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11
12 *Attorneys for Plaintiffs*

13
14 **UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

15 CHRISTIAN RODRIGUEZ,
16 ALBERTO CAZAREZ, individually
17 and as class representatives

18 *Plaintiffs,*

19 vs.

20 CITY OF LOS ANGELES, CARMEN
21 TRUTANICH, CHARLES BECK,
22 ALLAN NADIR, ANGEL GOMEZ
23 AND DOES 1 THROUGH 10.

24 *Defendants.*

Case No.: CV11-01135 DMG (JEMx)

**NOTICE OF MOTION AND
MOTION TO ENFORCE
SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF**

[*Filed Concurrently with: Declarations of Stephanie Carroll (and Exs. A through XX thereto); Ben "Taco" Owens; Tina Padilla; and Alex Sanchez;*]

Date: April 12, 2024
Time: 9:30 a.m.
Location: Courtroom 8C
Hon. Dolly M. Gee

Complaint Filed: February 7, 2011

1 **TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:**

2

3 PLEASE TAKE NOTICE that on April 12, 2024 at 9:30 a.m., or as soon

4 thereafter as this matter may be heard in the above-titled Court, Plaintiffs will and

5 hereby do move the Court to reopen this matter and enforce their Settlement

6 Agreement with Defendant, the City of Los Angeles, which the Court approved to

7 fully and finally settle the above-captioned litigation.

8 This motion is made following the conference of counsel pursuant to L.R. 7-3

9 which took place on June 9, 2023 and November 29, 2023.

10 This motion is based upon this Notice of Motion and Motion, the Memorandum

11 of Points and Authorities filed herewith, the concurrently filed Declarations of

12 Stephanie Carroll, Ben “Taco” Owens, Tina Padilla, and Alex Sanchez and upon such

13 other matters as may be presented to the Court at the time of the hearing.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Introduction**

3 This settlement enforcement motion arises from Defendant’s breach of the
4 Court-approved settlement agreement in a class action. Plaintiffs seek this Court’s
5 order rectifying Defendant’s breaches of the parties’ settlement agreement so that
6 the class members have a meaningful chance to obtain the benefits to which they
7 are entitled. As detailed below, Plaintiffs have discovered that Defendant has
8 violated the settlement agreement by: (1) spending significantly more than the
9 agreed limit of ten percent of Settlement funds on Administrative Costs; and (2)
10 deterring class member participation in settlement programs by creating
11 unnecessary barriers to participation.

12 **II. Background**

13 Plaintiffs filed this lawsuit on February 7, 2011, challenging the
14 constitutionality of a curfew provision within 26 gang injunctions in the City of
15 Los Angeles (the “City”). Dkt. 1. Plaintiffs alleged claims stemming from service
16 of the injunctions and enforcement of the curfew under 42 U.S.C. § 1983 for
17 violations of Plaintiffs’ First, Fourth, and Fourteenth Amendment rights, as well
18 as claims under the California Constitution, under the Bane Act (Cal. Civ. Code
19 §52.1), and for false imprisonment and violation of mandatory duties. Plaintiffs
20 named as defendants the City of Los Angeles, Charles Beck, Carmen Trutanich,
21 Allan Nadir, and Angel Gomez. Dkt. 1. In their Complaint, Plaintiffs sought
22 general, special, and statutory damages; punitive damages against individual
23 defendants; attorney’s fees and costs; interest; preliminary and permanent
24 injunctive relief; and declaratory relief. Dkt. 1. Plaintiffs filed a First Amended
25 Complaint on April 13, 2011, and on June 30, 2011, Plaintiffs filed a Second
26 Amended Complaint. Dkts. 9, 18.

27 On July 1, 2016, Plaintiffs and Defendant the City of Los Angeles filed a

1 Settlement Agreement and Release (the “Settlement”) to fully, finally, and
2 forever compromise, release, resolve, discharge, and settle released claims. Dkt.
3 No. 380-1; *see also* Declaration of Stephanie Carroll (“Carroll Decl.”) at ¶¶ 3.
4 Under the Settlement, the City of Los Angeles agreed to establish Jobs and
5 Education and Tattoo Removal Programs for four years. Dkt. No. 380-1; Carroll
6 Decl. ¶ 4. The Settlement provides that “[a]dministrative costs for the Jobs and
7 Education Program are included in the total minimum [\$1.125 million per year]
8 and maximum [\$7.5 million per year] contributions; however, they will not
9 exceed 10% of the total annual expenditures.” Dkt. No. 380-1, Exhibit B, Sec.
10 II; Carroll Decl. ¶ 6. The Settlement defines “**Administrative Costs [as] the**
11 **estimated cost for administering the settlement and claims process,**
12 **including providing the Notice of Settlement, various efforts to locate**
13 **Settlement Class Members, and coordinating the provision of settlement**
14 **benefits to the Settlement Class.”** Dkt No. 380-1 at ¶ 16; Carroll Decl. ¶ 7.

15 This Court approved the Settlement on March 24, 2017, (Dkt. No. 403) and
16 specifically retained “exclusive and continuing jurisdiction over the Action,
17 Plaintiffs, all Class Members, and Defendants for purposes of implementing and
18 enforcing the Judgment, this Order of Final Approval, and the Settlement....”
19 Dkt No. 403 at ¶ 26.

20 The Parties have modified the Settlement by stipulation and by approval of
21 the Court five times (Dkt. Nos. 414, 423, 425, 431, and 441); Carroll Decl. ¶ 5.
22 The primary effect of these modifications has been to extend the Settlement in
23 order to increase Class Members’ participation in the Settlement’s benefits
24 programs, which has been low for various reasons, including the COVID-19
25 pandemic. Carroll Decl. ¶ 4. Plaintiffs, by and through Class Counsel, have
26 monitored Defendant’s implementation of the programs required by the
27 Settlement, including by analyzing reports related to Defendant’s Settlement-

1 related expenses. Carroll Decl. ¶ 8. On the basis of those reports, Defendant has
2 violated the terms of the Settlement by surpassing the ten percent cap on
3 Administrative Costs. Defendant's records indicate it may have spent as high as
4 29.3 percent of Settlement funds on Administrative Costs (see Section IV.B.1.,
5 *infra*).

