UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**CV 11-1135-DMG (PJWx)**	Date	May 1, 2024
Title	***Christian Rodriguez, et al. v. City of Los Angeles, et al.***	Page	1 of 17

Present: The Honorable	DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

KELLY DAVIS	NOT REPORTED
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s)	Attorneys Present for Defendant(s)
None Present	None Present

Proceedings: IN CHAMBERS—ORDER RE PLAINTIFFS' MOTION TO ENFORCE SETTLEMENT [443]

I.
INTRODUCTION

Plaintiffs Christian Rodriguez and The Estate of Alberto Cazarez entered into a settlement agreement with Defendant City of Los Angeles on July 1, 2016, relating to the City's service and enforcement of 26 gang injunctions containing curfew provisions. *See* Decl. of Anne Richardson ISO Mot. Prelim. Approval of Settlement, Ex. 1 (the "Agreement") at 16–63 [Doc. # 380-1]. On February 16, 2024, Plaintiffs filed a Motion to Enforce the Agreement, alleging that the City had materially breached two of its provisions. [Doc. # 443 ("MTE").] The Motion is fully briefed. [Doc. ## 447 ("Opp."), 448 ("Reply").] The Court held a hearing on April 12, 2024.

Having carefully considered the parties' arguments and for the reasons set forth below, the Court **GRANTS in part** and **DENIES in part** Plaintiffs' motion to enforce.

II.
BACKGROUND

A. Procedural History

Plaintiffs filed this lawsuit in 2011, challenging the constitutionality of a curfew provision within 26 gang injunctions that were served and enforced by the City of Los Angeles. [Doc. # 1.] The operative Second Amended Complaint, filed June 30, 2011, alleged claims under 24 U.S.C. section 1983 for violation of the First, Fourth, and Fourteenth Amendments; under Article I, section 7 of the California Constitution; the Bane Act, California Civil Code section 52.1; and California Penal Code section 236. [Doc. # 18.] Plaintiffs alleged those claims on behalf of themselves and similarly-situated individuals pursuant to Federal Rule of Civil Procedure 23. *Id.* ¶ 34.

On July 1, 2016, Plaintiffs and the City filed the Agreement as part of a motion for preliminary approval of a class action settlement. [Doc. # 380.] The Court granted final approval of the settlement on March 24, 2017. [Doc. # 403.] Initially, the benefits in the Agreement were supposed to last a period of four years. *See* Agreement ¶ 36, Ex. B at 46.

The parties have modified the Agreement by stipulation and approval of this Court on seven occasions. [Doc. ## 414, 423, 425, 427, 431, 433, 441.] The first time, in August 2019, they amended the Agreement to modify the Claims Form to (1) allow deceased Class Members' benefits to be passed to their heir and (2) reflect that Removal Applications were no longer necessary because the City had agreed it would not enforce the gang injunctions. [Doc. ## 413, 414.] Next, in October 2020, the parties stipulated to again amend the Claims Form and extend the program's duration to December 27, 2021, due to low enrollment they believed to be caused by the COVID-19 pandemic. [Doc. ## 418, 423.] Subsequently, the parties stipulated to two further six-month extensions of the program, and then to an additional 12-month extension. [Doc. ## 424–31.] In September 2022, they requested a court order providing for the disclosure of confidential information to the third-party evaluator, Dr. Ari Malka. [Doc. ## 432, 433.] In June 2023, they filed a final stipulation to extend the program deadline to its current end date, June 27, 2024. [Doc. ## 440, 441.]

B. Factual Background

1. Settlement Terms

The Agreement commits the City to funding a job training and readiness program (the "Jobs and Education Program") and to providing subsidized tattoo removal benefits to Class Members. *See* Agreement ¶ 35. Under the Agreement, the City committed to paying a minimum of $1.125 million per year—and up to a maximum contribution of $7.5 million per year—to fund the Jobs and Education Program. *Id.*, Ex. B at 46. An annual amount of $150,000 would be reserved for free tattoo removal for Class Members, which does not count towards the annual minimum Jobs and Education Program funding, but would count towards the City's $7.5 million maximum contribution. The Agreement also provides that the "Administrative Costs" shall not exceed 10% of the City's annual contributions to the fund. *Id.*, Ex. B at 46. The estimated expenditure per participant was $10,000. *Id.*

The Jobs and Education Program provides education, skills training, career counseling, and subsidized employment through the entities contracted to administer it. Per the Agreement, the

City of Los Angeles' Economic and Workforce Development Department ("EWDD") oversees provision of these services. *Id.*, Ex. B at 46 [Doc. # 380-1].

