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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVID COLE, et al.,
Plaintiffs,
v.
COUNTY OF SANTA CLARA, et al.,
Defendants.

Case No. 16-CV-06594-LHK
**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF
CLASS SETTLEMENT AND NOTICE
TO THE CLASS**
Re: Dkt. Nos. 66, 72

The parties have entered into a Consent Decree that was filed with their Joint Motion for Preliminary Approval of Consent Decree and Notice to the Class on November 13, 2018, which would settle all claims in this case. *See* ECF No. 66. The parties also submitted a proposed Notice to the class, attached as Exhibit B to the Consent Decree.

On December 6, 2018, this Court held a Preliminary Approval hearing in the above-captioned action. *See* ECF No. 70. During the hearing, the Court ordered the parties to (1) file a declaration affirming that Defendant complied with the notice requirements of the Class Action Fairness Act (“CAFA”) of 2005; (2) file a corrected Consent Decree that fixed a typographical error that resulted in the Consent Decree § VIII citing to 28 U.S.C. § 3626 instead of 18 U.S.C. §

1 3626; and (3) file a revised Notice that provided that objectors must also include their name,
2 address, and signature in any objections. In addition, the parties stated that they wished to add
3 language from the Northern District of California’s Procedural Guidance for Class Action
4 Settlements that the Court could only approve or reject the settlement and could not change the
5 terms of the settlement.

6 On December 6, 2018, Defendant filed a declaration affirming that it provided the requisite
7 CAFA notice on December 6, 2018. ECF No. 71. On December 7, 2018, Plaintiff filed a
8 declaration that attached as Exhibit 1 a corrected version of the Consent Decree that fixed the
9 typographical error (referred to below as the “corrected Consent Decree”). ECF No. 72, Ex. 1
10 (“corrected Consent Decree”). Additionally, the corrected Consent Decree included as Exhibit B
11 the revised Notice that updated the original proposed Notice to require that objectors include their
12 name, address, and signature in any objections and added language that the Court may only
13 approve or deny the Consent Decree and cannot change the terms of the Consent Decree (referred
14 to below as the “revised Notice”). ECF No. 72, Ex. B to Ex. 1 (“revised Notice”). The corrected
15 Consent Decree and the revised Notice are the operative documents that the Court approves
16 below.

17 After reviewing all of the pleadings, records, and papers on file, the Court finds that, good
18 cause appearing, IT IS ORDERED AS FOLLOWS:

19 1. This action is determined to be properly maintained as a class action pursuant to
20 Rule 23(b)(2) of the Federal Rules of Civil Procedure. The Court has already certified a class
21 defined as “All individuals with mobility disabilities who are now, or will be in the future,
22 incarcerated in the Santa Clara County Jails, which consist of three facilities: (1) the Santa Clara
23 County Main Jail Complex (“Main Jail”), consisting of Main Jail North and Main Jail South, in
24 San Jose, California; (2) facilities for male inmates at the Elmwood Correctional Complex in
25 Milpitas, California (“Elmwood”); and (3) the Elmwood Complex Women’s Facility in Milpitas,
26 California.” ECF No. 38.

1 2. The corrected Consent Decree, ECF No. 72, Ex. 1, falls within the range of
2 possible approval and is sufficiently fair to warrant the dissemination of notice to the class
3 members apprising them of the settlement.

4 3. The corrected Consent Decree, ECF No. 72, Ex. 1, is the product of arm's-length,
5 serious, informed and non-collusive negotiations between experienced and knowledgeable counsel
6 who have actively prosecuted and defended this litigation.

7 4. The corrected Consent Decree, ECF No. 72, Ex. 1, is granted preliminary approval
8 and incorporated herein by this reference, and has the full force and effect of an order of the Court.