6 In addition, Class Counsel regularly communicate with Class Members
7 about their experiences obtaining Settlement benefits and with the City staff
8 overseeing the Settlement's programs. Carroll Decl. ¶ 53. Class Counsel have
9 learned of several policies and practices by Defendant that deter Class Member
10 participation in the Settlement's programs, including but not limited to telling
11 Class Members the program is out of money and closed – while Defendant is
12 simultaneously spending more than double the agreed upon amount on
13 Administrative Costs (see Section IV.B.2., *infra*). Class Counsel have notified
14 Defendant of these problems each time and attempted to work with the City to
15 resolve them. Carroll Decl. ¶ 52-88. Nevertheless, widespread problems persist
16 and, as a result, the benefit to Class Members from the Settlement's programs
17 has been unacceptably low.

18 In order to ensure Defendant's compliance with the Settlement, Plaintiffs
19 seek this Court's order: (1) ordering that Defendant increase (non-
20 administrative) program spending so that its Administrative Costs fall below ten
21 percent of its total spending over the life of the Settlement or, alternatively, that
22 Defendant spend \$30 million total, the maximum contemplated under the
23 Settlement, whichever is lower, with a cap on future Administrative Costs; (2)
24 appointing a forensic examiner under Fed. R. Civ. Pro. 706 to determine the
25 exact amount by which Defendant has exceeded the ten percent Administrative
26 Cost cap; (3) appointing a special master under Fed. R. Civ. Pro. 53 to oversee
27 Defendant's remedial spending or, in the alternative, appoint a magistrate judge
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1 for this purpose; (4) ordering that Defendant cease and desist from its practices
2 deterring Class Member participation in the Settlement’s programs, and take
3 affirmative steps to remediate its past deterrence of participation; (5) awarding
4 Plaintiffs their reasonable attorneys’ fees and costs incurred in connection with
5 this motion, according to proof; (6) awarding Plaintiffs their reasonable
6 attorneys’ fees and costs for work to monitor and enforce any remedial
7 measures ordered by the Court as a result of this Motion and for their continued
8 monitoring and enforcement of the Settlement; and (7) for any other relief the
9 Court may deem just and proper.

10 **III. Legal Standards**

11 **A. Court Authority to Enforce Settlement Agreements.**

12 Federal courts have “the equitable power to enforce summarily an agreement
13 to settle a case pending before it.” *Callie v. Near*, 829 F.2d 888, 890 (9th Cir.
14 1987).¹ Ordinarily, when a district court incorporates the terms of a settlement
15 agreement or a stipulation into an order, it retains subject matter jurisdiction to
16 interpret and enforce the contents of that order. *Nehmer v. U.S. Dep’t of Veterans*
17 *Affs.*, 494 F.3d 846, 856 (9th Cir. 2007) (citing *Flanagan v. Arnaiz*, 143 F.3d 540,
18 544 (9th Cir.1998). The enforcement of settlement agreements is favored in the
19 law. *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1989). “Promotion of this policy
20 requires judicial enforcement of settlement agreements.” *MWS Wire Industries,*
21 *Inc. v. California Fine Wire Co.*, 797 F.2d 799, 802 (9th Cir. 1986).

22 The law guiding enforcement of settlements is well established. A settlement
23 is a contract, *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 378 (1992), and
24 is therefore generally construed and enforced as such. *Jeff D. v. Andrus*, 899 F.2d
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26 ¹ California law also specifically provides for “summary enforcement of
27 settlement agreements” in Code of Civil Procedure §664.6.

1 753, 759 (9th Cir. 1989). The court’s enforcement power includes authority to
2 award damages and order specific performance; the Court may also issue orders
3 “commanding or enjoining particular conduct.” *TNT Marketing, Inc. v. Agresti*,
4 796 F.2d 276, 278 (9th Cir. 1986).

5 In some respects, a motion to enforce a settlement is like a motion for
6 summary judgment. *In re City Equities Anaheim, Ltd.*, 22 F.3d 954, 959 (9th Cir.
7 1994). Accordingly, “the court may hear evidence and make factual
8 determinations.” *Fair Hous. Council of Cent. Cal., Inc. v. Tylar Prop. Mgmt. Co.*,
9 975 F. Supp. 2d 1115, 1118 (E.D. Cal. 2012); *see also Credit Bureau Connection,*
10 *Inc. v. Pardini*, 580 F. App’x 553, 553–54 (9th Cir.2014) (finding no abuse of
11 discretion by the trial court when it declined to hold an evidentiary hearing
12 because “[t]he parties relied on the briefs and declarations rather than expressly
13 requesting the opportunity to present witnesses[, and because the parties] did not
14 identify any ‘material facts’ that could not be resolved by reference to the terms
15 of the settlement agreement, the declarations submitted by the parties, and the
16 court’s prior dealings with the litigants”). Thus, it is “well established that when
17 the parties execute a complete, written [settlement] agreement, it is enforceable in
18 the same manner as any other written contract, and courts may admit all relevant
19 evidence, as they would in any other contract enforcement proceeding.” *Const.*
20 *Laborers Trust Funds for S. Cal. Admin Co. v. Lucky Water Trucks, LLC*, 2017
21 WL 7846983, at *5 (C.D. Cal. Nov. 30, 2017) (*citing* C.D. Cal. General Order
22 No. 11–10).

23 **B. The Burden of Proof is the Preponderance of the Evidence.**

24 “The construction and enforcement of settlement agreements are governed
25 by principles of local law which apply to interpretation of contracts generally.”
26 *Flores v. Sessions*, 394 F. Supp. 3d 1041, 1048 (C.D. Cal. 2017) (*citing O’Neil v.*
27 *Bunge Corp.*, 365 F.3d 820, 822 (9th Cir. 2004)). In California, courts apply the

1 preponderance of the evidence standard to motions to enforce settlement
2 agreements. *Flores*, 394 F. Supp. 3d at 1048 (citing *Buss v. Superior Court*, 16 Cal.
3 4th 35, 54, 65 Cal.Rptr.2d 366, 939 P.2d 766 (1997)).

