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15
16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **SAN FRANCISCO DIVISION**

19 LUGENE McCULLOUGH, by and through
20 his guardian ad litem Maya Klein; GINA
21 LAMBERTON, by and through her guardian
22 ad litem Jeffrey Taylor; JOSONIA BISHARA,
by and through her guardian ad litem Samond
Bishara on behalf of themselves and all others
similarly situated,

23 Plaintiffs,

24 v.

25 CALIFORNIA DEPARTMENT OF
26 DEVELOPMENTAL SERVICES, and
27 NANCY BARGMANN, in her official
capacity as Director of the California
Department of Developmental Services,

28 Defendants.

Case No. 3:20-cv-2958-SI

**JOINT MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: April 28, 2023
Time: 10:00 a.m.
Place: Remote (Zoom)
Judge: Susan Illston

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1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES and the COURT: PLEASE TAKE NOTICE THAT on April 28, 2023 at
 3 10:00 a.m., or as soon thereafter as can be heard, Plaintiff Lugene McCullough, by and through
 4 his guardian *ad litem* Maya Klein, and Plaintiff Josonia Bishara, by and through her guardian *ad*
 5 *litem* Samond Bishara (collectively “Plaintiffs”); and Defendants California Department of
 6 Developmental Services (“DDS”) and Nancy Bargmann in her official capacity as Director of
 7 DDS (collectively “Defendants”) will move the Court for entry of an order: (1) granting
 8 preliminary approval of their proposed class-wide settlement agreement, submitted herewith as
 9 Ex. 1 to the Declaration of Meredith J. Weaver; (2) provisionally certifying the proposed
 10 Settlement Class and appointing Plaintiffs’ attorneys as class counsel, pending final approval;
 11 (3) approving the Parties’ proposed form of notice and directing notice to the class; and
 12 (4) setting deadlines for notice, objections, and a final fairness hearing. The hearing on this
 13 motion will take place before United States District Judge Susan Illston, and will be conducted
 14 via Zoom webinar (the login information for which can be found on the Court’s website at
 15 <https://www.cand.uscourts.gov/judges/illston-susan-si/>). This motion is based upon this Notice of
 16 Motion and Motion, the accompanying Memorandum of Points and Authorities, the concurrently
 17 filed declarations and exhibits, all pleadings and papers on file in this action, and any oral
 18 argument that may be presented.

19 **MEMORANDUM OF POINTS AND AUTHORITIES¹**

20 **I. INTRODUCTION**

21 In April 2020, Plaintiffs filed this action against Defendants, alleging that DDS and its
 22 Director were violating federal and state laws by discriminating against Plaintiffs and other deaf
 23 consumers². Following extensive negotiations that took place over more than two years, the
 24

25 ¹ Nothing in this joint motion should be construed as an admission of liability, or a waiver of any
 26 arguments or defenses any party might raise in the future, should final approval not be granted.

27 ² “Consumer” refers to an individual who has been found eligible to receive services pursuant to
 28 the Lanterman Developmental Disabilities Services Act (“Lanterman Act”). *See* Cal. Welf. &
 Inst. Code § 4512(a) (defining developmental disability under the Lanterman Act) & § 4512(d)
 (defining “consumer” as “a person who has a disability that meets the definition of
 developmental disability set forth in subdivision (a)”).

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1 Parties have reached a proposed Class Settlement Agreement (the “Agreement”) that includes
 2 meaningful procedural requirements to ensure that deaf consumers have effective
 3 communication. Among other things, the Agreement will create a working group with
 4 membership of key stakeholders to make recommendations regarding DDS policies, services,
 5 and training; will result in the hiring of a statewide Equity Specialist, and a regional Deaf
 6 Services Specialist at each of the twenty-one regional centers; and will implement a process for
 7 assessing the communication skills and needs of deaf consumers. *See* Decl. Meredith J. Weaver
 8 Supp. Joint Mot. Prelim. Approval (“Weaver PA Decl.”) Ex. 1: Class Action Settlement
 9 Agreement (hereinafter “Agreement”). Under the Agreement, deaf consumers will receive
 10 appropriate communication assessments, which will ensure that regional center staff and vendors
 11 are aware of their abilities, preferences, and needs for auxiliary aids and services. Deaf
 12 consumers will also have more appropriate programs from which to choose thanks to DDS’s
 13 commitment to prioritize funding for new and expanded programs for deaf consumers, including
 14 housemate matching. New Deaf Services Specialists at every regional center and at the statewide
 15 level will be available to support the development of new resources, staff training, and
 16 completion of communication assessments. And DDS will provide training for staff who work
 17 with deaf consumers and a new webpage with resources on increasing access for deaf
 18 consumers.

19 The Agreement is in the best interest of all Parties and satisfies the requirements of
 20 Federal Rule of Civil Procedure 23. Plaintiffs respectfully request that the Court: (1) grant
 21 preliminary approval of the Agreement; (2) provisionally certify the proposed Settlement Class
 22 and appoint Plaintiffs’ attorneys as class counsel, pending final approval; (3) approve the Parties’
 23 proposed form of notice and direct notice to the class; and (4) set deadlines for notice, objections,
 24 and a final fairness hearing.

25 **II. FACTUAL BACKGROUND**

26 **A. Litigation History**

27 **1. Commencement of the Action in Two Forums**

28 Plaintiffs filed this putative class action on April 30, 2020, alleging that the California

1 Department of Developmental Services (“DDS”) and DDS’s Director, in her official capacity,
 2 fail to ensure that deaf individuals who qualify for DDS services receive equal access thereto in
 3 violation of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* (“Title II”);
 4 Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 (“Section 504”); and California
 5 Government Code section 11135 (“Section 11135”). ECF No. 1 (Compl.). Plaintiffs allege that
 6 they and thousands of other deaf consumers are systematically denied interpreters and other aids
 7 and services that are necessary for effective communication and therefore are denied the benefits
 8 of the program that are available to hearing consumers. *Id.*; ECF No. 11 (First Am. Compl.).
 9 Defendants expressly deny these allegations and assert that they have always complied with the
 10 law and that deaf consumers received the legally required services. ECF No. 39 (Answer).

11 After Defendants indicated that they would challenge the U.S. District Court’s
 12 jurisdiction over Plaintiffs’ state law claims, Plaintiffs filed their First Amended Complaint
 13 (“FAC”) removing Section 11135 claims. ECF No. 11 (FAC); Weaver PA Decl. ¶ 3. Plaintiffs
 14 refiled their Section 11135 claims, based on the same underlying facts as this litigation, in the
 15 Superior Court of California. Weaver PA Decl. ¶ 4.³ The Parties agreed that Plaintiffs would
 16 withhold service of the state court complaint during the pendency of this Court’s stay of
 17 litigation. Weaver PA Decl. ¶ 7; ECF No. 56 (Order Stay Litig.).

18 2. Dispositive Motion Practice

19 On July 13, 2020, Defendants filed a motion to dismiss Plaintiffs’ FAC for failure to
 20 establish subject matter jurisdiction and for failure to state a claim upon which relief can be
 21 granted. ECF No. 23 (Defs’ Mot. Dismiss). Plaintiffs opposed the motion. ECF No. 27 (Pls.’
 22 Opp’n). Following oral argument, the Court denied Defendants’ motion in its entirety. ECF
 23 Nos. 35 (Mins. re Hr’g Mot. Dismiss) & 38 (Order Den. Mot. Dismiss).

