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18 (Other counsel listed below)

19 **UNITED STATES DISTRICT COURT**  
20 **CENTRAL DISTRICT OF CALIFORNIA**

21 DUNCAN ROY, *et al.*,  
22 Plaintiffs,  
23  
24 vs.  
25 COUNTY OF LOS ANGELES, *et al.*,  
26 Defendants.  
27  
28

Case No. CV 12-09012 (FFMx)

[Honorable André Birotte, Jr.]

**NOTICE OF MOTION AND MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT;  
[PROPOSED] ORDER;  
DECLARATIONS AND EXHIBITS**

**Date: November 20, 2020**  
**Time: 10:00 A.M.**  
**Place: Courtroom 10A**

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1 TO DEFENDANTS AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, on November 20, 2020, at 10:00 a.m., or as  
3 soon thereafter as this matter may be heard in Courtroom 5A of the United States  
4 District Court for the Central District of California, 350 West First Street, Los  
5 Angeles, California 90012, Plaintiffs will, and hereby do, move the Court to  
6 preliminarily approve the proposed settlement in this case, and to authorize the  
7 mailing and other forms of notice to class members.

8 This motion is unopposed and is based on the accompanying Memorandum  
9 of Law, the stipulation of all parties to entry of the proposed Preliminary Approval  
10 Order, the proposed Preliminary Approval Order and exhibits thereto filed  
11 concurrently, the files and records in this case, and on such further evidence as  
12 may be presented at a hearing on the motion.

13 DATED: October 30, 2020

Respectfully submitted,

14 Kaye, McLane, Bednarski & Litt, LLP

15 By: /s/ Barrett S. Litt

16 Barrett S. Litt

17 Attorneys for Plaintiffs

18 By: /s/ Lindsay Battles

19 Lindsay Battles

20 Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. INTRODUCTION**

3 This class action arose from the LASD’s former policy of detaining persons  
4 solely on the basis of immigration detainers, which are issued by Immigration and  
5 Customs Enforcement (ICE) for suspected civil immigration violations. Plaintiffs  
6 specifically challenged: 1) LASD’s practice of holding inmates on detainers after  
7 they became due for release on criminal matters (i.e. after they were acquitted or  
8 otherwise ordered released by a judge, or after serving a jail sentence); 2) LASD’s  
9 practice of incarcerating arrestees with bail of less than \$25,000 who, in the absence  
10 of an immigration detainer, would have been released on their own recognizance  
11 pursuant to LASD policy; and 3) LASD’s practice of refusing to accept bail on  
12 behalf of inmates with immigration detainers.

13 With regard to the first two practices, Plaintiffs not only established liability  
14 on summary judgement, but also established that class members were entitled to  
15 classwide general damages for each day of unlawful detention, at a per-diem amount  
16 to be determined at trial. The Court’s summary judgement decision issued on  
17 February 8, 2018. Defendants filed a motion for reconsideration, which was denied  
18 on July 11, 2018. (Dkt. 395) The Court simultaneously issued an order denying  
19 Defendants’ motion to decertify the class and finding that class members were  
20 entitled to classwide general damages. (Dkt. 394) (“The Court agrees with these  
21 decisions and finds that general damages are available on a class-wide basis here.”).  
22 With regard to the third practice – whether the LASD maintained a practice of  
23 refusing to accept bail on behalf of prisoners with immigration holds – the Court  
24 found a dispute of fact to be resolved at trial. Thus, after dispositive motions and  
25 class certification litigation, the two issues remaining for trial were: (1) whether the  
26 LASD maintained a practice of refusing to accept bail for persons with ICE holds;  
27 and, (2) the amount of classwide general damages.

28 Following the liability and class certification decisions, the parties entered



1 settlement negotiations. While the negotiation process proved more protracted than  
2 anticipated, the parties have now reached a settlement. Declaration of Barrett S. Litt  
3 (hereafter “Litt Dec.”) ¶ 5. On December 3, 2018, the parties participated in a full  
4 day settlement conference before Antonio Piazza, a well-known and highly regarded  
5 mediator. The December 3, 2018 conference resulted in a settlement in principle, but  
6 did not resolve several key terms and a dispute regarding the class size. Even after  
7 reaching a settlement in principle, it took well over a year and numerous discussions  
8 among or between counsel and Mr. Piazza to agree to the specific settlement terms.  
9 The proposed settlement has now been approved by the Los Angeles County Board  
10 of Supervisors and is contingent on the Court’s approval.

11 After a bidding process, the parties have selected Heffler Claims Group as the  
12 Claims Administrator. Heffler has prepared an extensive notice strategy to overcome  
13 notice challenges arising from the fact that the class is comprised mostly of  
14 undocumented persons, many of whom were removed from the United States.

15 Defendants have not yet reviewed this motion, but have advised that they do  
16 not anticipate filing an opposition.

17 **II. CERTIFIED CLASSES & CLASS SIZES**

18 The damages classes were certified on September 9, 2016, (Dkt. 184), with a  
19 42-page decision issued by Judge Beverly Reid O’Connell. The Court subsequently  
20 granted a motion to expand the Fourth Amendment Gerstein class and denied the  
21 County’s motion for decertification. (Dkt. Nos. 394, 396) Below we describe each  
22 of the certified classes and their sizes.

23 **A. Fourth Amendment (“Gerstein”) Class**

24 **Definition:** All LASD inmates who were detained beyond the time they are due for  
25 release from criminal custody, solely on the basis of immigration detainers,  
26 excluding inmates who had a final order of removal or were subject to ongoing  
27

1 removal proceedings as indicated on the face of the detainer.<sup>1</sup> (Class period:  
2 10/19/2010 to June 2014).

