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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TERESA FARRIS, et al.,

Plaintiffs,

v.

FRANKLIN COUNTY, et al.;

Defendants.

CLASS ACTION

No. 4:14-cv-05083-SAB

PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION,
PRELIMINARY APPROVAL OF
PROPOSED CLASS ACTION
SETTLEMENT, AND APPROVAL
OF NOTICE TO CLASS

Friday, April 29, 2016, 6:30 p.m.
Without Oral Argument

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1 **I. INTRODUCTION AND RELIEF REQUESTED**

2 The Parties have reached a settlement of this lawsuit challenging conditions
3 in the Franklin County Correctional Center (“the Jail”). The Plaintiffs therefore
4 ask the Court to grant preliminary approval of the settlement pursuant to Fed. R.
5 Civ. P. 23(e), certify a settlement class of all people who will be incarcerated at
6 the Jail in the next three years and order that the Defendants serve the two class
7 notice of settlement attached as Exhibit 2 and Exhibit 3 to this motion upon
8 Plaintiff Class members in the manner described below.¹

9 **II. RELEVANT FACTS**

10 **A. Procedural Background.**

11 The eight representative plaintiffs, people then incarcerated at the Franklin
12 County Jail, filed this action against the Defendants in August 2014 and alleged a
13 variety of illegal conditions there. *See* Dkt. #66-2 (Plaintiffs’ Second Amended
14 Complaint). These allegations included claims related to the Jail’s use of restraints
15 and chemical spray, isolation of inmates, denial of procedural due process,
16 inadequate medical and mental health care, denial of out of cell time and other
17 problems. The Plaintiffs requested class certification in their initial and amended

18 ¹ Plaintiffs’ counsel has shared this motion and proposed order with Defendants’
19 counsel and received feedback from Mr. Kamerrer. Defendants do not join this
20 motion, but have no objections to the entry of the order at this time. Defendants
may file a response to the motion to provide the Court with their views if they
deem it necessary after filing.

1 complaints. See Dkt #1 at 8-9 (Plaintiffs' Original Complaint); Dkt #21 at 7-9
2 (Plaintiffs' First Amended Complaint); Dkt. #66-2 at 10-13 (Plaintiffs' Second
3 Amended Complaint). Disability Rights Washington, a state-wide non-profit
4 organization that represents the interests of disabled Washingtonians, is also a
5 plaintiff in this action. Dkt. #66-2 at 5-6.

6 The Plaintiffs originally sued then Franklin County Sheriff Richard Lathim
7 and his Jail administrator, Captain Rick Long, in their official capacities. Dkt. #1
8 at 4-7. Sheriff Lathim lost the subsequent election and was replaced as Franklin
9 County Sheriff by current defendant, James Raymond, in January 2015. Sheriff
10 Raymond appointed Commander Stephen Sultemeier as the new Jail
11 administrator. Sheriff Raymond and Commander Sultemeier continue to oversee
12 the management and daily operations of the Jail. Dkt #66-2 at 6-10. The
13 Defendants have denied and continue to deny the Plaintiffs' allegations.

14 Before filing suit, Plaintiffs' counsel conducted a number of interviews with
15 people incarcerated at the Franklin County Jail and sought and received
16 documents under Washington's Public Records Act from the Jail. *See* Declaration
17 of Nicholas B. Straley at 4, ¶ 19. After filing the case, the parties engaged in
18 extensive additional discovery. Plaintiffs' counsel received and reviewed tens of
19 thousands of pages of written discovery, conducted a number of depositions and
20 retained three nationally recognized, corrections experts. *Id.* at 4, ¶ 21; 6 ¶¶ 29-30.

1 The parties initially attempted to reach a settlement of this action in April
2 2015 during two days of mediation in Yakima with Magistrate Judge Hutton's
3 assistance. *Id.* at 5-6, ¶ 28. They were unsuccessful at that time.

4 The Plaintiffs conducted additional discovery following the parties'
5 unsuccessful initial mediation effort. The Plaintiffs' three experts and one of the
6 Defendants' experts issued expert reports regarding the Jail's operations and
7 conditions at the Jail. *Id.* at 6, ¶¶ 30-31. Those reports all indicated that there
8 continue to be serious problems at the Jail. *Id.*

9 The parties returned to mediation in February 2016 and with Magistrate
10 Judge Rodgers' assistance reached a settlement after two more days of mediation.
11 *Id.* at 7, ¶¶ 33-35. The settlement agreement the parties have executed is attached
12 as Exhibit 1 to this motion. *Id.* at 7, ¶ 35. All of the defendants and the Franklin
13 County Board of Commissioners have approved the Settlement Agreement. *Id.* at
14 7, ¶ 37.