24 3. Early Discovery

25 Following the Court’s order on Defendants’ motion to dismiss, the Parties began their
 26

27 ³ The Superior Court designated Plaintiffs’ case as complex pursuant to Rule 3.4 *et seq.* of the
 28 California Rules of Court and appointed Maya Klein and Samond Bishara as guardians *ad litem*
 to represent the interests of Plaintiffs Lugene McCullough and Josonia Bishara, respectively.
 Decl. Meredith J. Weaver Supp. Joint Mot. Prelim. Approval (“Weaver PA Decl.”) ¶¶ 5–6.

1 discovery efforts. On August 31, 2020, the Parties exchanged initial disclosures pursuant to
 2 Federal Rule of Civil Procedure 26(a)(1)(C). Weaver PA Decl. ¶ 8. In November 2020, Plaintiffs
 3 served their first sets of Interrogatories and Requests for Admission on Defendants. *Id.* ¶¶ 9–10.
 4 Litigation was stayed by the Court prior to Defendants’ response to Plaintiffs’ discovery
 5 requests. *Id.* ¶ 11; ECF No. 56 (Order Stay Litig.).

6 On April 26, 2021, Plaintiffs notified Defendants that they intended to designate
 7 Dr. Romy Spitz and Dr. Judy Shepard-Kegl as experts and provided Defendants the experts’
 8 joint report containing opinions regarding each Plaintiff’s communication abilities and needs
 9 based on their evaluation of each Plaintiff and expertise in linguistics, American Sign Language
 10 (“ASL”) and other signed languages, and language acquisition by individuals who are deaf and
 11 have an intellectual or developmental disability. Weaver PA Decl. ¶ 12.

12 **B. The Parties Reached the Agreement Through More Than Two Years of**
 13 **Arms’ Length Negotiations**

14 Following the Initial Case Management Conference held on September 18, 2020, the
 15 Court granted the Parties’ joint request that the case be referred to then-Magistrate Judge
 16 Jacqueline Scott Corley for a settlement conference. *See* ECF No. 32 at 9⁴ (Joint Case Mgmt.
 17 Statement), ECF No. 36 (Order Ref. Mag. J. Settlement).

18 From November 2020 to September 2022, the Parties held eight settlement conferences
 19 with Judge Corley and at least seven settlement meetings among themselves. ECF Nos. 50, 54,
 20 58, 60, 67, 79, 89, 92 (Min. Entries re Settlement Confs.); Weaver PA Decl. ¶ 17. In addition, the
 21 Parties exchanged dozens of proposals in crafting this settlement, including term sheets, remedial
 22 plans, and many versions of the Agreement and Implementation Plan. *Id.* ¶ 18. At multiple
 23 junctures, the Parties reached impasse and only overcame these issues with the assistance of
 24 Judge Corley. *Id.* ¶ 19. The Plaintiffs’ guardians *ad litem* participated in many of the settlement
 25 conferences and meetings where substantive terms were negotiated, and provided input
 26 throughout the negotiation process. *Id.* ¶ 17; Decl. Maya Klein Supp. Joint Mot. Prelim.

27
 28 ⁴ For ECF documents, page number citations refer to the ECF branded number in the upper right-
 hand corner of the page.

1 Approval (“Klein PA Decl.”) ¶ 13; Decl. Samond Bishara Supp. Joint Mot. Prelim. Approval
2 (“Bishara PA Decl.”) ¶ 8.

3 The Parties resolved all other terms of the Agreement prior to Plaintiffs providing their
4 demand for attorneys’ fees and costs in September 2022. Weaver PA Decl. ¶ 20. Plaintiffs’ initial
5 demand consisted of \$1,788,305 in attorneys’ fees incurred for work through final approval⁵,
6 \$30,650.05 in costs incurred through final approval, and \$113,360 to cover work necessary to
7 monitor implementation of the Agreement. *Id.* ¶¶ 22–23. Plaintiffs’ counsel also provided
8 Defendants their detailed billing records and itemized costs. *Id.* ¶ 25. After over four months of
9 negotiations, the Parties reached agreement on a lump-sum payment of \$1,300,000 for all
10 attorneys’ fees and costs through the term of the Agreement. *Id.* ¶ 24; Agreement § III.D.

11 **C. Material Terms of the Proposed Settlement Agreement**

12 The Agreement defines a single statewide Settlement Class as follows:

13 All persons eligible for services pursuant to the Lanterman
14 Developmental Disabilities Services Act whose response to
15 question 60 within DDS’s “Client Development Evaluation Report
16 (CDER) Diagnostic Element” is “2-Severe hearing loss,” “3-
17 Profound hearing loss,” or “9-Hearing loss suspected, severity
18 undetermined,” and whose response to question 61 within DDS’s
19 CDER Diagnostic Element is “2-Severe hearing loss,” “3-Profound
20 hearing loss,” “8-Correction not possible,” or “9-Hearing not
21 corrected.”

22 Agreement ¶¶ 3, 6, 22.

23 The central remedial element of the Agreement is the *Plan to Enhance Services for*
24 *Individuals Who Are Deaf*, which describes “DDS’s phased process for implementation of
25 additional resources to support Settlement Class Members” and includes milestones for various
26 tasks along with target dates for completion. *See* Agreement § III.B & Exhibit A (hereinafter,
27 “Implementation Plan”). The Implementation Plan has six elements, discussed in more detail
28 below: (1) creation of a Steering Committee, § A; (2) a process for providing communication
assessments for deaf consumers, § B.1; (3) hiring of twenty-two specialists at the statewide and

⁵ This demand was based on Plaintiffs’ counsel’s combined lodestar, discussed below in § IV.B.3.b.

1 regional levels to provide leadership, expertise, and support for deaf consumers, § B.2.a–b;
 2 (4) prioritization for increasing appropriate service and housing options, § B.3; (5) increasing
 3 staff, service provider, and consumer familiarity with and knowledge of effective communication
 4 for deaf consumers, § B.2.c–d & § B.4; and (6) data collection and DDS monitoring of regional
 5 centers, § B.5.

6 The new Steering Committee will be composed of stakeholders and subject matter
 7 experts. Implementation Plan § A. Steering Committee members will include individuals who
 8 are Deaf, service providers with experience serving deaf individuals, regional center
 9 representatives, and a representative from one of Plaintiffs’ counsel, Disability Rights California.
 10 *Id.* § A.1. The Steering Committee will make recommendations to DDS “to advance the quality
 11 and depth of services and supports to regional center consumers who are deaf.” *Id.* § A. These
 12 recommendations will address the remaining elements of the Implementation Plan. *Id.* § A.2.
 13 DDS has already begun forming the Steering Committee. Decl. Brian Winfield Supp. Joint Mot.
 14 Prelim. Approval (“Winfield PA Decl.”) ¶ 4.

15 The Implementation Plan sets out a new process for offering deaf consumers assessments
 16 of their communication preferences, strengths, and needs. Implementation Plan § B.1. As part of
 17 this innovative effort, DDS will retain a contractor to identify and train sufficient assessors to
 18 conduct thousands of new assessments. *Id.* § B.1.c. Completed Communication Assessments will
 19 be reviewed by each Settlement Class Member’s interdisciplinary team at an individual program
 20 plan (“IPP”) meeting to ensure that the consumer’s needs are fully addressed. *Id.* § B.1.d. To
 21 facilitate monitoring and accountability, DDS will also modify its contracts with regional centers
 22 to include these newly required Communication Assessments. *Id.* § B.1.e.

23 The Implementation Plan creates a new position for a statewide Equity Specialist who
 24 will participate in the Steering Committee and oversee the remaining elements of the
 25 Implementation Plan, including the Communication Assessments, trainings, a new webpage, etc.
 26 *Id.* § B.2.a. Although the settlement has not yet been approved, DDS has already filled this
 27 position with a widely respected individual with extensive experience, who is Deaf. Winfield PA
 28 Decl. ¶ 7; Klein PA Decl. ¶ 17; Bishara PA Decl. ¶ 14. The Implementation Plan also requires

1 each of the state’s twenty-one regional centers to hire a Deaf Services Specialist to “support the
 2 expansion of deaf service resources, provide training and expertise to regional center staff, and
 3 coordinate with DDS on statewide efforts.” Implementation Plan § B.2.b.