3 The parties estimate there are 14,949 members of the Fourth Amendment  
4 *Gerstein* class. This estimate includes 11,364 confirmed members plus an estimated  
5 3,565 additional members, whose status will be confirmed with individual review of  
6 LASD records for any potential class member who submits a claim.

7 Using LASD data, Plaintiffs ascertained approximately 16,486<sup>2</sup> prisoners who  
8 were held beyond the time they were due for release solely on the basis of an  
9 immigration detainer. Not all of these individuals satisfied the class definition  
10 because some were subject to a final order of removal or ongoing removal  
11 proceedings. While this information cannot be determined from LASD database  
12 data, it can be determined from checkboxes on the face of the immigration detainer  
13 form (I-247 form) and, in many cases, from ICE databases. By cross-referencing  
14 LASD and ICE data, Plaintiffs were able to confirm class membership for 11,364 of  
15 the 16,486 potential *Gerstein* class members.

16 There remain 5,122 *potential* class members who could not be matched to ICE  
17 data.<sup>3</sup> Confirming their class membership will require manual review of their I-247  
18

---

19 <sup>1</sup> There is a checkbox on all versions of the detainer to indicate whether the detainer was  
20 supported by a final Order of Removal or by a Notice to Appear, a document that initiates  
21 removal proceedings. More than 80 percent of the detainers issued to LASD had neither  
22 box checked, which is consistent with ICE data tracking such orders between 2010-2016.

23 <sup>2</sup> The parties have agreed to make a slight adjustment in the methodology used to identify  
24 *Gerstein* class members. This adjustment will result in a slight increase in the total  
25 number of potential *Gerstein* members.

26 <sup>3</sup> Confirming class membership for these 5,122 potential members will ultimately require  
27 pulling a copy of their immigration detainer form (I-247 form) scanned by LASD. Instead  
28 of retrieving booking jackets for all 5,122 potential *Gerstein* class members before  
sending notice, the parties agree that it is more efficient to send notice to potential  
*Gerstein* class members, advising that they *may* be entitled to financial compensation  
depending on whether their detainer was supported by a final order of removal or  
ongoing removal proceedings. (This will require a modified version of class notice for  
these individuals, see below, Section IV, C). Should the parties receive responses from  
any potential *Gerstein* class members, LASD agrees to retrieve the I-247 form for

1 forms, which the LASD maintains in electronic format. We conservatively assume  
 2 that at least 70% of the potential class members (which total 3,585) will be actual  
 3 class members, and similarly assume that at least 70% of their wrongful detention  
 4 days will apply. This estimate is based on the fact that approximately 80% of ICE  
 5 detainers issued to LASD were not supported by ongoing removal proceedings or a  
 6 removal order.

7 The parties have agreed that notice will be issued to all 5,122 potential,  
 8 unconfirmed *Gerstein* class members, advising that they may be entitled to  
 9 compensation, provided they did not have a final removal order or pending removal  
 10 proceedings. Should any of the 5,122 potential class members submit claims, LASD  
 11 will produce a copy of their I-247 form to the Claims Administrator for review to  
 12 determine whether they satisfy the class definition.

	Members	Unlawful Detention Days
Confirmed Gerstein Class Members	11,364	39,890
Estimated Additional Gerstein Class Members (70% of Potential Members)	3,585	15,846
<b>ESTIMATED TOTAL</b>	14,949	55,736

**B. Equal Protection Class (“No Money Bail Class”)**

**Definition:** All LASD inmates on whom an immigration detainer had been lodged, who would otherwise have been subject to LASD’s policy of rejecting for booking misdemeanor defendants with bail of less than \$25,000 (including Order of Own Recognizance (OR)). (Class period: 10/19/2010 to June 2014).

The No Money Bail Class has 3,622 members, excluding 6 individuals whose

\_\_\_\_\_ determination of whether the individual qualifies as a class member. LASD will provide a copy of the I-247 form to the claims administrator.

1 records must be individually reviewed.<sup>4</sup> These class members account for 15,844  
2 days of unlawful detention.

3 **C. No Bail Notation Class**

4 **Definition:** All LASD inmates on whom an immigration detainer had been lodged  
5 and recorded in LASD's AJIS database, and who were held on charges for which  
6 they would have been eligible to post bail. (Class period: 10/19/2010 to 10/18/2012).

7  
8 Plaintiffs have identified 5,776 members of the No Bail Notation Class, who  
9 are not also members of the No-Money-Bail class. (We exclude individuals who are  
10 also members of the No Money Bail Class because they will be compensated for  
11 each day of pretrial incarceration). All of these individuals had bail in excess of  
12 \$25,000. It is not possible to determine from jail records whether they would have  
13 posted bail or in fact attempted to post bail. In response to the notice, these  
14 individuals will be asked to attest, under penalty of perjury, whether they had access  
15 to over \$2,500 and would have posted bail had it not been for LASD's policy, and  
16 notwithstanding their immigration hold. (Unlike other class members, whose  
17 compensation is based on the number of days they were held by LASD on an ICE  
18 hold, these class members receive a relatively low fixed amount of \$250.)

19 **III. TERMS OF THE SETTLEMENT**

20 The total size of the non-reversionary settlement fund is \$14,000,000 from  
21 which costs of class administration, consultant/expert and litigation costs, mediation  
22 costs, incentive awards, and attorneys' fees will be taken. Depending on a variety of  
23 factors, the parties expect the amount available for distribution to the class will be  
24 approximately \$8,700,000.<sup>5</sup>

25 \_\_\_\_\_  
26 <sup>4</sup> The LASD agrees to provide booking jackets for these 6 individuals so the parties can  
27 determine each person's number of unlawful detention days.

