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20 UNITED STATES DISTRICT COURT
21 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

22 JENNY LISETTE FLORES, *et al.*,) Case No. CV 85-4544 DMG (AGR_x)
23)
24 Plaintiffs,) [PROPOSED] ORDER RE COMPLIANCE
25 - vs -) WITH SETTLEMENT
26)
27 LORETTA E. LYNCH, Attorney)
28 General of the United States, *et al.*,) Date: June 17, 2016.
Time: 9:30 a.m.
Defendants.) Dept: Courtroom 7
[HON. DOLLY M. GEE]

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1 The original complaint in this action was filed on July 11, 1985. [Doc. # 1.] On
2 January 28, 1997, the Court approved a class-wide settlement of this action pursuant to
3 Fed. R. Civ. P. 23. (See Plaintiffs' First Set of Exhibits in Support of Motion to
4 Enforce Settlement ("Ps' First Set"), Exh. 1 ("Settlement").)

5
6 Plaintiffs filed a motion to enforce the Settlement on February 2, 2015.1 [Doc. #
7 100.] Defendants filed an opposition to Plaintiffs' motion. [Doc. # 121.] On February
8 27, 2015, Defendants filed a motion to amend the Settlement. [Doc. # 120.] On March
9 6, 2015, Plaintiffs filed an opposition. [Doc. # 122.] A hearing on the motions was held
10 on April 24, 2015.
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12
13 On July 24, 2015, this Court issued its Order Re Plaintiffs' Motion To Enforce
14 Settlement Of Class Action And Defendants' Motion To Amend Settlement ("Order of
15 July 24, 2015"). [Doc. # 177.] After further briefing, on August 21, 2015, this Court
16 issued its Order Re Response To Order To Show Cause ("Order of August 21, 2015").
17 [Doc. # 189.]
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19
20 In its Order of August 21, 2105, the Court ordered Defendants to implement the
21 following remedies by October 23, 2015:

- 22 1. Defendants, upon taking an accompanied class member into custody, shall
23 make and record prompt and continuous efforts toward family reunification and
24 the release of the minor pursuant to Paragraph 14 of the Settlement.
- 25 2. Unless otherwise required by the Settlement or the law, Defendants shall
26 comply with Paragraph 14A of the Settlement by releasing class members
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1 without unnecessary ... Class members not released pursuant to Paragraph
2 14 of the Settlement will be processed in accordance with the Settlement,
3 including, as applicable, Paragraphs 6, 9, 21, 22, and 23.
4

5 3. Subject to Paragraph 12A of the Settlement, accompanied class members
6 shall not be detained by Defendants in unlicensed or secure facilities that do
7 not meet the requirements of Paragraph 6 of the Settlement or, in appropriate
8 cases, as set forth in the Settlement, in facilities that do not meet the
9 requirements of Paragraphs 12A, 21, and 23 ...
10

11 4. ... [A] class member's accompanying parent shall be released with the
12 class member in accordance with applicable laws and regulations unless the
13 parent is subject to mandatory detention under applicable law or after an
14 individualized custody determination the parent is determined to pose a
15 significant flight risk, or a threat to others or the national security ...
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18 5. As contemplated in Paragraph 28A of the Settlement, Defendants or their
19 Regional Juvenile Coordinator shall monitor compliance with their
20 acknowledged standards and procedures for detaining class members in
21 facilities that are safe and sanitary ... including access to adequate drinking
22 water and food, toilets and sinks, medical assistance if the minor is in need
23 of emergency services, temperature control, ventilation, adequate
24 supervision to protect minors from others, and contact with family members
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1 who were arrested with the minor. In the alternative, the parties may
2 stipulate to the appointment of a special monitor for this purpose.

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4 6. Defendants shall monitor compliance with the Settlement and this Order
5 and shall provide Class Counsel on a monthly basis statistical information
6 collected pursuant to Paragraph 28A of the Settlement.

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8 August 21, 2015 Order at 14-15 [Doc./ #189.]