15 **B. The Settlement Agreement**

16 *(1) Benefits of Settlement to Class.*

17 The Defendants have agreed to provide extensive prospective, non-
18 monetary relief enforceable by members of the Class as part of the Settlement
19
20

1 Agreement. *See* Settlement Agreement attached as Exhibit 1 (“S.A.”).

2 Specifically, the Defendants have agreed to do the following:

- 3 • Hire an additional 11 correctional staff and 2 administrative staff
4 over the next two years. *Id.* at 6-7, ¶ (A)(11).
- 5 • Enter into a new contract for medical and mental health services at
6 the Jail with Lourdes Health Network or another provider. *Id.* at 7, ¶
7 (A)(13).
- 8 • Renovate and repair parts of the Jail to allow for more out of cell
9 time and to improve conditions in areas of the Jail. *Id.* at 7, ¶ (A)(12).
- 10 • Draft and implement a host of new policies and procedures in a range
11 of different operational areas. *Id.* at 6-10, ¶¶ (A)(10), (A)(14) &
12 (A)(16) & Appendix A to S.A.²
- 13 • End general, jail-wide 23 hour lockdown and other practices in place
14 when the case was filed. *Id.* at 6-7, ¶ (A)(11).
- 15 • Train Jail staff on the new operations and policies and procedures. *Id.*
16 at 6-8, ¶¶ (A)(10) & (A)(14).

17
18
19 ² Appendix A to the parties’ Settlement Agreement is a list of the operational areas
20 in which the Defendants have agreed to draft and implement new policies and
procedures and the applicable standard that they will use in creating each such
policy.

- 1 • Allow an independent third party to monitor the Jail's operations and
2 compliance with the terms of the settlement agreement over the next
3 three years. *Id.* at 10-13, ¶¶ (B)(1)-(B)(13).

4 The Defendants will draft policies and procedures that will conform to and
5 be consistent with jail accreditation standards created by the Washington
6 Association of Sheriffs and Police Chiefs. Their policies will also be guided by
7 relevant national correctional standards, including standards from the American
8 Correctional Association and the National Committee on Correctional Health
9 Care. S.A. at 8, ¶ (A)15 & Appendix A to S.A.

10 Because of the number of policies and procedures that must be drafted and
11 finalized, the parties have agreed that the Defendants will finalize policies on a
12 staggered timeline over the next year. *Id.* at 7-10, ¶¶ (A)(14) & (A)(16). Plaintiffs'
13 counsel will have an opportunity to review those drafts and provide input prior to
14 finalization and implementation. *Id.* at 7-8, ¶ (A)(14). The Defendants must
15 review the Plaintiffs' suggestions and respond to them in writing. *Id.* Once they
16 are finalized, the Defendants will train staff regarding the new policies and
17 procedures. *Id.* at 6-8, ¶¶ (A)(10) & (A)(14).

18 The Defendants have also ended or agreed to end certain practices at the
19 Jail, including the use of four point restraints against inmates. The Jail will also be
20 phasing out the use of 23 hour lockdown as a general, jail-wide practice as they

1 hire additional staff and remodel the Jail to meet the different operational needs.

2 *Id.* at 6-7, ¶¶ (A)(11) - (12).³

3 **(2) *Term of agreement, class certification, monitoring, dispute***
4 ***resolution and attorneys' fees and costs.***

5 The parties have agreed that the Settlement Agreement will terminate three
6 years from the date that this Court grants final approval, provided the Defendants
7 are in compliance with its terms at that time. *Id.* at 4-5, ¶ (A)(6). The Court may
8 extend the term of the agreement if it believes that the Defendants have not
9 complied with its provisions. *Id.*

10 The parties have also agreed to the appointment of a corrections expert to
11 monitor the Defendants' compliance with the Settlement Agreement over the next
12 three years. *Id.* at 10-13, ¶¶ (B)(1) - (13). The Defendants will pay a reasonable
13 amount to compensate the monitor for her time and expenses. *Id.* at 10-11, ¶
14 (B)(1). The Defendants will provide the monitor and Plaintiffs' counsel with a set

