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14 J.L., M.D.G.B., J.B.A., and M.G.S. on behalf
of themselves and all others similarly situated
15

16 **UNITED STATES DISTRICT COURT**
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

18 J.L., M.D.G.B., J.B.A., and M.G.S. on behalf
of themselves and all others similarly situated,
19

20 Plaintiffs,

21 v.

22 KENNETH T. CUCCINELLI, II *et al.*,¹

23 Defendants.
24
25
26

Case No. CV 18-4914

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
SETTLEMENT REGARDING
PLAINTIFFS' CLAIM FOR EQUAL
ACCESS TO JUSTICE ACT FEES AND
COSTS**

Date: February 26, 2020
Time: 1:00 pm

Hon. Nathanael M. Cousins

Action Filed: August 14, 2018

27 ¹ Chad F. Wolf is the current Acting Secretary of the Department of Homeland
28 Security. Pursuant to Fed. R. Civ. P. 25(d), he is automatically substituted as the proper party in
his official capacity.

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TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 26, 2020 at 1:00 pm, or as soon thereafter as the motion may be heard, Plaintiffs J.L., M.G.S., M.D.G.B., and J.B.A. (collectively, “Plaintiffs”) by and through their attorneys of record, will and hereby do move for approval of a settlement resolving Plaintiffs’ claim for Equal Access to Justice Act (“EAJA”) fees, costs, and expenses relating to this action (“Fees and Costs Settlement Agreement”). This motion is made pursuant to 28 U.S.C. §§ 2412(a)(1), (b) and (d)(1)(A); Federal Rules of Civil Procedure 23 and 54(d); and Rule 54-5 of the Local Rules of Practice in Civil Proceedings before the United States District Court for the Northern District of California for entry of an order approving the agreement awarding Plaintiffs eight hundred and seventy five thousand dollars (\$875,000) – \$14,129.30 which are payable pursuant to 28 U.S.C. § 2412(a)(1), and fees and expenses in the amount of \$860,870.70, which are payable pursuant to the EAJA, 28 U.S.C. § 2412(d) – in full and complete satisfaction of any claims by Plaintiffs for costs, attorneys’ fees, and litigation expenses, including any interest in connection with the above captioned case.

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the concurrently filed Declaration of Adrienne Marshack in Support of Plaintiffs’ Motion and the exhibit attached thereto, the concurrently filed Declaration of Mary Tanagho Ross in Support of Plaintiffs’ Motion, the concurrently filed Declaration of Bree Bernwanger in Support of Plaintiffs’ Motion, the concurrently filed Declaration of Sara Van Hofwegen in Support of Plaintiffs’ Motion, the concurrently filed Declaration of Kristen Jackson in Support of Plaintiffs’ Motion, and all other pleadings and papers on filed in this action and such other argument or evidence that the Court may consider.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs J.L., M.G.S., M.D.G.B., and J.B.A. (collectively, “Plaintiffs”), by and through their counsel of record, respectfully seek approval of the Fees and Costs Settlement Agreement entered into on January 14, 2020. Defendants U.S. Citizenship and Immigration Services (“USCIS”); Department of Homeland Security (“DHS”); Kenneth T. Cuccinelli, II, in his official capacity as Acting Director, USCIS; Chad F. Wolf, in his official capacity as Acting Secretary, DHS; and Robert M. Cowan, in his official capacity as Director, USCIS National Benefits Center, (collectively, “Defendants,” and together with Plaintiffs, the “Parties”) have agreed to pay, and Plaintiffs have agreed to accept, subject to the Court’s approval, eight hundred and seventy five thousand dollars (\$875,000) in full and complete satisfaction of any claims by Plaintiffs for costs, attorneys’ fees, and litigation expenses, including any interest in connection with this lawsuit.

This proposed sum breaks down as follows: fees and expenses in the amount of \$860,870.70, which are payable pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d) and costs in the amount of \$14,129.30, which are payable pursuant to 28 U.S.C. § 2412(a)(1). Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, Plaintiffs now move for the Court’s approval of this settlement regarding EAJA fees and costs (the “Fees and Costs Settlement Agreement”).

II. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs and the class they represent are immigrant children, aged 18 to 20 years old at the time of the relevant findings, who were abandoned, abused, and/or neglected and who meet the requirements for Special Immigrant Juvenile Status (“SIJS”) as set forth in the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101(a)(27)(J) (the “SIJ Statute”), and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”). Plaintiffs commenced this lawsuit shortly after discovering that USCIS was consistently denying and/or issuing Notices of Intent to Deny (“NOIDs”) to vulnerable immigrants aged 18 to 20 seeking SIJS.