Pursuant to the Agreement, the City created the Los Angeles Reconnections Career Academy 2.0 Program ("LARCA 2.0" or the "Program"). *See* Decl. of Gerardo Ruvalcaba ISO Opp. ¶ 4 [Doc. # 447-1 ("Ruvalcaba Decl.")]; Agreement, Ex. B at 46. Through the Program, individualized program services are provided as determined necessary by case managers at City-contracted WorkSource Centers ("WSCs"). Ruvalcaba Decl. ¶¶ 4, 64–65.[1] Through the Program, each participant works with those case managers to create an Individual Employment Plan ("IEP") that identifies "unique barriers to employment" for that individual and "provides an individualized plan" for the available services that would most benefit them. *See* Ruvalcaba Decl. ¶ 4. LARCA 2.0 is a "Pay for Performance" contract, which means that Class Members can receive benefits either by having the City pay a vendor directly for a particular service, or by reimbursing participants for approved out-of-pocket expenses. *See* Opp. at 15. As a consequence of this structure, the City invests in significant staff time to train and provide technical support to WSCs, as well as to review WSC invoices. *See* Ruvalcaba Decl. ¶ 17.[2]

The Settlement requires the parties to "cooperate fully with each other to . . . implement the terms" of the Agreement, and "to use their best efforts, including all efforts contemplated by [the Agreement], and any other efforts that may become necessary . . . to effectuate [it]." *See* Agreement ¶ 58. To help ensure this good faith cooperation, the Agreement provides that a third-party evaluator will produce an annual report with authority to propose changes to the Program. *See* Agreement ¶ 36. The cost of the third-party evaluations and reports is to be an Administrative Cost under the Settlement, to be paid by the City. *See* Agreement, Ex. B at 51. EWDD also assigns a senior project manager to act as an ombudsman exclusively for LARCA 2.0. *Id.* at 50–51.

2. Accusations of Breach

Since launching LARCA 2.0 in 2017, the Program has enrolled 1,210 participants, which equals roughly 20% of the estimated 6,000 potential class members. Ruvalcaba Decl. ¶ 5. It has provided educational and vocational training for nearly 300 participants and supported nearly 50 participants to start and/or expand businesses. *Id.* ¶ 6. Both sides agree that this is a much lower enrollment rate than they hoped for when finalizing the Settlement, although they have different

[1] The Court notes Plaintiffs' objection to a statement in paragraph 64, but it need not rule on that objection since it has not relied on that statement. *See* Pls.' Objs. No. 37 [Doc. # 451].

[2] The Court **OVERRULES** Plaintiffs' objection to this statement on the basis of relevance. *See* Pls.' Objs. No. 8; Fed. R. Evid. 402. This statement is relevant insofar as it provides background on LARCA 2.0 operations.

explanations for the statistic. *See* MTE at 9 ("Nevertheless, widespread problems persist and, as a result, the benefit to Class Members from the Settlement's programs has been unacceptably low."); Opp. at 18–19 ("Enrollment in this program has always been lower than expected and hoped for. . . . The fact that the Settlement was not as successful as the Parties had hoped does not mean the City did not use its best efforts under the Settlement.").

In their Motion, Plaintiffs identify several aspects of Defendant's operation of LARCA 2.0 that it argues constitute a breach of the Agreement. The Court will address each of them in turn.

a. Skills Assessment Tests

In the first few years of the Program's implementation, the City required some Class Members to take literacy and arithmetic tests in order to access services. *See* Carroll Decl. ¶ 55. This practice was "mostly discontinued" after Class Counsel met and conferred with the City about the issue in 2019, but Plaintiffs have received some complaints about the practice continuing past that time. *Id.*;[3] *see also id.*, Ex. AA (Aug. 16, 2021 Meet and Confer Summary Email) at 127–28, Ex. BB (Oct. 5, 2021 Meet and Confer Letter) at 132, Ex. LL (Aug. 18, 2022 Meet and Confer Agenda Email) at 189, Ex. Y-1 (Oct. 27, 2023 Meet and Confer Letter) at 101 [Doc. # 443-4].

In response, Defendant points to the Agreement's provision that the Program "will include assessment for career goals and job readiness," as well as that Class Members would "receive educational and career assessments." *See* Opp. at 15. The Ruvalcaba Declaration also explains that certain vocational training programs require testing, but there is no testing required by the City. Ruvalcaba Decl. ¶¶ 46–53.[4] The City's position is that such assessments are useful to "identify basic skills deficiencies" in the program participants so it can remediate them, but that it agreed in 2019 to remove any testing requirement unless specifically required by a training provider. *Id.* ¶¶ 51–52,[5] Ex. AA (WDS Directive No. 17-18) at 26–32 [Doc. # 447-1]. Another Directive in the record, WDS Directive No. 23-01, issued September 19, 2022, specifies more

[3] The Court **OVERRULES** Defendant's hearsay objection to the statement that "Class Counsel continued to hear from some Class Members about testing requirements long after Defendant told Class Counsel the practice had ended[,]" as it is not offered for the truth of the matter asserted. *See* Def.'s Objs. No. 10 [Doc. # 445-4]; Fed. R. Evid. 802. Instead, it is offered for its impact on the listener and as foundation for the following sentence that Class Counsel repeatedly raised the issue with the City.

[4] The Court notes Plaintiffs' objections to two of Ruvalcaba's statements in paragraphs 50 and 51, but the objections are **OVERRULED** as moot because the Court has not relied on those statements. *See* Pls.' Objs. Nos. 29, 30.

