. 4:23-cv-04155-YGR

**PLAINTIFFS’ UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF  
PROPOSED CONSENT DECREE**

Date: December 17, 2024

Time: 2:00 p.m.

Crtrm.: 1, 4th Floor

Judge: Hon. Yvonne Gonzalez Rogers

Trial Date: June 23, 2025

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1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE THAT on December 17, 2024 or as soon thereafter as the  
4 matter may be heard, Plaintiffs CALIFORNIA COALITION FOR WOMEN PRISONERS  
5 (“CCWP”); R.B.; A.H.R.; S.L.; J.L.; J.M.; G.M.; A.S.; and L.T. (“Named Plaintiffs”)  
6 (together, the “Plaintiffs”), by and through Class Counsel (as defined in the Proposed  
7 Consent Decree) will and hereby do move the Court for entry of an Order: (1) granting  
8 preliminary approval of the proposed class settlement agreement (the “Proposed Consent  
9 Decree”) submitted herewith as Exhibit 1 to the Declaration of Kara J. Janssen in support  
10 of this Motion;<sup>1</sup> (2) approving the manner and form of giving notice of the Proposed  
11 Consent Decree to the Class Members;<sup>2</sup> (3) scheduling deadlines for objections; and  
12 (4) scheduling a fairness hearing regarding final approval of the Proposed Consent Decree.

13 In support of this Motion, Plaintiffs state that the Proposed Consent Decree:  
14 (1) represents a comprehensive settlement of the issues raised in this case; (2) offers a fair  
15 and equitable result to those affected by it; and (3) will result in significant long-term  
16 benefits for both the Class Members as well as for Defendants United States of America,  
17 United States of America Federal Bureau of Prisons (“BOP”), BOP Director Colette  
18 Peters, in her official capacity, and FCI Dublin Acting Warden Charles Hubbard, in his  
19 official capacity (collectively “Defendants”).

20 The Motion is based upon this Notice of Motion and Motion; the accompanying  
21 Memorandum of Points and Authorities; the attached Declaration of Kara J. Janssen and  
22 the exhibits attached thereto; all pleadings and papers on file in this action; and any oral  
23 argument this Court permits.

24 Rule 23 of the Federal Rules of Civil Procedure does not require a hearing on a  
25 motion seeking preliminary approval of a class action settlement. Plaintiffs and  
26

27 <sup>1</sup> All “Ex.” references herein are to the Declaration of Kara Janssen.

28 <sup>2</sup> As used herein, “Class Members” refers to all people who were incarcerated at FCI  
Dublin between March 15, 2024 and May 1, 2024, and all named Plaintiffs. Ex. 1, ¶ 11.

1 Defendants (collectively the “Parties”) agree to forego a hearing unless the Court  
2 concludes that a hearing is necessary.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

The Proposed Consent Decree provides injunctive relief to the certified class of individuals who were formerly incarcerated at FCI Dublin and subject to FCI Dublin's and Defendant Bureau of Prisons' uniform policies, customs, and practices. The Proposed Consent Decree requires the BOP to implement certain measures to safeguard the rights of Class Members incarcerated at BOP facilities nationwide for a term of two years following the Court's final approval. The Proposed Consent Decree is fair, adequate, and reasonable, and is the product of serious, informed, and non-collusive negotiations between experienced and knowledgeable counsel, Class Representatives, and BOP officials. It satisfies all criteria for preliminary approval under Rule 23 of the Federal Rules of Civil Procedure. Additionally, the Parties' Proposed Notice and schedule for a fairness hearing will allow Class Members an adequate opportunity to review and comment on the Proposed Consent Decree and is consistent with the Parties' desire for prompt implementation of the Proposed Consent Decree.

Accordingly, Plaintiffs respectfully request that the Court (1) grant preliminary approval of the Proposed Consent Decree; (2) approve and direct the distribution of the Proposed Notice; and (3) adopt the schedule proposed herein for Class Member objections, filing of Motions for Attorneys' Fees and Costs and for Final Approval, and for hearing the motions and addressing objections detailed herein.

**II. CASE BACKGROUND**

**A. The Court Enters A Preliminary Injunction And Certifies The Class.**

The disturbing history of sexual assault, retaliation, and unconstitutional conditions at FCI Dublin has been well documented, including by this Court.<sup>3</sup> In August 2023, the

<sup>3</sup> See, e.g., ECF No. 222 (order on preliminary injunction); *United States v. Garcia*, No. 4:21-cr-00429-YGR (N.D. Cal.); *United States v. Highhouse*, No. 4:22-cr-00016-HGS (N.D. Cal.); *United States v. Chavez*, No. 4:22-cr-00104-YGR-1 (N.D. Cal.); *United States v. Klinger*, No. 4:22-cr-00031-YGR (N.D. Cal.); *United States v. Bellhouse*, No. 4:22-cr-00066-YGR (N.D. Cal.); *United States v. Smith*, No. 4:23-cr-00110-YGR-1 (charges

1 California Coalition for Women Prisoners (“CCWP”) and eight individual incarcerated  
2 people brought this action and simultaneously moved for class certification and a  
3 preliminary injunction to remedy these unconstitutional conditions. ECF Nos. 1, 10, 11.