9 The Court also again found that Customs and Border Protection (“CBP”)
10 stations were not complying but “must comply with the Settlement and Defendants’
11 own acknowledged standards and procedures.” *Id.* at 13. In its July 24, 2015 Order, the
12 Court found that conditions in CBP stations for Class Member children were
13 “widespread and deplorable.” Order of July 24, 2015 at 18. [Doc. # 177.]

14
15 On _____, 2016, Plaintiffs filed a motion again seeking to enforce
16 compliance with the Settlement and also seeking appointment of a Special Monitor. On
17 _____, 2016, Defendants’ filed an opposition. [Doc. #__.] On _____,
18 2016, Plaintiffs filed a reply to Defendants’ opposition. [Doc. #__].

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21 Having duly considered the respective positions of the parties as presented in
22 their briefs [if applicable: and at oral argument held on _____, 2016], the Court
23 now renders its decision. Plaintiffs’ motion for appointment of a Special Monitor is
24 addressed in a separate Order. [Doc. #__.]

25
26 1. This Court retains subject matter jurisdiction to make the requested further
27 Orders because (1) each issue currently under consideration by the Ninth Circuit would
28

1 “remain[] unchanged” by the Proposed Orders, and (2) the Proposed Orders will
2 “protect plaintiffs’ rights in direct response to defendants’ repeated and willful non-
3 compliance with [the Court’s] earlier orders.” *Armstrong v. Brown*, 732 F.3d 955, 959
4 fn. 6 (9th Cir. 2013), *cert denied*, 134 S. Ct. 2725 (2014) (affirming the district court’s
5 authority to issue modified orders requiring near immediate action by California state
6 prison officials pending appeal of its judgment, which determined the rights of disabled
7 prisoners and obligations of state officials).

10 2. This Court has already ruled that “[t]he plain language of the Settlement
11 clearly encompasses accompanied minors.” Order of July 24, 2015, at 4. [Doc. # 177.]
12 *See also* Order of August 21, 2015 at 7 [Doc. #189] (“The consent decree’s language
13 clearly and unambiguously applies to accompanied minors .”)

16 3. The evidence establishes that Class Members in custody since October 23,
17 2015, have continued to experience deplorable conditions in CBP facilities. *Inter alia*,
18 Class Member children have been provided inadequate food, forced to sleep on cold
19 concrete floors with no blankets or mats or mattresses, bright lights are kept on all
20 night, cells are severely overcrowding making even sleeping on the floor difficult,
21 there are no washing facilities such as soap and towels, drinking water is dirty and
22 detainees must share cups, no toiletries are allowed or provided, no change of clothing
23 is provided when class members’ cloths are wet, and room temperatures are extremely
24 cold. These conditions are inconsistent with Paragraph
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1 4. The evidence establishes that upon taking accompanied Class Members into
2 custody since October 23, 2015, Defendants have not made and recorded prompt and
3 continuous efforts toward family reunification and the release of Class Member minors
4 pursuant to Paragraph 14A of the Settlement.
5

6 5. The evidence establishes that since October 23, 2015, Defendants have not as
7 expeditiously as possible placed Class Members not released under Paragraph 14A in
8 non-secure licensed facilities under Paragraph 19 of the Settlement.
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10 6. The evidence establishes that since October 23, 2015, Defendants have not
11 processed Class Members not released under Paragraph 14A or placed under Paragraph
12 19 in accordance with the Settlement, including, as applicable, Paragraphs 6, 9 and 21-
13 23.
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15 7. The evidence establishes that since October 23, 2015, Defendants have
16 continued to detain Class Members in unlicensed or secure facilities that do not meet
17 the requirements of Paragraph 6 of the Settlement or, in appropriate cases as set forth in
18 the Settlement, in facilities that meet the requirements of Paragraphs 12A, 21, and 23.
19 Pursuant to Paragraph 19 of the Settlement, if a Class Member is not promptly released
20 under Paragraph 14, then the minor shall be “temporarily” placed in a licensed program
21 until “release can be effected in accordance with Paragraph 14 ...” Under
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1 Paragraph 6 licensed programs “shall be non-secure” as required under state law. *Id.*¹
2 Defendants concede they are not holding Class Members in licensed “non-secure”
3 facilities.
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5 8. Paragraph 12A of the Settlement provides that “Whenever the INS takes a
6 minor into custody, it shall expeditiously process the minor and shall provide the minor
7 with a notice of rights, including the right to a bond redetermination hearing if
8 applicable.” The evidence establishes that Defendants have not provided Class
9 Members with such notices.
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11 9. The evidence establishes that Defendants have not brought Class Members
12 before Immigration Judges for review of their custody status in appropriate cases as
13 required by Paragraph 12A of the Settlement.
14