4 To address the current shortage of service providers and living situations with staff who
 5 can communicate with deaf consumers in sign language or visual-gestural means, the
 6 Implementation Plan provides that DDS will give priority to funding requests that address this
 7 deficit, with guidelines based on recommendations from the Steering Committee. *Id.* § B.2.b &
 8 § B.3. The Implementation Plan will also create a new, statewide housemate matching service
 9 under the oversight of the statewide Equity Specialist, which may be used by Settlement Class
 10 Members to specify their preferences for living options and communities including whether they
 11 would like to live with other deaf housemates. *Id.* § B.3.d.

12 Under the Implementation Plan, DDS will also develop trainings for regional center
 13 service coordinators, professionals, and paraprofessionals who support Settlement Class
 14 Members about the needs of deaf consumers and resources for supporting them. *Id.* § B.2.c–d.
 15 DDS will set up a webpage dedicated to deaf services that includes these training materials,
 16 directives in ASL, FAQs, information on statutory and regulatory requirements, and more. *Id.*
 17 § B.4. The Steering Committee will make recommendations regarding trainings, the webpage,
 18 and appropriate resources. *Id.* § A.2.b.

19 Finally, the Implementation Plan requires DDS to collect and review data regarding the
 20 assessment process and monitor regional center compliance with the new requirements.
 21 Implementation Plan § B.5. DDS will also send a reminder to regional centers of their
 22 obligations under the Americans with Disabilities Act (“ADA”) and guidance on effective
 23 communication from the U.S. Department of Justice. *Id.* § B.5.c.

24 The Agreement includes procedural requirements that will benefit Settlement Class
 25 Members. The Agreement provides that the Parties will jointly ask the Court to retain
 26 jurisdiction to ensure compliance with the Settlement Agreement until it terminates. Agreement
 27 ¶ 64. Termination will occur one year after the completion of essential provisions of the
 28 Implementation Plan, the latest of which are estimated to occur between December 1, 2023 and

1 February 29, 2024. *Id.* ¶ 44; Implementation Plan § B.1.d & § B.1.e. Thus, court jurisdiction will
 2 likely extend at least through December 2024 and possibly later if DDS requires additional time
 3 to satisfy the requirements of the Implementation Plan.

4 Regarding monitoring, the Agreement requires DDS to provide Class Counsel with
 5 progress and data reports twice per year and be available to meet twice per year to discuss these
 6 reports. Agreement ¶¶ 40–41. The Parties may also meet at other times by mutual consent to
 7 discuss implementation efforts. *Id.* ¶ 42. If disputes develop, the Agreement provides that the
 8 Parties will first provide written notice and meet to attempt to resolve the dispute. *Id.* ¶ 66. If the
 9 Parties cannot resolve their dispute, they will request a conference with Judge Corley. *Id.* ¶¶ 67–
 10 68. If this is unsuccessful, an enforcement motion may be filed thirty days after the conference.
 11 *Id.* ¶ 69.

12 The Agreement includes a reasonable release of claims as to DDS, and as to its agents
 13 and contractors. Agreement ¶¶ 21, 45–46. The release is limited to claims under Title II, Section
 14 504, and Section 11135 that arise out of the allegations in the federal and state complaints up to
 15 the date of the Court’s final approval order. *Id.* ¶ 21 (definition of Released Claims), ¶ 8
 16 (definition of Effective Date of Settlement). Furthermore, non-party Settlement Class Members
 17 do not release any claims for damages. *Id.* ¶ 21. In addition, non-party Settlement Class
 18 Members may still pursue individual claims regarding the provision of services, subject to the
 19 pre-existing requirement in state law that they have exhausted the claim through the
 20 administrative hearing process. *Id.*

21 III. LEGAL STANDARD

22 “Settlement [is] the preferred means of dispute resolution[,] especially . . . in complex
 23 class action litigation.” *Officers for Just. v. Civ. Serv. Comm’n of City & Cnty. of San Francisco*,
 24 688 F.2d 615, 625 (9th Cir. 1982). Indeed, a “strong judicial policy” favors the settlement of
 25 class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). Under Rule
 26 23(e) of the Federal Rules of Civil Procedure, a class action settlement that is binding on absent
 27 class members requires court approval. Fed. R. Civ. P. 23(e). Approval is a two-step process: (1)
 28 preliminary approval of the settlement and (2) after a notice period, final determination that the

1 settlement is fair, reasonable, and adequate. *See Bakhtiar v. Info. Res., Inc.*, No. 17-cv-04559-
 2 JST, 2021 WL 4472606, at *5–6 (N.D. Cal. Feb. 10, 2021).

3 To grant preliminary approval, the court determines whether the class is proper for
 4 settlement purposes, and, if so, preliminarily certifies the class. *Cf. Amchem Prods., Inc. v.*
 5 *Windsor*, 521 U.S. 591, 620 (1997); *see also Uschold v. NSMG Shared Servs., LLC*, 333 F.R.D.
 6 157, 166 (N.D. Cal. 2019) (citing *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003)).

7 To support class certification, a court must find each of Rule 23(a)’s four requirements—
 8 numerosity, commonality, typicality, and adequacy of representation—has been satisfied.
 9 *Amchem Prods.*, 521 U.S. at 614. The court must then determine whether the proposed class
 10 fulfills the criteria of one of the three subsections of Rule 23(b). *Id.* The applicable provision
 11 here is Rule 23(b)(2), which “permits class actions for declaratory or injunctive relief where ‘the
 12 party opposing the class has acted or refused to act on grounds generally applicable to the
 13 class.’ ” *Id.* (quoting Fed. R. Civ. P. 23(b)(2)).

14 At the preliminary approval stage, the Parties must show “that the court will likely be
 15 able to” approve their proposed settlement when considering the following factors: (1) whether
 16 the class was adequately represented; (2) whether the proposed settlement was negotiated at
 17 arm’s length; (3) whether the relief provided for the class is adequate, taking into account the
 18 costs, risks, and delay of trial and appeal, and the terms of any proposed award of attorneys’ fees;
 19 and (4) whether the proposal treats class members equitably relative to one another. Fed. R. Civ.
 20 P. 23(e)(1)(B), 23(e)(2).

21 **IV. ARGUMENT**

22 **A. The Proposed Settlement Class Should Be Certified**

23 The Parties have stipulated to seek certification of the following Settlement Class, for the
 24 purposes of settlement only:

25 All persons eligible for services pursuant to the Lanterman
 26 Developmental Disabilities Services Act whose response to
 27 question 60 within DDS’s “Client Development Evaluation Report
 28 (CDER) Diagnostic Element” is “2-Severe hearing loss,” “3-
 Profound hearing loss,” or “9-Hearing loss suspected, severity
 undetermined;” and whose response to question 61 within DDS’s

1 CDER Diagnostic Element is “2-Severe hearing loss,” “3-Profound
2 hearing loss,” “8-Correction not possible,” or “9-Hearing not
3 corrected.”⁶

4 Agreement ¶¶ 3, 6, 22, 35.

5 The proposed Settlement Class meets the requirements of Rule 23(a) and Rule 23(b)(2)
6 and should be provisionally certified pending final approval.

7 1. The proposed Settlement Class of approximately 10,000 consumers is
8 sufficiently numerous.