On August 14, 2018, Plaintiffs filed a class action complaint (the “Complaint”). Dkt. 1. In their Complaint, Plaintiffs alleged that Defendants’ new requirement that the state court making factual findings required for SIJS have authority to reunite the child with his or her parents

1 violated Plaintiffs’ Fifth Amendment due process rights, and violated both the INA and the
2 Administrative Procedure Act (“APA”). *See id.* Plaintiffs also sought declaratory relief that
3 Defendants’ new requirement was unlawful and that California Probate Courts appointing
4 guardians under Section 1510.1 of the California Probate Code (“Section 1510.1”) qualify as
5 “juvenile courts” under the SIJ Statute. *Id.*

6 At the same time Plaintiffs filed their Complaint, they also filed a motion for leave to
7 proceed using pseudonym (Dkt. 5) and moved for a preliminary injunction. Dkt. 6. Both motions
8 were opposed by Defendants. *See* Dkts. 31; 32. On October 17, 2018, the Court granted
9 Plaintiffs’ motion to proceed using pseudonym (Dkt. 46), and on October 24, 2018, the Court
10 granted Plaintiffs’ motion for preliminary injunction and enjoined Defendants from denying SIJS
11 “on the ground that a California Probate Court does not have jurisdiction or authority to ‘reunify’
12 an 18- to 20-year-old immigrant with his or her parents;” from initiating removal proceedings
13 against or removing any SIJS petitioner who was appointed a guardian pursuant to Section
14 1510.1(a) and “whose [SIJS] petition has been denied on the grounds that the California Probate
15 Court did not have the jurisdiction or authority to ‘reunify’ an 18- to 20- year-old immigrant with
16 his or her parents;” and required Defendants to “provide no less than 14 days[‘] notice to
17 Plaintiffs’ Counsel before [taking] any adverse adjudicatory or enforcement action against any of
18 the individual Plaintiffs or members of the Proposed Class.” Dkt. 49 at 28 (the “PI Order”).

19 This litigation has been hard fought and involved numerous discovery disputes. On
20 November 21, 2018, Plaintiffs filed a motion for class certification and appointment of class
21 counsel. Dkt. 71. On December 20, 2018, Defendants filed an opposition (Dkt. 79), and on
22 February 1, 2019, the Court granted Plaintiffs’ motion for class certification and appointed class
23 counsel. Dkt. 112. On January 7, 2019, Defendants filed a motion to dismiss. Dkt. 91.
24 Defendants then produced an initial Certified Administrative Record (“CAR”) on January 11, 2019
25 (Dkt. 96) and a second CAR on March 1, 2019. Dkt. 133. On March 15, 2019, the Court denied
26 Defendants’ motion to dismiss. Dkt. 142. On March 29, 2019, Defendants filed an Answer to
27 Plaintiffs’ Amended Complaint. Dkt. 144. Plaintiffs then moved to supplement the record and
28 compel Defendants to produce a privilege log. Dkts. 145; 146; 148. On April 11, 2019, the Court

1 granted Plaintiffs' request for the production of a privilege log (Dkt. 150), and on May 22, 2019,
2 the Court granted Plaintiffs' motion for discovery outside of the CAR. Dkt. 161. Defendants then
3 filed a supplement to the CAR and a privilege log on June 21, 2019. Dkt. 164.

4 On August 12, 2019, the Parties filed cross-motions for summary judgment. Dkts. 179;
5 180. After the Parties' cross-motions for summary judgment were fully briefed, the Parties
6 engaged in settlement discussions with Magistrate Judge Donna M. Ryu (*see* Dkts. 199, 202, 203),
7 reaching a merits settlement on October 25, 2019 after extensive negotiations. Dkt. 211.

8 As a result of the merits settlement, USCIS will no longer require that the state court
9 issuing SIJ Findings have the authority to return a child to the custody of his or her parent in order
10 to qualify as a "juvenile court" under the SIJ Statute. Dkts. 211-2; 228.

11 Additionally, Defendants agreed that the Probate Court is a "juvenile court" for the purpose
12 of: (1) making custodial placements and/or legal commitments; (2) issuing findings regarding
13 whether abandonment, abuse, neglect, or a similar basis under state law render reunification
14 between a Person² under the age of 21 and his or her parent not viable; and (3) issuing findings
15 regarding best interests pursuant to California law, as required under the SIJ Statute. Dkt. 211-2.