15 10. Paragraph 12A of the Settlement provides “If there is no one to whom the
16 INS may release the minor pursuant to Paragraph 14, and no appropriate licensed
17 program is immediately available for placement pursuant to Paragraph 19, the minor
18 may be placed in an INS detention facility, or other INS-contracted facility, *having*
19 *separate accommodations for minors ...*” (Emphasis added). Defendants concede they
20 have not held Class Members in facilities having separate accommodations for minors.
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27 ¹ The Settlement also defines the exceptional circumstances in which class members
28 may be held in “secure” facilities. *See, e.g.* Paragraph 21 (class member charged with
a crime); Paragraph 22 (escape risks).

1 11. Paragraph 24D of the Settlement provides that “[t]he [defendants] shall
2 promptly provide each minor not released with (a) INS Form 1-770, (b) an explanation
3 of the right of judicial review as set out in Exhibit 6, and (c) the list of free legal
4 services available in the district pursuant to INS regulations (unless previously given to
5 the minor).” The Settlement also makes clear that “[i]n order to permit judicial review
6 of Defendants' placement decisions as provided in this Settlement, Defendants shall
7 provide minors not placed in licensed programs with a notice of the reasons for
8 housing the minor in a detention or medium. security facility.” Settlement ¶24C. The
9 evidence shows that Defendants have not provided Class Members with the notices
10 required by Paragraphs 24C and 24D.
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14 12. Paragraph 12C of the Settlement provides “In preparation for an
15 ‘emergency’ or ‘influx,’ as described in Subparagraph B, the [Defendants] shall have a
16 written plan that describes the reasonable efforts that it will take to place all minors as
17 expeditiously as possible. This plan shall include the identification of 80 beds that are
18 potentially available for ... placements ... The [defendants] shall update this listing of
19 additional beds on a quarterly basis and provide Plaintiffs' counsel with a copy of this
20 listing.” Defendants concede that such plans have not been provided to Plaintiffs’
21 counsel.
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25 12. Defendants have not established that since October 2015 their Regional
26 Juvenile Coordinator has monitored compliance with the Settlement or Defendants’
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1 acknowledged standards and procedures for detaining Class Members in facilities that
2 are safe and sanitary.

3 Based on the foregoing, the Court finds that Defendants are in material breach of
4 the Settlement and GRANTS Plaintiffs' motion to enforce the Settlement.

5 The Court orders Defendants to implement the following remedies within thirty
6 (30) days of the date of this Order unless a different time period is specified below:
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8 1. As required by Paragraph 18 of the Settlement, Defendants, including
9 CBP and ICE officials, upon taking an accompanied class member into custody,
10 shall make and record prompt and continuous individualized efforts toward
11 family reunification and the release of the minor pursuant to Paragraph 14 of the
12 Settlement. These efforts will include contacting a parent or other relatives or
13 adults identified in Paragraph 14A-D and F, determining whether placement
14 with such individuals is appropriate, and if not to make and record prompt
15 efforts to place the Class Member in a licensed program as required by
16 Paragraph 14E.
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18 2. Defendants shall comply with and accurately record their compliance
19 with Paragraph 24C of the Settlement requiring that minors not placed in
20 licensed programs be provided with a notice of the reasons for housing the minor
21 in a detention or medium security facility and Paragraph 24D of the Settlement
22 which requires that Defendants promptly provide each minor not released with
23 (a) INS Form 1-770, (b) an explanation of the right of judicial review as set out
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1 in Exhibit 6, and (c) the list of free legal services available in the district
2 pursuant to INS regulations (unless previously given to the minor).