9 The first element of Rule 23(a) requires that the class be “so numerous that joinder of all
10 members is impracticable.” Fed. R. Civ. P. 23(a)(1). While Rule 23(a)’s numerosity requirement
11 “is not tied to any fixed numerical threshold,” courts generally find that classes of 40 or more
12 members satisfy the requirement—and sometimes even fewer. *Rannis v. Recchia*, 380 F. App’x
13 646, 651–52 (9th Cir. 2010) (discussing standard and affirming certification of 20-member
14 class); *Hernandez v. Cnty. of Monterey*, 305 F.R.D. 132, 153 (N.D. Cal. 2015) (citing 1 William
15 Rubenstein, *Newberg on Class Actions* § 3:12, at 198 (5th ed. 2011) (“A class or subclass with
16 more than 40 members ‘raises a presumption of impracticability based on numbers alone.’ ”)).
17 The numerosity requirement is satisfied here, where Defendants’ data indicate that
18 approximately 10,000 individuals meet the class definition. Winfield PA Decl. ¶ 6. The Court
19 should therefore find that the Settlement Class is sufficiently numerous.

20 2. Plaintiffs’ claims depend on common contentions capable of class-wide
21 resolution.

22 The second element of Rule 23(a) requires the existence of “questions of law or fact
23 common to the class.” Fed. R. Civ. P. 23(a)(2). Commonality is satisfied where the plaintiff
24 alleges the existence of “a common contention” such that “determination of its truth or falsity
25 will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-*

26 ⁶ This Settlement Class is slightly different than the class described in Plaintiffs’ First Amended
27 Complaint (“FAC”): “Individuals who, now or in the future, are deaf and are eligible or become
28 eligible for DDS’s I/DD services pursuant to the Lanterman Developmental Disabilities Services
Act.” FAC ¶ 17, ECF No. 11. While, in practical terms, both class definitions apply to the same
group of affected persons, the modified class definition is appropriate because it enables the
parties to clearly identify Settlement Class Members based on DDS data.

1 *Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). “This does not, however, mean
 2 that *every* question of law or fact must be common to the class[.]” *Abdullah v. U.S. Sec. Assocs.,*
 3 *Inc.*, 731 F.3d 952, 957 (9th Cir. 2013). Plaintiffs may meet the commonality requirement by
 4 raising even a single common question of fact or law. *Wal-Mart*, 564 U.S. at 359. The critical
 5 question is whether class members have suffered the same injury, such that their claims “depend
 6 upon a common contention . . . [that] is capable of classwide resolution.” *Id.* at 350.⁷

7 Plaintiffs challenge Defendants’ alleged state-wide policies and practices that apply to
 8 every member of the proposed Settlement Class, including but not limited to: failing to ensure
 9 that deaf consumers receive appropriate communication assessment; allowing IPP planning
 10 meetings to be conducted without auxiliary aids and services necessary for deaf consumers to
 11 communicate effectively; and failing to take any reasonable actions to ensure that California’s
 12 intellectual and developmental disability (“I/DD”) services are accessible to deaf consumers.
 13 FAC ¶¶ 61–69, 73–74, 77–89. The legality of these actions and inactions is a question capable of
 14 classwide resolution, and where a lawsuit seeks a determination regarding “systemic policies and
 15 practices” that affect all of the putative class members—as this case does—Rule 23(a)’s
 16 commonality requirement is met. *See Parsons v. Ryan*, 754 F.3d 657, 681–82 (9th Cir. 2014)
 17 (discussing cases); *see also B.K. ex rel. Tinsley v. Snyder*, 922 F.3d 957, 969 (9th Cir. 2019)
 18 (affirming district court’s commonality determination and noting that systemic “statewide
 19 policies and practices [were] the ‘glue’ ” holding together the putative class); *Smith v. City of*
 20 *Oakland*, 339 F.R.D. 131, 140–41 (N.D. Cal. 2021) (finding commonality where plaintiffs
 21 “challenge a deficient government policy or program, not [an] individual harm”); *Hernandez*,
 22 305 F.R.D. at 153 (“In civil rights cases, ‘commonality is satisfied where the lawsuit challenges
 23 a system-wide practice or policy that affects all of the putative class members.’ ” (quoting
 24 *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001))); *Gray v. Golden Gate Nat’l*
 25 *Recreational Area*, 279 F.R.D. 501, 512, 515 (N.D. Cal. 2011) (finding commonality satisfied
 26 where plaintiffs challenged

27 ⁷ Rule 23(a)(2)’s commonality requirement is “less rigorous” than the predominance requirement
 28 of Rule 23(b)(3). *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998); *see also Wal-*
Mart, 564 U.S. at 359 (distinguishing requirements).

1 “uniform policies and practices of failing to ensure” accessibility for people with disabilities).
 2 Insofar as Settlement Class Members differ in their access needs or in the extent to which
 3 they may have been harmed by DDS policies, these dissimilarities do not impede classwide
 4 resolution. *See Wal-Mart*, 564 U.S. at 350. Where plaintiffs challenge “a deficient government
 5 policy or program, not [an] individual harm,” no individualized inquiry is necessary. *Smith*, 339
 6 F.R.D. at 140. Here, Plaintiffs’ central claim is not that they were individually denied access to
 7 specific services, but that they were excluded from full participation because of their deafness—a
 8 question common to all Settlement Class Members. *See id.* at 141 (“[T]he question presented by
 9 this lawsuit is not whether class members were denied access to particular accessible housing,
 10 but whether they were excluded from the protections of the [rent control program] because of
 11 their disabilities.”). Indeed, Plaintiffs sought and achieved not individualized relief but systemic
 12 reforms, like new communications assessment procedures, a statewide Steering Committee, and
 13 hiring of an Equity Specialist at the state level and Deaf Services Specialists at the regional level,
 14 which benefit all class members. *See* § II.C, *supra* (discussing relief provided by Agreement).
 15 The Court should thus find that the proposed Settlement Class satisfies Rule 23(a)’s
 16 commonality requirement.

17 3. Plaintiffs’ claims are typical of the Settlement Class.

18 The third element of Rule 23(a) requires that the claims of the representative parties are
 19 typical of the claims of the class. Fed. R. Civ. P. 23(a)(3). Rule 23(a)’s typicality requirement is
 20 met so long as the named plaintiffs’ claims are “reasonably coextensive with those of absent
 21 class members; they need not be substantially identical.” *Parsons*, 754 F.3d at 685 (quoting
 22 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998), *overruled on other grounds by*
 23 *Wal-Mart*, 564 U.S. at 338). “The test of typicality is ‘whether other members have the same or
 24 similar injury, whether the action is based on conduct which is not unique to the named
 25 plaintiffs, and whether other class members have been injured by the same course of conduct.’ ”
 26 *Id.* (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)).

27 Plaintiffs allege injuries attributable to the same alleged course of conduct: Defendants’
 28 failure to ensure that deaf consumers receive effective communication and meaningful access to

1 the benefits of California’s I/DD service program. *See, e.g.*, FAC ¶¶ 61–69, 73–74, 77–89.
 2 Though the extent of their injuries may differ, Plaintiffs allege that *every* class member is
 3 affected by this same course of conduct. The legal theories that Plaintiffs would have relied on to
 4 redress this harm apply equally to each member of the proposed Settlement Class, and the relief
 5 Plaintiffs have achieved will benefit that class as a whole. The Court should thus find that the
 6 proposed Settlement Class satisfies Rule 23(a)’s typicality requirement.

7 4. Plaintiffs and their Counsel have and will fairly and adequately protect the
 8 interests of the Class.