9 5. By January 22, 2019, the revised Notice, ECF No. 72, Ex. B to Ex. 1, shall be
10 disseminated to the Class by the following means: (1) the revised Notice shall be posted in
11 English, Spanish, and Vietnamese for thirty (30) consecutive days in the all intake, housing, and
12 programming units of the Jails and on the television-notification system inside the Jails; (2) the
13 revised Notice and corrected Consent Decree shall be made available on Class Counsel's websites
14 for thirty (30) days; (3) a copy of the corrected Consent Decree shall be available in all intake,
15 housing, and programming units of the Jails in English and will be made available upon request in
16 Spanish and Vietnamese; and (4) Inmates may request a copy of the corrected Consent Decree by
17 completing an Inmate Request Form and Custody Staff will provide the inmate with a copy within
18 three days of the request. The revised Notice informs class members that there is no right to opt-
19 out of the class. The revised Notice constitutes valid, due, and sufficient notice to the class,
20 constitutes the best notice practicable under the circumstances, and complies fully with the
21 requirements of Rule 23 of the Federal Rules of Civil Procedure. The proposed forms of notice
22 apprise class members in a fair and neutral way of the existence of the corrected Consent Decree
23 and their rights with respect to the corrected Consent Decree.

24 6. The expense of giving notice to the class members shall be paid by the County.
25 Dissemination of the revised Notice as provided above is hereby authorized and approved, and
26 satisfies the notice requirement of Rule 23(e), Federal Rules of Civil Procedure, the Constitution
27

1 of the United States, due process and any other applicable rule(s) of this Court. The County must
2 file and serve on Class Counsel a declaration affirming that notice was published as required in
3 this order.

4 7. Any member of the class may enter an appearance on his or her own behalf in this
5 action through that class member's own attorney (at their own expense) but need not do so. Class
6 members who do not enter an appearance through their own attorneys will be represented by Class
7 Counsel. Any member of the class may object to the corrected Consent Decree by February 28,
8 2019, more than 35 days after the January 22, 2019 deadline for posting of notice at the Jails and
9 on Class Counsel's webpage. Class Counsel and/or the County, as appropriate, will respond to any
10 timely-filed objections not later than March 14, 2019.

11 8. The Court will consider written objections when deciding whether to approve the
12 corrected Consent Decree. Objections must include at the top of the first page the case name, *Cole*
13 *v. County of Santa Clara* and case number (5:16-cv-06594-LHK). Objections must also include
14 the name, address, and signature of the objector. Objections must be postmarked no later than
15 February 28, 2019, and sent to the following address:

16 Clerk of the Court
17 United States District Court
18 Northern District of California
280 South 1st Street
San Jose, CA 95113

19 9. A hearing is appropriate to consider whether this Court should grant final approval
20 to the corrected Consent Decree, and to allow adequate time for members of the class, or their
21 counsel, to support or oppose this settlement.

22 10. A final approval hearing pursuant to Rule 23(e), Federal Rules of Civil Procedure,
23 will be in the Courtroom of undersigned on March 21, 2019 at 1:30 p.m. in the United States
24 District Court for the Northern District of California, to determine whether the proposed
25 settlement is fair, reasonable and adequate, and whether it should be finally approved by the Court.
26 The hearing may be continued from time to time without further notice. The motion for final
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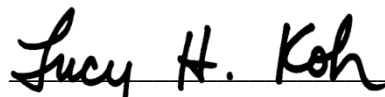
1 approval and the motion for attorneys' fees and costs shall be filed on or before January 14, 2019,
2 and the replies in support of final approval and of attorney's fees and costs shall be filed by March
3 14, 2019.

4 11. A summary of the deadlines set by the Court is included in the chart below:

Event	Date
Class Counsel Motion for Final Approval and Motion for Attorneys' Fees and Costs	January 14, 2019
Post of Settlement Revised Notice in English, Spanish, and Vietnamese and Consent Decree in English in a Binder in all Intake, Housing, and Programming Units of the Jails; and Creation of Webpage by Class Counsel Electronically Publishing Notice	January 22, 2019
Deadline for Objections by Class Members	February 28, 2019
Replies in Support of Motion for Final Approval and Attorneys' Fees and Costs (and Response to Objections)	March 14, 2019
Final Approval Hearing	March 21, 2019 at 1:30 p.m.

15 **IT IS SO ORDERED.**

16 Dated: December 7, 2018

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19 LUCY H. KOH
20 United States District Judge