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19 UNITED STATES DISTRICT COURT

20 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

21 RICHARD GARRIES; ANDREW
22 YBARRA, individually and on behalf
of all others similarly situated,

23 Plaintiff-Petitioners,

24
25 vs.

26 LOUIS MILUSNIC, in his capacity as
Warden of Lompoc, et al.,

27 Defendant-Respondents.
28

Case No. 2:20-cv-04450-CBM-PVCx

**NOTICE OF JOINT MOTION
AND MOTION FOR
CERTIFICATION OF
SETTLEMENT CLASS,
PRELIMINARY APPROVAL OF
SETTLEMENT AGREEMENT,
AND CLASS NOTICE;
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT**

Filed Concurrently with Declaration of
Oliver Rocos; and Proposed Order

Hearing:

Date: July 12, 2022

Time: 10:00 a.m.

Courtroom 8D

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 12, 2022 at 10:00 a.m. in Courtroom 8D of the above-entitled Court, Plaintiff-Petitioners (“Petitioners”) Richard Garries and Andrew Ybarra, and on behalf of all others similarly situated, and Defendant-Respondents (“Respondents”) Louis Milusnic, in his official capacity as Warden of FCI Lompoc and USP Lompoc, and Michael Carvajal, in his official capacity as Director of the Bureau of Prison, will jointly move and hereby do seek: (i) an order pursuant to Federal Rule of Civil Procedure (“Rule”) 23(c)(1)(C), (e), and (g) certifying as the Settlement Class the class that was provisionally certified on July 14, 2020, Dkt. 45; (ii) preliminarily approve the proposed settlement agreement attached hereto as Exhibit A; (iii) approve the proposed Notice to the Class attached hereto as Exhibit B; and (iv) set the proposed case schedule and fairness hearing.

This motion is based upon this Notice, the Memorandum of Points and Authorities, the Declaration of Oliver Rocos, all accompanying exhibits, the filings in this action, the Proposed Order, and any and all evidence, argument, or other matters that may be presented at the hearing.

Local Rule 5-4.3.4(a)(2)(i) Compliance: Filer attests that all other signatories listed concur in the filing’s content and have authorized this filing.

Respectfully submitted,

1 DATED: June 10, 2022

Respectfully submitted,

2 Terry W. Bird
3 Dorothy Wolpert
4 Shoshana E. Barnett
5 Kate S. Shin
6 Oliver Rocos
7 Christopher J. Lee
8 Bird, Marella, Boxer, Wolpert, Nessim,
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By: /s/ Oliver Rocos

Oliver Rocos

Attorneys for Plaintiff-Petitioners

12 DATED: June 10, 2022

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Sara Norman

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21 Naeun Rim
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Attorneys for Plaintiff-Petitioners

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3 DATED: June 10, 2022

Peter Eliasberg
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6 By: /s/ Peter Bibring

Peter Bibring
Attorneys for Plaintiff-Petitioners

8 Dated: June 10, 2022

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After engaging in litigation for the last two years, the parties now jointly seek certification of a settlement class and preliminary approval of a proposed Settlement Agreement that entails dismissal of this action. See Exhibit A. Additionally, the parties seek an order approving notice to the class of a fairness hearing concerning the Settlement Agreement and an order setting a schedule for the fairness hearing. The parties request that unless the Court has any questions, this motion be submitted on the papers and that the Court expedite consideration of the proposed order. The Court should issue an order pursuant to Federal Rule of Civil Procedure (“Rule”) 23(c)(1)(C), (e), and (g) certifying the provisional class that was certified on July 14, 2020, Dkt. 45, as the Settlement Class. While Respondents continue to deny the allegations in this action, they consent to the certification of the Settlement Class, the appointment of Plaintiff-Petitioners Richard N. Garries and Andrew G. Ybarra as representatives of the Settlement Class, and the appointment of class counsel.¹

The Court should also grant preliminary approval of the Settlement Agreement because it is the product of arm’s-length, serious, informed, and non-collusive negotiations between experienced and knowledgeable counsel who have actively prosecuted and defended this litigation. Additionally, the notice and schedule for a fairness hearing proposed by the parties will allow an adequate opportunity for class members to review and comment on the Settlement Agreement, and is consistent with the parties’ desire for prompt implementation of its terms.