4 The Court held an evidentiary hearing on the motions from January 3-9, 2024 and  
5 heard extensive testimony regarding the ongoing risks and occurrences of sexual assault,  
6 retaliation, and lack of access to basic human needs at FCI Dublin, such as medical care,  
7 mental health care, and sanitation.

8 On January 24, 2024, five FCI Dublin officials were placed on administrative leave,  
9 including a captain who testified on behalf of BOP at the evidentiary hearing weeks  
10 earlier. On February 14, 2024, Judge Gonzales Rogers toured FCI Dublin and the adjacent  
11 satellite camp and spoke to staff and incarcerated individuals. On March 11, 2024, the FBI  
12 executed a search warrant at FCI Dublin and walked off members of the new leadership  
13 team, including the latest Warden, the Assistant Warden, and the Executive Assistant who  
14 testified before the Court during the January evidentiary hearing. ECF No. 222 at 14.

15 On March 15, 2024, this Court issued an Order Granting the Motion for Class  
16 Certification and Granting and Denying in Part the Motion for Preliminary Injunction.  
17 ECF No. 222. The Court found that “because of its inability to promptly investigate the  
18 allegations that remain, and the ongoing retaliation against incarcerated persons who report  
19 misconduct, BOP has lost the ability to manage with integrity and trust.” *Id.* at 7. The  
20 Court further found that even under the “new leadership,” incarcerated people faced staff  
21 retaliation “for making any kind of report, whether for malfeasance like sexual abuse or  
22 the enforcement of their rights, such as filing a medical complaint.” *Id.* at 9. “[T]he Court  
23 f[ound] that BOP’s response to the crisis unfolding at FCI Dublin demonstrates that it has  
24 been, and is, deliberately indifferent to plaintiffs’ risk of abuse.” *Id.* at 26. The Court  
25 based this finding on repeated failures to appoint leadership “capable of understanding and  
26 responding to the gravity of the situation,” failure to reform the investigative process for

27 \_\_\_\_\_  
28 pending); *United States v. Nunley*, No. 4:23-cr-00213-HSG (N.D. Cal.); *United States v. Jones*, No. 4:23-cr-00212-HSG (N.D. Cal.).

1 sexual assault allegations to ensure independent investigations, and failure to institute zero  
2 tolerance of staff abuse by allowing abusive officers to remain on the job. *Id.* at 26-28.

3 The Court also found that medical and mental health services were inadequate to  
4 address the serious needs of a population with a history of trauma and that BOP was  
5 deliberately indifferent to the resulting risks of serious harm. *Id.* at 29-35.

6 The Court found that incarcerated persons faced retaliation for reporting sexual  
7 abuse or even for complaining about things that staff interpreted as a sexual abuse  
8 complaint. The evidence provided by Plaintiffs demonstrated that one common form of  
9 retaliation was placement in the Special Housing Unit (SHU). Defendant officials  
10 contended that they were simply applying BOP nationwide policies on SHU placement  
11 neutrally and that they needed to use the SHU to deter false allegations against staff. The  
12 Court rejected these contentions. *Id.* at 36-42.

13 The Court further certified a class of “all people who are now, or will be in the  
14 future, incarcerated at FCI Dublin and subject to FCI Dublin’s uniform policies, customs,  
15 and practices concerning sexual assault, including those policies, customs, and practices  
16 related to care in the aftermath of an assault and protection from retaliation for reporting an  
17 assault.” *Id.* at 14, 20.

18 The Court announced that it would appoint a Special Master to be onsite at FCI  
19 Dublin. *Id.* at 44. After a several-week process of party-nominations and Court  
20 interviews, the Court selected a longtime former correctional official, Wendy Still, as  
21 Special Master. ECF No. 248.

22 **B. The Litigation Continues Following FCI Dublin’s Closure And Class**  
23 **Members’ Transfer To BOP Facilities Nationwide.**

24 Ms. Still began her on-site presence at FCI Dublin on Monday, April 8, 2024. Four  
25 days later, on April 12, 2024, the BOP informed the Court in a sealed filing that it would  
26 close FCI Dublin. ECF No. 251. As BOP rushed to close the facility and move Class  
27 Members to other facilities nationwide, Class Members reported horrific conditions of  
28 their transfer including physical and psychological abuse, medical neglect, rampant loss of



1 property, and denial of basic necessities for hours and days during transport.

2 On May 8, 2024, the Court issued an Order re Closure of FCI Dublin & Preliminary  
3 Injunction (ECF No. 300) detailing the impacts of the “ill-conceived” closure on the Class  
4 Members’ welfare, the steps taken to attempt to mitigate those impacts by the Court and  
5 Special Master, and additional steps necessary to further protect the class members in the  
6 months leading up to trial. As the Court’s May 8 Order noted, “the BOP cannot hide from  
7 or escape its obligations merely by closing FCI Dublin.” ECF No. 300 at 13.