16 Defendants also agreed that a Person is not disqualified from SIJ classification provided
17 that (1) state law confers upon a state court the jurisdiction to declare the Person dependent, legally
18 commit the Person to an individual or entity, or place the Person under the custody of an individual
19 or entity regardless of age; and (2) the Person is unmarried and under the age of 21 when he or she
20 petitions for SIJ classification. *Id.*

21 Finally, Defendants agreed that a "child" as defined by Section 1510.1 is not disqualified
22 from SIJ classification, despite having reached California's age of majority before obtaining a
23 custodial placement and/or legal commitment as required for SIJ classification eligibility because
24 the California Probate Court has jurisdiction over such "child" as a "juvenile" for purposes of SIJ
25 classification under Section 1510.1. *Id.*

26 On the same day the Parties sought approval of the merits settlement agreement,

27 ² Per the merits settlement agreement, "Person" means an individual considered a "juvenile,"
28 "child," "minor," or equivalent term subject to the jurisdiction of a juvenile court under the law of
the state in which he or she resides.

1 Defendants filed a Notice of USCIS Policy Update notifying the Court of USCIS’s official policy
 2 update, announcing that USCIS is “no longer requiring evidence that a state court had the authority
 3 to place a petitioner in the custody of an unfit parent in order to make a qualifying determination
 4 regarding parental reunification for purposes of SIJ classification.” Dkt. 209. On October 30,
 5 2019, this Court preliminarily approved the merits settlement, setting the final approval hearing for
 6 December 18, 2019. Dkt. 218.

7 Since the Court preliminarily approved the merits settlement on October 30, 2019, Plaintiffs’
 8 counsel learned that at least three class members included on the Class List³ had been removed from
 9 the U.S. without 14 days’ notice to Plaintiffs’ counsel in potential violation of the Court’s PI Order.
 10 *See* Dkt. 49 at 28; Dkt. 223, Dkt. 227.⁴ Plaintiffs’ counsel also discovered that the Class List failed
 11 to accurately identify which potential class members were in removal proceedings. *See* Dkt. 222-2
 12 at 7-16. When the Court approved the merits settlement on December 18, 2019 and issued its final
 13 judgment, it retained jurisdiction to enforce the preliminary injunction and to enforce the terms of
 14 the settlement. *See* Dkts. 228-229.

15 Following the approval of the merits settlement and the entry of final judgment, the Parties
 16 continued to diligently negotiate at arm’s length to resolve Plaintiffs’ claim for attorneys’ fees and
 17 costs under the EAJA. Plaintiffs sent detailed information regarding their fees and costs to
 18 Defendants, and the Parties reached this Fees and Costs Settlement Agreement on January 14, 2020.
 19 The proposed Fees and Costs Settlement Agreement currently before the Court will have no impact
 20 on the merits settlement or final judgment ordered by the Court. It pertains only to Plaintiffs’ request
 21 for fees and costs under the EAJA.

22 **III. SUMMARY OF FEES AND COSTS SETTLEMENT TERMS**

23 On January 14, 2020, the Parties reached the proposed Fees and Costs Settlement Agreement.

24 _____
 25 ³ In compliance with the terms of the merits settlement agreement, Defendants provided Class
 Counsel with a Class List on November 13, 2019. *See* Dkt. 211-2 at 6, 10-11.

26 ⁴ The Court ordered Defendants to file by January 17, 2020, an update supported by declaration
 27 under penalty of perjury, “with 100% confidence,” as to: “its review of removals in violation or
 28 potential violation of the preliminary injunction order in this case,” and “an update as to NPG, EA,
 and RMN.” Further, the Court ordered that Plaintiffs file a response by January 24, 2020, and set a
 further hearing on the Order to Show Cause for January 29, 2020.

1 Declaration of Adrienne Marshack (“Marshack Decl.”) ¶ 2, Ex. A. In accordance with this
 2 agreement, Defendants have agreed to pay Plaintiffs \$875,000 to settle claims for attorneys’ fees and
 3 costs incurred in this litigation, subject to the Court’s approval. *Id.*, ¶ 1. This proposed sum breaks
 4 down as follows: fees and expenses in the amount of \$860,870.70, which are payable pursuant to the
 5 EAJA, 28 U.S.C. § 2412(d), and costs in the amount of \$14,129.30, which are payable pursuant to
 6 28 U.S.C. § 2412(a)(1). *Id.*, ¶ 2. Sixty days after the Court’s approval of this Fees and Costs
 7 Settlement Agreement or sixty days after Defendants’ receipt of Plaintiffs’ payment processing
 8 information upon the Court’s approval, whichever is later, Defendants will transfer these funds to
 9 Plaintiffs. *Id.*, ¶¶ 4, 5.