4 Preponderance of the evidence means “more likely than not.” *Sandoval v.*
5 *Bank of Am.*, 94 Cal.App.4th 1378, 1387-88 (2002). “Preponderance of the
6 evidence means that the evidence on one side outweighs, preponderates over, is
7 more than, the evidence on the other side, not necessarily in number of witnesses
8 or quantity, but in its effect on those to whom it is addressed. . . . In other words,
9 the term refers to evidence that has more convincing force than that opposed to
10 it.” *People ex rel. Brown v. Tri–Union Seafoods, LLC*, 171 Cal.App.4th 1549, 1567
11 (2009) (internal quotations and citations omitted).

12 The objective intent of the parties determines a contract's meaning. *United*
13 *Commercial Ins. Serv., Inc. v. Paymaster Corp.*, 962 F.2d 853, 856 (9th Cir.1992)
14 (citing Cal. Civ. Code §§ 1636, 1638). Therefore, the Court must look at the
15 “intent manifested in the agreement” and the “surrounding conduct” of the parties
16 instead of their subjective beliefs to resolve what a contract means. *Id.*
17 Nevertheless, the Court enforces the agreement “according to the *plain* meaning of
18 its terms.” *Nodine v. Shiley Inc.*, 240 F.3d 1149, 1154 (9th Cir. 2001) (emphasis
19 added); *United States v. Armour & Co.*, 402 U.S. 673, 682 (1971) (settlement’s
20 requirements “must be discerned within its four corners. . . .”).

21 **C. Settlement Compliance Requires Substantial Compliance with Each**
22 **Settlement Provision.**

23 In considering a settlement enforcement motion, the moving party should
24 establish there has not been substantial compliance with some provision of the
25 agreement. *See e.g., Flores*, 394 F. Supp. 3d at 1049–50 (citing *Jeff D. v. Otter*,
26 643 F.3d 278, 283–84 (9th Cir. 2011) (“[b]ecause consent decrees have many of
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1 the attributes of ordinary contracts [and] ... should be construed basically as
2 contracts, the doctrine of substantial compliance, or substantial performance, may
3 be employed.”)) Each provision of a settlement agreement is an “independent
4 obligation[.]... which must be satisfied.” *Flores*, 394 F. Supp. 3d at 1049–50 (*citing*
5 *Rouser v. White*, 825 F.3d 1076, 1081 (9th Cir. 2016). Substantial compliance
6 means more than taking significant steps toward compliance with a settlement
7 agreement; in California, a party is deemed to have substantially complied with an
8 obligation only where any deviation is “unintentional and so minor or trivial as not
9 substantially to defeat the object which the parties intend to accomplish” *Flores*,
10 394 F. Supp. 3d at 1049-50. . (citations and some quotation marks omitted).

11 **D. Court Appointed Expert Witness (Rule 706).**

12 A Court may appoint any expert witness that the parties agree on or any
13 expert of the Court's own choosing. Fed. R. Evid. 706(a). “A Rule 706 expert
14 typically acts as an advisor to the court on complex scientific, medical, or technical
15 matters.” *Armstrong v. Brown*, 768 F.3d 975, 987 (9th Cir. 2014). The expert “does
16 not serve as an advocate for either party” *Patton v. Loadholt*, 445 F. Supp. 3d 802,
17 803 (E.D. Cal. 2020). “Courts have broad discretion to appoint expert witnesses,”
18 *Sanders v. York*, 446 F. App'x 40, 43 (9th Cir. 2011), but their appointment
19 “should be reserved for exceptional cases in which the ordinary adversary process
20 does not suffice.” *McCoy v. Stronach*, 494 F. Supp. 3d 736, 740 (E.D. Cal. 2020).
21 “Ultimately, the most important question a court must consider when deciding
22 whether to appoint a neutral expert witness is whether doing so will promote
23 accurate fact finding.” *Gorton v. Todd*, 793 F. Supp. 2d 1171, 1179 (E.D. Cal.
24 2011).

1 **E. Appointment of Master (Rule 53).**

2 The Court “may appoint a master only to... address pretrial and posttrial
3 matters that cannot be effectively and timely addressed by an available district
4 judge or magistrate judge of the district.” Fed. R. Civ. P. 53(a)(1)(C). Although the
5 Ninth Circuit has traditionally required “a showing of exceptional conditions to
6 justify the appointment,” *Burlington N. R. Co. v. Dep't of Revenue of State of*
7 *Wash.*, 934 F.2d 1064, 1071 (9th Cir. 1991), it is now the rule that “[t]he only
8 prerequisite to the appointment of a pretrial or posttrial master is that no district
9 judge or magistrate judge of the district be available who can address the matter to
10 be referred in a timely and effective manner.” *United States ex rel. Poehling v.*
11 *United Health Grp., Inc.*, No. CV 16-8697 FMO (SSx), 2020 WL 10731245, at *1
12 (C.D. Cal. May 5, 2020) (quoting 9 Moore's Federal Practice § 53.10[3][b]). Thus,
13 there is no longer a requirement for “exceptional conditions” for the appointment
14 of posttrial masters where the appointment does not involve holding trial
15 proceedings and making recommend findings of facts on issues to be decided
16 without a jury. *United States ex rel. Poehling*, 2020 WL 10731245, at *1.

17 **IV. Argument**

18 The Court should grant this Motion because it has jurisdiction to enforce
19 Settlement compliance and there is overwhelming evidence that Defendant has not
20 adhered to the terms of the Settlement. More specifically, Defendant’s settlement-
21 related financial records and public documents lay bare that it has exceeded the ten
22 percent cap on Administrative Costs. In addition, Defendant has also undermined
23 the Settlement’s purpose by deterring class member participation.

24 The appointment of a Special Master and an Independent Forensic Examiner
25 to oversee compliance and accurately assess Administrative Costs is within this
26 court’s authority and necessary to accomplish the purpose of the settlement. The
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1 Court should also compensate Class Counsel for their extensive and diligent
2 monitoring of Settlement compliance and preparation of this Motion. Finally,
3 approving Class Counsel’s recovery of fees monitoring compliance with any
4 orders resulting from this Motion is also within the Court’s authority and would
5 ultimately benefit the class.