28 <sup>5</sup> This is the estimated "Remainder" of the Class Fund, a term designating the amount  
available for distribution to Class Members. The "Remainder" is the amount in the Class  
Fund *after* payment of attorneys' fees and costs, litigation costs, and mediation costs. The  
Remainder is estimated to amount to approximately \$8,733,334, based on the estimate of

1           **A.     DISTRIBUTION TO CLASS MEMBERS**

2                   **1.     *Per-Diem Compensation for Gerstein and No-Money-Bail***  
3                   ***Class Members***

4           Under the parties' distribution model, *Gerstein* and No-Money-Bail class  
5 members are compensated for each day they were unlawfully detained. The model  
6 does not differentiate between unlawful detention days endured by the *Gerstein* and  
7 No-Money-Bail classes. Each unlawful detention day is assigned one point which  
8 will translate to a per-diem dollar value at the time of distribution. The per-diem  
9 value will increase proportionately to a per-day maximum of \$1,000. No Class  
10 Member shall receive more than \$25,000 total, even if their unlawful detention days  
11 would otherwise result in more.

12                   **2.     *Flat Award for No-Bail-Notation Class Members***

13           Each No-Bail-Notation class member who responds to the notice by attesting  
14 that they would have posted bail will receive a flat amount of \$250, irrespective of  
15 how long they spent in pretrial custody. Individuals who belong to both the No Bail  
16 ***and*** No Money Bail classes will receive compensation pursuant to the No Money  
17 Bail formula (per-diem compensation), but will not receive an extra flat amount as  
18 members of the No Bail Notation class.

19           **B.     CY PRES DISTRIBUTION IN THE EVENT OF A LOW CLAIMS RATE**

20           The parties recognize that there is the possibility of an unusually low claims  
21 rate in this case, due in large part to the fact that a significant percentage of Class  
22 Members were transferred to ICE custody and subsequently deported. These  
23 individuals are likely living abroad and may be difficult or impossible to locate.

24           Accordingly, as a form of indirect compensation to absent Class Members,  
25

26 \_\_\_\_\_  
27 the maximum fees to be sought (1/3 of the \$14,000,000 Class Fund), estimated litigation  
28 costs (\$200,000) and estimated class administration costs (\$400,000). It could end up  
varying somewhat depending on certain court rulings and class administration costs, but  
this is a reasonable estimate.

1 the settlement agreement provides for *cy pres* distributions to be used solely to fund  
2 Los Angeles County programs that provide legal representation to persons who face  
3 immigration consequences as a result of a criminal arrest or conviction in Los  
4 Angeles County. The *cy pres* provisions apply should the maximum payments to  
5 *Gerstein* and No-Money-Bail class members (the number of days corresponding to  
6 the number of timely claims, multiplied by the per-diem maximum of \$1000), *plus*  
7 the \$250 payments to No-Bail-Notation class members fail to consume the entirety  
8 of the Remainder.

9 Each party is entitled to designate the recipient of 50% of *cy pres* funds  
10 provided that any organizations or programs provide legal representation to persons  
11 facing immigration consequences as result of their criminal arrest or conviction in  
12 Los Angeles County. The settlement agreement provides that any such  
13 disbursements must *augment* (emphasis in settlement agreement) the funding  
14 already provided by the County of Los Angeles to support activities that these  
15 programs would not be able to pursue without the *cy pres* funds.

16 The parties agree to work in good faith to reach an agreement regarding the  
17 organizations or programs to receive those funds based on the foregoing criteria. If  
18 they cannot agree, the parties will separately brief the Court, and the Court will  
19 determine the organizations and/or programs to which the *cy pres* funds will be paid,  
20 consistent with identified criteria.

21 The agreement expressly provides that the settlement is non-reversionary.  
22 None of the Class Fund shall revert to the LASD or be used to fund LASD programs.  
23 No *cy pres* funds may be used to supplant or replace County funding already  
24 provided by the Board of Supervisors.

25 **C. ADDITIONAL TERMS**

26 The settlement agreement contains the following, additional material terms:

27 ➤ Incentive awards to the two Class Representatives in the amount of  
28 \$10,000 each (for a total of \$20,000).

1           ➤ Plaintiffs will file a motion for attorneys’ fees and costs to be approved  
2 by the Court. The settlement agreement provides that Plaintiffs’ counsel may request  
3 up to 1/3 of the class fund but not more, plus reimbursement of litigation costs. The  
4 final determination of the appropriate attorneys’ fee will be made by the Court.

5           ➤ Payment of the third-party class settlement administration costs to the  
6 chosen class administrator, with experience locating international class members.  
7 After carefully reviewing bids from multiple candidates, Plaintiffs’ counsel selected  
8 Heffler Claims Group, which has prepared a plan including direct notice via multiple  
9 channels (mail, text, email and social media) coupled with robust media outreach  
10 and community-based outreach. Heffler estimates a maximum of \$350,000 for this  
11 undertaking. The parties have agreed to supplement the Administrator’s effort with  
12 outreach efforts by Justice in Motion, an organization that specializes in international  
13 outreach for undocumented persons. Plaintiffs’ counsel estimates an additional  
14 \$50,000 for such community-based outreach. The parties currently estimate a  
15 maximum of approximately \$400,000 for outreach, notice and administration.