8 On June 18, 2024, Defendants moved to dismiss this case, arguing that it  
9 “recognized that FCI Dublin was in ‘dire need of immediate change,’” “determined that it  
10 needed to close FCI Dublin and transfer all female adults in custody (AICs) to other  
11 facilities,” and that FCI Dublin’s closure mooted the case. ECF No. 326 at 2. The Court  
12 denied Defendants’ motion to dismiss, holding that “[t]he notion that the constitutional  
13 injuries alleged by FCI Dublin’s AICs were comprehensively remedied by the facility’s  
14 closure strains credulity. Redressable injuries stemming from the AICs’ experiences at  
15 FCI Dublin remain to be addressed, and the BOP is well aware of this fact.” ECF No. 385  
16 at 1.

17 In the months since the closure and mass transfers, Ms. Still has continued to  
18 monitor Class Members’ treatment and wellbeing, providing regular updates to the Court  
19 and Parties. Ms. Still works with BOP and Class Counsel to track Class Members’  
20 concerns, including medical and mental health needs, early release credits and  
21 designations, compassionate release requests, and PREA reports and advocacy services.  
22 Class Members and Class Counsel have continued to report concerns about staff abuse and  
23 retaliation, unmet medical needs, case work, and other critical areas to Ms. Still and her  
24 team.

25 Ms. Still also authored a Special Master Report, issued on June 5, 2024, detailing  
26 her findings and recommendations after her time at FCI Dublin. ECF No. 339-3 (Wendy  
27 Still, First Report of the Special Master Pursuant to the Court’s Order of March 26, 2024  
28 (2024)). The Report “found numerous operational, policy and constitutional violations,”

1 including “the failure of Central Office and Regional Office management to correct  
2 significant and longstanding deficiencies that had previously been identified in multiple  
3 audits and investigations,” which “put the health, safety and liberty of AICs at great risk  
4 for many years.” Still concluded that “[i]t is unconscionable that any correctional agency  
5 could allow incarcerated individuals under their control and responsibility to be subject to  
6 the conditions that existed at FCI-Dublin for such an extended period of time without  
7 correction,” and noted “concerns that the mistreatment, neglect and abuse the AICs  
8 received at FCI-Dublin not be repeated at the facilities where these individuals are being  
9 transferred to as many of the conditions that existed at this facility appear to be  
10 longstanding and systemic in nature.” *Id.* at 13.

11 On May 24, 2024, the Court referred the parties to Magistrate Judge Joseph C.  
12 Spero for settlement discussions (ECF No. 310). Following an exchange of initial  
13 proposals in August 2024, the Parties began regularly meeting with Magistrate Judge  
14 Spero to negotiate a potential settlement of this matter. After dozens of hours with  
15 Magistrate Judge Spero, spanning seven settlement conferences including two sessions  
16 with representatives from CCWP and almost all of the Named Plaintiffs, plus dozens of  
17 hours of private negotiations between the Parties, the Parties have agreed to the Proposed  
18 Consent Decree (Ex. 1).

### 19 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

20 The Proposed Consent Decree is attached hereto as Exhibit 1 to the Declaration of  
21 Kara Janssen. The Proposed Consent Decree will not affect any other pending cases  
22 because it resolves only claims for injunctive relief, none of which are raised in the other  
23 related cases.

24 The Proposed Consent Decree details measures that Defendants have agreed to  
25 implement to resolve claims for injunctive relief raised in this action and does not address  
26 or otherwise resolve any individual claims for monetary relief. The Proposed Consent  
27 Decree does not affect any Class Members’ right or ability to seek money damages  
28 through other means. Janssen Decl., Ex. 1, ¶ 3.

1 The Proposed Consent Decree requires the Defendants to implement the following  
2 measures for Class Members for a term of two years, unless the BOP moves for and the  
3 Court grants termination based on substantial compliance no earlier than 18 months  
4 following final approval by the Court (Ex. 1, ¶ 32):<sup>4</sup>

5 ***Public Acknowledgment of Abuse***

6 a) The BOP Director will issue a formal, public acknowledgement to victims of  
7 staff sexual abuse at FCI Dublin. Ex. 1, ¶ 88.

8 ***Appointment of Monitor and BOP Liaison***

9 b) The Court will appoint Wendy Still as a “Monitor” to implement the  
10 Proposed Consent Decree. If Ms. Still is not available, the Proposed Consent Decree  
11 provides procedures for the selection of another Monitor. The Monitor will be permitted a  
12 reasonable number of staff to assist the Monitor, and the BOP shall pay the fees and costs  
13 incurred by the Monitor and staff.