6 **A. This Court Retained Jurisdiction to Enforce Settlement Compliance.**

7 The Court’s order approving the Settlement explicitly retains jurisdiction for
8 the purpose of settlement enforcement. On November 18, 2016, Plaintiffs filed
9 their Unopposed Motion For Final Approval Of Settlement (Dkt. No. 396). The
10 Court granted the motion on March 24, 2017. (Dkt. No. 403, Order Granting
11 Plaintiffs’ Unopposed Motion For Final Approval Of Settlement). Consistent with
12 the terms of the Settlement, the order states:

13 “the Court retains exclusive and continuing jurisdiction over the
14 Action, Plaintiffs, all Class Members, and Defendants for purposes of
15 implementing and enforcing the Judgment, [the] Order of Final
16 Approval, and the Settlement, and for purposes of considering any
17 future motion for reasonable attorney’s fees arising from a reasonable
18 need to enforce the Settlement Agreement against the City.”

19 (Dkt. No. 403 at ¶ 26). Therefore, the Court can enforce the Settlement *See, e.g.,*
20 *Nehmer*, 494 F.3d at 856 (a court retains subject matter jurisdiction to interpret and
21 enforce the contents of a settlement agreement that are incorporated into its order).
22 Moreover, the public policy favoring settlement agreements requires this Court to
23 exercise its settlement authority. *See, e.g., MWS Wire Industries, Inc.* 797 F.2d at
24 802.

B. The Preponderance Of The Evidence Establishes That Defendant Is Not In Substantial Compliance With The Settlement Agreement.

Defendants have failed to comply with two key aspects of the Settlement.

First, Defendants have violated the term of the Settlement that prohibits the City from spending more than ten percent of the total program budget on

Administrative Costs. The ten percent cap is described in the Settlement as follows:

“Administrative costs for the Jobs and Education Program are included in the total minimum [\$1.125 million per year] and maximum [\$7.5 million per year] contributions; however, they will not exceed 10% of the total annual expenditures.”

Dkt. No. 380-1, Ex. B, Sec. II (Page 46 of 68, Page ID #11574; *see also* Carroll Decl. ¶ 6. The Settlement defines “Administrative Costs [as] the estimated cost for administering the settlement and claims process, including providing the Notice of Settlement, various efforts to locate Settlement Class Members, and coordinating the provision of settlement benefits to the Settlement Class.” Dkt. No. 380-1, ¶ 16 (emphasis added); *see also* Carroll Decl. ¶ 7. The Court must enforce the agreement that Administrative Costs will not exceed ten percent of total Settlement expenses according to the plain meaning of the term. *See, e.g., Nodine*, 240 F.3d at 1154.

Second, the Settlement requires the parties to “use their best efforts, including all efforts contemplated by [the] Settlement Agreement, and any other efforts that may become necessary... to effectuate th[e] Settlement Agreement.”

Dkt. No. 380-1, ¶ 58; *see also* Carroll Decl. ¶ 52. Defendant is not in substantial compliance with this provision of the Settlement because it has engaged in policies and practices that deter Class Member participation in the Settlement’s programs.

See Carroll Decl. ¶ 52-88. For example, Defendant has: required Jim-Crow era-like

1 testing; been unresponsive to Class Members; caused long delays in providing
2 services; required Class Members to cover expenses out-of-pocket and delayed
3 reimbursements; made opaque decisions on benefits allocation, approval and
4 distribution; arbitrarily capped benefits for certain Class Members; denied certain
5 Class Members access to public services because of their participation in the
6 Settlement; and persistently underfunded providers, leading to service denials to
7 Class Members seeking Settlement benefits at those providers. All of these actions
8 by Defendant deter Class Member participation in the Settlement's programs.

9 Moreover, Defendant has failed to take satisfactory corrective action to
10 address longstanding and ongoing problems identified by Class Counsel that have
11 driven Class Members away from availing themselves of their Settlement benefits.
12 Carroll Decl. ¶ 53-88. Without this Court's intervention, the vast majority of Class
13 Members will not obtain the relief to which they are entitled under the Settlement.

14 1. Ten Percent Cap on Administrative Costs

15 The evidence that Defendant's Settlement expenditures have significantly
16 exceeded the ten percent cap is insurmountable. *See* Carroll Decl. at ¶¶ 10, 19, 20,
17 22-51. *See also Flores*, 394 F. Supp. 3d at 1048 (the preponderance of the evidence
18 standard applies to motions to enforce settlement agreements). There is also
19 overwhelming evidence that Defendant's financial records are internally
20 inconsistent and irreconcilable across the various records and reports; thus, at best,
21 Defendant's accounting of its expenditures, including those for Administrative
22 Costs, are unreliable and suggest Defendant has not been properly tracking its
23 spending on Administrative Costs. Carroll Decl. at ¶¶ 8, 35-36, 38-45.
24 Accordingly, it is impossible to determine from the information available the exact
25 amount Defendant has spent on Administrative Costs or the percentage of the total
26 spent. Carroll Decl. at ¶¶ 43-45, 96. It is for this reason that Plaintiffs seek the
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1 appointment of a forensic examiner to ascertain the actual amount of Defendant’s
2 spending on Administrative Costs. (*See* Part C., below). **Nevertheless,**
3 **Defendant’s own documents prove they have significantly exceeded the ten**
4 **percent cap permitted under the Settlement.** Carroll Decl. at ¶¶ 24-51.²

5 In the course of their investigation leading to this Motion, Plaintiffs received
6 and analyzed three reports that detail Defendant’s spending by Class Member.
7 Carroll Decl. at ¶ 24 - 27. Plaintiffs believe that these reports – which provide the
8 most detail of Defendant’s spending – are the most reliable. Defendant provided
9 the first such report on April 20, 2022 showing a total amount spent of
10 \$5,426,067.25.³ Carroll Decl. at ¶ 25. Plaintiffs received the second of these
11 reports on February 14, 2023 showing \$6,505,251.84 in total spending. Carroll
12 Decl. at ¶ 25. The third report is comprised of: a PDF report for the period ending
13 June 30, 2023 (the “Financial Report”); thirteen Excel files, one for each active
14 WorkSource Center (the “WSC Reports”); and a PDF of “non-active” service
15 providers (the “Non-Active WSC Report”) (collectively the “July 14, 2023
16 Reports”). Carroll Decl. at ¶ 23. The Financial Report indicates \$8,705,933 has
17 been spent on service providers, including the WorkSource Centers that directly
18 serve Class Members and other providers (e.g., those helping with outreach);
19 \$2,852,882 has been spent on “City of LA” costs; and \$155,471 has been spent on
20 “Outreach, Marketing & Others.” Carroll Decl. at ¶ 26, 42, 51. The total

21 ² Only one of Defendant’s documents – an expenditure report provided on
22 September 1, 2023 – purports to show Administrative Costs under ten percent.
23 Carroll Decl. at ¶¶ 40, 42. Class Counsel find this report to be completely
24 unreliable because none of the figures in it are reconcilable with any other of
25 Defendant’s financial reports. Carroll Decl. at ¶ 42.