10 Although the Fees and Costs Settlement Agreement settles all claims relating to fees and
 11 costs expended in connection with this case, in their January 17, 2020 filing, Defendants may
 12 disclose additional individuals removed without notice in possible violation of the Court’s PI Order
 13 in response to the Court’s minute order. *See* Dkt. 227. The Fees and Costs Settlement Agreement
 14 enables Plaintiffs to request that the Court award compensatory sanctions of up to fifteen thousand
 15 dollars (\$15,000) for any past, present, or future work expended to remedy such identified possible
 16 violations, as the Court deems appropriate. Marshack Decl. ¶ 2, Ex. A ¶ 8. Defendants reserve the
 17 right to oppose such request. *Id.*

18 The Fees and Costs Settlement Agreement also enables Plaintiffs to seek monetary
 19 compensatory sanctions, without a cap, including those based on the value of work completed, to
 20 address any additional potential violations of the preliminary injunction that Defendants do not
 21 disclose in their January 17, 2020 filing. *Id.* Again, Defendants reserve the right to oppose such
 22 request. *Id.* Such terms were negotiated at arm’s length in order to preserve any future claims by
 23 Plaintiffs for compensatory sanctions based on the value of work expended.

24 **IV. THE COURT SHOULD APPROVE THE SETTLEMENT AMOUNT FOR FEES,**
 25 **EXPENSES, AND COSTS**

26 “In a certified class action, the court may award reasonable attorneys’ fees and nontaxable
 27 costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). Here, Plaintiffs
 28 and Defendants reached a Fees and Costs Settlement Agreement on January 14, 2020. Marshack

1 Decl. ¶ 2, Ex. A. Because the Parties have agreed to an attorneys' fee and costs award, the Court's
 2 task is to determine whether the agreed-upon amount is reasonable, using the fees potentially
 3 awardable under the relevant fee-shifting statute or statutes as a benchmark. *See In re Bluetooth*
 4 *Headset Products Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011) (reasonableness of fees must be
 5 considered against the backdrop of the American Rule, subject to fee-shifting statutes and other
 6 exceptions to this rule).

7 In this case, the EAJA, which applies to lawsuits against the United States government or any
 8 agency, or governmental officials in their official capacity, provides the relevant benchmark. *See* 28
 9 U.S.C. § 2412(d)(1); *see also Scarborough v. Principi*, 541 U.S. 401, 401 (2004).⁵ The Court's task
 10 is made simpler because the Parties bifurcated negotiations regarding the merits and fees, and did not
 11 reach this Fees and Costs Settlement Agreement until well after the merits settlement was approved
 12 by the Court. This obviates any concerns about Plaintiff's counsel's interest in attorneys' fees being
 13 pitted against class members' interest in obtaining complete relief. *Cf. Knisley v. Network*
 14 *Associates, Inc.*, 312 F.3d 1123, 1125 (9th Cir. 2002) ("One risk of class action settlements is that
 15 class counsel may collude with the defendants, tacitly reducing the overall settlement in return for a
 16 higher attorney's fee.").

17 The Court should approve the Parties' agreed-upon amount of \$14,129.30 in costs and
 18 \$860,870.70 in fees and expenses because the agreed-upon amount is reasonable and fair. The
 19 Parties have engaged in arms' length settlement negotiations, including three telephonic conference
 20 sessions and a series of written and telephonic correspondence over a period of several months under
 21 the direction and supervision of Judge Ryu, to arrive at the Fees and Costs Settlement Agreement
 22 that all parties concluded is reasonable. Marshack Decl. ¶ 2, Ex. A ¶ 3. Further, the award of fees
 23 and costs will be paid directly to Plaintiffs' counsel and will not affect the merits settlement
 24

25 ⁵ As the Court has already approved the merits settlement, Plaintiffs have secured substantial
 26 relief enforceable in and by this court. *See Barrios v. California Interscholastic Federation*, 277
 27 F.3d 1128, 1134 (9th Cir. 2002) (recognizing a party prevails by obtaining enforceable judgment,
 28 consent decree, or judicially enforceable settlement agreement). The Court need not analyze
 Defendants' potential defenses to a fee award because Defendants have agreed to pay the amount
 sought. *See Gutierrez v. Barnhart*, 274 F.3d 1255, 1258 (9th Cir. 2001) (substantial justification of
 government position is a defense under EAJA).

1 benefitting the class or any other relief ordered to an individual class member. *Id.* ¶ 4.