[5] *See supra* note 4.

explicitly that such testing is supposed to be "optional and only required if the participant is expected to enroll in a classroom training program." *See* Carroll Decl., Ex. RR (WDS Directive No. 23-01) at 248 [Doc. # 443-4].

The City says it "cannot alter the requirements of some individual training providers, or of some regulatory requirements applicable to some training and certification programs." Ruvalcaba Decl. ¶ 53. But the parties had agreed upon certain parameters for when external providers mandate pre-course assessments, including requiring Case Managers to verify that the assessment is actually mandatory for the particular benefit, and explaining to Class Members that any testing is not a condition of receiving benefits, but relates to a requirement of the course provider they have chosen. *See* Carroll Decl., Ex. AA (Aug. 16, 2021 Meet and Confer Summary Email) at 127–28. It is unclear whether the City enforces these stated parameters on a regular basis with the WSCs.

b. Application Processing and Benefit Delays

Plaintiffs also submit evidence of long application processing delays and unresponsive caseworkers frustrating participants and chilling enrollment in the program. *See* Carroll Decl. ¶¶ 57–67. Much of this evidence is contained in declarations of three individuals who hold leadership roles in community organizations that have contracted with LARCA to help enroll Class Members in the program. *See generally* Decl. of Ben "Taco" Owens ISO MTE [Doc. # 443-5 ("Owens Decl.")]; Decl. of Tina Padilla ISO MTE [Doc. # 443-6 ("Padilla Decl.")]; Decl. of Alex Sanchez ISO MTE [Doc. # 443-7 ("Sanchez Decl.")].

These declarations recount a variety of issues that these individuals have personally observed in the course of their recruitment (and *de facto* case management) duties as part of LARCA 2.0. Owens, Executive Director of Detours Mentoring Group, recounts that it takes a while to successfully enroll participants in the Program, and that participants often face "difficulties in securing their benefits" even after enrollment, citing "communication problems and unresponsiveness" of Case Managers. *See* Owens Decl. ¶ 6. Padilla, Founder and Executive Director of Community Warrior 4 Peace, attests that the City's responses to her correspondence are "delayed," which prolongs the already truncated process of confirming that potential participants' names are on the class list. *See* Padilla Decl. ¶ 6. Overall, in her experience, it takes two to three months on average once an application is submitted for the participant to receive any benefits. *Id.* ¶¶ 10–11. According to Sanchez, Executive Director of Homies Unidos, some applicants he has worked with never even hear back from WSCs about benefits after their applications are approved. *See* Sanchez Decl. ¶ 27. Sanchez describes some common tactics he uses to try to elicit a quicker response from the City, including repeat follow-up emails and calls,

and encouraging people to copy him on emails they send to the City so he can follow up directly as necessary. *Id.* ¶ 30.

Defendant, for its part, denies that it frequently takes its employees a long time to respond to participants. *See* Decl. of Juan Romero ISO Opp. ¶ 14, Ex. 3 (email correspondence between Juan Romero and Stephanie Carroll) [Doc. # 447-2 ("Romero Decl.")]. It does acknowledge, however, that "there have been occasional delays in services due to delays in receiving approval for Program funding" at WSCs. *See* Opp. at 18–19; Reply at 20. Despite these delays, it claims it has "employed various strategies to mitigate the effect of these delays on Class Members," including reallocation of funds between WSCs, transferring participants, and facilitating agreements between WSCs so one can pay for the services of another. *See* Opp. at 18; Ruvalcaba Decl. ¶¶ 55–59.[6] Since the Program was extended for years beyond its original scope, the City did not appropriate funding through the regular budget process during the three years of extensions. Ruvalcaba Decl. ¶ 57. For example, EWDD's request for FY 2022–23 funds was not approved until May 2023. *Id.* ¶ 57. As a result, benefits were delayed, although Defendant insists that "no claimant was denied due to this delay" and that "the City worked diligently with its network of service providers to ensure that all eligible claimants received the services they were promised." *Id.* ¶¶ 57, 60.

c. Reimbursement Delays

In addition to application processing and benefit disbursement delays, Plaintiffs point to delays in processing participants' reimbursement requests as having a significant effect frustrating the Agreement's purpose. *See* Reply at 16–17. Defendant claims that the Program was intentionally set up to either directly pay vendors or have participants submit claims for reimbursements of covered expenses, and that it implemented processes and procedures to ensure that Program participants would receive the full benefits to which their IEP entitled them. It does not deny that there are significant delays in reimbursing covered expenses. *See* Opp. at 15–16; Ruvalcaba Decl. ¶ 17; *see also* Carroll Decl., Ex. QQ (Sept. 18, 2023 Email) at 243 (Henriquez estimating that reimbursement would take approximately 4–7 weeks for processing). There is evidence, however, that not all reimbursement requests take this long. *See* Decl. of Karina Henriquez ISO Opp. ¶¶ 33–40 [Doc. # 447-3 ("Henriquez Decl.")].[7]

[6] The Court notes Plaintiffs' objections to statements in paragraphs 55 and 57, but cites them solely to represent Defendant's position rather than for their truth. *See* Pls.' Objs. Nos. 31, 33.