9 The final element of Rule 23(a) requires that “the representative parties will fairly and
 10 adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). Plaintiffs are adequately
 11 represented so long as “the named plaintiffs and their counsel [do not] have any conflicts of
 12 interest with other class members, and . . . [will] prosecute the action vigorously on behalf of the
 13 class.” *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000), as amended
 14 (June 19, 2000).

15 There are no conflicts between Plaintiffs and other Settlement Class Members. *See* Klein
 16 PA Decl. ¶¶ 11–12; Bishara PA Decl. ¶¶ 6–7. Plaintiffs McCullough and Bishara are impacted
 17 by Defendants’ systemwide policies and practices challenged in this case. FAC ¶¶ 95–125, 171–
 18 207. Plaintiffs sought only injunctive and declaratory relief to make California’s I/DD services
 19 equally available to deaf consumers—relief structured to benefit the class as a whole. *Id.* ¶¶ 25,
 20 246–47; *see also Am. Council of the Blind v. Astrue*, No. C 05-04696 WHA, 2008 WL 4279674,
 21 at *6 (N.D. Cal. Sept. 11, 2008) (stating that where plaintiffs do not seek monetary damages,
 22 “[t]he potential for any conflict or collusion is . . . minimal”). Furthermore, the Parties’
 23 Agreement provides the same injunctive relief for Plaintiffs and every member of the proposed
 24 Settlement Class. *See* § II.C, *supra* (discussing relief provided by Agreement).

25 In addition, Plaintiffs, through their guardians *ad litem*, have vigorously represented the
 26 class and pursued this outcome on behalf of the Settlement Class. Klein PA Decl. ¶¶ 12–14;
 27 Bishara PA Decl. ¶¶ 5–6, 8–9. Ms. Klein and Mr. Bishara have knowledge of the case and their
 28 duties as class representatives and have reviewed and support the Agreement. Klein PA Decl.

1 ¶¶ 12–16; Bishara PA Decl. ¶¶ 6–13.

2 Similarly, Plaintiffs’ counsel has no known conflicts of interests with any Settlement
3 Class Member and has acted vigorously on behalf of the proposed Settlement Class, through
4 both litigation and arms’-length settlement negotiations. Adequate representation of counsel is
5 generally presumed in the absence of contrary evidence. *Californians for Disability Rights, Inc.*
6 *v. Ca. Dep’t of Transp.*, 249 F.R.D. 334, 349 (N.D. Cal. 2008). Counsel may demonstrate their
7 qualifications with previous experience litigating class action lawsuits. *See Hanlon*, 150 F.3d at
8 1021. In this case, Plaintiffs’ counsel have extensive experience litigating class action suits,
9 including other similar class actions challenging governmental policies. Weaver PA Decl. ¶¶ 27–
10 35; Decl. Melinda Bird Supp. Joint Mot. Prelim. Approval (“Bird PA Decl.”) ¶¶ 5–11.

11 Plaintiffs’ counsel thoroughly investigated the claims, defeated Defendants’ motion to
12 dismiss, retained experts to prepare detailed reports, and spent over two years engaging in
13 negotiations to reach this Agreement. Weaver PA Decl. ¶¶ 12–20; Bird PA Decl. ¶¶ 3–4; ECF
14 No. 38 (Order Den. Mot. Dismiss). In addition, Plaintiffs’ counsel properly refused to negotiate a
15 demand for payment of attorneys’ fees and costs until after reaching an agreement with
16 Defendants on all other aspects of the settlement, in order to avoid even the appearance of
17 conflict between the interests of counsel and the interests of the Settlement Class. Weaver PA
18 Decl. ¶ 20.

19 Based on Plaintiffs’ counsel’s experience litigating novel and complex cases against
20 public entities, they have determined that the injunctive terms and other provisions contained in
21 the Agreement will adequately protect the rights of Plaintiffs and the Settlement Class that this
22 case sought to vindicate. Weaver PA Decl. ¶¶ 37–40; Bird PA Decl. ¶¶ 14–16. Moreover,
23 Plaintiffs’ counsel are well-aware that attempting to reach a resolution through additional
24 litigation could have taken years and might not have yielded a resolution as favorable as that
25 contained in the proposed Agreement. Weaver PA Decl. ¶¶ 21, 37–40; Bird PA Decl. ¶¶ 14–16.
26 The Court should find that Rule 23(a)(4)’s adequacy requirement is met.

27 5. The proposed class meets the requirements of Rule 23(b)(2).

28 Rule 23(b)(2), which requires that the defendant “has acted or refused to act on grounds

1 that apply generally to the class, so that final injunctive relief or corresponding declaratory relief
 2 is appropriate respecting the class as a whole,” *see* Fed. R. Civ. P. 23(b)(2), was designed to
 3 empower individuals like Plaintiffs to vindicate their civil rights through class action litigation.
 4 *See Parsons*, 754 F.3d at 686–87. “Civil rights cases against parties charged with unlawful,
 5 class-based discrimination are prime examples” of the purpose of this rule. *Amchem Prods.*, 521
 6 U.S. at 614; *see also Parsons*, 754 F.3d at 686 (“[T]he primary role of this provision has always
 7 been the certification of civil rights class actions.”); *Baby Neal ex rel. Kanter v. Casey*, 43 F.3d
 8 48, 64 (3d Cir. 1994) (“The writers of Rule 23 intended that subsection (b)(2) foster institutional
 9 reform by facilitating suits that challenge widespread rights violations of people who are
 10 individually unable to vindicate their own rights.”). The rule is “almost automatically satisfied in
 11 actions primarily seeking injunctive relief.” *Hernandez*, 305 F.R.D. at 151 (quoting *Gray*, 279
 12 F.R.D. at 520).

13 Here, Plaintiffs challenge DDS policies and practices applicable to all Settlement Class
 14 Members and seek injunctive relief. The proposed Agreement will benefit all Settlement Class
 15 Members. Among other improvements, every Settlement Class Member will be offered an
 16 appropriate communication assessment, have the benefit of new Deaf Services Specialists at
 17 their regional centers and at the statewide level, and enjoy increased access to programs
 18 including a new housemate matching program. Implementation Plan §§ B.1, B.2.a, B.2.b, B.3.
 19 Furthermore, the Agreement does not release non-party Settlement Class Members’ potential
 20 claims for monetary damages or their ability to seek individualized relief through the
 21 administrative process.

22 The proposed Settlement Class meets all requirements of Rule 23(a) and Rule 23(b)(2)
 23 and should be certified.

24 **B. The Parties’ Agreement Should Be Preliminarily Approved**

25 In making a final fairness determination, Rule 23 requires courts to consider: (1) whether
 26 the class was adequately represented; (2) whether the proposed settlement was negotiated at
 27 arm’s length; (3) whether the relief provided for the class is adequate, taking into account, in
 28 relevant part, the costs, risks, and delay of trial and appeal and the terms of any proposed award

1 of attorneys’ fees; and (4) whether the proposal treats class members equitably relative to one
 2 another. Fed. R. Civ. P. 23(e)(2); *see also Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir.
 3 2012) (listing *Hanlon* factors considered in the Ninth Circuit). Courts “cannot, however, fully
 4 assess such factors until after the final approval hearing; thus, a full fairness analysis is
 5 unnecessary at this stage.” *Uschold*, 333 F.R.D. at 169 (internal quotation marks and citation
 6 omitted). “Preliminary approval is thus appropriate if the proposed settlement appears to be the
 7 product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not
 8 improperly grant preferential treatment to class representatives or segments of the class, and falls
 9 within the range of possible approval.” *Id.* (internal quotation marks and citation omitted).
 10 “[P]reliminary approval should only be granted where the parties have ‘shown that the court *will*
 11 *likely be able to . . .* approve the proposal under [the final approval factors] in Rule 23(e)(2).’ ”
 12 *In re MyFord Touch Consumer Litig.*, No. 13-cv-03072-EMC, 2019 WL 1411510, at *4 (N.D.
 13 Cal. Mar. 28, 2019) (quoting Fed. R. Civ. P. 23(e)(1)(B)) (alteration in original).