2 Under these circumstances, “the agreed amounts for attorneys’ fees and expenses . . . are
3 presumed to be reasonable.” *Wehlage v. Evergreen at Arvin LLC*, No. 4:10-CV-05839-CW, 2012
4 WL 4755371, at *1 (N.D. Cal. Oct. 4, 2012); *see also Hensley v. Eckerhart*, 461 U.S. 424, 437
5 (1983) (“A request for attorney’s fees should not result in a second major litigation. Ideally, of
6 course, litigants will settle the amount of a fee.”); *In re Apple Computer, Inc. Derivative Litig.*, No. C
7 06-4128 JF(HRL), 2008 WL 4820784, at *3 (N.D. Cal. Nov. 5, 2008) (citation omitted) (“A court
8 should refrain from substituting its own value for a properly bargained-for agreement.”); *Ingram v.*
9 *Coca-Cola Co.*, 200 F.R.D. 685, 695 (N.D. Ga. 2001) (absent evidence of collusion or detriment to a
10 party, the court “should give substantial weight to a negotiated fee amount, assuming that it
11 represents the parties’ best efforts to understandingly, sympathetically, and professionally arrive at a
12 settlement as to attorney’s fees”). The Ninth Circuit has “made clear that ‘since the proper amount
13 of fees is often open to dispute and the parties are compromising precisely to avoid litigation, the
14 court need not inquire into the reasonableness of the fees at even the high end with precisely the
15 same level of scrutiny as when the fee amount is litigated.’” *Laguna v. Coverall N. Am., Inc.*, 753
16 F.3d 918, 922 (9th Cir. 2014) (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 966 (9th Cir. 2003))
17 (vacated and dismissed as moot because the parties subsequently reached a settlement regarding the
18 appeal, 772 F.3d 608 (9th Cir. 2014)).

19 **A. The Amount of Attorneys’ Fees and Expenses Is Reasonable**

20 The agreed upon amount of \$860,870.70 in fees and expenses is reasonable when compared
21 to a lodestar. “The lodestar method [for calculating a reasonable attorneys’ fee] is most appropriate
22 where the relief sought is ‘primarily injunctive in nature,’ and a fee-shifting statute authorizes ‘the
23 award of fees to ensure compensation for counsel undertaking socially beneficial litigation.’”
24 *Laguna*, 753 F.3d at 922 (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th
25 Cir. 2011). A lodestar figure is “presumptively reasonable.” *Cunningham v. Cty. of Los Angeles*,
26 879 F.2d 481, 488 (9th Cir. 1988) (citation omitted).

27 Here, the settlement amount is a fraction of the fees actually incurred by Class Counsel.
28 After over a year of contentious litigation, including several opposed and fully-briefed motions,

1 including a motion for preliminary injunction, motion for class certification, motion to dismiss, cross
 2 motions for summary judgment, and motions to compel, the total amount of Plaintiffs' attorneys'
 3 fees exceeds \$1.1 million⁶ when considering all relevant EAJA statutory and specialist rates.⁷
 4 Marshack Decl. ¶ 30; Declaration of Mary Tanagho Ross ("Ross Decl.") ¶ 6; Declaration of Bree
 5 Bernwanger ("Bernwanger Decl.") ¶ 6. Should Plaintiffs have needed to file a motion for attorneys'
 6 fees and costs under the EAJA, as opposed to reaching the agreement with Defendants, Plaintiffs
 7 would have requested these fees for the 4,481.7 hours of work put in by Class Counsel. Marshack
 8 Decl. ¶ 26, 127; Ross Decl. ¶ 6; Bernwanger Decl. ¶ 6. Such a request for the full amount of fees
 9 would be reasonable when considering the complex nature of litigating a class action lawsuit against
 10 a government agency that vigorously defended its policy. Nevertheless, Plaintiffs have agreed to
 11 accept less than 77% of the fees actually incurred as a part of the Fees and Costs Settlement.

12 In addition to the heavy motion practice addressed above, Class Counsel's efforts on behalf
 13 of the Plaintiffs necessarily included: (i) working with Plaintiffs to assess the merits of a potential
 14 class action; (ii) researching and defining the contours of the prospective class; (iii) creating a record
 15 of USCIS's various, shifting grounds of SIJ adjudications; (iv) researching complex concepts of
 16 California law; (v) drafting a Complaint and Amended Complaint; (vi) drafting a motion to proceed
 17 under pseudonym; (vii) drafting cross motions for summary judgment; (viii) preparing for oral
 18 argument and attending hearings on these motions; (ix) navigating various discovery disputes; (x)
 19 developing a suitable remedy for all class members detrimentally affected by USCIS's policy;
 20 (xi) monitoring compliance with the Court's PI Order; and (xii) monitoring compliance with the
 21 merits settlement agreement. *See* Marshack Decl. ¶¶ 32-131; Ross Decl. ¶¶ 11-65; Bernwanger
 22 Decl. ¶¶ 10-54. Class Counsel will continue to represent Plaintiffs and the entire class by advising
 23 them on how to obtain the relief in the Court's judgment and final approval of the merits settlement
 24 agreement. *See* Dkts. 228, 229.