[7] The Court **OVERRULES** Plaintiffs' Rule 403 objections to paragraph 34 and 37. *See* Pls. Objs. Nos. 63, 66. It does not cite the objected-to provision in paragraph 35. *Id.* No. 64.

Plaintiffs have repeatedly raised this issue of delay with Defendant, but it remains unresolved. *See* Reply at 16; Carroll Decl. ¶¶ 58–63, Ex. AA (Aug. 16, 2021 Meet and Confer Summary Email) at 127–29; LL (August 18, 2022 Meet and Confer Agenda Email) at 187–88. The parties seem to agree that "no class members should have to pay up front for fees, equipment or materials." *See* Carroll Decl. ¶ 59.

d. Inconsistent Provision of Benefits

Plaintiffs also raise concerns about seemingly "opaque and arbitrary decisions about benefits." *See* Reply at 17.

One of the main benefits generating this confusion was the availability of rental assistance, which is not a benefit initially contemplated by the Settlement. *See* Reply at 17; Carroll Decl. ¶¶ 68–69. During the first part of the COVID-19 pandemic, the City temporarily provided rental assistance and housing services to participants for whom housing insecurity was identified as a barrier to receiving job and education benefits under their IEP. *See* Carroll Decl. ¶ 68; Ruvalcaba Decl. ¶¶ 6, 69;[8] Romero Decl. ¶ 11. The benefit ended in June 2022, although apparently there were outdated flyers advertising the benefit that continued to circulate after that date, causing confusion among Class Members. *See* Carroll Decl. ¶ 69, Ex. MM (May 4, 2023 Email) at 192 (explaining that homeless participant who was told housing assistance was no longer available "feels that he is being treated differently" from other participants because "housing assistance is noted on the flyer as part of the benefits available to class members."). Defendant's response is that all participants who received a housing benefit were explicitly told that it was a temporary feature of the program. *See* Henriquez Decl. ¶ 46.

Plaintiffs submit evidence that they had "welcomed any move that provided direct benefits to Class Members," including housing assistance, but they had asked for notice to all Class Members of the availability of this resource and information on the process the City was using to determine who got such benefits. *See* Suppl. Carroll Decl. ISO Reply ¶ 5 [Doc. # 448-1]; Carroll Decl., Ex. LL (August 18, 2022 Meet and Confer Agenda Email) at 187 (requesting "[e]qual notice and availability of Covid rent/utilities relief for all class members," explaining that housing assistance "was never explicitly identified as an approved benefit under the settlement and so most

[8] The Court notes Plaintiffs' objections to statements in paragraph 6, but does not cite them for the objected-to reason. *See* Pls.' Objs. No. 1. Plaintiffs' objection to paragraph 69 is **OVERRULED** because Ruvalcaba is authorized to speak on behalf of the City with respect to his management of the Program. *See id.* No. 39; Fed. R. Evid. 602, 701; *see also* Ruvalcaba Decl. ¶ 1 (explaining his role in the Program administration).

class members had no notice of its availability," and asking to "explore what process the City used for determining which class members" received it.).

Another issue relates to a more recent alleged "capping" of benefits at $10,000 due to an alleged "increase in claims." *See* MTE at 22; Opp. at 17; Reply at 18–19; *see also* Carroll Decl., Ex. QQ (Sept. 18, 2023 Email) at 242–43 (noting discrepancy between participants and Henriquez's response that "with the increase in enrollments, the current funding cannot support approvals over the agreed allocation per claimant."). The Agreement originally estimated that the expenditure per participant would be "approximately $10,000," but that was not a hard "cap." *See* Agreement, Ex. B at 46.

The City claims that it did not "cap" benefits, but prioritized benefits to new claimants over those claimants who had already received benefits. *See* Romero Decl. ¶ 12. It also provides evidence that some Class Members did ultimately receive more than the $10,000 in benefits when their IEP called for such benefits. *See* Opp. at 17; Henriquez Decl. ¶ 51.

e. Prohibition on "Dual Enrollment"

The City requires pre-authorization of certain benefits to avoid duplication of services when a participant is receiving benefits from both LARCA 2.0 and another EWDD program, which Plaintiffs characterize as a "prohibition on dual enrollment." *See* Opp. at 17–18; Carroll Decl. ¶¶ 79–81, Ex. RR (WDS Directive No. 23-01) at 248. Defendant explains that this is not a "prohibition," but a policy that ensures that EWDD is following its regulatory obligations to properly bill costs to the correct grant or program. *See* Ruvalcaba Decl. ¶ 22.

C. Program Oversight

The record contains hundreds of pages of documents detailing the City's expenditures in operating the Program, the performance of the WSCs, and evaluating the Program's efficacy. The financial data provided, however, is notably inconsistent. *See* Carroll Decl. ¶¶ 21–51. In support of their Motion, Plaintiffs use numerous sources to assess Defendant's spending on the Program and attempt to parse through these inconsistencies.