15 ³ The former Jail administration designed the Jail to keep all inmates locked in
16 their cells, twenty three hours a day, irrespective of their classification, security
17 risk or behavior. All of the experts, including the Defendants', agree that this
18 policy and practice is inappropriate. The current administration is committed to
19 ending this practice, but must hire additional staff and make certain structural
20 changes to the Jail before they can allow inmates out of their cells more frequently.
The Defendants have agreed to complete these tasks and eliminate jail-wide, 23
hour lockdown over the next 18 months. *See* S.A. at 6-7, ¶¶ (A)(11) - (12). The Jail
may continue to hold some inmates on 23 hour lockdown depending on the
security needs of the Jail. New policies and procedures will govern the use of 23
hour lockdown in these more limited circumstances.

1 of relevant reports and documents on a quarterly basis. *Id.* at 11-12, ¶ (B)(4) – (7).
2 In addition, the Monitor will tour the Jail at least twice and provide the Court and
3 the parties with at least two monitoring reports during the monitoring period. *Id.* at
4 13, ¶¶ (B)(9) – (12).

5 The Court has not yet certified a class. The parties agree that this case
6 should be certified as a class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2).
7 *Id.* at 5, ¶ (A)(7). They ask the Court to certify a settlement class defined as: “All
8 individuals who are now, or in the future will be, detained in the Franklin County
9 Correctional Center during the term of the parties’ Settlement Agreement.” *Id.*
10 The parties agreed that the Court should determine the content of the notice of
11 settlement and the appropriate manner of service. *Id.* at 6, ¶ 9.

12 The Settlement Agreement also includes a dispute resolution mechanism.
13 *Id.* at 16-17, ¶¶ (H)(1) – (2). If the Plaintiffs believe that the Defendants have not
14 complied with the terms of the Settlement Agreement, they must first address
15 those concerns with the Defendants and seek a mutually agreeable resolution. *Id.*
16 at 16, ¶ (H)(1). If the parties cannot reach agreement, then the Plaintiffs may ask
17 this Court to review the dispute. *Id.* at 17, ¶ (H)(2).

18 The Defendants agree that the Plaintiffs are entitled to an award of their
19 reasonable attorneys’ fees and taxable costs pursuant to 42 U.S.C. §1988(b). *Id.* at
20 at 18-19, ¶¶ (K)(1) – (2). The Defendants have agreed that the Plaintiffs may seek

1 the amounts that they paid to retain their three experts, provided the amount
2 sought for each is reasonable. *Id.* Class Counsel will file a separate request for
3 approval from the Court of an award of attorney's fees and costs within 30 days
4 from the date the Court grants final approval of the settlement. *Id.*

5 Plaintiffs' counsel believe that these promises address the significant issues
6 present in the Jail when the case was filed and those that the experts identified in
7 their reports. They further believe that the settlement is fair and adequate and in
8 the Plaintiff Class's best interests. Straley Decl. at 8-10, ¶¶ 40-50.

9 **IV. ARGUMENT**

10 **A. The Court Must Follow Certain Procedures When Considering**
11 **Whether To Approve A Settlement Reached In A Putative Class Action**
12 **Lawsuit.**

13 Fed R. Civ. Pro. 23(e) requires that the Court approve any settlement
14 reached between the parties.⁴ The settlement approval process involves two steps.

15 ⁴ Fed. R. Civ. Pro(e) reads:

16 (e) Settlement, Voluntary Dismissal, or Compromise. The claims, issues, or
17 defenses of a certified class may be settled, voluntarily dismissed, or compromised
18 only with the court's approval. The following procedures apply to a proposed
19 settlement, voluntary dismissal, or compromise:

17 (1) The court must direct notice in a reasonable manner to all class members
18 who would be bound by the proposal.

18 (2) If the proposal would bind class members, the court may approve it only
19 after a hearing and on finding that it is fair, reasonable, and adequate.

19 (3) The parties seeking approval must file a statement identifying any
20 agreement made in connection with the proposal.