26 ³ Class Counsel’s analysis of the April 20, 2022 report revealed that out of a
27 class estimated at 5,606 Class Members, 845 people were enrolled in the
28 Settlement’s programs, and only 688 received any meaningful or tangible benefit
from the Settlement at the point in time. Carroll Decl. at ¶ 20.

1 expenditure listed is \$11,714,286. Carroll Decl. at ¶ 50. Class Counsel believe the
2 \$2,852,882 in “City of LA” costs and the \$155,471 spent on “Outreach, Marketing
3 & Others”, totaling \$3,008,353 are Administrative Costs under the Settlement.
4 Accordingly, Defendant’s own financial reports indicate it has spent **more than 25**
5 **percent** of the total expenditure listed on Administrative Costs. Carroll Decl. at ¶
6 51. This calculation is generous to Defendant, as it does not include additional
7 expenses for categories like Reporting, Meetings, Reporting/Meetings, Outreach,
8 Active members, and MOUs by WorkSource Centers and other service providers
9 that would increase the percentage of spending on Administrative Costs even
10 further beyond the ten percent limit in the Settlement. Carroll Decl. at ¶ 30-33.

11 Publicly available financial data also indicates Defendant is exceeding the
12 Settlement’s ten percent limit on Administrative Costs. A January 9, 2023 City of
13 Los Angeles Economic and Workforce Development Department (EWDD)
14 Funding Request stated that the City had appropriated \$13,301,863 from fiscal year
15 2016-2017 through fiscal year 2022-2023, \$3,291,069 of which was for “EWDD
16 Oversight” (*i.e.*, Administrative Costs). Carroll Decl. at ¶ 47. This “EWDD
17 Oversight” expenditure is 24.7 percent of the total amount listed as appropriated
18 (\$13,301,863) for the Settlement, well in excess of the 10 percent cap on
19 Administrative Costs permitted by the Settlement. Carroll Decl. at ¶ 47. Moreover,
20 given that this report indicates that only \$7,955,559 of the \$10,010,794 allocated
21 for service providers was actually spent, the “EWDD Oversight” expense could be
22 **as high as 29.3 percent**. Carroll Decl. at ¶ 47. Once again, this accounting is quite
23 generous to Defendant, as it does not contemplate the \$380,309 in additional
24 expenses (for Reporting, Meetings, Reporting/Meetings, Outreach, Active
25 members, and MOUs) listed by WorkSource Centers in the July 14, 2023 Reports,
26 all of which Class Counsel believe are Administrative Costs under the Settlement.
27 Carroll Decl. at ¶ 48.

1 Plaintiffs have raised these problems with Defendant’s spending on
2 Administrative Costs repeatedly, including when the parties formally met and
3 conferred in anticipation of this Motion on June 9, 2023 and November 29, 2023.
4 Carroll Decl. at ¶¶ 11-17, 94-97. Following the first of these meetings, Defendant
5 agreed to provide Class Counsel with additional documents that would allow them
6 to determine the precise percentage of Defendant’s Administrative Costs. Carroll
7 Decl. at ¶¶ 17, 96. Defendant also agreed to provide Plaintiffs information that
8 would make clear what expenses it considers “Administrative Costs.” Carroll Decl.
9 at ¶ 17. The subsequently provided July 14, 2023 Reports, however, were
10 inconsistent, both internally and when compared with other records. Carroll Decl.
11 at ¶¶ 29, 36, 42-44.

12 Significantly, Defendant’s records show that Defendant is attempting to
13 exclude its spending on “Program Administration” or “Program Operations” from
14 the calculation of its spending on Administrative Costs. Carroll Decl. at ¶ 37-45.
15 This category of expenditures is what Defendant spent on funding the “EWDD
16 Workforce Development Division.” Carroll Decl. at ¶ 42; and Ex. Y-3 to Carroll
17 Decl. Everything described as “Program Administration” or “Program Operations”
18 falls under the category of “coordinating the provision of settlement benefits to the
19 Settlement Class” and is therefore an “Administrative Cost” under the Settlement.
20 Carroll Decl. at ¶ 45.

21 On October 27, 2023, Class Counsel wrote to Defendant in anticipation of
22 filing this Motion. Ex. EE-1 to Carroll Decl. Subsequently, the parties met on
23 November 29, 2023. Carroll Decl. at ¶ 97. During that meeting, Defendant’s
24 counsel offered only that Defendant agrees the parties have discussed the
25 Administrative Cost issue several times; Defendant’s counsel did not offer to explain
26 the problems with Defendant’s Settlement related financial records or to provide
27

1 additional information that would enable Class Counsel to reliably determine
2 Defendant’s spending on Administrative Costs. Carroll Decl. at ¶ 97.

3 Even without knowing the exact figures, Defendant is not in substantial
4 compliance with the Settlement’s ten percent cap on Administrative Costs because
5 the deviation is not “so minor or trivial as not substantially to defeat the object
6 which the parties intend to accomplish.” *See Flores*, 394 F. Supp. 3d at 1049–50.

7 **The purpose of the Settlement – delivery of benefits to Class Members – is**
8 **significantly undermined by excessive Administrative Costs that take funds from**
9 **the Class and places them in the pockets of City employees and contractors. It is**
10 **for this very reason that the Settlement explicitly included the ten percent cap.**

11 2. Deterrence of Class Member Participation in the Settlement’s
12 Programs.