1. Third-Party Evaluator

The contractually-provided third-party evaluator, California State University at Northridge, produced five reports in the first four years of the Program:

- LARCA 2.0 Evaluation, *Flash Report* (2018) [Doc. # 443-2 at 51–68]
- LARCA 2.0 Evaluation, *Year-End Formative Evaluation Report* (2019) [Doc. # 443-2 at 69–89]
- LARCA 2.0: *Year Two Evaluation Report* (2020) [Doc. # 443-2 at 90–112]
- LARCA 2.0: 2019–20 Evaluation Report (2020) [Doc. # 443-2 at 113–134]
- LARCA 2.0 *Flash Report* (2021) [Doc. # 443-2 at 136–276]

While these reports are instructive as to the functioning of the Program, they do not account for the City's allocation of its funding while operating it. Indeed, none of these reports make more than a "passing mention of program spending." *See* Reply at 23 (citing Carroll Decl. ¶¶ 17 n.4, 26 n.5).

2. Financial Reports

According to Plaintiffs, there are three reports that they consider the "most reliable" accounting of Defendant's spending. *See* MTE at 18. The reports are: (1) the "April 22, 2022 Report"; (2) the "February 14, 2023 Report"; and (3) the "July 14, 2023 Reports." The July 14, 2023 Reports are a compilation of several reports, including the "Financial Report," the "WSC Reports," (thirteen Excel files, one for each WSC) and the "Non-Active WSC Report" (a PDF of non-active service providers). When Plaintiffs received the April 22, 2022 Report, it was the first time Defendant had provided any WSC-specific financial data. *See* Carroll Decl. ¶ 18.

Plaintiffs also reviewed three publicly-filed reports relating to EWDD funding of LARCA 2.0.[9] *See* Carroll Decl. ¶¶ 46–51.

III.
LEGAL STANDARD

This Court has the inherent power to enforce the terms of the Agreement because the Agreement provides that "[t]he Court shall retain jurisdiction with respect to the implementation and enforcement of [its] terms." *See* Agreement ¶ 70; *see also Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 380–81 (1994); *Dacanay v. Mendoza*, 573 F.2d 1075, 1078 (9th Cir.

[9] Plaintiffs filed an unopposed Request for Judicial Notice ("RJN") in support of their MTE, requesting that the Court take judicial notice of three publicly-available government documents. [Doc. # 444.] The Court **GRANTS** Plaintiffs' request. *See* Fed. R. Evid. 201; *Mack v. South Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986); *U.S. ex rel. Modglin v. DJO Glob. Inc.*, 114 F. Supp. 3d 993, 1008 (C.D. Cal. 2015).

1978).[10] "[T]he construction and enforcement of settlement agreements are governed by principles of local law which apply to interpretation of contracts generally." *O'Neil v. Bunge Corp.*, 365 F.3d 820, 822 (9th Cir. 2004) (quoting *United Commercial Ins. Serv., Inc. v. Paymaster Corp.*, 962 F.2d 853, 856 (9th Cir. 1992)); *see also Knudsen v. C.I.R.*, 793 F.3d 1030, 1035 (9th Cir. 2015) ("A settlement is a contract, and its enforceability is governed by familiar principles of contract law.") (citation omitted).

Under California law, a court must interpret a contract with the goal of giving effect to the mutual intention of the parties as it existed at the time of contracting. Cal. Civ. Code § 1636. Where the parties dispute the meaning of specific contract language, "the court must decide whether the language is 'reasonably susceptible' to the interpretations urged by the parties." *Badie v. Bank of Am.*, 67 Cal. App. 4th 779, 798 (1998). If the contract is clear, however, the plain language of the contract governs. *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 1264 (1998).

The Court must consider the contract as a whole and "give effect to every part, if reasonably practicable, each clause helping to interpret the other." *Pinel v. Aurora Loan Servs., LLC*, 814 F. Supp. 2d 930, 943 (N.D. Cal. 2011) (quoting Cal. Civ. Code § 1641) (internal quotation marks omitted). "Courts must interpret contractual language in a manner that gives force and effect to every provision, and not in a way that renders some clauses nugatory, inoperative or meaningless." *Id.* When necessary, a court can look to the subsequent conduct of the parties as evidence of their intent. *See Crestview Cemetery Assn. v. Dieden*, 54 Cal. 2d 744, 754 (1960). If there is still uncertainty after the Court applies the foregoing rules, "the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist." Cal. Civ. Code § 1654.

IV.
DISCUSSION

A. Evidentiary Objections

The Court has reviewed the parties' objections to the other sides' evidence, as well as any responses provided. [Doc. ## 445-4, 447-5, 451, 452.]

[10] While the Agreement does not use the term "consent decree," that term generally refers to a court-adopted settlement agreement containing an injunction, such as this one. *See Conservation Nw. v. Sherman*, 715 F.3d 1181, 1185 (9th Cir. 2013) (citation omitted). The Court may therefore use caselaw about the interpretation and enforcement of consent decrees to aid its resolution of the instant Motion to Enforce.