¹ The original named plaintiffs are no longer in custody at Lompoc. The parties filed a stipulation to dismiss the original named plaintiffs and substitute Mr. Garries and Mr. Ybarra as Plaintiff-Petitioners in this action, which the Court granted. *See* Dkt. Nos. 419 & 420.

1 **II. BACKGROUND**

2 Petitioners filed suit on May 16, 2020, seeking (1) a “highly expedited
3 process” for review of class members for home confinement, as well as (2) an order
4 seeking improved conditions, including adequate social distancing, access to
5 hygiene supplies and PPE, adequate screening procedures, a system for isolated
6 exposed individuals, adequate medical care for those that contract COVID-19,
7 protections against retaliation, and monitoring to ensure compliance. *See* Dkt. 1
8 (Complaint). Petitioners moved for a temporary restraining order and preliminary
9 class certification. On July 14, 2020, the Court issued an order granting Petitioners’
10 motions in part, converting the requested TRO into a preliminary injunction, and
11 provisionally certifying a class of people in custody at Lompoc over 50 or with
12 underlying health conditions. *See* Dkt. 45.

13 **Home Confinement.** On the issue of home confinement, the court’s
14 Preliminary Injunction ordered Respondents to make “full and speedy use of their
15 authority under the CARES Act and evaluate each class member’s eligibility for
16 home confinement which gives substantial weight to the inmate’s risk factors for
17 severe illness and death from COVID-19 based on age (over 50) or Underlying
18 Health Conditions”. *See* Dkt. 45. Petitioners also brought a motion to enforce the
19 preliminary injunction, which the Court granted. *See* Dkt. 105.

20 In January 2021, Petitioners filed a second motion to enforce compliance
21 with the Preliminary Injunction. The magistrate recommended granting in part and
22 denying in part the motion. *See* Dkt. 276. The Court adopted the magistrate’s
23 recommendation and ordered Respondents to re-evaluate class members who had
24 been denied home confinement where the only reason given for the denial was the
25 amount of time served or percentage of sentence served, or some other variation of
26 a time component, as well as ordering Respondents to release individuals within
27 one month of approving them for home confinement. *See* Dkt. 290.

28 On May 25, 2021 Respondents moved to dissolve the preliminary injunction.

1 Dkt. 250.

2 **Conditions.** On conditions at Lompoc, the Court denied Petitioners'
3 application for a temporary restraining order regarding condition of confinement,
4 finding that Petitioners' request was precluded by disputed facts as to the safety
5 measures implemented at Lompoc. *See* Dkt. 45 at p. 80.

6 The Court granted Petitioners' request to appoint Dr. Homer Venters as the
7 Court's expert, and approved site visits for Dr. Venters in September 2020, April
8 2021 and February 2022. *See* Dkts. 101, 239, 367. The purpose of these visits was
9 to determine whether Respondents were complying with applicable COVID
10 standards set by the BOP and the Centers for Disease Control. During each visit,
11 Dr. Venters found areas of compliance and areas where he believed that
12 Respondents were deficient. *Id.*

13 Respondents dispute the validity of Dr. Venters' reports, and retained expert
14 witnesses to inspect Lompoc and opine on the COVID safety measures at the
15 facility. On May 25, 2021, Respondents moved for summary judgment and to
16 dissolve the preliminary injunction. Dkts. 250, 251. Those motions are still
17 pending.

18 **III. SUMMARY OF KEY PROPOSED SETTLEMENT TERMS**

19 **Home Confinement.** The Settlement Agreement largely codifies the
20 Preliminary Injunction and the Court's enforcement orders. Specifically, it requires
21 Respondents to comply with Attorney General Barr's March 26 and April 3, 2020
22 memoranda, the current BOP guidance at the time of each review, and the standards
23 set forth in this Court's orders when making decisions about a request for home
24 confinement. In addition, the agreement requires Respondents to transfer
25 individuals within one month of the decision granting home confinement and, if the
26 transfer does not occur timely Respondents must provide an explanation of the
27 reasons for the delay.

28 **Conditions.** The Settlement Agreement requires Respondents to follow BOP

1 policies for COVID testing, checks for people who exhibit symptoms, screening of
2 workers, and medical isolation practices.