13 There is also overwhelming evidence of Defendant’s violation of the
14 requirement to “use their best efforts” to accomplish the purpose of the Settlement
15 (Dkt. No. 380-1, ¶ 58) through its deterrence of Class Member participation. As
16 with Defendant’s violation of the Administrative Cost provision of the Settlement,
17 the Court should grant this Motion because it is (significantly) more likely than not
18 that Defendant is not in substantial compliance with the “best efforts” clause. *See,*
19 *e.g., Flores*, 394 F. Supp. 3d at 1048. The breach here is especially egregious
20 because Defendant has not only failed to take “significant steps” to ensure that
21 Class Members are able to obtain the benefits provided by the Settlement
22 Agreement (*see, e.g., id.* at 1049-50); Defendant has also failed to take meaningful
23 corrective action in response to Plaintiffs’ repeated requests for improvements to
24 the administration of the Settlement’s programs. Carroll Decl. at ¶¶ 54-88.

25 Defendant’s policies and practices deterring Class Member participation in
26 the Settlement’s programs are longstanding, widespread, and well-documented.

1 Carroll Decl. at ¶¶ 54-93; Declaration of Ben “Taco” Owens (“Owens Decl.”) at ¶¶
2 4-6, 8-15; Declaration of Tina Padilla (“Padilla Decl.”) at ¶¶ 6, 8-25; and
3 Declaration of Alex Sanchez (“Sanchez Decl.”) ¶¶ 6-32;. They encompass Jim-
4 Crow era style testing requirements; unresponsive service providers and
5 caseworkers; long delays in providing Class Members services; requiring Class
6 Members to cover costs out-of-pocket and seek reimbursement (for which there are
7 further, often many months-long delays); opaque and arbitrary decisions about
8 which Class Members are provided certain benefits; unnecessarily capping benefits
9 for some Class Members (but not others); prohibiting Class Members who receive
10 benefits from accessing services available to non-Class Members; and years of
11 perennial problems funding service providers (*i.e.* WorkSource centers) resulting
12 in Class Members being turned away from providers and told – sometimes literally
13 – that the Settlement’s benefits program is out of money and closed. Carroll Decl.
14 at ¶¶ 54-88; Owens Decl. at ¶¶ 4-6, 8-15; Padilla Decl. at ¶¶ 6, 8-25. Class Counsel
15 have been diligent in flagging each of these problems for Defendant to address.
16 Nevertheless – and sometimes despite Defendant’s assurances – deterrent practices
17 persist. *See, e.g.*, Carroll Decl. at ¶¶ 55, 84-85, 57-66.

18 The effect of Defendant’s failure to comply with the Settlement’s “best
19 efforts” requirement is evident from the low Class Member participation rate.
20 Despite the Class including between 5,600 and 6,000 Class Members, as of the
21 claims administrator’s last report, dated December 20, 2023, there have been only
22 1,872 claims, and of those, only 1,746 have been approved. Carroll Decl. at ¶¶ 89-
23 91. Moreover, while Defendant’s administration of the Settlement’s benefits
24 programs has been characterized by low program participation, the number of
25 approved claimants who go on to sign up with a WorkSource Center is even lower
26 and the number who obtain a meaningful benefit is even lower still. Carroll Decl.
27 at ¶¶ 89-92. For example, Class Counsel’s analysis of Defendant’s July 14, 2023
28

1 Reports reveal that of the 1,210 Class Members actually enrolled with a
2 WorkSource Center, 270 received no tangible Settlement benefit. Carroll Decl. at ¶
3 92. For these 270 Class Members, Defendant invested either nothing at all, or only
4 in “outreach” or “case management,” for which solely providers are paid. Carroll
5 Decl. at ¶ 92.

6 The experiences of individuals working with the Class Members’
7 communities to enroll them in the Settlement’s benefits programs further
8 emphasize how the programs’ administration deters Class Members from
9 participation. Owens Decl. at ¶¶ 4-6, 8-15; Padilla Decl. at ¶¶ 6, 8-25; Sanchez
10 Decl. ¶¶ 6-32. Crucially, the WorkSource centers contracted to serve Class
11 Members are not culturally competent in working with the Class population.
12 Owens Decl. at ¶¶ 5; Padilla Decl. at ¶¶ 14, 16, 21-24; Sanchez Decl. ¶¶ 21-22.
13 Moreover, the availability of benefits is inconstant and unclear, leading to
14 frustration and Class Members that give up on obtaining benefits. Owens Decl. at
15 ¶¶ 10-11, 13, 15; Padilla Decl. ¶¶ 7-9; Sanchez Dec. ¶¶ 17-20. Long delays in
16 receiving benefits and false reports that the program is out of money and closed
17 have also further eroded trust between Class Members and Defendant,
18 undermining the Settlement. Owens Decl. at ¶¶ 4-6, 8-17; Padilla Decl. at ¶¶ 6, 8-
19 26; Sanchez Decl. ¶¶ 6-32.

20 **C. The Court Should Appoint A Special Master and Independent**
21 **Forensic Examiner to Oversee Settlement Compliance**

22 Plaintiffs make no secret of the fact that the gaps and discrepancies in the
23 reports provided to Class Counsel, and the vague expense category descriptions
24 used in some of those reports, have hindered a precise calculation of Defendant’s
25 expenses on Administrative Costs to date. Carroll Decl. at ¶¶ 18-51. In fact,
26 Plaintiffs have tried several times to address these problems with Defendants.
27

1 Carroll Decl. at ¶ 9. Moreover, although the Settlement provides for a third party
2 evaluator, none of the evaluator’s five reports contain any financial analysis of
3 Defendant’s spending on Administrative Costs. See Carroll Decl. at ¶ 26 n5.

4 This is a complex Settlement involving potentially tens of millions of
5 dollars of expenditures – directly by the City and though as many as twenty-three
6 provider agencies – to hundreds of Class Members engaged so far, and thousands
7 more who are part of the Class. Carroll Decl. at ¶¶ 4, 89-91. The Settlement
8 administration has involved five extensions and multiple City budget allocations
9 over more than six years. Carroll Decl. at ¶ 5.