The Court **OVERRULES** Defendant's generalized objections to statements made in the Carroll, Padilla, Owens, and Sanchez declarations relaying their observations and impressions of participants' experiences navigating the Program. Each of these declarants lays a foundation and establishes their personal knowledge of this litigation, the Program, and the experiences of the participants with whom they directly work. *See* Carroll Decl. ¶¶ 1, 8, 53; Owens Decl. ¶¶ 1–8; Padilla Decl. ¶¶ 1–5; Sanchez Decl. ¶¶ 1–5; Fed. R. Evid. 602, 701.

For the same reasons, it **OVERRULES** Plaintiffs' generalized objections to statements made in the Henriquez Declaration on the basis of lack of personal knowledge, because her statements are based on personal observations and experiences. *See* Henriquez Decl. ¶¶ 1–4.

Otherwise, the Court will address specific objections as needed in its record citations.

B. Administrative Costs

Plaintiffs claim that the City has breached the Agreement by exceeding the Agreement's 10% limit on Administrative Costs. MTE at 16. They urge the Court to appoint a Special Master and Independent Forensic Examiner to oversee compliance and accurately assess the administrative costs. *See* MTE at 14, 16.

As previously described, the Agreement provides that Administrative Costs for the Jobs and Education Program shall not exceed 10% of total annual expenditures by the City on the Program's benefits paid out to Class Members. *See* Agreement, Ex. B at 46. The Agreement 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." *See* Agreement ¶ 16.

Defendant concedes that the City's administrative costs have exceeded 10% of its total annual expenditures, but argue that the breach is immaterial. *See* Opp. at 11–13; Ruvalcaba Decl. ¶ 8 ("While the Administrative Costs did exceed 10% of annual expenditures in the Program . . . I am not aware of any claimant or class member who was denied services or benefits because Administrative Costs exceeded 10% of annual expenditures."). According to Defendant, the City has expended a total of $12.289 million on the Program, consisting of $8.199 million in program benefits or service provider payments and $4.090 million in Administrative Costs. *Id.* ¶ 10. Even according to defense calculations, the administrative costs are in excess of 33%.

The justifications provided for this breach—as legitimate as they may be—do not excuse it. There is certainly some inherent tension in the City's efforts to increase outreach and advertising while keeping administrative costs at a fixed rate. *See* Opp. at 11–13; Marcus Decl. ¶ 7 ("Plaintiffs' counsel requested that the City increase its outreach efforts in order to locate and attract more Class Members to apply for benefits. The City agreed to do so, which meant the City spent more money on outreach and advertising (including radio ads), which is an Administrative Cost under the Settlement.").

Defendant attempts to rationalize the discrepancies between the various financial documents in the record by distinguishing between "City-based" and "non-City" administrative costs, applying a definition set forth in a federal regulation interpreting the Workforce Innovation and Opportunity Act. *See* Ruvalcaba Declaration ¶¶ 10 (breaking down the $4.090 million "Administrative Costs" figure), 11 (citing 20 C.F.R. § 683.215). As Defendant's counsel explained during the hearing, this is not an attempt to rewrite the definition of "Administrative Costs," in the Settlement, *see* Agreement ¶ 16, but an analogy to how that term is used in other grants.

Nothing in that analogy can change the fact of Defendant's breach. If Defendant felt that it could not effectuate the intent of the Agreement without going above that 10% cap, it should have negotiated with Plaintiffs to modify the Agreement in that respect, as they did on many other occasions since the Court granted final approval of the settlement. [Doc. ## 414, 423, 425, 427, 431, 433, 441.] The apparent reasonableness of such a modification makes it all the more likely that it would have been approved by this Court.

C. "Best Efforts"

Plaintiffs also argue that the City has breached the Agreement's directive to "use their best efforts" to vindicate its purpose. *See* MTE at 21; Agreement ¶ 58. As previously discussed in this Order, they claim that Defendant has deterred Class Member participation by imposing skills testing requirements, that the programs are understaffed and thus Class Members have a long delay before receiving services, by requiring Class Members to cover out-of-pocket costs and seek delayed reimbursement, by making "opaque and arbitrary" decisions about which Class Members receive which benefits, and by not timely resolving funding issues with WSCs. *See* MTE at 22; *see supra* Part II.B.2.

A "best efforts" clause requires a party to make such efforts that are reasonable in light of that party's ability and the means at its disposal and of the other party's justifiable expectation. *See California Pines Prop. Owners Assn. v. Pedotti*, 206 Cal. App. 4th 384, 393 (2012) (citing,

inter alia, *Gilmore v. Hoffman*, 123 Cal. App. 2d 313, 319–20 (1954)). When a contract does not define "best efforts," the promisor must use the diligence of a reasonable person under the circumstances. *Id.* at 394 (citation omitted). It does not require "every conceivable effort[,]" nor does it "require the promisor to ignore its own interests, spend itself into bankruptcy, or incur substantial losses to perform its contractual obligations." *Id.* at 394–95 (citations omitted); *see also Samica Enterprises, LLC v. Mail Boxes Etc. USA, Inc.*, 637 F. Supp. 2d 712, 717 (C.D. Cal. 2008) (describing interpretation of "best efforts" contractual provisions generally).