16           The terms of the settlement are set forth in greater detail in the exhibits  
17 attached to the Proposed Preliminary Approval Order (specifically in the Settlement  
18 Agreement), which exhibits are as follows:

- |    |           |   |
|----|-----------|---|
| 19 | Exhibit A | Settlement Agreement                      |
| 20 | Exhibit B | Proposed Class Notice(s) - Versions 1 – 8 |
| 21 | Exhibit C | Claim Forms – Versions 1- 2               |
| 22 | Exhibit D | Class Administration Bid and Credentials  |

23           **IV. THE SETTLEMENT SATISFIES THE CRITERIA FOR**  
24           **PRELIMINARY APPROVAL**

25           **A. PRELIMINARY APPROVAL UNDER FRCP 23(E)(1)(B)**

26           FRCP 23(e)(1) provides the standard for preliminary approval. Notice of a  
27 proposed settlement requires the parties to show that: (1) the court will be able to  
28 certify the class; and, (2) will “likely” and approve the settlement under Rule

1 23(e)(2), which sets for criteria for final approval of the settlement proposal. Federal  
2 Rule of Civil Procedure 23(e)(1)(B). We do not address the likelihood of class  
3 certification since the class has already been certified.

4 Under Rule 23(e)(2), a settlement may be approved only on a finding that it  
5 is fair, reasonable, and adequate after considering the following factors:

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

18 ***I. Adequacy of Representation***

19 The class representatives and class counsel adequately represented the class.  
20 This case was vigorously litigated. Plaintiffs conducted extensive discovery,  
21 including more than 10 depositions, review of tens of thousands of pages of  
22 document discovery (including considerable ESI), and extensive analysis of LASD  
23 database data to ascertain the identities of prisoners held solely on immigration  
24 holds.

25 Both liability and class certification were heavily contested. Plaintiffs secured  
26 certification of the damages classes in 2016 and successfully moved to expand the  
27 primary damages class in 2018. The parties also litigated Defendants' 2018 motion  
28 to decertify the class on the basis of individual damages. In 2017 – 2018, the parties



1 litigated cross motions for summary judgment, resulting in the grant of summary  
2 judgment on liability for two of the damages classes. The parties further litigated  
3 liability in connection with Defendants 2018 motion for reconsideration of the  
4 summary judgment decision. Litt Dec., ¶ 3.

5 **2. Arms-Length Negotiations**

6 The settlement terms were negotiated at arms' length with the assistance of an  
7 experienced mediator, Antonio Piazza, after one in person mediation session and  
8 follow-up sessions. Litt Dec., ¶ 5, 6.

9 **3. Adequacy of the Relief**

10 The proposed settlement represents a highly favorable outcome to class  
11 members.

12 **a) The Settlement Represents an Excellent Outcome Considering  
13 the Costs, Risks and Delay of Trial and Appeal**

14 This settlement qualifies as unique in both its successful legal theories and in  
15 recovering significant sums for detainees held on ICE holds. After costs and  
16 maximum fees, there will be approximately \$8,700,000 to distribute to class  
17 members. There is a significant probability that members of the *Gerstein* and No  
18 Money Bail classes will receive the maximum of \$1,000 per day for each day of  
19 over-detention (to a maximum of \$25,000).

20 Because the class is comprised almost entirely of undocumented persons,  
21 including a significant percentage of whom were deported by ICE, we anticipate that  
22 class members will be difficult to locate. Although the settlement agreement  
23 provides for a comprehensive notice plan to reach the maximum number of class  
24 members, we expect a claims rate that is lower than the typical claims rate in a jail  
25 conditions case, which is between 10% - 20%. Based on the class period (extending  
26 back to 2010), and characteristics of the class, we believe the claims rate will likely  
27 fall between 5% - 10%. Litt Dec., ¶ 14. Because we do not have data for similar  
28 cases, we recognize the possibility of an even lower claims rate.

1            Provided the claims rate is 10% or less, all claimants will recover the  
2 maximum of \$1,000 per day (up to a maximum of \$25,000 per claimant).<sup>6</sup> The  
3 average *Gerstein* class member has 2.3 days of incarceration, meaning their average  
4 award would be \$2,300. The average No-Money-Bail class member has 4 days of  
5 incarceration; their average award would be \$4,000. Approximately 1,500  
6 individuals belong to both classes and can anticipate average rewards of over \$5,000.  
7 Should the claims rate reach 15%, which is higher than we anticipate, each over  
8 detention day would be valued at over \$700 per day (with average awards of \$1,610  
9 and \$2,800). The individual recoveries fall on the higher side of recoveries in jail  
10 over-detention class actions. Litt Decl. ¶13.

11            The individual recoveries in this case represent a very favorable outcome for  
12 class members. Even with summary judgement on liability, classwide general  
13 damages were left to be decided by a jury. The uncertainty of what jurors might  
14 award to persons who had been accused of both criminal and civil immigration  
15 offenses presented a significant risk. This risk was underscored by the difficulty in  
16 locating class members to come forward to participate in a jury trial on damages.  
17 And even if Plaintiffs could have secured substantial classwide general damage  
18 awards, Defendants made clear they would have challenged any classwide general  
19 damages on appeal. Statutory damages were not available in light of the court's  
20 ruling dismissing the state law damages claims. Under these circumstances, securing  
21 certain monetary recovery for all claiming class members represented a significantly  
22 more favorable outcome than trial.

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25 <sup>6</sup> Including both the estimated *Gerstein* class members and all No-Money-Bail class  
26 members, there are a total of 80,063 over-detention days. Assuming that approximately  
27 10% of No-Bail-Notation class members make claims, each for \$250, the total award to  
28 that subclass would be \$144,250, leaving \$8,555,750 for distribution to the *Gerstein* and  
No-Money-Bail class members. This would compensate 8,556 days at \$1,000 per day,  
which constitutes 10.7% of the total over-detention days attributable to class members.