14 c) The Monitor will have access to Class Members, including the ability to  
15 schedule confidential phone calls and conduct in-person interviews. Class Members will  
16 be able to communicate confidentially with the Monitor. The BOP will provide Class  
17 Members with access to confidential two-way email communication with the Monitor, and  
18 BOP staff will not open outgoing mail from Class Members to the Monitor. *Id.* Ex. 1,  
19 ¶¶ 78-79. The Monitor will also have access to BOP facilities and BOP documents related  
20 to Class Members and the terms of the Proposed Consent Decree and the ability to inspect  
21 BOP facilities and interview BOP staff. Class Counsel and BOP Counsel will be permitted  
22 to communicate *ex parte* with the Monitor. Ex. 1, ¶¶ 90-92, 94-97.

23 d) The BOP will establish a “BOP Liaison” who is “an employee from BOP’s  
24

25 <sup>4</sup> This summary of the Proposed Consent Decree is intended only as a summary of key  
26 terms of the Proposed Consent Decree and does not amend or alter the terms, provisions,  
27 and obligations of the Proposed Consent Decree. This summary does not detail every  
28 individual term, provision, or obligation of the Proposed Consent Decree. In the event of  
any inconsistencies between the terms, provisions, and obligations of the Proposed  
Consent Decree and the summary set forth herein, the Proposed Consent Decree shall  
govern.

1 Central Office who is a direct report to the BOP's Deputy Director who is designated to  
2 and whose sole duties are to facilitate BOP's compliance with the terms of this Consent  
3 Decree." Jennifer Knox, Women and Special Populations National Policy and Program  
4 Coordinator, will be appointed as the BOP Liaison. Ex. 1, ¶¶ 10, 114.

5 ***Monitor's Public Reports***

6 e) The Monitor will issue public monthly and quarterly reports on the treatment  
7 and conditions of Class Members. Ex. 1, ¶¶ 98-100.

8 f) The Monitor will review and report on concerns related to Class Member's  
9 treatment and conditions at FCI Dublin, including: outstanding medical and/or mental  
10 healthcare needs, PREA reports and advocacy services, compassionate release requests,  
11 release dates and application of Federal Time Credits (FTCs), FCI Dublin disciplinary  
12 incidents and impacts on early release credits and security and recidivism classifications  
13 and property claims and reports of mistreatment during transport from FCI Dublin. Ex. 1,  
14 ¶¶ 8, 42-43

15 g) The Monitor will review and report on the capacity of all facilities where  
16 class members are designated, including the medical and mental healthcare staffing levels  
17 and wait times for outside provider care. Ex. 1, ¶¶ 37, 36.

18 h) The Monitor will review and report on all reports of staff abuse or retaliation  
19 against all Class Members. The Monitor will also review and report on all SHU  
20 placements of all Class Members. Ex. 1, ¶ 50.

21 i) The Monitor will review and report on Class Members' designations,  
22 including whether Class Members are designated to facilities with adequate programming  
23 and educational and vocational opportunities. The Monitor will also review and report on  
24 Class Members' release dates, Federal Time Credits ("FTCs"), and eligibility for release to  
25 community placements (*i.e.* home confinement or Residential Reentry Centers), and any  
26 issues receiving or applying credits, or being released when eligible. Ex. 1, ¶¶ 68, 71. The  
27 Monitor will review and report on compassionate release requests submitted by Class  
28 Members. Ex. 1, ¶ 77.

1 j) The Monitor will also review and report on the protections afforded by the  
2 Proposed Consent Decree, including access to confidential communication between Class  
3 Members and the Monitor and Class Counsel, access to medical care in Class Members’  
4 primary language, access to Rape Crises Centers. Ex. 1, ¶¶ 38, ¶ 39, 83.

5 ***BOP’s Obligations as to Class Member Case Work, Access to Care and Services,  
6 and SHU Placements***

7 k) **Class Member Designations:** BOP will (subject to bed availability,  
8 designation, and individual Class Member needs) house each Class Member “in a facility  
9 as close as practicable to the Class Member’s primary residence, and to the extent  
10 practicable, in a facility within 500 driving miles of that residence” and “in the lowest  
11 security level facility possible.” No Class Member with longer than nine months  
12 remaining on their sentence will be housed in an Administrative Detention Facility  
13 (pretrial detention center) for any period longer than six months or at a Federal Transfer  
14 Center for any period longer than one month. Time housed at FCI Dublin or at  
15 Administrative Detention Facilities following transfer from FCI Dublin will count towards  
16 the 18-month waiting period to apply for transfer to a new facility.

17 l) **Release to Community Placement (Halfway House or Home  
18 Confinement):** BOP will release to community placement any Class Member eligible for  
19 community placement under the First Step Act or the Second Chance Act “as soon as  
20 practicable after the Class Member becomes eligible.” BOP will not deny FTCs or release  
21 to community placement under the FSA to any Class Member on the basis of immigration  
22 status or the existence of a detainer alone. Ex. 1, ¶¶ 69-70, 72.

23 m) **FCI Dublin Disciplinary Review:** The BOP will review all disciplinary  
24 incident reports issued to Class Members at FCI Dublin between January 1, 2020, and  
25 May 1, 2024, and will expunge all disciplinary reports that are found to contain due  
26 process, evidentiary, or other procedural violations and adjust Class Members’ security  
27 and recidivism classifications, FTCs, and release dates accordingly. The Monitor will  
28 review and report on this process, including the reclassification of Class Members’

1 security and recidivism designations and release dates. Ex. 1, ¶¶ 75-76.