25 _____
 26 ⁶ Plaintiffs submit detailed declarations setting forth the time spent on various tasks concurrently
 27 with the filing of this motion. To the extent the Court wishes to see additional information or
 Plaintiffs' billing records, Plaintiffs are happy to provide these as well for *in camera* review.

28 ⁷ Pursuant to the EAJA, Plaintiffs' counsel are eligible for fees capped at the statutory rates set
 forth in 28 U.S.C. § 2412(d), unless they can show they qualify as specialists.

1 The statutory cap on fees under the EAJA for work performed in 2018 was \$201.60/hour and
 2 for work performed in 2019 was \$204.25/hour. *See* 28 U.S.C. § 2412(d)(2)(A); Ninth Circuit Rule
 3 39-1. In addition, specialist rates should be applied as to hours recorded by Plaintiffs’ counsel from
 4 Lawyers’ Committee for Civil Rights, Bree Bernwanger, and Public Counsel, Kristen Jackson and
 5 Sara Van Hofwegen. Ross Decl. ¶¶ 6-7; Bernwanger Decl. ¶¶ 6, 55-64; Declaration of Kristen
 6 Jackson (“Jackson Decl.”) ¶¶ 3-10; Declaration of Sara Van Hofwegen (“Van Hofwegen Decl.”) ¶¶
 7 3-10. Ms. Bernwanger, Ms. Jackson, and Ms. Van Hofwegen are all entitled to specialist rates due to
 8 their extensive experience, and these rates are \$475/hour, \$720/hour, and \$580/hour, respectively.
 9 *Id.* Under this calculation, fees attributable to Manatt are \$604,419.00, those attributable to Lawyers’
 10 Committee are \$228,927.20, including \$207,860.00 at specialist rates, and those attributable to
 11 Public Counsel are \$290,573.01, including \$151,086 at specialist rates. Should the Court apply these
 12 rates, the total attorneys’ fee award would therefore be \$1,123,919.21. The table below sets forth
 13 these figures.

Fees at EAJA Rates	
Manatt Statutory Fees (2,975.2 hours at statutory rates)	\$604,419.00
Lawyers’ Committee Statutory Fees (104.5 hours at statutory rates)	\$21,067.20
Public Counsel Statutory Fees (707.6 hours at statutory rates)	\$139,487.01
Lawyers’ Committee Specialist Fees (437.6 hours at hourly rates)	\$207,860.00
Public Counsel Specialist Fees (256.8 hours at hourly rates)	\$151,086.00
Total	\$1,123,919.21

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 20 Even without specialist rates for Ms. Bernwanger, Ms. Jackson, and Ms. Van Hofwegen, the
 21 requested amount for fees would be over \$905,000.00. *See* Ross Decl. ¶ 6; Bernwanger Decl. ¶ 6.
 22 Plaintiffs are willing to accept the lower settlement amount of \$860,870.70 in fees to avoid
 23 burdening the Court, in the interest of compromise, and to account for the risk inherent in any
 24 continuing litigation. Because all of these figures exceed the settlement amount, the settlement
 25 amount is presumptively reasonable. *Cunningham*, 879 F.2d at 488; *see also Briggs v. United States*,
 26 No. C 07-05760 WHA, 2010 WL 1759457, at *8 (N.D. Cal. Apr. 30, 2010) (approving negotiated
 27 fee award *higher* than the Court’s EAJA rate calculation, but still “within the range of attorney’s fees
 28 that would likely have been awarded had the Court been tasked with such a determination,” as a “fair

1 and reasonable award”).

2 Moreover, these figures are significantly lower than an appropriate lodestar. Plaintiffs have
3 limited the number of timekeepers by excluding time spent by paralegals and law clerks, although
4 the work these individuals undertook directly and substantially contributed to Plaintiffs’ success in
5 this litigation, and would otherwise be recoverable under the EAJA. Marshack Decl. ¶¶ 25, 30; *See,*
6 *e.g., Sorenson v. Mink*, 239 F.3d 1140, 1147 (9th Cir. 2001) (declining to reduce plaintiffs’ award
7 under EAJA where plaintiffs “obtained excellent results” and their successful and unsuccessful
8 claims “involved a common core of facts’ and were ‘based on related legal theories’”).