10 **Given the Settlement’s complexity, the Court should appoint a forensic**
11 **examiner to audit the Defendant’s and its contractors’ Settlement expense records.**
12 **The audit will provide the Court the Administrative Cost figure,** ideally broken
13 down by Settlement year. *See, e.g., Gorton*, 793 F. Supp. 2d at 1178 (“the most
14 important question a court must consider when deciding whether to appoint a
15 neutral expert witness [under Rule 706] is whether doing so will promote accurate
16 fact finding.”). A forensic examiner is needed to audit, investigate, and correct the
17 various troubling accounting issues – such as the billing of over \$28,000 in
18 benefits to fictitious “John Doe” Class Members – and the varied, conflicting, and
19 irreconcilable financial reports. See Carroll Decl. at ¶ 30, 42, 44. **Once the**
20 **examiner determines how much Defendant has overspent on Administrative Costs,**
21 **the Court can order additional (non-administrative) spending so as to bring the**
22 **percentage of Administrative Costs under ten percent and in compliance with the**
23 **Settlement.**

24 Determining the true percentage of Administrative Costs expenses to date is
25 only part of the challenge to remedying Defendant’s breach. Once it is known
26 exactly how much Defendant has overspent on Administrative Costs, the Court
27 must order it to correct the spending. Doing so will likely involve even more

1 Administrative Costs and create additional questions about what new spending is
2 properly categorized as Administrative Costs. For this reason, the Court should
3 also appoint a Master to effectively and timely address this post-trial matter. Fed.
4 R. Civ. P. 53(a)(1)(C). The Master would, for example, impose reporting
5 requirements on Defendant and monitor the remedial steps it is taking to come into
6 compliance without undue delay. In addition, the Master would entertain Plaintiffs’
7 petition for attorneys’ fees and costs arising from ongoing enforcement work by
8 Class Counsel beyond this Motion.

9 **D. The Court Should Award Plaintiffs Attorneys’ Fees and Costs.**

10 The Settlement Agreement gives this Court exclusive and continuing
11 jurisdiction over the action, including to “consider[] any future motion for
12 reasonable attorney’s fees arising from a reasonable need to enforce the
13 Settlement Agreement against the City.” Class Counsel have diligently
14 monitored Settlement compliance since the agreement became effective in
15 2016. Class Counsel have assisted Class Members by fielding over 900 calls
16 and providing them assistance in navigating Defendant’s efforts to deter
17 participation. Carroll Decl. at ¶ 101.

18 Plaintiffs have not yet sought compensation for their attorneys’ fees
19 incurred since the Settlement was reached. Nevertheless, Class Counsel have
20 incurred over \$750,000 in fees monitoring and administering the Settlement
21 to ensure Class Members receive their benefits. Carroll Decl. at ¶ 99. Of that,
22 at least \$300,000 are attributable to Plaintiffs’ attempts to persuade
23 Defendant to fulfill its obligations under the Settlement, and at least \$150,000
24 in fees are attributable to Class Counsel’s work since January 2023, when
25 Plaintiffs began investigating in earnest the Administrative Cost issue and
26
27
28

1 preparing for this Motion. Carroll Decl. at ¶ 99.⁴ Accordingly. Plaintiffs seek
2 to recover their reasonable attorneys’ fees and costs for this enforcement
3 action and the ongoing enforcement of the Settlement and respectfully
4 request that the Court’s enforcement order related to this motion include
5 Plaintiffs attorneys’ fees and costs according to proof.

6 **V. Conclusion**

7 For the foregoing reasons, Plaintiffs respectfully request that their Motion to
8 Enforce the Settlement be granted.

9
10 Dated: February 16, 2024

Respectfully submitted,

11 PUBLIC COUNSEL

12 By:

13
14 /s/ Ghirlandi Guidetti
15 Ghirlandi Guidetti
16 *Attorney for Plaintiffs*

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22
23 ⁴ Class Counsel’s fees are modest compared to, for example, Defendant’s
24 payment of at least \$586,409 to the third-party evaluator at CalState Northridge.
25 Carroll Decl. at ¶ 100. And the evaluator’s work has yielded no discernable
26 benefit. *Id.* at ¶ 101. Significantly, none of the evaluator’s reports flagged the
27 problem with Defendant’s spending on Administrative Costs, even after Class
28 Counsel provided the evaluator with detailed information about the issue. *Id.* at ¶
26 n5.

ADDENDUM

**INDEX OF EXHIBITS TO DECLARATION OF STEPHANIE CARROLL
IN SUPPORT OF MOTION TO ENFORCE SETTLEMENT**

Exhibit	Description
A	Court approved Settlement Agreement of July 29, 2016. (Dkt. No. 380)
B-1	LARCA 2.0 Evaluation, <i>Flash Report</i> (2018)
B-2	LARCA 2.0 Evaluation, <i>Year-End Formative Evaluation Report</i> (2019)
B-3	LARCA 2.0: <i>Year Two Evaluation Report</i> (2020)
B-4	LARCA 2.0, <i>2019-20 Evaluation Report</i> (2020)
B-5	LARCA 2.0 Flash Report (Aug. 2021)
C	Questions/EWDD Responses
D	Questions/EWDD Responses, Attachment B
E	January 22, 2020 Defendant email
F	February 6, 2023 email from Stephanie Carroll
G	June 12, 2023 email from Guidetti
H-1	April 20, 2022 email from Ricardo Renteria
H-2	Participant Expenditure Report Through April 2022
I	August 15, 2022 email from Steph Carroll
J-1	August 23, 2022 email Steph Carroll to A. Malka
J-2	August 23, 2022 email PDF attachment (LARCA Data Analysis)
J-3	August 23, 2022 email Excel Attachment (Copy of LARCA Data Original Clean)
K-1	February 14, 2023 email from Juan Romero
K-2	“PC Report LARCA 2.0 Master Participant Fiscal Tracking List 5.01.2022 12.01.2022” aka “February 14, 2023 Report
L-1	July 14, 2023 email from Romero w LARCA Master Agency Financial Expenditures Reports.zip
L-2	July 14, 2023 Financial Report
L-3	AADAP-LARCA 2.0 [WSC Financial Report (Received July 14, 2023)]
L-4	Canoga Park LARCA [WSC Financial Report (Received July 14, 2023)]
L-5	Catholic Charities [WSC Financial Report (Received July 14, 2023)]
L-6	El Proyecto Del Barrio [WSC Financial Report (Received July 14, 2023)]
L-7	NELA May 2023 [WSC Financial Report (Received July 14, 2023)]