1 It is also likely that Defendants would have appealed the grant of summary  
2 judgment, and the outcome of such an appeal could not be predicted with certainty.  
3 Litt Dec., ¶ 19. Given all of these factors, it was the judgment of Plaintiffs' counsel  
4 that the settlement represents a fair compromise reflecting plaintiffs' expected  
5 recovery balanced against the value of the settlement offer.

6 ***b) The Settlement Includes a Fair and Effective Means of***  
7 ***Distributing the Settlement to Class Members in the Form of***  
8 ***Direct Monetary Compensation and Indirect Cy Pres***  
9 ***Distributions Should Too Few Class Members Make Claims***

10 The settlement provides for a straightforward claims procedure whereby class  
11 members will be able to submit a claim form by mail, email or online. The claim  
12 form itself simply requires class members to confirm their identity and contact  
13 information, and in the case of No-Bail-Notation claimants, to attest that they would  
14 have posted bail.

15 The distribution formula is similarly straightforward. Each No Bail Notation  
16 claimant will receive \$250. Each *Gerstein* and No Money Bail class member's share  
17 of the class fund depends on the number of Class Members who make timely claims,  
18 multiplied by the number of unlawful detention days attributable to each claiming  
19 class member. This will be accomplished with a point system, with one point per  
20 unlawful detention day, up to a maximum of 25 points. Once the claims period closes  
21 and the settlement is finally approved, the claims administrator will calculate the  
22 total points for all claiming class members who submitted timely claims. Each class  
23 member's recovery will be determined based on that Class Member's percentage of  
24 the total points for all class members, subject to the maximum per diem and per class  
25 member compensation provided in the Settlement Agreement. (The money per class  
26 member making a timely claim will increase proportionately, up to a per-day  
27 maximum of \$1000 and a maximum total payment per Class Member of \$25,000.  
28 See Settlement Agreement, ¶¶ 21-25).

1                    *c) The Cy Pres Provisions are Reasonable*

2                    As further discussed below, the settlement provides for an extensive notice  
3 and outreach plan to reach as many class members as possible. However, in the event  
4 that exceedingly few class members make claims, the agreement also provides for  
5 *cy pres* distributions as a form of indirect compensation.

6                    The *cy pres* provisions are reasonable under the particular circumstances of  
7 this case. As noted, the daily and per class member caps were vigorously disputed  
8 and resolved only through a mediator’s proposal. It was Defendants’ assertion that  
9 even the mediator’s proposal amount constituted an undue windfall to class members  
10 while Plaintiffs strongly disagreed, and the maximums used were compromise  
11 figures for both sides.

12                    Because the *cy pres* funds only apply to funds after the maximums are hit and  
13 where there is a low claims rate, and may only go to organizations or activities that  
14 provide legal representation to persons facing immigration consequences as a result  
15 of their criminal arrest or conviction in Los Angeles County, they only apply where  
16 there exists an issue of arguable excess or windfall recovery and the *cy pres* funds  
17 are closely tied to the objectives of this litigation and advance the interests of absent  
18 class members. Such limited *cy pres* awards are appropriate. Further, the *cy pres*  
19 distributions here only apply to the extent there is a low claims rate (when compared  
20 to historic jail settlement claim rates). *See, e.g., In re BankAmerica Corp. Securities*  
21 *Litigation*, 775 F.3d 1060, 1064 (8th Cir. 2015) (“[b]ecause the settlement funds are  
22 the property of the class, a *cy pres* distribution to a third party of unclaimed  
23 settlement funds is permissible only when it is not feasible to make further  
24 distributions to class members” who have not yet been fully compensated.  
25 (quotation marks and alteration omitted); *Nachshin v. AOL, LLC*, 663 F.3d 1034,  
26 1038 (9th Cir. 2011) (“federal courts frequently use the *cy pres* doctrine ‘in the  
27 settlement of class actions where the proof of individual claims would be  
28 burdensome or distribution of damages costly”) (quoting *Six (6) Mexican Workers*

1 *v. Arizona Citrus Growers*, 904 F.2d 1301, 1305 (9th Cir. 1990)); *Masters v.*  
2 *Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 436 (2d Cir. 2007) (noting with  
3 approval that “[w]ith respect to the approval of settlements providing for  
4 a Cy Pres remedy, the [Draft of the Principles of the Law of Aggregate Litigation by  
5 the American Law Institute] proposes a rule limiting Cy Pres ‘to circumstances in  
6 which direct distribution to individual class members is not economically feasible,  
7 or where funds remain after class members are given a full opportunity to make a  
8 claim’ ”).<sup>7</sup>

9 Although the parties strenuously disputed the amount of the per-diem  
10 maximum to be set (as well as the amount of the per claimant maximum), there was  
11 agreement that some per-diem maximum would be appropriate and that any portion  
12 of the class fund remaining after claimants received appropriate maximum  
13 distributions should be used for indirect compensation to class members. Prevention  
14 of windfall recoveries to class members is a well-recognized basis for the use of *cy*  
15 *pres* distributions once claiming class members have been fairly compensated. *See,*  
16 *e.g., Klier v. Elf Atochem North America, Inc.*, 658 F.3d 468, 475 (5th Cir.2011) (pro  
17 rata distribution of excess funds to class members should be the norm “except where  
18 an additional distribution would provide a windfall to class members”). Thus,  
19 “[c]aps on a maximum *pro rata* distribution are a commonly employed aspect  
20 of class action distributions.” *In re Dynamic Random Access Memory (DRAM)*