14 1. Plaintiffs and their counsel have adequately represented the Settlement
 15 Class.

16 In determining whether a class has been adequately represented, courts consider the same
 17 “adequacy of representation” questions that are relevant to class certification. *See id.* at *8; *see*
 18 *also O’Connor v. Uber Techs., Inc.*, No. 13-cv-03826-EMC, 2019 WL 1437101, at *6 (N.D. Cal.
 19 Mar. 29, 2019). As discussed above in § IV.A.4, this requirement is satisfied. First, Plaintiffs’
 20 counsel engaged in extensive investigation and advocacy prior to filing suit. Bird PA Decl. ¶¶ 3–
 21 4; Weaver PA Decl. ¶¶ 13–15. Second, Plaintiffs’ counsel and Plaintiffs vigorously prosecuted
 22 the action. They successfully defended against Defendants’ motion to dismiss, propounded
 23 discovery, and produced an extensive expert report. *See* ECF No. 38 (Order Den. Mot. Dismiss);
 24 Weaver PA Decl. ¶¶ 8–12. Third, Plaintiffs, through their guardians *ad litem* have been engaged
 25 and involved in this matter to represent the interests of the class, including by participating in
 26 many settlement conferences and meetings and providing input throughout the Parties’
 27 settlement negotiations. Weaver PA Decl. ¶ 17; Klein PA Decl. ¶ 13; Bishara PA Decl. ¶ 8.
 28 Thus, the Court should find that this Rule 23(e)(2) factor weighs in favor of approval.

2. The Parties’ Agreement is the product of arms’ length negotiations.

The Parties’ proposed Agreement is the product of over two years of arms’ length negotiations, including eight settlement conferences before Judge Corley, numerous settlement meetings between the parties, and dozens of written proposals exchanged. ECF Nos. 50, 54, 58, 60, 67, 79, 89, 92 (Min. Entries re Settlement Confs.); Weaver PA Decl. ¶¶ 16–19. While no presumption of fairness attaches to settlements achieved through arms-length negotiations, *see Roes, 1–2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1049 (9th Cir. 2019), such negotiations do weigh in favor of approval.⁸ Fed. R. Civ. P. 23(e)(2)(B). And, as the Advisory Committee has recognized, “the involvement of a neutral or court-affiliated mediator or facilitator . . . may bear on whether [negotiations] were conducted in a manner that would protect and further the class interests.” Advisory Committee Notes to 2018 Amendments, Fed. R. Civ. P. 23(e)(2). Where, as here, an agreement is the product of “serious, informed, non-collusive negotiations” conducted by experienced counsel over an “extended period of time,” courts routinely find that preliminary approval is appropriate. *See, e.g., In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079–80 (N.D. Cal. 2007). Furthermore, Plaintiffs’ counsel refused to negotiate attorneys’ fees and costs until agreement was reached on the remainder of the settlement. Weaver PA Decl. ¶ 20. The Court should find that this Rule 23(e)(2) factor weighs in favor of approval.

3. The Parties’ Agreement will provide exceptional relief to Plaintiffs and the Settlement Class

The third factor requires courts to consider whether “the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney’s fees, including timing of payments; and (iv) any agreement required to be identified under Rule

⁸ The considerations encompassed by the revised Rule 23(e)(b)(2)(A)–(B) “overlap with certain *Hanlon* factors, such as the non-collusive nature of negotiations, the extent of discovery completed, and the stage of proceedings.” *In re Extreme Networks, Inc. Sec. Litig.*, No. 15-cv-04883-BLF, 2019 WL 3290770, at *7 (N.D. Cal. July 22, 2019) (citing *Hanlon*, 150 F.3d at 1026).

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1 23(e)(3).” Fed. R. Civ. P. 23(e)(2)(C). In determining whether the Agreement “falls within the
 2 range of possible approval,” the Court must focus on “substantive fairness and adequacy” and
 3 “consider plaintiffs’ expected recovery balanced against the value of the settlement offer.” *See In*
 4 *re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1080 (citations omitted). “It is well-settled law
 5 that a proposed settlement may be acceptable even though it amounts only to a fraction of the
 6 potential recovery that might be available to class members at trial.” *Uschold*, 333 F.R.D. at 171
 7 (internal quotation and alterations omitted).

8 Here, the settlement fully addresses the issues that led Plaintiffs to file this lawsuit.
 9 Plaintiffs were living in three different group homes with staff who could not communicate with
 10 them using sign language, and participated in day programs that also had no signing staff. FAC
 11 ¶¶ 104–09, 145–46, 153, 164–67, 180–86, 196, 200. Although all preferred to communicate with
 12 sign language, the staff from the regional center, their group homes, and their day programs all
 13 attempted to communicate using written notes, without regard to their preference or actual
 14 ability. *Id.* ¶¶ 110–16, 130, 140–44, 178–82, 188, 193. One Plaintiff wished to move to a home
 15 with other deaf residents; once she was provided an interpreter and could communicate this to
 16 her regional center, she was told none were available. *Id.* ¶¶ 159–63. Regional Center staff were
 17 unaware of the importance of videophones as an accommodation for deaf residents and failed to
 18 ensure that this accommodation was available to the Plaintiffs. *Id.* ¶¶ 125, 156, 198. Neither the
 19 regional centers nor their group home staff arranged for interpreters for their medical care, so
 20 they were unable to communicate their medical needs, understand their treatment or ask
 21 questions. *Id.* ¶¶ 124, 157–58, 199.

22 The Agreement and Implementation Plan address all these issues. Deaf consumers will be
 23 offered appropriate communication assessments, which will ensure that regional center staff and
 24 vendors are aware of their abilities, preferences, and need for auxiliary aids and services. New
 25 and expanded programs for deaf consumers, including housemate matching, will be given
 26 priority for new funding, so that deaf consumers will have more appropriate programs from
 27 which to choose. Deaf Services Specialists at every regional center will be available to support
 28 the development of new resources, staff training and completion of the communication

1 assessments. DDS will provide training for staff who work with deaf consumers and a new
 2 webpage with resources on increasing access for deaf consumers. Once implemented, these
 3 changes will resolve the problems that led to the lawsuit.

4 *a. The potential costs, risks, and delays associated with trial and*
 5 *appeal weigh in favor of approval.*

6 In considering “the costs, risks, and delay of trial and appeal,” Fed. R. Civ. P.
 7 23(e)(2)(C)(i), courts in the Ninth Circuit evaluate “the strength of the plaintiffs’ case; the risk,
 8 expense, complexity, and likely duration of further litigation; [and] the risk of maintaining class
 9 action status throughout the trial.” *Hanlon*, 150 F.3d at 1026. Further, in determining whether the
 10 Agreement “falls within the range of possible approval,” the Court considers the expected
 11 outcome balanced against the value of the settlement. *See Uschold*, 333 F.R.D. at 171.

12 In deciding whether to agree to this settlement, Plaintiffs were required to, and did,
 13 consider the possibility that DDS would prevail in the litigation, and the case would end with no
 14 benefits to the class. Weaver PA Decl. ¶¶ 38–40; Bird PA Decl. ¶ 16. DDS has argued that it is
 15 not responsible for the actions of the regional centers or their vendors who provide services
 16 directly to Plaintiffs and the Settlement Class. DDS argued that the issue of appropriate
 17 accommodations for each class member was so individualized as to defeat class certification.
 18 DDS also contended that it was up to the consumer’s IPP team, not DDS, to offer any
 19 appropriate assessments.