For the most part, Plaintiffs' evidence falls short of showing that Defendant has not used reasonable diligence to comply with the Agreement. The City has provided services to 1,210 participants, put up a website to publicize information about the Program's services and benefits, and successfully provided educational and vocational training to 300 participants. *See* Romero Decl. ¶ 3; Ruvalcaba Decl. ¶¶ 5–6. It has gone above the requirements of the Program to provide support for housing insecurity plaguing Class Members during the height of the pandemic. *See* Ruvalcaba Decl. ¶¶ 6, 69. During the time since the Agreement was finalized, the City has had to deal with the extreme impact of the COVID-19 pandemic and significant staffing challenges. *See* Ruvalcaba Decl. ¶¶ 33, 36.[11] Defendant's declarants recount that City staff spends significant time working with WSCs and directly with participants on a wide variety of issues, including confirming claim eligibility, collecting and forwarding claims forms to the Claims administrator, forwarding and customizing acceptance letters to Class Members and/or their beneficiaries, managing program tracking sheets, acting as ombudsman for program participants, providing technical assistance to WSCs, reviewing and approving service requests and monthly invoices from providers, managing the Work Experience employer management process for participants, and corresponding with Class Counsel, participants, and the general public. *See* Henriquez Decl. ¶ 4.

Courts also look at causation before awarding damages for violation of a "best efforts" clause. *See Samica Enterprises*, 637 F. Supp. 2d at 718 ("Plaintiffs may not maintain a breach of contract claim based on the 'best efforts' provision because they have not raised a genuine issue that UPS would have acted any differently had Defendants exerted greater effort." (citation omitted)); *see also* Cal. Civ. Code § 3301 ("No damages can be recovered for a breach of contract which are not clearly ascertainable in both their nature and origin."). The City's role as an oversight entity, rather than a direct service provider, casts uncertainty on what further efforts

[11] The Court **OVERRULES** Plaintiffs' relevance and personal knowledge objections to Ruvalcaba's invocation of the COVID-19 pandemic in paragraph 36. *See* Pls.' Objs. No. 21; Fed. R. Evid. 402, 602. The conditions of the pandemic and its impact on city programs is indisputably relevant to the Court's analysis of the "best efforts" provision.

could solve some of the problems that Plaintiffs identify. For example, the evidence shows that the City has made efforts to work with WSCs on no longer requiring skills testing, and ensuring that participants did not have to travel to rival gang areas. *See* Ruvalcaba Decl. ¶ 59; Carroll Decl., Ex. AA (Aug. 16, 2021 Meet and Confer Summary Email) at 127–28. There is no evidence of any benefits being denied due to the City's "dual enrollment" policies.

The most concerning record evidence is that of the application and claims processing and reimbursement delays (hereinafter referred to as "processing and reimbursement delays") routinely faced by participants. *See supra* Part II.B.2.b. The Court recognizes that "[n]o program is perfect, especially one the size, scope, and ambition of LARCA 2.0." *See* Opp. at 15; *see also* Henriquez Decl. ¶ 64 ("In my 20 years' experience as a public servant, I have come to the realization that no program is 100% problem-free. . . . Nevertheless, serving people and helping them get through challenging situations has been my goal throughout my career.").[12] Nonetheless, the problems that Plaintiffs identified with respect to processing and reimbursement delays undermine the purpose of the Agreement by discouraging enrollment and exacerbating participants' distrust in the program. *See* Owens Decl. ¶ 15 ("After hearing the success stories of some class members getting rent, bills, and business start-up costs covered, many other claimants have been disappointed that they can only use the program benefits for training that does not make sense for their situation.");[13] Padilla Decl. ¶¶ 5, 12 ("[T]he community does not trust any messages or ads coming from the City. . . . People feel abandoned because the process is telling them to hurry up and wait. People get frustrated and tell us that the program is 'a bunch of crap.' Often, they do not get the benefits they expected and they say the program is a roadblock, as expected.");[14] Sanchez Decl. ¶¶ 14, 24 ("During our outreach and recruitment efforts, a big challenge we faced with these applicants is convincing them to sign up for this program, which is run by the same city that put them on the gang injunction list in the first place. . . . Applicants get frustrated working with Case Managers who do not speak their language, do not understand, respond to calls or emails, and do not try to understand how to work with the community and meet people where they are."). Plaintiffs' evidence of delayed processing and reimbursements directly contradicts what the City claims is its policy, and the problem has remained unresolved after Plaintiffs' counsel has repeatedly tried to fix the issue. *See supra* Part II.B.2.c. Without a full accounting, however, it is

[12] The Court **OVERRULES** Plaintiffs' objection to this paragraph, as it merely expresses the declarant's personal observations and intent. *See* Pls.' Objs. No. 77.

[13] To the extent Defendant's hearsay objection extends to the quoted language, the Court **OVERRULES** that objection. *See* Def.'s Objs. No. 36. Owens merely states his personal observations of the Program and its impact on Class Members. *See* Fed. R. Evid. 701.