2 n) **Credit Loss from Dublin Transfers:** The BOP will ensure that no Class  
3 Member lost FTCs or was placed in a “non-earning status” of FTCs due to transfer from  
4 FCI Dublin, including in transit, while housed at a Federal Transfer Center, or while  
5 designated to an Administrative Detention Center after the Dublin closure. Ex. 1, ¶¶ 73-74.  
6 The Monitor will review reports of lost credits due to transfer and recommend corrective  
7 action.

8 o) **Property Claims from Dublin Transfers:** Class Members may file claims  
9 for monetary damages for property lost or damaged as a result of the Dublin transfers. The  
10 BOP shall provide, by July 1, 2025, a final decision on all claims for money damages due  
11 to property loss related to the closure of FCI Dublin that were submitted by December 1,  
12 2024. The Proposed Consent Decree provides procedures for Class Members to submit  
13 reconsideration requests related to these claims. Ex. 1, ¶¶ 84-86. The Monitor will review  
14 and report on such property claims.

15 p) **Medical and Mental Healthcare:** Upon request, BOP will (consistent with  
16 security) communicate with Class Members regarding the status of the request or referral  
17 for outside medical care, including the estimated wait time. BOP will provide medical and  
18 mental health care to Class Members in their primary language to the extent feasible,  
19 including through confidential interpretation, and incarcerated persons will not be used as  
20 translators for Spanish except in emergency situations.

21 q) **Crisis Counseling:** BOP will provide access to Rape Crisis Centers to all  
22 Class Members who request it, including, at a minimum, access to confidential  
23 unmonitored calls that will not count against the Class Member’s phone minutes and  
24 confidential in-person visits in the Class Member’s primary language.

25 r) **SHU Placements:** The Proposed Consent Decree includes restrictions and  
26 guidelines for placements of Class Member in SHU (segregated housing):

- 27 • Within 24 hours of a Class Member’s placement in SHU, the Class Member  
28 and Monitor will be provided with a copy of the Administrative Detention

1 Order, including an articulated specific reason for placement in SHU. Ex. 1,  
2 ¶ 44.

- 3 • All Class Members in SHU shall be provided with administrative remedy  
4 forms, confidential two-way communication with the Monitor, and  
5 confidential legal calls with Class Counsel,. Ex. 1, ¶¶ 45, 47-48.
- 6 • Class Members placed in SHU on Administrative Detention Status (non-  
7 punitive status) will be provided: additional phone calls to be presumptively  
8 approved up to 1.5 hours per week in one session plus one additional phone  
9 call per week; access to open general correspondence and visitation in  
10 accordance with the same rules and regulations that apply to general  
11 population; opportunity to exercise outside their quarters at least 7 hours per  
12 week; access to programming activities; reasonable amount of personal  
13 property; and the ability to purchase and receive items from the commissary  
14 with the same frequency as the general population. Ex. 1, ¶ 46. The Proposed  
15 Consent Decree outlines specific processes for Class Members to submit  
16 complaints related to the denial of these SHU privileges, and for the Monitor  
17 to review and make recommendations on BOP's compliance. Ex. 1, ¶ 51.
- 18 • Class Members shall not be placed in SHU pending disciplinary review  
19 solely for Low (400 series) or Moderate (300 series) Severity Levels  
20 disciplinary shots.
- 21 • When a Class Member is placed in SHU for alleged disciplinary violations,  
22 BOP will provide the Class Member, Class Counsel, and the Monitor a copy  
23 of the underlying incident report within 24 hours. The Class Member will be  
24 provided a Unit Disciplinary Committee (UDC) hearing within 5 workdays,  
25 and if referred, a Disciplinary Hearing Officer (DHO) hearing within 10  
26 workdays. BOP will provide the Class Member, Class Counsel, and the  
27 Monitor with all documentation related to the UDC and DHO hearings  
28 within 24 hours.



- 1 • The Proposed Consent Decree outlines specific processes for review of SHU  
2 placements, including the involvement of the Monitor and Class Counsel.  
3 Ex. 1, ¶¶ 52-57.

4 ***Processes For Reporting Retaliation and Abuse***

5 s) Class Members may report allegations of staff physical or sexual abuse to the  
6 Monitor, to DOJ OIG, or to BOP OIA. The Monitor will review and report on allegations  
7 of staff physical and sexual abuse of Class Members, including “an assessment of BOP’s  
8 responses to reports of staff physical and sexual abuse towards Class Members and  
9 recommendations for corrective action, including changes to designations, changes to  
10 housing and job placements, provision of medical and/or mental health treatment, and  
11 other measures necessary to protect Class Members.” The Monitor will report on the  
12 status of PREA reports made by Class members regarding abuse that took place at FCI  
13 Dublin and reports on injuries and mistreatment suffered by Class Members during  
14 transport between BOP facilities. Ex. 1, ¶¶ 62-63, 65-67.