9 The amount requested by Plaintiffs further understates the fees to which Plaintiffs are entitled
10 because they do not include any fees incurred after December 18, 2019, even though substantial
11 work by Class Counsel has continued. Marshack Decl. ¶¶ 30, 128-130; Ross Decl. ¶ 6; Bernwanger
12 Decl. ¶ 6. Work performed by Class Counsel after December 18, 2019, for which it is not seeking
13 fees, includes the efforts involved in reach this settlement and preparing this Motion and the
14 supporting declarations detailing the amount of work expended by Class Counsel. *Id.* These fees
15 could otherwise be compensable. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 981 (9th Cir.
16 2008) (quoting *In re Nucorp Energy, Inc.*, 764 F.2d 655, 659-660 (9th Cir. 1985)) (“In statutory fee
17 cases, federal courts, including our own, have uniformly held that time spent in establishing the
18 entitlement to and amount of the fee is compensable.”); *Thompson v. Gomez*, 45 F.3d 1365, 1366
19 (9th Cir. 1995) (quoting *Clark v. City of Los Angeles*, 803 F.2d 987, 922 (9th Cir. 1986)
20 (“Recoverable attorney’s fees may include fees incurred while doing work on the underlying merits
21 of the action (‘merits fees’) as well as fees incurred while pursuing merits fees (‘fees-on-fees’).”).
22 Likewise, Plaintiffs are otherwise entitled to an award of fees for time Class Counsel spent
23 monitoring compliance with the merits settlement agreement. However, Plaintiffs have agreed not to
24 seek such fees in order to reach the Fees and Costs Settlement Agreement. *See Lucas v. White*, 63 F.
25 Supp. 2d 1046, 1059 (N.D. Cal. 1999).

26 The Court should approve the agreed upon amount of \$860,870.70 in fees and expenses
27 pursuant to the Fees and Costs Settlement Agreement between the Parties because it is fair and
28 reasonable.

1 **B. Plaintiffs’ Costs Are Reasonable**

2 Nontaxable costs may also be awarded to class counsel under Rule 23(h). *See* Fed. R. Civ. P.
 3 23(h). The Court should similarly approve the agreed upon amount of \$14,129.30 in costs pursuant
 4 to the Fees and Costs Settlement Agreement between the Parties because it is fair and reasonable.
 5 Here, Plaintiffs have spent at least \$46,278.19 in costs throughout this litigation, including filing
 6 fees, document preparation service, postage and delivery service, computerized legal research, audio
 7 and video conferencing services, copying, and travel expenses – all expenses that are routinely billed
 8 to clients and are recoverable under the EAJA. Marshack Decl. ¶¶ 132-134; *See Sneede by*
 9 *Thompson v. Coye*, 856 F. Supp. 526, 536 (N.D. Cal. 1994) (finding that Plaintiffs are entitled to
 10 recover “out-of-pocket costs” under an EAJA fee award). This amount only includes costs through
 11 September 30, 2019, and does not include any costs incurred since then. Marshack Decl. ¶¶ 132-
 12 134. Accordingly, the agreed upon settlement amount is but a fraction of the costs expended by
 13 Plaintiffs and is reasonable and well-justified.

14 **V. DIRECT NOTICE TO THE CLASS IS NOT REQUIRED**

15 The Parties are not required to give direct notice of the proposed Fees and Costs Settlement
 16 Agreement. The Court certified the class under Rule 23(b)(2) of the Federal Rules of Civil
 17 Procedure. Dkt. 112. “Because Rule 23(b)(2) provides only injunctive and declaratory relief, ‘notice
 18 to the class is not required.’” *In re Yahoo Mail Litig.*, No. 13-CV-4980-LHK, 2016 WL 4474612, at
 19 *5 (N.D. Cal. Aug. 25, 2016) (quoting *Lyon v. United States Immigration & Customs Enforcement*,
 20 300 F.R.D. 628, 643 (N.D. Cal. 2014)); *see also Chan v. Sutter Health Sacramento Sierra Region*,
 21 No. LA CV15-02004 JAK (AGR_x), 2016 WL 7638111, at *14 (C.D. Cal. June 9, 2016) (citing Fed.
 22 R. Civ. P. 23(c)(2)(A)). Furthermore, class members’ rights will not be prejudiced by this Fees and
 23 Costs Settlement Agreement because they will still “receive the benefit of the injunctive relief”
 24 ordered by the Court pursuant to the merits settlement, and they “do not release any statutory
 25 damages claims or claims for monetary relief.” *Chan*, 2016 WL 7638111 at *13.

26 Class Counsel has used Public Counsel’s website to communicate with class members and
 27 notify them of ongoing developments in this litigation. Plaintiffs’ motion for approval of the Fees
 28 and Costs Settlement Agreement, supporting documents, and Fees and Costs Settlement Agreement

1 will be posted on the Public Counsel website concurrent with this filing with the Court.

2 **VI. CONCLUSION**

3 For all of the reasons set forth above, Plaintiffs respectfully request that the Court approve
4 the Fees and Costs Settlement Agreement and award Plaintiffs' counsel \$14,129.30 in costs and
5 \$860,870.70 in fees and expenses.