1	L-8	PACOIMA LARCA 2.0 [WSC Financial Report (Received July 14, 2023)]
2	L-9	HACLA Expenditure Cash [WSC Financial Report (Received July 14, 2023)]
3	L-10	JVS 303 LARCA [WSC Financial Report (Received July 14, 2023)]
4	L-11	Long Beach LARCA [WSC Financial Report (Received July 14, 2023)]
5	L-12	MCS BH LARCA 2.0 [WSC Financial Report (Received July 14, 2023)]
6	L-13	MCS_Hollywood Expendituretrackingreport [WSC Financial Report (Received July 14, 2023)]
7	L-14	PACE LARCA Financial Expenditure [WSC Financial Report (Received July 14, 2023)]
8	L-15	UAW- LARCA 2.0 Expenditure [WSC Financial Report (Received July 14, 2023)]
9	L-16	LARCA NON ACTIVE Service Providers 10 Master Participant Fiscal Tracking List June 2023.pdf Expenditure [WSC Financial Report (Received July 14, 2023)]
10	L-17	A&P Report (EWDD LARCA Costs for Admin and Programs)
11	L-18	Supportive Services/Needs-Related Payments Policy
12	M-1	Carroll Analysis: Detailed expenditure reports provided by the City of L.A. to Class Counsel
13	M-2	Carroll Summary: Summary of spending by WorkSource centers not attributed to individual class members
14	M-3	Carroll Analysis: Listed Service providers with no individual class members listed
15	N	Summary of Expenses for “Outreach, Enrollment, Evaluation, and Assessment” and /or Case Management Sessions and Support”
16	O	Analysis Provided to Defendant based on February 14, 2023 Report in the M&C Letter
17	P	July 20, 2023 email from Guidetti
18	Q	Email Chain 2023, July 24, Aug 15, Aug 17 Sept 1
19	R	Program and Administration Narrative
20	S-1	“PC Response - 9.1.23.” / Additional Public Counsel Questions
21	S-2	Gang Injunction Curfew Settlement City Costs FY 16-17 to FY 23-24 / Gang Injunction Curfew Settlement LARCA 2.0

T	September 19 from Guidetti Re LARCA Folder with EWDD Settlement Related Expenses
U	January 9, 2023 EWDD Report (“January 9, 2023, EWDD filing w/ City Council RE “Approval of Request From [EWDD] To Allocate \$2.75 Million to the [Rodriguez] Settlement Program.”)
V	March 9, 2023, CAO Request (“Request From [EWDD] To Allocate \$2.75 Million To The Gang Injunction Curfew Settlement Program For Fiscal Year 2022-23”)
W	April 14, 2023 CAO Request (“Office of the City Administrative Officer, Amended Request from the Economic and Workforce Development Department to Allocate Additional Funding to the Gang Injunction Curfew Settlement Program for Fiscal Year 2022-23, Council File No. 16-0081-S3 (Apr. 14, 2023))
X	Literacy and Arithmetic Tests
Y-1	October 27, 2023 Meet and Confer Letter
Y-2	Table of Exhibits from M&C Letter Corresponding to the Declaration Exhibits
Z	Email Chain 2021, Nov and Dec Re especially egregious delay
AA	August 16, 2021 Confirmation Email from Steph Carroll
BB	October 5, 2021 Meet and Confer Letter
CC	January 2022 Email Chain Re Funding Delays and Advancing Costs
DD	February 10, 2022 email Steph Carroll
EE	April 15, 2022 email from Steph Carroll
FF	July 22, 2022 email from Steph Carroll

1	GG	March 8, 2023 email from Steph Carroll
2		
3	HH	May 3, 2023 email from Jackie Chidiac
4		
5	II	May - June, 2023 emails re Denial of Benefits by Boyle Heights/East Los Angeles WorkSource Center
6	JJ	May 2023 emails Re Housing Assistance
7		
8	KK	May 9, 2022 email from Steph Carroll
9		
10	LL	Aug 18 Meet and Confer Agenda
11		
12	MM	May 1, 2023 email from Erika Luna
13		
14	NN	July 21, 2023 Letter from Guidetti Re Supportive Services, Needs-Related Payments Policy
15		
16	OO	August 4, 2023 letter from Revulcaba Re Response Re: Denial Of Rodriguez Class Members To Access To Wioa Benefits (Wds Directive 23-01); And Supportive Services/Needs – Related Payments Policy
17		
18		
19	PP-1	Public Counsel Analysis of Claims Administrator Reports
20		
21	PP-2	CAC Status Report as of January 17, 2023
22		
23	PP-3	CAC Status Report as of July 7, 2023
24		
25	PP-4	CAC Status Report as of August 7, 2023
26		
27		
28		

1	PP-5	CAC Status Report as of September 15, 2023
2		
3	PP-6	Status Report as of October 6, 2023
4		
5	PP-7	CAC - City of LA - Status Report as of November 14, 2023
6		
7	PP-8	CAC Status Report as of December 20, 2023
8		
9	QQ	September 18, 2023 email from Guidetti Re Benefits Cap
10		
11	RR	WDS Directive No. 23-01 (Sept. 19, 2022)
12		
13	SS	November 2021 Emails Re WSC Funding
14		
15	TT	January 11, 2023 Email from Gerardo Ruvalcaba
16		
17	UU	October 2023 Email Chain Re Delays and Rejections
18		
19	VV	March 29, 2023, Letter from Steph Carroll to City Council's Budget, Finance, and Innovation Committee
20		
21	WW	May 16, 2023, Email from Steph Carroll to Scott Marcus Re: Request to Meet and Confer Regarding Administrative Expenses and Stipulation
22		
23	XX	November 4, 2020 letter from Steph Carroll to Ari Malka Re: Questions related to CSUN's Year Two and 2019-2020 Evaluation Reports
24		
25		
26		
27		
28		