20 On the other hand, Plaintiffs contend that under the ADA and its implementing
 21 regulations, DDS is required to ensure that the benefits of its program are available to deaf
 22 consumers and that its operations, as well as those of its contractors, do not discriminate on the
 23 basis of disability. Thus, Plaintiffs contend that DDS is responsible for the failure of regional
 24 centers and their vendors to provide effective communication to deaf consumers. Plaintiffs
 25 amassed extensive evidence demonstrating deaf consumers’ exclusion from meaningful
 26 participation in California’s I/DD services program and from the opportunity to benefit from
 27 decision making about their own services because of the lack of sign interpreters. Plaintiffs were
 28 also prepared to show that class certification was appropriate.

1 Nevertheless, there is no guarantee that Plaintiffs would prevail, and any litigated result
 2 would require significant time and resources for the Court to resolve these disputes. Plaintiffs
 3 considered the fact that the settlement provided additional benefits—such as the engagement of
 4 regional center representatives in the Steering Committee and the hiring of Deaf Services
 5 Specialists at every regional center—that would greatly enhance the prospective relief. Klein PA
 6 Decl. ¶¶ 15–17; Bishara PA Decl. ¶¶ 10–14. The Steering Committee, which includes subject
 7 matter experts, will also make recommendations to DDS regarding a consistent set of
 8 procedures, tools, and materials for communication assessments and recruitment for assessors.
 9 Implementation Plan § A. This and other relief included in the Agreement might not otherwise
 10 be available from a court, even if Plaintiffs were to prevail.

11 Based on these factors, Plaintiffs made a considered decision that this settlement is in the
 12 best interests of the Settlement Class and deserves judicial approval. Klein PA Decl. ¶ 14;
 13 Bishara PA Decl. ¶ 9.

14 ***b. The terms of the Parties’ proposed attorneys’ fee award also***
 15 ***weigh in favor of approval.***

16 The statutes at issue in this action allow prevailing plaintiffs to recover their reasonable
 17 fees and costs. *See* 42 U.S.C. § 12205 (ADA); 29 U.S.C. § 794a(b) (Section 504). In the context
 18 of a class settlement, “courts have an independent obligation to ensure that the award, like the
 19 settlement itself, is reasonable, even if the parties have already agreed to an amount.”⁹ *In re*
 20 *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011).

21 Subject to this Court’s approval, Defendants have agreed to pay Plaintiffs’ counsel
 22 \$1,300,000 to cover all attorneys’ fees and costs, including those incurred for monitoring
 23 implementation of the Agreement. Agreement ¶ 43. This term was negotiated after all
 24 substantive settlement terms pertaining to injunctive relief had been resolved. Weaver PA Decl.

25 _____
 26 ⁹ While such awards are not formally approved until the final approval hearing, class counsel
 27 must “include information about the fees and costs . . . they intend to request[and] their lodestar
 28 calculation (including total hours) . . . in the motion for preliminary approval.” *See* U.S. DIST.
 CT. N. DIST. OF CAL., *Procedural Guidance for Class Action Settlements* ¶ 6 (Aug. 4, 2022),
 available at <https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/>.

1 ¶ 20.

2 Plaintiffs’ lodestar, calculated by multiplying the number of hours Plaintiffs reasonably
 3 expended on the litigation by their reasonable hourly rate, is the presumptively reasonable
 4 attorneys’ fee for settlement purposes. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d
 5 at 941. Moreover, “lawyers are not likely to spend unnecessary time on contingency fee cases”
 6 such as this one “in the hope of inflating their fees”; thus, “[b]y and large, the court should defer
 7 to the winning lawyer’s professional judgment as to how much time he was required to spend on
 8 the case[.]” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008).

9 Plaintiffs’ Counsel devoted a total of 4394.9 hours to this action through August 31,
 10 2022. Weaver PA Decl. ¶ 25, Ex. 5 (DRA Billing Summary); Bird PA Decl. ¶¶ 25–26, Ex. 1
 11 (DRC Billing Summary). In the interest of settlement, Plaintiffs wrote off a significant amount of
 12 this time—1420 hours, or over 32.3% of all hours billed—meaning that they only sought
 13 compensation for 2974.9 hours of work. Weaver PA Decl. Ex. 5; Bird PA Decl. ¶ 26. Based on
 14 2022 rates for Plaintiffs’ counsel¹⁰—this amounted to a lodestar of \$1,788,305. Weaver PA Decl.
 15 Ex. 5; Bird PA Decl. Ex. 1. Plaintiffs also requested \$30,650.05 in reasonable costs and expenses
 16 incurred through August 31, 2022. Weaver PA Decl. ¶ 22.

17 This amount thus represents a significant reduction to Plaintiffs’ lodestar, which did not
 18 include any of the necessary work Plaintiffs have done since August 31, 2022 or the further work
 19 they will do in support of final approval and monitoring the Agreement’s implementation.
 20 However, Plaintiffs are willing to agree to such a discount in the interest of bringing this case to
 21 a close.

22 Where, as here, Plaintiffs have achieved an excellent result on behalf of the proposed
 23 Settlement Class—as discussed in § II.C, above—that fact weighs heavily in favor of finding that
 24 their fee award is reasonable. *See Hensley v. Eckerhart*, 461 U.S. 424, 435–436 (1983) (“Where
 25 a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee.
 26 . . . [T]he most critical factor [to the reasonableness of an attorney fee award] is the degree of
 27

28 ¹⁰ Plaintiffs’ counsel’s rates are regularly approved in the Northern District of California. Weaver
 PA Decl. ¶ 26; Bird PA Decl. ¶ 27.

1 success obtained.”); *see also Vizcaino v. Microsoft Corp.*, 142 F. Supp. 2d 1299, 1303 (W.D.
 2 Wash. 2001), *aff’d*, 290 F.3d 1043 (9th Cir. 2002). Thus, the Court should find that the terms of
 3 the Parties’ proposed fee award weigh in favor of approval.

4 4. The Parties’ Agreement treats all Settlement Class Members equitably.

5 “The Court must next examine whether the Settlement Agreement provides preferential
 6 treatment to any class member.” *Uschold*, 333 F.R.D. at 170 (internal quotation and citation
 7 omitted). Here, all Settlement Class Members, both named and unnamed, will be treated
 8 equitably and will receive the same benefits in the form of injunctive relief. Agreement § III.
 9 Furthermore, non-party Settlement Class Members will not release any potential claims for
 10 monetary damages or for individualized services. Agreement ¶ 21, 45–46. The Plaintiffs will not
 11 receive an incentive payment or any benefits that are not afforded to non-party Settlement Class
 12 Members. *See* Agreement.

13 C. The Parties’ Proposed Form of Notice Should Be Approved

14 Notice to a settlement class certified under Rule 23(b)(2) is within the Court’s discretion.
 15 Fed. R. Civ. P. 23(c)(2)(a), (e)(1). “Notice provided pursuant to Rule 23(e) must ‘generally
 16 describe[] the terms of the settlement in sufficient detail to alert those with adverse viewpoints
 17 to investigate and to come forward and be heard.’ ” *Lane*, 696 F.3d at 826 (alteration in original)
 18 (quoting *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 962 (9th Cir. 2009)). The Parties’
 19 proposed form of notice meets this standard.