3 **Reporting.** The Agreement requires Respondents to provide monthly reports
4 on home confinement reviews and the conditions issues listed above.

5 **Termination.** The Agreement will terminate on the earliest of the following
6 dates: a) November 17, 2022, b) the day the national emergency declaration with
7 respect to the Coronavirus Disease 2019 (COVID–19) under the National
8 Emergencies Act (50 U.S.C. 1601 et seq.) terminates; or c) the day the Attorney
9 General determines that emergency conditions no longer materially affect the
10 functioning of the Bureau of Prisons,

11 **Attorney Fees.** Pursuant to Federal Rule of Civil Procedure 23(h), the
12 parties move the court for an order awarding attorneys’ fees and costs. Subject to
13 Court approval, the Parties have reached a compromise and Respondents have
14 agreed to pay Plaintiffs’ counsel \$375,000 for reasonable fees and expenses.

15 **IV. PROPOSED NOTICE**

16 The parties have agreed to a proposed notice to the class, which is filed as
17 Exhibit B. This form of notice is adequate to provide the class with notice of the
18 proposed Settlement Agreement and the fairness hearing, and it complies with the
19 due process requirements of Rule 23 of the Federal Rules of Civil Procedure.
20 Within seven days of the Court granting preliminary approval of the settlement and
21 the notice to the class attached as Exhibit B, Respondents will post the notice in
22 FCC Lompoc, including at locations and in formats accessible to disabled inmates;
23 and post an electronic version of the notice on the electronic bulletin board which is
24 available to all Class Members in FCC Lompoc.

25 **V. ARGUMENT**

26 **A. The Court should certify the Settlement Class, appoint Mr.**
27 **Garries and Mr. Ybarra as Settlement Class Representatives, and**
28 **Appoint Class Counsel.**

The parties ask the Court to certify a Settlement Class defined as:

1
2 all current and future people in post-conviction custody at FCI Lompoc
3 and USP Lompoc over the age of 50, and all current and future people in
4 post-conviction custody at FCI Lompoc and USP Lompoc of any age
5 with underlying health conditions, including chronic obstructive
6 pulmonary disease; serious heart conditions such as heart failure,
7 coronary artery disease, or cardiomyopathies; Type 2 diabetes; chronic
8 kidney disease; sickle cell disease; immunocompromised state from a
9 solid organ transplant; obesity (body mass index of 30 or higher);
10 asthma; cerebrovascular diseases; cystic fibrosis; hypertension or high
11 blood pressure; immunocompromised state from blood or bone marrow
transplant; immune deficiencies, HIV, or those who use corticosteroids,
or use other immune weakening medicines; neurologic conditions such
as dementia; liver diseases; pulmonary fibrosis; thalassemia; Type 1
diabetes; and smokers (hereinafter, “Underlying Health Conditions”).

12 The above definition is identical to the definition for the provisional class this Court
13 certified in its July 14, 2020 order (“Provisional Class Certification Order”),
14 granting a preliminary injunction and certifying, on a provisional basis, a class
15 pursuant to Rule 23(a) and (b)(2). (Dkt. 45 at 44-48). For the same reasons it
16 certified the provisional class, the Court should also certify the Settlement Class.

17 The threshold task in determining whether to certify a class for settlement
18 purposes is to examine whether the four requirements of Rule 23(a) are met.
19 *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 614 (1997); *Hanlon v. Chrysler*
20 *Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). Additionally, parties seeking
21 certification must show that the action satisfies at least one subsection of Rule
22 23(b). *Amchem*, 521 U.S. at 614; *Hanlon*, 150 F.3d at 1022. Many of the qualifying
23 criteria contained in Rule 23(a) and (b) exist to protect the interests of absentee
24 class members and therefore deserve “undiluted, even heightened, attention” in the
25 context of a settlement-only class certification. *Amchem*, 521 U.S. at 620.

26 Rule 23(a) provides that a district court may certify a class only if: “(1) the
27 class is so numerous that joinder of all members is impracticable; (2) there are
28

1 questions of law or fact common to the class; (3) the claims or defenses of the
2 representative parties are typical of the claims or defenses of the class; and (4) the
3 representative parties will fairly and adequately protect the interests of the class.”
4 Fed. R. Civ. P. 23(a). That is, the class must satisfy the requirements of numerosity,
5 commonality, typicality, and adequacy of representation to maintain a class action.
6 *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 588 (9th Cir. 2012).