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21  
22 <sup>7</sup> “*Cy pres* serves several purposes. *First*, it ensures full disgorgement of the defendant by  
23 offering an alternative to reversion of unclaimed funds and therefore serves a deterrent  
24 function. *Second*, by sending money to charities that work in the class's interest, it is  
25 arguably compensatory, albeit indirectly so. The class benefits from a *cy pres* distribution  
26 as it realizes the gains that its charitable contribution can accomplish. This  
27 makes *cy pres* preferable to *pro rata* redistribution, as the absent class members realize  
28 no gain (other than deterrence) when their fellow class members are enriched at their  
expense. Escheat also creates a general benefit for the class, as the class members would  
benefit from the government's greater provision of services. However, *cy pres* may be  
preferable to escheat because the funds can be targeted more specifically to the class's  
interests than when they simply go into the general treasury.” 4 Newberg on Class  
Actions § 12:32 (5th ed.), § 12:32.(Cy pres—Generally).

1 *Antitrust Litig.*, No. C 06-4333 PJH, 2013 WL 12333442, at \*82 (N.D. Cal. Jan. 8,  
2 2013), *report and recommendation adopted sub nom. In re Dynamic Random Access*  
3 *Memory Antitrust Litig.*, No. C 06-4333 PJH, 2014 WL 12879520 (N.D. Cal. June  
4 27, 2014) (citing *Rodriguez v. West Publ. Corp.*, 2007 WL 2827379, at \*2, 2007  
5 U.S. Dist. LEXIS 74767, at \*40 (C.D. Cal. Sept. 10, 2007), *affirmed in part and*  
6 *reversed on other grounds by Rodriguez v. West Publ'g Corp.*, 563 F.3d 948 (9th  
7 Cir. 2009) (“The Court rejects the argument of certain Objectors that the possibility  
8 of a cap on individual recovery resulting in a *cy pres* award should defeat approval  
9 of the Settlement. Those provisions do not render the Settlement inadequate. The  
10 Maximum Payment was a heavily negotiated term of the Settlement. Because the  
11 Net Settlement Fund is to be distributed *pro rata* among the Class Members who  
12 make a valid claim, the Maximum Payment prevents a small group from receiving a  
13 ... windfall.”); *In re NCO Fin. Sys.*, 2002 U.S. Dist. LEXIS 17602 at \*24 (E.D. Pa.  
14 2002) (approving a settlement distribution plan that provided that “[t]o the extent  
15 that claiming class members' checks are returned or remain uncashed for a period of  
16 120 days after mailing, or each claiming class member receives the maximum share  
17 of \$75.00 and there still remains a portion of the net settlement fund undistributed,  
18 NCO shall transmit to Lead/Liaison Counsel a check representing the remaining  
19 portion of the net settlement fund for a *cy pres* distribution”); *In re Music Compact*  
20 *Disc Minimum Advertised Price Litigation*, *supra*, 216 F.R.D. 197, 208-10 (district  
21 court approved a fixed distribution that capped recovery at \$25 per consumer).

22 ***d) A Reasonable Attorney Fee Will Be Decided by the Court***

23 As addressed in the settlement agreement, Plaintiffs’ counsel will file a  
24 motion for attorneys’ fees and costs to be approved by the Court. The agreement  
25 provides that Plaintiffs’ counsel may request up to 1/3 of the class fund but not more,  
26 plus reimbursement of litigation costs.  
27  
28

1                   **4.        *Equitable Treatment of Class Members***

2           The treatment of class members is equitable. All class members who were  
3 unlawfully detained solely on the basis of immigration detainers will receive the  
4 same per-diem compensation. All class members who were deprived of the  
5 opportunity to post bail will receive the same flat amount, irrespective of whether  
6 they can establish that they would have been able to post bail. The cap of \$25,000  
7 reflects the fact that longer over-detentions tend to be compensated at a lower per-  
8 diem rate than shorter over-detentions. Both the daily cap of \$1000 and the per class  
9 member cap of \$25,000 were hotly disputed issues in drafting the settlement  
10 agreement, and were ultimately the result of a mediator’s proposal because the  
11 parties were unable to agree. Litt Dec., ¶ 5.

12           The proposed settlement does not reflect unduly preferential treatment of class  
13 representatives. It provides a slight benefit to the two class representatives (\$10,000  
14 in addition to their class member formula award). The proposal for incentive awards  
15 was at Class Counsel’s initiative and the proposed incentive awards to each class  
16 representative reflects counsel’s assessment of the value of their contributions to the  
17 case, the risk taken by them and the size of the settlement. Both publicly revealed  
18 themselves as undocumented persons who spent time in jail for alleged criminal  
19 offenses and submitted declarations addressing the circumstances of their arrests in  
20 connection with the class certification litigation. Both plaintiffs were deposed and  
21 responded to discovery requests. The class substantially benefited from their efforts,  
22 resulting in a one-of-a-kind class settlement, advancing novel claims regarding the  
23 lawfulness of local law enforcement detaining persons on the basis of an ICE hold.  
24 No agreements were made with class representatives prior to settlement to seek  
25 incentive awards. Litt Dec., ¶ 11.

26           The requested \$10,000 incentive award is well within the range of reasonable  
27 incentive awards. *See Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003)  
28 (identifying factors to consider in evaluating the reasonableness of incentive

1 awards); *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009)  
2 (incentive awards are “intended to compensate class representatives for work done  
3 on behalf of the class, to make up for financial or reputational risk undertaken in  
4 bringing the action, and, sometimes, to recognize their willingness to act as a private  
5 attorney general”); *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, No. 1917, 2016  
6 WL 153265, at \*2–3 (N.D. Cal. Jan. 13, 2016).