20 Here, the proposed class notice, attached as Exhibit B to the Agreement (hereinafter
 21 “Notice”), is written using plain language with a Flesch-Kincaid reading level of 10th grade. Bird
 22 PA Decl. ¶ 21. The Notice will be available in English, Spanish and other threshold languages as
 23 defined by paragraph (3) of subdivision (a) of Section 1810.410 of Title 9 of the California Code
 24 of Regulations. Agreement ¶ 52. DDS will mail the Notice to Settlement Class Members, who
 25 will be identified using DDS data sources. *Id.* ¶ 51; Winfield PA Decl. ¶ 6. DDS and Plaintiffs’
 26 counsel will each post the Notice on their websites, along with a video of an ASL translation of
 27 the notice. Agreement ¶ 52. DDS will also respond to requests for the Notice in alternative
 28 formats. *Id.* If DDS determines that providing the Notice in a requested alternative format is

1 unduly burdensome, it will report any such determination as part of the final approval process
 2 and explain why the request was unduly burdensome. *Id.* In addition, DDS will work with the
 3 regional centers to disseminate information to Settlement Class Members about the Agreement,
 4 the process for filing objections, and the date for the fairness hearing. *Id.* ¶ 53.

5 The Notice also informs Settlement Class Members that they can file objections in
 6 writing or by submitting a sign language video of their objection directly to the courtroom
 7 deputy. Notice at 4. Plaintiffs' counsel specifically negotiated for this option to ensure that deaf
 8 Settlement Class Members face no barriers to expressing their views on the proposed Class
 9 Settlement. Bird PA Decl. ¶ 23.

10 The Notice and proposed notice process satisfies Rule 23(c) because it is easy to
 11 comprehend and provides sufficient information to alert Settlement Class Members with
 12 opposing views to investigate and express their objections.

13 **D. The Agreement meets the Northern District's Guidance**

14 The Northern District of California has issued procedural guidance for class action
 15 settlements. U.S. DIST. CT. N. DIST. OF CAL., *Procedural Guidance for Class Action Settlements*
 16 (Aug. 4, 2022), available at [https://www.cand.uscourts.gov/forms/procedural-guidance-for-](https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/)
 17 [class-action-settlements/](https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/). Below, the Parties address those guidelines that are applicable in this
 18 matter.

19 First, as noted above, the Settlement Class is slightly different from the class proposed in
 20 the operative complaint. In their FAC, Plaintiffs defined the putative class as "Individuals who,
 21 now or in the future, are deaf and are eligible or become eligible for DDS's I/DD services
 22 pursuant to the Lanterman Developmental Disabilities Services Act." FAC ¶ 17. The Settlement
 23 Class is defined as

24 All persons eligible for services pursuant to the Lanterman
 25 Developmental Disabilities Services Act whose response to
 26 question 60 within DDS's "Client Development Evaluation Report
 27 (CDER) Diagnostic Element" is "2-Severe hearing loss," "3-
 28 Profound hearing loss," or "9-Hearing loss suspected, severity
 undetermined;" and whose response to question 61 within DDS's
 CDER Diagnostic Element is "2-Severe hearing loss," "3-Profound

1 hearing loss,” “8-Correction not possible,” or “9-Hearing not
2 corrected.”

3 Agreement ¶¶ 3, 6, 22, 35. While, in practical terms, both class definitions apply to the same
4 group of affected persons, the modified class definition is appropriate because it enables the
5 parties to clearly identify Settlement Class Members based on DDS data.

6 Second, the claims released in the Agreement are different from the claims in Plaintiffs’
7 FAC in two respects. First, DDS’s agents and contractors were not named as defendants in
8 Plaintiffs’ federal or state actions, though the Agreement includes them in the release of claims.
9 This is appropriate because the systemic actions DDS has agreed to will also be implemented by
10 their agents and contractors at the regional center level, for example through modification of
11 regional center contracts (Implementation Plan §§ B.1.e, B.5.b) and hiring of regional Deaf
12 Services Specialists (*id.* § B.2.b) and because the release is temporally limited to claims arising
13 before the Effective Date (Agreement ¶ 21). Second, the Agreement releases state law claims
14 under Section 11135, which are not included in Plaintiffs’ FAC because they were voluntarily
15 removed and filed in state court at Defendants’ request. Weaver PA Decl. ¶¶ 3–4 & Ex. 2.
16 Release of state law claims is appropriate because those claims have been filed in state court by
17 the same plaintiffs, represented by the same guardians *ad litem* and counsel, and based on the
18 same factual allegations which will be addressed by the same relief.

19 Third, to the Parties’ knowledge, the only other case that would be affected by the
20 Agreement is Plaintiffs’ parallel state action filed in Alameda County Superior Court (“State
21 Action”). The Agreement provides that Plaintiffs will dismiss this action with prejudice.
22 Agreement ¶ 65. The Parties are also aware of one other lawsuit filed by a member of the
23 proposed Settlement Class—*Melton v. Regional Center of the East Bay, Inc.*, No. 4:20-cv-
24 06613-YGR (N.D. Cal.). In *Melton* a deaf-blind consumer sued her regional center, Regional
25 Center of the East Bay (a DDS contractor), alleging violations of Section 504 and Section 11135.
26 First Am. Compl. Injunctive Relief & Damages ¶¶ 114–29, 143–54, *Melton*, No. 4:20-cv-06613-
27
28

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1 YGR (N.D. Cal. Mar. 11, 2021), ECF No. 48.¹¹ Ms. Melton's claims appear to arise out of
 2 allegations distinct from this case, as Plaintiffs' Complaint (ECF No. 1), FAC (ECF No. 11), and
 3 State Action (Weaver PA Decl. Ex. 2) do not include any allegations regarding the Regional
 4 Center of the East Bay.¹² However, *Melton* could be affected if a court were to determine that
 5 those claims arise out of the allegations in Plaintiffs' Complaint, FAC, or State Action. To the
 6 extent that Ms. Melton's Section 504 and Section 11135 claims against her regional center are
 7 for injunctive or declaratory relief *and* a court concludes that they arise out of the allegations in
 8 Plaintiffs' Complaint, FAC, or State Action, they would be released by the Agreement. Even in
 9 this unlikely event, Ms. Melton's claims for damages would be unaffected. The Parties provided
 10 Ms. Melton's counsel the Settlement Agreement and Implementation Plan; to the Parties'
 11 knowledge Ms. Melton does not object to the Agreement.

12 Finally, Defendants will provide notice to the Attorney General for the United States and
 13 the California Attorney General within ten days of filing this motion, as required by the Class
 14 Action Fairness Act, 28 U.S.C. § 1715(b).

15 V. CONCLUSION

16 The settlement of this litigation achieves important benefits for Plaintiffs and all members
 17 of the proposed Settlement Class. Plaintiffs respectfully request that the Court enter the attached
 18 proposed order preliminarily approving the Agreement, preliminarily certifying the proposed
 19 class, and approving the proposed notice form and notice plan.

20 DATED: March 30, 2023

Respectfully submitted,

21
22 DISABILITY RIGHTS ADVOCATES

23 
 24 Meredith J. Weaver
 Rebecca Williford
 Attorneys for Plaintiffs

25 ¹¹ Ms. Melton also alleged various other violations of federal and state anti-discrimination laws.
 26 First Am. Compl. Injunctive Relief & Damages, *Melton*, No. 4:20-cv-06613-YGR (N.D. Cal.
 27 Mar. 11, 2021), ECF No. 48. However, to the extent that those claims remain at issue in the
 28 *Melton* litigation, they would not be impacted by the Agreement.

¹² Plaintiffs are served by Golden Gate Regional Center and Inland Regional Center. *See* FAC
 ¶¶ 11–13, ECF No. 11.

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FILER'S ATTESTATION

Pursuant to Civil Local Rule 5-1(h)(3), I, Meredith J. Weaver, attest that concurrence in the filing of this document has been obtained from each of the Signatories.



Meredith J. Weaver

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