[14] The Court **OVERRULES** Defendant's objection to this statement, as it is offered to illustrate Padilla's perception of frustration with the Program. *See* Def.'s Objs. No. 41; Fed. R. Evid. 802.

impossible to know the extent to which these processing and reimbursement delays could have been avoided by more efficient City actions and procedures, or if they are the irremediable byproducts of bureaucratic realities.

Accordingly, Plaintiffs' motion to enforce is **GRANTED** as to breach of the "best efforts" clause solely with respect to processing and reimbursement delays.

D. Substantial Compliance

Since Defendant has breached the "Administrative Costs" provision of the Agreement, the Court must determine whether it is still in substantial compliance or whether Plaintiffs are entitled to a remedy for that breach. *See Flores v. Sessions*, 394 F. Supp. 3d 1041, 1049 (C.D. Cal. 2017); *see also United States v. Gonzales & Gonzales Bonds & Ins. Agency, Inc.*, 103 F. Supp. 3d 1121, 1131 (N.D. Cal. 2015) (citations omitted).

"Like terms in a contract, distinct provisions of consent decrees are independent obligations, each of which must be satisfied before there can be a finding of substantial compliance." *Rouser v. White*, 825 F.3d 1076, 1081 (9th Cir. 2016). "Substantial compliance" means more than "taking significant steps toward compliance" with a consent decree. *Id.* at 1082. In California, "a party is deemed to have substantially complied with an obligation only where any deviation is 'unintentional and so minor or trivial as not substantially to defeat the object which the parties intend to accomplish.'" *Id.* (quoting *Wells Benz, Inc. v. U.S. for Use of Mercury Elec. Co.*, 333 F.2d 89, 92 (9th Cir. 1964) (citation and some quotation marks omitted)). "This standard doesn't require perfection. . . . Deviations are permitted so long as they don't defeat the object of the decree." *Id.* (citation omitted).

Both the "Administrative Costs" breach and the "best efforts breach" are material to the purpose of the Agreement, and the City is not in substantial compliance. Although the precise amount of the administrative costs in excess of 10% is murky, it is by no means *de minimis* by either side's measure. The entire purpose of the Agreement is to deliver benefits to Class Members, which has not occurred at the rates the parties anticipated. Excessive administrative costs divert funds from Class Members and redirect them to City employees and contractors, directly flouting the parties' intent in setting a cap on such expenses. *See Rouser*, 825 F.3d at 1081. For many Class Members, a benefit delayed may be the practical equivalent of a benefit denied.

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E. Remedies

Because the Court has determined that Plaintiffs have met their burden to show that Defendant is not in substantial compliance with the Agreement's stricture not to exceed 10% of the City's annual expenditures under the Agreement and with the "best efforts" clause as to processing and reimbursement delays, the Court **GRANTS** Plaintiffs' request for appointment of a forensic auditor to audit the City's and its contractors' administrative expense records and all records pertaining to processing and reimbursement delays. A full accounting will enable the Court to determine the extent to which the City should be credited with legitimate administrative services rendered, charged for problematic expenditures, and/or ordered to reimburse the settlement fund for amounts in excess of the 10% cap.

Similarly, the Court cannot ascertain an appropriate remedy for the City's processing and reimbursement delays without pinpointing the cause for the various delays. Due to the complexity of this matter, the Court will also appoint a Special Master pursuant to Federal Rule of Civil Procedure 53(a)(1)(C) to oversee the audit process and, after completion of the audit, to assist the parties to reach agreement on appropriate remedies or recommend remedial action to the Court.

V. CONCLUSION

In light of the foregoing, Plaintiffs' motion to enforce is **GRANTED in part** and **DENIED in part.** The Court hereby **ORDERS** as follows:

1. By **May 22, 2024**, the parties shall meet and confer and submit a Joint Status Report informing the Court whether they are able to agree on an independent expert to conduct a forensic audit of the Program and the appointment of a Special Master to oversee the remedy phase of Plaintiffs' motion to enforce. *See* Fed. R. Evid. 706(a); Fed. R. Civ. P. 53(a)(1)(C). If the parties are unable to agree on an expert and/or Special Master, they shall submit the names of nominees for the Court's consideration. The cost will be borne by the City.

2. By **May 8, 2024**, Class Counsel shall submit to the City an attorneys' fee demand for all reasonable time expended starting January 1, 2023. If they are unable to informally resolve the dispute regarding Class Counsel's fees, Plaintiffs shall file a

fee motion within **30 days** of serving their initial fee demand on the City. *See* Agreement ¶ 42.[15]

3. The Program's Claim Submission Deadline shall be continued until the date on which the Court issues a final order resolving the disputes raised in this Motion.

After reviewing the parties' Joint Status Report, the Court may order further relief as it deems just and proper.

IT IS SO ORDERED.

[15] The Agreement provides that Plaintiffs may be entitled to attorneys' fees for "any work by Class Counsel to implement and monitor the Settlement Agreement," which includes litigation of this Motion. *See* Agreement ¶ 42. Before submitting a formal fees motion, the Agreement requires that the parties meet and confer to attempt to informally resolve the matter. *Id.*