20 (4) If the class action was previously certified under Rule 23(b)(3), the court
may refuse to approve a settlement unless it affords a new opportunity to request
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1 Initially, the Court considers whether to grant preliminary approval to the
2 settlement and the type of notice that must be served upon class members. Fed. R.
3 Civ. Pro 23(e)(1). In this case where the putative class has not yet been certified,
4 the Court also considers class certification. *Staton v. Boeing Co.*, 327 F.3d 938,
5 952 (9th Cir. 2003). After preliminary approval and following notice and an
6 opportunity for any class members to object, the Court holds a final approval
7 hearing at which it considers the proposed settlement in more detail and any
8 objections that it has received. Fed. R. Civ. P. 23(e)(3) & (e)(5). It must find that
9 the settlement is “fair, reasonable and adequate” in order to finally approve the
10 settlement. Fed. R. Civ. P. 23(e)(2).

11 **B. The Parties Agree That The Court Should Certify This Case As A**
12 **Class Action Pursuant To Fed. R. Civ. Pro 23(a) & 23(b)(2).**

13 Since the Court has not yet certified the plaintiff class, it should do so as
14 part of the preliminary settlement approval process. *Staton v. Boeing Co.*, 327
15 F.3d 938, 952 (9th Cir. 2003) (“[I]n the context of a case in which the parties
16 reach a settlement agreement prior to class certification, courts must peruse the
17 proposed compromise to ratify both the propriety of the certification and the

18 exclusion to individual class members who had an earlier opportunity to request
19 exclusion but did not do so.

20 (5) Any class member may object to the proposal if it requires court
approval under this subdivision (e); the objection may be withdrawn only with the
court's approval.

1 fairness of the settlement.”) The Plaintiffs bear the burden of proving to the Court
2 that the certification requirements of Fed. R. Civ. P. 23 have been met “so that
3 absent members can fairly be bound by decisions of class representatives.”
4 *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 619-622 (1997).

5 Certification requires that the proposed class satisfy the numerosity,
6 commonality, typicality, and adequacy of representation requirements of Federal
7 Rule of Civil Procedure 23(a) and one of the three subsections under Rule 23(b).
8 *Amchem Prods., Inc.*, 521 U.S. at. 614. The parties agree that this case meets these
9 criteria and that the Court should certify a class of all people who will be held in
10 the Jail during the term of the Settlement Agreement, pursuant to Fed. R. Civ. P.
11 23(b)(2). *See* S.A. at 5, ¶ (A)(7).

12 ***(1) The Class is large enough to support class certification.***

13 Rule 23(a)(1) requires a class to be “so numerous that joinder of all
14 members is impracticable.” Roughly 190 men and women are detained at the
15 Franklin County Jail every night. *See* Straley Decl. at 2, ¶ 3. Men and women
16 enter and leave the Jail regularly. *Id.* at 3, ¶ 9. The proposed class also includes an
17 unknown but large number of people who will be incarcerated at the Jail in the
18 future.

19 Joinder is impracticable due to the large and unascertainable number of
20 class members. *Cf. Jordan v. Los Angeles County*, 660 F.2d 1311, 1319 (9th Cir.

1 1982) (proposed class of at least 40 members presumptively satisfies the
2 numerosity requirement); *also, Sueoka v. United States*, 101 F. App'x 649, 653
3 (9th Cir. 2004) (“[b]ecause plaintiffs seek injunctive and declaratory relief, the
4 numerosity requirement is relaxed and plaintiffs may rely on the reasonable
5 inference arising from plaintiffs' other evidence that the number of unknown and
6 future members ... is sufficient to make joinder impracticable.”).

7 **(2) *The Class shares many common questions of fact and law.***

8 A class must share at least one common question of law or fact to support
9 class certification under Fed. R. Civ. Pro 23(a)(2). *Blackie v. Barrack*, 524 F.2d
10 891, 904 (9th Cir. 1975). In civil rights actions, “commonality is satisfied where
11 the lawsuit challenges a system-wide practice or policy that affects all of the
12 putative class members.” *Hernandez v. County of Monterey*, 305 F.R.D. 132, 153
13 (N.D. Cal. 2015).

14 The Plaintiffs raised a number of claims regarding the conditions at the Jail;
15 conditions under which all people detained there were held. *See* Dkt. #66-2
16 (Second Amended Complaint). The parties have agreed to resolve these claims
17 through this settlement. All people who are currently held at the Jail and all people
18 who will be held there in the future will benefit from the changes the Defendants
19 have committed to make. Commonality of law and fact is present.