3
4 3. Unless otherwise required by the Settlement, Defendants shall comply
5 with Paragraph 14A of the Settlement by releasing class members as
6 expeditiously as possible and without unnecessary delay in first order of
7 preference to a parent, including a parent who either was apprehended with a
8 class member or presented herself or himself with a class member. As required
9 by Paragraph 12A3, Class Members not released pursuant to Paragraph 14 shall
10 be placed pursuant to Paragraph 19 as expeditiously as possible in a non-secure
11 licensed program unless the Settlement precludes such placement based on
12 Paragraphs 12 or 21. In *individualized* circumstances a *de minimis* extension of
13 the five-day requirement to place Class Members under Paragraph 14A will not
14 necessarily result in a breach of the Settlement. Defendants shall record the
15 individualized circumstances that give rise to a delay in releasing or placing an
16 accompanied Class Member pursuant to Paragraphs 14A and 19. Beyond a *de*
17 *minimis* period caused by *individualized* circumstances, Defendants may *not*
18 extend Class Members' detention for reasons not set forth in Paragraphs 21
19 (chargeable or convicted of certain crimes) or 22 (escape risks) of the
20 Settlement.
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26 4. Accompanied Class Members shall not be detained by Defendants in
27 unlicensed or secure facilities in violation of Paragraph 6 of the Settlement, or in
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1 appropriate cases, as set forth in the Settlement, in facilities that do not meet the
2 requirements of Paragraphs 12A, 21, and 23. Defendants shall not selectively apply the
3 “influx” provision of Paragraph 12C of the Settlement to house class members
4 apprehended with a parent in facilities that do not comply with the Settlement.
5

6 5. To comply with Paragraph 14A of the Settlement and as contemplated in
7 Paragraph 15, a class member’s accompanying parent shall be released with the class
8 member in a non-discriminatory manner in accordance with applicable laws and
9 regulations unless after an individualized custody determination the parent is
10 determined to pose a significant flight risk, or a threat to others or the national security,
11 and the flight risk or threat cannot be mitigated by an appropriate bond or conditions of
12 release.
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15 6. Commencing immediately pursuant to Paragraph 12A of the Settlement
16 whenever the Defendants take a minor into custody, they shall expeditiously process
17 the minor and shall provide the minor with a notice of rights, including the right to a
18 bond redetermination hearing if applicable.
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21 7. Within 60 days of this Order Defendants and Plaintiffs shall file a joint
22 statement proposing standards, and procedures for monitoring compliance with such
23 standards, for detaining Class Members in facilities that are safe and sanitary,
24 consistent with concern for the particular vulnerability of minors, and consistent with
25 Paragraph 12 of the Settlement, including access to adequate drinking water and food,
26 toilets and sinks, medical assistance if the minor is in need of emergency services,
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1 temperature control, ventilation, adequate supervision to protect minors from others,
2 and contact with family members who were arrested with the minor.

3
4 8. Defendants shall not transfer Class Members to another facility without
5 advance notice to the Class Member's counsel of record as required by Paragraph 27 of
6 the Settlement.

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8 9. Defendants shall monitor compliance with the Settlement and this Order and
9 shall continue to provide Class Counsel on a monthly basis statistical information
10 collected pursuant to Paragraph 28A of the Settlement.

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13 IT IS SO ORDERED.

14 Dated: _____, 2016.

15 _____
16 Dolly M. Gee
United States District Judge

17 Presented by —

18 /s/
19 _____
Peter A. Schey
20 Class Counsel for Plaintiffs

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22 ///

CERTIFICATE OF SERVICE

I, Peter Schey, declare and say as follows:

I am over the age of eighteen years of age and am not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 256 S. Occidental Blvd., Los Angeles, CA 90057, in said county and state.

On May 19, 2016, I electronically filed the following document(s):

[PROPOSED] ORDER RE COMPLIANCE WITH SETTLEMENT with the United States District Court, Central District of California by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/Peter Schey
Attorney for Plaintiffs