15 t) Class Members may report allegations of staff retaliation directly to the  
16 Monitor, to DOJ OIG, or to BOP OIA. The Monitor will review and report on allegations  
17 of retaliation, including any disciplinary action imposed on Class Members after reporting  
18 staff misconduct, and recommend that BOP take corrective action. Ex. 1, ¶¶ 58-61.

19 u) “Upon request, BOP shall provide Class Members who report staff abuse  
20 with documentation of their report and a written final determination. BOP shall also  
21 inform the Class Member whenever: the staff member is no longer posted within the Class  
22 Member’s unit; the staff member is no longer employed at the facility; the agency learns  
23 that the staff member has been indicted on a charge related to sexual abuse at a BOP  
24 facility; or the agency learns that the staff member has been convicted on a charge related  
25 to sexual abuse at a BOP facility. Following the filing of a PREA report, BOP shall  
26 provide the Class Member with requisite follow up medical and psychological evaluations  
27 and care, and information about how to contact a Rape Crisis Center.” Ex. 1, ¶ 63.

28



1 *Access to Counsel*

2 v) The BOP shall provide Class Members with confidential access to Class  
3 Counsel. Ex. 1, ¶¶ 80-82, 101-105. Class Members will have the opportunity to make a  
4 free, confidential legal call to Class Counsel at least once per week. In addition, a phone  
5 number for Class Counsel will be added to all Class Members’ Trust Fund accounts, and  
6 Class Members will be able to make collect calls to Class Counsel regardless of  
7 restrictions on phone access. BOP will provide Class Counsel with ongoing and timely  
8 access to Class Members, including confidential legal calls within 72 hours’ notice and  
9 confidential legal visits within 10 days’ notice.

10 \* \* \* \* \*

11 The Proposed Consent Decree also provides that the “BOP shall pay Class  
12 Counsels’ reasonable attorneys’ fees and costs, subject to applicable limitations in terms of  
13 eligibility and amount” and that “BOP shall also pay Class Counsel ‘Monitoring fees’ for  
14 their reasonable time and reasonable expenses related to monitoring this Consent Decree.”  
15 Ex. 1, ¶ 110. The Proposed Consent decree does not provide for any specific fees and  
16 costs award, but rather sets forth an adversarial process for negotiating and, if necessary,  
17 litigating fees and costs.

18 **IV. ARGUMENT**

19 **A. The Class Certification Requirements Of Rule 23 Continue To Be**  
20 **Satisfied.**

21 On March 15, 2024, the Court found that the requirements of Fed. R. Civ. P.  
22 23(b)(2) had been satisfied and certified a class of “all people who are now, or will be in  
23 the future, incarcerated at FCI Dublin and subject to FCI Dublin’s uniform policies,  
24 customs, and practices concerning sexual assault, including those policies, customs, and  
25 practices related to care in the aftermath of an assault and protection from retaliation for  
26 reporting an assault.” ECF No. 222 at 14, 20.

27 Because FCI Dublin has been closed, the Parties have agreed to modify the class  
28 definition as follows: “all people who were incarcerated at FCI Dublin between March 15,

1 2024 and May 1, 2024, and all named Plaintiffs.” This class definition is more appropriate  
2 because it is these individuals who were transferred away from FCI Dublin as part of the  
3 closure and to whom the Court and Ms. Still’s work has been directed following FCI  
4 Dublin’s closure. The members of this class continue to meet the requirements of  
5 numerosity, commonality, typicality, and adequacy of representation pursuant to Fed. R.  
6 Civ. P. 23(a), as previously found by the Court. The Parties request that the Court approve  
7 the revised class definition.

8 **B. The Proposed Consent Decree Is Fair, Reasonable, And Should Be**  
9 **Granted Preliminary Approval.**

10 Federal Rule of Civil Procedure 23(e) conditions the settlement of any class action  
11 on court approval. *Frank v. Gaos*, 586 U.S. 485, 492 (2019). The Ninth Circuit recog-  
12 nizes the “overriding public interest in settling and quieting litigation ... particularly ... in  
13 class action suits ....” *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976);  
14 *see also Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (There is a  
15 “strong judicial policy that favors settlements, particularly where complex class action  
16 litigation is concerned.”); *In re Hyundai & Kia Econ. Litig.*, 926 F.3d 539, 556 (9th Cir.  
17 2019) (same). A court may probe the parties’ consensual agreement only “to ensure that it  
18 is ‘fair, adequate, and free from collusion.’” *Lane v. Facebook, Inc.*, 696 F.3d 811, 819  
19 (9th Cir. 2012) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998));  
20 *see* Fed. R. Civ. P. 23(e)(2) (the court may approve settlement “only after a hearing and on  
21 finding that it is fair, reasonable, and adequate”). District courts have “broad discretion”  
22 over settlement approval. *See Lane*, 696 F.3d at 818.