20

1 **(3) *The Representative Plaintiffs have claims that are typical of the***
2 ***Class as a whole.***

3 Under Fed. R. Civ. P. 23(a)(3) typicality is satisfied when claims of the
4 named plaintiffs are “typical of the claims or defenses of the class.” Fed. R. Civ.
5 P. 23(a)(3). The named plaintiffs were all incarcerated at the Jail when this case
6 was originally filed. *See* Dkt. #1 (Plaintiff’s Complaint). The Plaintiff’s Complaint
7 alleges that the named Plaintiffs suffered substantially similar conditions to those
8 all others at the Jail endured. *See* Dkt. #66-2. Though they are not currently
9 housed at the Jail, the eight named Plaintiffs have standing to represent the
10 proposed class and have claims typical of the class as a whole. *See Gerstein v.*
11 *Pugh*, 420 U.S. 103, 111 n. 11 (1975) (conviction does not moot claims of pre-
12 trial detainees who are class representatives when challenged actions are “capable
13 of repetition, yet evading review”); *also, Wade v. Kirkland*, 118 F.3d 667, 670
14 (9th Cir. 1997) (pretrial detainee has standing to assert class claims even after
15 release from jail because jail conditions claims are “inherently transitory”).

16 **(4) *The Representative Plaintiffs will fairly and adequately protect the***
17 ***interests of the Class.***

18 Representative plaintiffs satisfy the adequacy requirement if: “the named
19 plaintiffs and their counsel have [no] conflicts of interest with other class
20 members,” and if “the named plaintiffs and their counsel [will] prosecute the
 action vigorously on behalf of the class.” *Hanlon v. Chrysler Corp.*, 150 F.3d

1 1011, 1020 (9th Cir. 1998).

2 The Representative Plaintiffs do not have any conflicts with the proposed
3 Class. They share the same claims derived from common questions of fact and
4 law. The named Plaintiffs and Class counsel have vigorously prosecuted this
5 action and as a result, the parties have reached a fair and adequate settlement. The
6 class representatives and class counsel have fairly and adequately represented the
7 interests of the class. The proposed Class satisfies the requirements of Fed. R.
8 Civ. P. 23(a).

9 **(5) *The Court should certify this case pursuant to Fed. R. Civ. P.***
10 ***23(b)(2) and designate Columbia Legal Services as class counsel.***

11 Certification is appropriate under Fed. R. Civ. P. 23(b)(2) when “the party
12 opposing the class has acted or refused to act on grounds that apply generally to
13 the class, so that final injunctive relief or corresponding declaratory relief is
14 appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). The
15 Plaintiffs sought only injunctive and declaratory relief in this action. The
16 Settlement Agreement commits the Defendants to making many changes to the
17 Jail’s operations, staffing and physical plant. *See* S.A. at 6-10, ¶¶ (A)(10) –
18 (A)(17). The relief the Plaintiffs’ sought and achieved justifies certification
19 pursuant to Fed. R. Civ. P. 23(b)(2).

20 This Court should also appoint Columbia Legal Services as Class counsel
pursuant to Federal Rule of Civil Procedure 23(g). Counsel at Columbia Legal

1 Services have worked diligently and spent nearly two years investigating and
2 litigating this action to a successful conclusion. *See* Straley Decl. at 4-8, ¶¶ 18-39.
3 Plaintiffs’ counsel have significant legal experience in class action cases and are
4 knowledgeable about the applicable law. *Id.* at 2, ¶¶ 3-6; *also*, Declaration of
5 Rhona Taylor; Declaration of Melissa Lee. Columbia Legal Services has
6 dedicated extensive resources to this matter to date and is committed to doing so
7 during the monitoring period as well. *See* Straley Decl. at 2, ¶¶ 6 & 7-8, ¶38.
8 Proposed class counsel meets the requirements of Fed. R. Civ. P. 23(g). The Court
9 should grant class certification pursuant to Fed. R. Civ. P. 23(b)(2).