7 The awards here – totaling \$20,00 – represent a very small proportion (less  
8 than 0.15%) of the Class Fund, also a factor in evaluating the reasonableness of  
9 proposed incentive awards. *See, e.g., id.* at \*3 (0.196%.of class fund); *Hopson v.*  
10 *Hanesbrands Inc.*, 2009 WL 928133, \*10 (N.D. Cal. 2009) (1.25% of the settlement  
11 amount).<sup>8</sup>

## 12 B. NOTICE PLAN & CLAIMS PROCEDURE

13 This class action presents challenging class notice issues. The settlement class  
14 is comprised of former jail detainees, all of whom were held for additional time  
15 based on suspected civil immigration violations. Many, though not all, were taken  
16 into custody by ICE. Of those who were arrested by ICE, some were released back  
17

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18 <sup>8</sup> Numerous cases have approved incentive awards of \$10,000 or more. *See, e.g., Cathode*  
19 *Ray Tube (CRT) Antitrust Litig.*, *supra* (\$25,000 for each of ten class representatives in  
20 \$127.45 Million settlement); *Glass v. UBS Fin. Servs., Inc.*, 2007 WL 221862, at \*16  
21 (N.D. Cal. Jan.26, 2007) (approving payments of \$25,000 to each named plaintiff); *Van*  
22 *Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal.1995) (awarding  
23 \$50,000 to a lead plaintiff); *In re High-Tech Employee Antitrust Litig.*, No. 11-CV-  
24 02509-LHK, 2015 WL 5158730, at \*18 (N.D. Cal. Sept. 2, 2015) (awarding \$120,000  
25 and \$80,000 to class representatives in a case that settled for \$415 million, noting such  
26 awards were in line with “megafund” cases, and collecting cases); *Glass v. UBS Fin.*  
27 *Servs., Inc.*, No. C-06-4068 MMC, 2007 WL 221862, at \*17 (N.D. Cal. Jan. 26, 2007)  
28 *aff’d*, 331 F. App’x 452 (9th Cir. 2009) (approving award of \$25,000 for each of four  
class representative in a six-year case settling for \$45 million where named plaintiffs  
provided help with informal discovery, insight into an industry, and “placed something at  
risk by putting their names on a complaint against one of the largest brokerage houses in  
America”); *Chu v. Wells Fargo Investments, LLC*, Nos. C 05–4526 MHP, C 06–7924,  
2011 WL 672645, \*5 (N.D. Cal. Feb. 16, 2011) (awarding \$10,000 to two plaintiff  
representatives involved in case for five years and \$4,000 to three representative  
plaintiffs participating in case for two years, from a \$6.9 million settlement fund).



1 into the community while others were deported from the United States. A significant  
2 number were deported by ICE to Mexico and Central American nations, with some  
3 deported to nations in other parts of the world. Though some class members remain  
4 in the Los Angeles Area, many lack legal status and may be fearful of coming  
5 forward to assert claims against a law enforcement agency. It is critically important  
6 that they understand that they will not suffer retaliation by the LASD and that their  
7 whereabouts will not be disclosed to ICE. Few will have social security numbers,  
8 complicating efforts to accurately research their contact information using skip-trace  
9 databases.

10 While we typically expect to see a claims rate of 10% - 25% in jail class  
11 actions, it ultimately may not be possible to achieve a claims rate comparable to  
12 other jail class actions. Plaintiffs have adopted an aggressive notice plan in an effort  
13 to reach as many class members as possible, but recognize that obtaining claims  
14 filings from even a modest percentage of class members is a challenge.

15 The settlement agreement accordingly recognizes the need for an extensive  
16 outreach effort to ensure distribution of the award to as many class members as  
17 possible. Plaintiffs' counsel sought bids from three potential claims administrators.  
18 Each administration candidate was asked to describe their experience with class  
19 actions involving transnational outreach efforts, any specific measures they have  
20 previously used to disseminate notice to international class members, particularly  
21 those with limited economic resources, and any specific strategies they recommend  
22 for effectively reaching class members in this case.

23 After reviewing proposals, Plaintiffs' counsel determined that Heffler Claims  
24 Group was in the best position to address the unique notice challenges in this case.  
25 Heffler was recently appointed the Claims Administrator in *Owino v. Core Civic,*  
26 *Inc.*, 17-CV-01112, a class action before Judge Janis Sammartino in the Southern  
27 District of California. *Owino* challenges a private prisoner operator's practice of  
28 using immigration detainees to maintain, clean and operate the Otay Mesa Detention

1 Facility in San Diego in violation of labor laws. The class consisted of immigration  
2 detainees released from an immigration detention facility in Southern California,  
3 many of whom were likely deported to Mexico and Central America. Because the  
4 case involved a class with many similarities to this case, Heffler's experience in  
5 designing and executing a notice plan render it uniquely qualified to develop a notice  
6 plan for this case.

7 Plaintiffs' counsel and Heffler have designed a notice plan for this case that  
8 provides for multiple channels of direct notice, tiered media outreach and  
9 community-based outreach. Before issuing notice, the Class Administrator will use  
10 skip trace databases to locate updated address, mobile phone number and email  
11 address information for as many class members as possible. Using this information,  
12 the Administrator will issue direct notice to all class members using mail, text, email,  
13 direct social media contacts (Facebook and Instagram for all class members whose  
14 email address, mobile phone number or name matches a Facebook or Instagram  
15 account). Initial direct notice will be reinforced with reminder and follow-up  
16 messages for the duration of the class period, which is 180 days.