7 Dated: January 17, 2020

MANATT, PHELPS & PHILLIPS, LLP
MATTHEW KANNY
ADRIANNE MARSHACK
SIRENA CASTILLO

PUBLIC COUNSEL
JUDY LONDON
SARA VAN HOFWEGEN
MARY TANAGHO ROSS

LAWYERS' COMMITTEE FOR CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA
BREE BERNWANGER

15 By: /s/ Adrienne Marshack
16 Adrienne Marshack
17 Attorneys for *Plaintiffs*
18 J.L., M.D.G.B., J.B.A., and M.G.S., on behalf
19 of themselves and all others similarly situated

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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2020 the foregoing document was electronically filed with the Clerk of the Court for U.S. District Court, Northern District of California, through the CM/ECF system. All parties are registered CM/ECF users and will be served through the CM/ECF system.

By: /s/ Kathleen Wise

Motions

[5:18-cv-04914-NC J.L. et al v. Lee Francis Cissna et al](#) **CASE CLOSED on 12/18/2019**

ADRMOP,CLOSED,CONSENT,REFSET-DMR

U.S. District Court

California Northern District

Notice of Electronic Filing

The following transaction was entered by Wise, Kathleen on 1/17/2020 at 1:34 PM PST and filed on 1/17/2020

Case Name: J.L. et al v. Lee Francis Cissna et al

Case Number: [5:18-cv-04914-NC](#)

Filer: J.B.A.

J.L.

M.D.G.B.

M.G.S.

WARNING: CASE CLOSED on 12/18/2019

Document Number: [237](#)

Docket Text:

MOTION for Settlement Approval of EAJA Fees and Costs Settlement Agreement filed by J.B.A., J.L., M.D.G.B., M.G.S.. Motion Hearing set for 2/26/2020 01:00 PM in San Jose, Courtroom 5, 4th Floor before Judge Nathanael M. Cousins. Responses due by 1/31/2020. Replies due by 2/7/2020. (Attachments: # (1) Adrienne Marshack Declaration ISO Motion for Approval of Settlement of EAJA Fees and Costs, # (2) Mary Tanagho Ross Declaration ISO Motion for Approval of Settlement of EAJA Fees and Costs, # (3) Bree Bernwanger Declaration ISO Motion for Approval of Settlement of EAJA Fees and Costs, # (4) Sara Van Hofwegen Declaration ISO Motion for Approval of Settlement of EAJA Fees and Costs, # (5) Kristen Jackson Declaration ISO Motion for Approval of Settlement of EAJA Fees and Costs, # (6) [Proposed] Order Approving Settlement of EAJA Fees and Costs)(Wise, Kathleen) (Filed on 1/17/2020)

5:18-cv-04914-NC Notice has been electronically mailed to:

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5:18-cv-04914-NC Please see [Local Rule 5-5](#); Notice has NOT been electronically mailed to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\fakepath\01 Plaintiffs' Motion for Approval of EAJA Fees and Costs Settlement.pdf

Electronic document Stamp:

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Document description: Adrienne Marshack Declaration ISO Motion for Approval of Settlement of EAJA Fees and Costs

Original filename:C:\fakepath\02 Adrienne Marshack Declaration ISO Motion for Approval of Settlement of EAJA Fees and Costs.pdf

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Document description: Mary Tanagho Ross Declaration ISO Motion for Approval of Settlement of EAJA Fees and Costs

Original filename:C:\fakepath\03 Mary Tanagho Ross Declaration ISO Motion for Approval of Settlement of EAJA Fees and Costs.pdf

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Document description: Bree Bernwanger Declaration ISO Motion for Approval of Settlement of EAJA Fees and Costs

Original filename:C:\fakepath\04 Bree Bernwanger Declaration ISO Motion for Approval of Settlement of EAJA Fees and Costs.pdf

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Document description: Sara Van Hofwegen Declaration ISO Motion for Approval of Settlement of EAJA Fees and Costs

Original filename:C:\fakepath\05 Sara Van Hofwegen Declaration ISO Motion for Approval of Settlement of EAJA Fees and Costs.pdf

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Document description: Kristen Jackson Declaration ISO Motion for Approval of Settlement of EAJA Fees and Costs

Original filename:C:\fakepath\06 Kristen Jackson Declaration ISO Motion for Approval of Settlement of EAJA Fees and Costs.pdf

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Document description: [Proposed] Order Approving Settlement of EAJA Fees and Costs

Original filename:C:\fakepath\07 [Proposed] Order Approving Settlement of EAJA Fees and Costs.pdf

Electronic document Stamp:

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