7 When considering provisional class certification, the Court found that the
8 original Plaintiff-Petitioners to this action—Yonnedil Carror Torres, Vincent Reed,
9 Felix Samuel Garcia, Andre Brown, and Shawn L. Fears (“Original Named
10 Plaintiffs”) met the requirements for numerosity, commonality, typicality, and
11 adequacy of representation pursuant to Federal Rule of Civil Procedure 23(a).
12 Without waiving the arguments they made in opposition to provisional class
13 certification, Respondents agree that the same findings made as to numerosity,
14 commonality, typicality, and adequacy of representation the Court previously made
15 apply here to the Settlement Class.

16 Rule 23(a)’s numerosity requirement for class certification requires the class
17 to be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. Proc.
18 23(a). There are currently more than 2000 members of the provisional class.
19 (CITE.) The Court should therefore find “the class is so numerous that joinder is
20 impracticable, and therefore the numerosity requirement is met. (Dkt. 45 at 45.)

21 To satisfy the commonality requirement, there must be questions of law
22 and/or fact common to the class. Fed. R. Civ. P. 23(a)(2). To establish
23 commonality, Plaintiff-Petitioners need only point to a single common question to
24 the class. *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2556 (2011). The Court
25 should find, as it did previously, that “all class members have been subjected to
26 significant risk of exposure to COVID-19.” (Dkt. 45 at 45.) Common facts still
27 include “the process by Respondents in considering Lompoc inmates for home
28 confinement and compassionate release are common to the entire putative class,

1 and common questions exist as to whether Respondents’ failure to make prompt
2 and meaningful use of home confinement and compassionate release in light of the
3 pandemic, and disregard of inmates’ age and medical conditions in determining
4 eligibility for home confinement and compassionate release violate the Eighth
5 Amendment.” (*Id.* at 45-46.)

6 “Claims are ‘typical’ if they are reasonably coextensive with those of absent
7 class members; they need not be substantially identical.” *Hanlon*, 150 F.3d at 1020.
8 As it did for the Original Named Plaintiffs, the Court should find that the claims of
9 putative Plaintiff-Petitioners Richard N. Garries and Andrew G. Ybarra are typical
10 of the class because Petitioners are currently incarcerated at Lompoc, have been
11 subject to substantial risk of exposure to COVID-19, and have higher risk of severe
12 illness or death from COVID-19 based on their age and/or underlying medical
13 conditions. Mr. Garries is 58 years old, has a body mass index of over 30, and
14 currently suffers from type 2 diabetes and hypertension. (Declaration of Richard
15 Garries (“Garries Decl.”) ¶ 3.) Mr. Ybarra is 28 years old, has a body mass index of
16 over 30, and currently suffers hypertension and high liver enzymes indicative of
17 liver disease. (Declaration of Andrew Ybarra (“Ybarra Decl.”) ¶ 3.) Both Mr.
18 Garries and Mr. Ybarra “challenge the same process regarding Respondents’ failure
19 to make prompt and meaningful use of home confinement and compassionate
20 release” and therefore satisfy the typicality requirement. (Dkt. 45 at 46-47.)

21 To satisfy the adequacy of representation requirement, Petitioners must show
22 (1) that the putative named plaintiffs have the ability and the incentive to represent
23 the claims of the class vigorously; (2) that the named plaintiffs have obtained
24 adequate counsel, and (3) that there is no conflict between the named plaintiffs’
25 claims and those asserted on behalf of the class. *Lerwill v. Inflight Motion Pictures,*
26 *Inc.*, 582 F.2d 507, 512 (9th Cir. 1978). Counsel for the putative Plaintiff-
27 Petitioners submitted declarations in support of the application for provisional
28 certification detailing their qualifications. (Dkt. 22-1, 22-2, and 22-3.) Respondents

1 did not challenge the adequacy of Petitioners' counsel then and still do not.
2 Moreover, there is no conflict between Petitioners and members of the class.
3 Petitioners have confirmed their willingness to be a "named plaintiff, to serve as a
4 class representative, and to represent the claims of the class vigorously in this
5 action." (Garries Decl. ¶ 4; Ybarra Decl. ¶ 4.) Thus, the Court should again find the
6 adequacy requirement is met. (Dkt. 45 at 47.)