23 At the preliminary approval stage, the Court need only find that the proposed  
24 settlement is within the range of reasonableness such that it is appropriate to disseminate  
25 notice to the class and schedule a fairness hearing. *See In re Celera Corp. Sec. Litig.*, No.  
26 5:10-cv-02604-EJD, 2015 WL 1482303, at \*3 (N.D. Cal. Mar. 31, 2015); *see also* William  
27 B. Rubenstein, *Newberg on Class Actions*, § 13.15 (5th ed. 2016) (“Newberg”). “At this  
28 point, the court’s role is to determine whether the settlement terms fall within a reasonable

1 range of possible settlements, with ‘proper deference to the private consensual decision of  
2 the parties’ to reach an agreement rather than to continue litigating.” *Toolajian v. Air*  
3 *Methods Corp.*, No. 18-cv-06722-AGT, 2020 WL 8674094, at \*7 (N.D. Cal. Apr. 24,  
4 2020) (quoting *In re Google Referrer Header Privacy Litig.*, No. 5:10-CV-04809 EJD,  
5 2014 WL 1266091, at \*6 (N.D. Cal. Mar. 26, 2014)).

6 To determine whether an agreement is fundamentally fair, adequate, and  
7 reasonable, the Court may preview the factors that ultimately inform final approval:  
8 (1) the strength of plaintiff’s case; (2) the risk, expense, complexity, and likely duration of  
9 further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the  
10 amount offered in settlement; (5) the extent of discovery completed, and the stage of the  
11 proceedings; (6) the experience and views of counsel; (7) the presence of a governmental  
12 participant; and (8) the reaction of the class members to the proposed settlement. *See*  
13 *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1121 (9th Cir. 2020). Courts have found an  
14 absence of collusion when settlement negotiations are conducted by a third-party mediator.  
15 *See In re Hyundai & Kia Econ. Litig.*, 926 F.3d at 569; *The Civil Rights Educ. & Enf’t Ctr.*  
16 *v. RLJ Lodging Tr*, No. 15–cv–0224–YGR, 2016 WL 314400, at \*11 (N.D. Cal. Jan. 25,  
17 2016).

18 Thus, at this stage, so long as the settlement falls into the range of possible  
19 approval—giving deference to the result of the parties’ arms-length negotiations and the  
20 judgment of experienced counsel following sufficient investigation—the settlement should  
21 be preliminarily approved.

22 Here, the Proposed Consent Decree is fundamentally fair, adequate, and reasonable.  
23 The Plaintiffs reached the Proposed Consent Decree with the Defendants following seven  
24 settlement conferences amounting to dozens of hours of formal mediation with Magistrate  
25 Judge Joseph C. Spero in addition to dozens of hours of private negotiations between  
26 counsel. Representatives from CCWP and a majority of Named Plaintiffs also participated  
27 in two full days of formal mediation, provided input throughout, and ultimately approved  
28 the Proposed Consent Decree. As the Court has already found, Class Counsel collectively

1 have extensive expertise in complex civil litigation, in class action cases, and in litigation  
2 regarding the rights of incarcerated persons. *See* ECF No. 222 at 18. They have  
3 investigated the factual and legal issues raised in this action, vigorously litigated the  
4 matter, including obtaining a preliminary injunction, and diligently negotiated the  
5 Proposed Consent Decree. Class Counsel have considered the complexity of this action,  
6 the length of time until trial, and the risks inherent in litigation and believe that the  
7 Proposed Consent Decree is an acceptable alternative to trial. Janssen Decl., ¶ 4. Counsel  
8 on both sides view this agreement as a successful compromise that will afford significant  
9 benefits to the Class Members. Thus, the fact that qualified, well-informed counsel  
10 endorse the Proposed Consent Decree as being fair, reasonable, and adequate weighs in  
11 favor of preliminary approval. That the Parties negotiated the Proposed Consent Decree  
12 for the benefit of the Class Members, while leaving determination of claims for attorney's  
13 fees and costs for later negotiation, further demonstrates the absence of any collusion.

14 **C. The Consent Decree Does Not Provide for Any Particular Amount of**  
15 **Attorneys' Fees, But Provides for Litigation of any Claim for Attorneys'**  
16 **Fees and Expenses**

17 It is the practice of class counsel in injunctive cases such as this one to defer any  
18 specific discussion of attorneys' fees and expenses until after prospective relief has been  
19 secured for the class. The Parties have therefore reached no agreement regarding any  
20 specific amount of attorneys' fees and expenses to be recovered. Class counsel has agreed  
21 to bear the risk of litigating the amount of fees and expenses recoverable, with no  
22 guarantee of receiving any specific amount. Instead, fees and costs are to be addressed  
23 through an adversarial process.