17 In addition to these forms of direct notice, the Administrator has developed a  
18 tiered approach to media outreach, which will provide the heaviest media weight in  
19 the Los Angeles media market and will extend the outreach throughout California,  
20 nationwide, in Mexico, and, where data instructs, other Central American countries.  
21 The Administrator has also developed a plan to create a halo effect to the media  
22 campaign with community-based outreach efforts utilizing influencers and trusted  
23 sources such as immigration and human rights advocates, Catholic priests and social  
24 workers, among others to extend messaging efforts. The media plan includes  
25 approximately 400 30-second television commercials to air in Spanish in the Los  
26 Angeles Area and approximately 300, 60-second radio commercials.

27 In addition to conventional claims administration, Plaintiffs plan to work with  
28 an organization that specializes in transnational outreach efforts for migrant workers

1 and undocumented persons particularly in civil rights and employment class actions.  
 2 Plaintiffs intend for this organization to work closely with the administrator to devise  
 3 effective strategies for reaching class members, including radio and networking  
 4 through community and religious organizations.

5 **C. CLASS NOTICE VARIATIONS**

6 There are multiple versions of the long-form class notice. Each notice will  
 7 contain one or more of the following components:

- 8 ○ Notice for confirmed Gerstein class members advising that they are  
 9 entitled to financial compensation based on the number of days of  
 10 unlawful detention;
- 11 ○ Notice for confirmed No Money Bail class members advising that  
 12 they are entitled to financial compensation based on the number of  
 13 days of unlawful detention;
- 14 ○ Notice for *potential* Gerstein class members, which will explain that  
 15 entitlement to compensation depends on whether their detainer was  
 16 supported by a final order of removal or NTA.
- 17 ○ No Bail Notation Class Members, requesting that they indicate  
 18 whether they had access to at least \$2,500 and would have posted bail.

19 There are eight possible combinations of the above notice components. The  
 20 chart below summarizes how many class members will receive each version of the  
 21 notice.

	<b>Category</b>	<b>Notice Contents</b>	<b># Receiving this Notice</b>
22 23 24 25 26 27	1. Confirmed No-Money-Bail, NOT Gerstein (All Confirmed No-Money Bail who are not confirmed or potential members of the Gerstein class).  Doesn't matter if they are also members of the No-Bail-Notation Class.	Entitled to \$ for all pre-trial detention days.  [No mention of ability to post bail b/c they will be compensated for all pretrial days by virtue of membership in No-Money-Bail class]	1,507 <sup>9</sup>

28 <sup>9</sup> Counts below may change slightly once the methodology for identifying *Gerstein* members has been adjusted. For purposes of this request, please assume these numbers.

	Category	Notice Contents	# Receiving this Notice
2.	Confirmed No-Money Bail AND Confirmed Gerstein  Does not matter if they are No-Bail-Notation members.	Entitled to \$ for pretrial detention days + \$ for over-detention days.  [No mention of ability to post bail b/c they will be compensated for all pretrial days by virtue of membership in No-Money-Bail class]	1,514
3.	Confirmed No-Money-Bail AND <i>Potential</i> Gerstein Does not matter if they are No-Bail-Notation members.	Entitled to \$ for pretrial detention days + <i>possibly</i> entitled to \$ over-detention days. (The notice will advise that we will confirm their eligibility for compensation for over-detention days if we receive a claim form).  [No mention of ability to post bail b/c they will be compensated for all pretrial days by virtue of membership in No-Money-Bail class]	601
4.	Confirmed Gerstein Only (NOT members of the No-Money-Bail class, <i>and</i> NOT members of the No-Bail-Notation Class)	Entitled to \$ for over-detention days (only)	8,046
5.	Confirmed Gerstein AND No-Bail Notation class (but NOT No-Money-Bail Class)	Entitled to \$ for over-detention days + possibly entitled to \$ if would have posted bail.  Claim form will ask these individuals to self-identify whether they had access to \$2,500 and would have posted bail had they been permitted to do so.	1,803
6.	Potential Gerstein Only (NOT No-Money-Bail Class, NOT No-Bail-Notation)	<i>Possibly</i> entitled to \$ over-detention days (only)	3,898

	<b>Category</b>	<b>Notice Contents</b>	<b># Receiving this Notice</b>
7.	Potential Gerstein Class AND No-Bail-Notation Class, but NOT No-Money-Bail	<i>Possibly</i> entitled to \$ for over-detention days + possibly entitled to \$ if would have posted bail  Claim form will ask these individuals to self-identify whether they had access to \$2,500 and would have posted bail had they been permitted to do so.	623
8.	No-Bail-Notation ONLY (Not No-Money-Bail, No Confirmed or Potential Gerstein)	Entitled to \$ if would have posted bail	3,350
<b>TOTAL INDIVIDUAL NOTICES</b>			<b>21,342</b>

**V. CONCLUSION**

For the foregoing reasons, Plaintiffs ask that the Court preliminarily approve the settlement, and sign the proposed Preliminary Approval Order (with any revisions the Court deems necessary). The Proposed Preliminary Approval Order contains a provision approving the parties’ request to issue notice using a combination of mail, email and text message. The Proposed Order contains dates that have been worked out among the parties and reviewed by the Class Administrator. They assume that the order will be entered by November 20, 2020. If it is later, the dates may need to be modified to allow sufficient time to follow the schedule.

DATED: October 30, 2020

Respectfully submitted,

KAYE, McLANE, BEDNARSKI & LITT, LLP

By: /s/ Barrett S. Litt  
Barrett S. Litt

By: /s/ Lindsay Battles  
Lindsay Battles

Attorneys for Plaintiffs