10 **C. The Court Should Also Grant Preliminary Approval To The Parties’**
11 **Settlement.**

12 Preliminary approval is appropriate if the settlement “(1) appears to be the
13 product of serious, informed, non-collusive negotiations; (2) has no obvious
14 deficiencies; (3) does not improperly grant preferential treatment to class
15 representatives or segments of the class; and (4) falls within the range of possible
16 approval.” *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1333 (N.D. Cal. 2014).

17 A settlement reached after thorough discovery and following an arm’s length
18 negotiation between experienced counsel is entitled to a presumption of fairness.
19 *Nat’l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal.
20 2004); *In re Orthopedic Bone Screw Prods. Liab. Litig.*, 176 F.R.D. 158, 184

(E.D. Pa. 1997) (“[s]ignificant weight should be attributed to the belief of
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1 experienced counsel that settlement is in the best interest of the class”) (internal
2 quotation marks and citation omitted). This settlement should be presumed to be
3 fair and the Court should grant preliminary approval.

4 **(1) *The settlement is the result of protracted, arm’s length, informed***
5 ***negotiations.***

6 The parties spent four days mediating this dispute over the course of six
7 months. Straley Decl. at 7, ¶¶ 33-36 & 5-6, ¶¶ 27-28. The Plaintiffs engaged in
8 significant discovery, including relevant depositions, and the retention of
9 corrections’ experts. *Id.* at 4-5, ¶21 & 6, ¶¶ 29-31. The experts’ opinions and the
10 facts developed through discovery provided the basis for the settlement. *Id.* at 7, ¶
11 32. The settlement provides for on-going monitoring by an independent third party
12 and for on-going engagement by Class counsel over the next three years. *See* S.A.
13 at 10-14, ¶¶ (H)(1) – (13). Class counsel is confident that the settlement is in the
14 best interests of the proposed Class and significantly remedies the many
15 deficiencies about which the Plaintiffs complained. Straley Decl. at 8-10, ¶¶ 40-
16 50. There was no collusion between the parties in reaching this agreement. The
17 settlement is the result of a thorough, well conducted investigation and a long,
18 detailed mediation process.

19 **(2) *The settlement is well “within the range of possible approval.”***

20 In determining whether the proposed settlement is “within the range of
possible approval,” the Court should compare what the Plaintiffs could reasonably

1 expect to achieve at trial with what they received through settlement. *Vasquez v.*
2 *Coast Valley Roofing, Inc.*, 670 F. Supp. 2d 1114, 1125 (E.D. Cal. 2009) (“courts
3 primarily consider plaintiffs' expected recovery balanced against the value of the
4 settlement offer”).

5 The Plaintiffs have only sought injunctive and declaratory relief. The
6 Settlement Agreement ensures that the Jail will remedy the deficiencies that
7 prompted the Plaintiffs to bring this action. *Compare* S.A. with Dkt #66-2. The
8 settlement also provides for on-going monitoring, ensuring the Defendants' on-
9 going compliance with the agreement's terms. S.A. at 10-13, ¶¶ (H)(1) – (13). The
10 settlement achieves the outcome the Plaintiffs sought when they filed this action.

11 **(3) *The settlement has no obvious deficiencies.***

12 At the preliminary approval stage, “the court is only concerned with
13 whether the proposed settlement discloses grounds to doubt its fairness or other
14 obvious deficiencies such as unduly preferential treatment of class representatives
15 or segments of the class, or excessive compensation of attorneys.” *Alberto v.*
16 *GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. 2008). No such defects are present
17 here. The named plaintiffs will receive no monetary compensation from the
18 settlement. Any award of the Plaintiffs' attorneys' fees and costs will be
19 reasonable.

20 In a class action, a court must independently determine whether the

1 attorneys' fees and costs provision of a settlement, like the settlement itself, is
2 reasonable. *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 941 (9th
3 Cir. 2011). Here the parties have agreed to allow the Court to determine the
4 amount of attorneys' fees and costs to be awarded to the Plaintiffs. S.A. at 18-19,
5 ¶¶ (K)(1) – (2). Given that this case does not involve a monetary award to the
6 Plaintiff class from which Plaintiffs' counsel will seek their fees and costs,
7 Plaintiffs' counsel have no financial interest that may conflict with the interests of
8 the Plaintiff Class. Nonetheless, the Court will evaluate Plaintiffs' motion for
9 attorneys' fees and costs after notice is given to Class members and they have had
10 an opportunity to object to the settlement. The settlement contains no obvious
11 defects.