24 The Proposed Consent Decree instead provides the following process for resolving  
25 attorneys' fees and costs:

26 The Parties agree that the entry of this Consent Decree is a court-ordered  
27 change in the legal relationship between the Parties for purposes of  
28 determining eligibility for attorneys' fees and costs. BOP shall pay Class  
Counsel's reasonable attorneys' fees and costs, subject to applicable  
limitations in terms of eligibility and amount. The Parties shall engage in  
good faith efforts to resolve Class Counsel's claim for reasonable attorneys'  
fees and costs, including production of billing records, before resorting to the

1 Dispute Resolution Process. BOP shall also pay Class Counsel “Monitoring  
2 fees” for their reasonable time and reasonable expenses related to monitoring  
3 this Consent Decree, subject to applicable limitations in terms of eligibility  
and amount.

4 Janssen Decl., Ex. 1, Consent Decree at ¶ 110. The schedule at the end of this  
5 motion provides a deadline to move for attorney’s fees or to move for approval of any fees  
6 agreement.

7 **D. The Proposed Notice Satisfies Due Process And Should Be Approved.**

8 Notice provided under Fed. R. Civ. P. 23(e) must “generally describe[ ] the terms of  
9 the settlement in sufficient detail to alert those with adverse viewpoints to investigate and  
10 to come forward and be heard.” *In re Hyundai & Kia Econ. Litig.*, 926 F.3d at 567  
11 (quoting *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 962 (9th Cir. 2009)).

12 The notice standard is satisfied here. First, the proposed notice informs the Class  
13 Members of the relevant aspects of the litigation and the settlement, including: (i) a brief  
14 statement of this action, the settlement embodied, and the claims released by the class;  
15 (ii) the date and time of the hearing on final approval; (iii) the deadline and process for  
16 submitting objections to the Proposed Consent Decree; and (iv) a copy of the Proposed  
17 Consent Decree. *See* Janssen Decl. ¶¶ 2-3, Ex. 1 (Proposed Consent Decree), Ex. 2  
18 (Proposed Notice).

19 Additionally, the Parties have agreed to the following distribution plan: Within two  
20 (2) business days following the Court’s grant of Preliminary Approval, the BOP will  
21 deliver the Proposed Notice and a copy of the Proposed Consent Decree to every Class  
22 Member, including in English, Spanish, or other languages required by Class Members.

23 The proposed form of notice and the proposed distribution plan will fairly apprise  
24 Class Members of the settlement and their options with respect thereto. The Court should  
25 approve the proposed notice and direct that it be distributed.

26 **E. The Court Should Approve The Proposed Scheduling Order, Including**  
27 **Setting A Date For The Fairness Hearing.**

28 Once a court grants preliminary approval and notice is provided, the court conducts

1 a “fairness hearing” at which all interested parties have an opportunity to be heard. At  
 2 such a hearing, the court conducts a substantive evaluation of the proposed settlement to  
 3 determine whether it is “fundamentally fair, adequate, and reasonable.” *Officers for*  
 4 *Justice v. Civil Serv. Comm’n of City & Cnty. of San Francisco*, 688 F.2d 615, 625 (9th  
 5 Cir. 1982); *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal. 2016).

6 The Parties propose the following schedule:

Event	Date
Defendants to provide notice to the appropriate officials as required by the Class Action Fairness Act (CAFA) 28 U.S.C. § 1715(b)	Within 10 days of the filing of Preliminary Approval.
BOP to distribute the Proposed Notice and Consent Decree to all Class Members	Within two (2) business days after entry of order granting Preliminary Approval.
Deadline for objections by Class Members	January 31, 2025
Deadline for filing of Motion for Final Approval, Plaintiffs Motion for Attorneys’ Fees and Costs and for filing of responses to any timely-filed Class Member Objections	February 7, 2025
Hearing on Motion for Final Approval	February 25, 2025

### 18 CONCLUSION

19 For the foregoing reasons, Plaintiffs respectfully request that this Court: (1) grant  
 20 preliminary approval of the Proposed Consent Decree; (2) approve and direct the  
 21 distribution of the Proposed Notice; and (3) adopt the schedule proposed herein for Class  
 22 Member objections, filing of the Motion for Final Approval, and for hearing the motions  
 23 and addressing objections. Defendants have reviewed this motion and do not oppose  
 24 Plaintiffs’ requests.

25 Pursuant to Local Rule 5-1(i)(3) concurrence in the filing of this document has been  
 26 obtained from each of the signatories below.

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Respectfully submitted,  
ROSEN BIEN GALVAN & GRUNFELD LLP

By: /s/ Kara J. Janssen  
Kara J. Janssen  
Ernest Galvan  
Adrienne Spiegel  
Luma Khabbaz

DATED: December 6, 2024 CALIFORNIA COLLABORATIVE FOR IMMIGRANT JUSTICE

By: /s/ Susan M. Beaty  
Mx. Susan M. Beaty (they/them)

DATED: December 6, 2024 RIGHTS BEHIND BARS

By: /s/ Amaris Montes  
Amaris Montes  
Miriam R. Nemeth

DATED: December 6, 2024 ARNOLD & PORTER KAYE SCHOLER LLP

By: /s/ Stephen Cha-Kim  
Stephen Cha-Kim  
Carson D. Anderson  
Natalie Steiert

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