7 Once the requirements of Rule 23 (a) are satisfied, the action must also be
8 maintainable under one of the three subsections of Rule 23(b). *Hanlon*, 150 F.3d at
9 1022. When certifying the provisional class, the Court found that Respondents had
10 acted or refused to act on grounds that applied generally to the provisional class
11 such that final injunctive relief was appropriate to the class as a whole in
12 accordance with Federal Rule of Civil Procedure 23(b)(2). (Dkt. 45 at 45-48). The
13 same finding applies to Settlement Class.

14 **B. The Court should preliminarily approve the stipulated settlement.**

15 The Ninth Circuit maintains a "strong judicial policy" that favors the
16 settlement of class actions. *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th
17 Cir. 2008); *Class Plaintiffs v City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).
18 In reviewing a proposed class action settlement agreement, a court first "conducts a
19 preliminary approval or prenotification hearing to determine whether the proposed
20 settlement is 'within the range of possible approval' or, in other words, whether
21 there is 'probable cause' to notify the class of the proposed settlement." *Horton v.*
22 *Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825, 827 (E.D.N.C.
23 1994) (citing *Armstrong v. Board of School Directors*, 616 F.2d 305, 312 (7th Cir.
24 1980)); see also *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079–80
25 (N.D. Cal. 2007); Manual for Complex Litigation (Fourth) § 21.632 (2004)
26 (explaining that courts "must make a preliminary determination on the fairness,
27 reasonableness, and adequacy of the settlement terms and must direct the
28 preparation of notice of the certification, proposed settlement, and date of the final

1 fairness hearing”). “Second, assuming that the court grants preliminary approval
2 and notice is sent to the class, the court conducts a ‘fairness’ hearing, at which all
3 interested parties are afforded an opportunity to be heard on the proposed
4 settlement.” *Horton*, 855 F. Supp. at 827. Preliminary approval entails an initial
5 assessment of the fairness of the proposed settlement made by a court “on the basis
6 of information already known, supplemented as necessary by briefs, motions, or
7 informal presentations by parties.” Manual for Complex Litigation § 21.632.

8 Newberg on Class Actions summarizes the preliminary approval criteria as follows:

9 If the preliminary evaluation of the proposed settlement
10 does not disclose grounds to doubt its fairness or other
11 obvious deficiencies, such as unduly preferential
12 treatment of class representatives or of segments of the
13 class, or excessive compensation for attorneys, and
14 appears to fall within the range of possible approval, the
court should direct that notice under Rule 23(e) be given
to the class members of a formal fairness hearing, at
which arguments and evidence may be presented in
support of and in opposition to the settlement.

15 4 Alba Conte & Herbert B. Newberg, Newberg on Class Actions § 11:25 (4th Ed.
16 2002).

17 The purpose of the preliminary approval process is to determine whether the
18 proposed settlement is within the range of reasonableness and thus whether notice
19 to the class of the terms and conditions and the scheduling of a formal fairness
20 hearing is worthwhile. *Id.*; see also *Young v. Polo Retail, LLC*, No. C-02-4546
21 VRW, 2006 WL 3050861, at *5 (N.D. Cal. Oct. 25, 2006). There is an “initial
22 presumption of fairness when a proposed class settlement was negotiated at arm’s
23 length by counsel for the class.” *Murillo v. Texas A&M Univ. Sys.*, 921 F.Supp.
24 443, 445 (S.D. Tex. 1996). Other factors courts consider in assessing a settlement
25 proposal include: “[1] the strength of the plaintiffs’ case; [2] the risk, expense,
26 complexity, and likely duration of further litigation; [3] the risk of maintaining
27 class action status throughout the trial; [4] the amount offered in settlement; [5] the
28 extent of discovery completed and the stage of the proceedings; [6] the experience

1 and views of counsel; [7] the presence of a governmental participant; and [8] the
2 reaction of the class members to the proposed settlement.” *Hanlon v. Chrysler*
3 *Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); *see also In re Oracle Sec. Litig.*, 829 F.
4 Supp. 1176, 1179 (N.D. Cal. 1993). The district court must explore these factors to
5 satisfy appellate review, but “the decision to approve or reject a settlement is
6 committed to the sound discretion of the trial judge.” *Hanlon*, 150 F.3d at 1026.

7 Furthermore, courts must give “proper deference to the private consensual
8 decision of the parties.” *Id.* at 1027. “[S]ettlement [is] the preferred means of
9 dispute resolution” and that “is especially true in complex class action litigation.”
10 *Officers for Justice v. Civil Serv. Comm’n*, 688 F. 2d 615, 625 (9th Cir. 1982).
11 “[T]he court’s intrusion upon what is otherwise a private consensual agreement
12 negotiated between the parties to a lawsuit must be limited to the extent necessary
13 to reach a reasoned judgment that the agreement is not the product of fraud or
14 overreaching by, or collusion between, the negotiating parties, and that the
15 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
16 *Hanlon*, 150 F.3d at 1027 (citing *Officers for Justice*, 688 F.2d at 625). Thus, a
17 district court’s decision to approve a class-action settlement may be reversed “only
18 upon a strong showing that the district court’s decision was a clear abuse of
19 discretion.” *Id.* (citation omitted).

20 Here, a preliminary review of the relevant considerations easily demonstrates
21 a solid basis for granting the conditional approval requested by this motion. The
22 Settlement Agreement is fair and adequate in that Respondents have agreed to
23 detailed terms that directly address the class claims in this case. The settlement was
24 reached after years of litigation and negotiations between the parties, who were
25 zealously represented by their experienced counsel throughout this litigation.

26 Further, the outcome of the litigation and the extent of any relief that the
27 class might be awarded if the case went to trial is uncertain, as demonstrated by
28 Respondents’ currently pending motions for summary judgment and to dissolve the

1 preliminary injunction. And proceeding through pre-trial motions, trial, and
2 probable appeal would impose risks, costs, and a substantial delay in the
3 implementation of any remedy in this matter. Given the relief achieved and the
4 risks and costs involved in further litigation, the Settlement Agreement represents a
5 fundamentally “fair, reasonable, and adequate” resolution of the disputed issues and
6 should be preliminarily approved. Fed. R. Civ. Pro. 23(e)(2).

7 **C. The Court should approve the Class Notice.**

8 Rule 23(e) requires notice to the class before the Court grants formal
9 approval to any compromise of the case. The parties have agreed to the form and
10 content of the notice to the class, which is attached as Exhibit B, and which
11 provides reasonable notice of the terms of the Settlement Agreement. The means of
12 disseminating the notice will allow an adequate opportunity for the class to review
13 and comment on the settlement. The parties respectfully request that the Court
14 approve the notice and order its dissemination to the class members.

15 **D. The Court should approve the proposed scheduling order and set**
16 **a date for a fairness hearing concerning the Settlement**
Agreement.

17 The parties propose the following time schedule to provide for notice,
18 comment, and final approval of the Stipulated Judgment and for a proposed
19 scheduling order. First, the parties request approximately seven days from the time
20 of the preliminary approval to publish the notice in FCC Lompoc. Second, the
21 parties request fifteen days, following the publication of the notice, during which
22 class members may file comments and objections. Third, the parties request
23 fourteen days from the end of the comment period for the parties to respond to any
24 objections and to move for final approval of the Settlement Agreement. Fourth, the
25 parties request that the fairness hearing be set approximately seven days after the
26 deadline for responding to the objections and filing the motion for final approval.

27 ///

28 ///

1 **VI. CONCLUSION**

2 For the reasons discussed above, Petitioners and Respondents request that the
3 Court issue preliminary approval of the Settlement Agreement, approve the form of
4 the proposed notice and order its publication to the class and issue the proposed
5 scheduling order. A proposed order is filed herewith.

6
7 DATED: June 10, 2022

Respectfully submitted,

8 Terry W. Bird

9 Dorothy Wolpert

Shoshana E. Bannett

10 Kate S. Shin

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Christopher J. Lee

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3 DATED: June 10, 2022

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1 Dated: June 10, 2022

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