12 **(4) *The approval of the settlement by Franklin County officials weighs***
13 ***heavily in favor of its reasonableness.***

14 The presence of a governmental entity is an important consideration when
15 analyzing whether a settlement is fair, adequate and reasonable. *Churchill Village*
16 *v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir.2004). Sheriff Raymond, an elected
17 Franklin County official, and the Franklin County Board of Commissioners have
18 all approved the settlement reached here. Straley Decl. at 7, ¶ 37. Their agreement
19 is an important factor demonstrating its reasonableness.

20 The settlement reached here does not involve collusion, involves no undue

1 benefits to Plaintiffs’ counsel and most importantly significantly benefits all
2 members of the Plaintiff class. The Court should grant preliminary approval of the
3 settlement.

4 **D. The Court Should Direct The Defendants To Provide Notice To The**
5 **Class As Requested By The Plaintiffs.**

6 If the Court preliminarily approves the settlement, Fed. R. Civ. P. 23(e)(1)
7 requires it to “direct notice in a reasonable manner to all class members who
8 would be bound by the proposal” and give any class member the opportunity to
9 object to the settlement before final approval. Fed. R. Civ. P. 23(e)(1) & (e)(5).
10 “Notice is satisfactory if it generally describes the terms of the settlement in
11 sufficient detail to alert those with adverse viewpoints to investigate and to come
12 forward and be heard.” *Churchill Village*, 361 F.3d at 575. It should “fairly
13 apprise the prospective members of the class of the terms of the proposed
14 settlement and of the options that are open to them in connection with the
15 proceedings.” *Spann v. J.C. Penney Corp.*, ___ F.R.D. ___, 2016 WL 297399, at *15
16 (C.D. Cal. Jan. 25, 2016) (*citing Weinberger v. Kendrick*, 698 F.2d 61, 70 (2d Cir.
17 1982)). This information should be conveyed “neutrally, simply, and
18 understandably.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 962 (9th Cir.
19 2009).

20 In addition to being readable and informative, notice must also be delivered

1 in a way that is reasonably calculated to reach all class members. The notice
2 process may “not systematically leave any group without notice.” *Officers for*
3 *Justice v. Civil Serv. Comm'n of City & Cnty. of S.F.*, 688 F.2d 615, 624 (9th Cir.
4 1982) (citation omitted); *see also, Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D.
5 326, 330 (N.D. Cal. 2014).

6 The Plaintiffs have attached a copy of the two notices that they ask the
7 Court to order served upon all Class members. *See* Exhibit 2 (Plaintiffs’ Proposed
8 Class Action Notice Of Settlement To All Individuals Held At The Franklin
9 County Corrections Center) (“Class Notice”) and Exhibit 3 (Plaintiffs’ Proposed
10 One Page Notice of Settlement) (“One Page Notice”).

11 The One Page Notice provides basic information about the settlement and
12 refers the reader to the longer, more detailed Class Notice that will be posted in
13 various conspicuous places throughout the Jail and on-line. The longer Class
14 Notice contains basic information about the case, about the settlement terms,
15 explains how class members can find out more about the case and the steps they
16 should take to object to the settlement. *Id.* The Defendants

17 Because of the large number of people housed at the Jail who speak Spanish
18 as their first language, both notices should be translated into Spanish and widely
19 available to any person who may require a Spanish version. The One Page Notice
20 will have an English version on one side of the page and a Spanish version on the

1 other.

2 The Court should require the Defendants to hand deliver a copy of the One
3 Page Notice to each person housed in the Jail on a date certain following
4 preliminary approval and thereafter to every person admitted into the Jail and
5 provide a copy to any person who requests one. Plaintiffs ask the Court to require
6 the Defendants to post the English and Spanish versions of the Class Notice in a
7 conspicuous place in all of the Jail's housing units, in the Jail's booking area,
8 infirmary, public visiting area, and in the public area of the Jail's administrative
9 offices and post a link to the notice and to the parties' Settlement Agreement on
10 their website.

11 The Jail must also ensure that any person held in isolation is provided the
12 One Page Notice and is given access to the longer Class Notice. Finally, the Class
13 Notice should be published in the local newspaper, the Tri-City Herald, for a
14 reasonable period of time. The Jail must also provide all inmates with reasonable
15 access to the entire settlement agreement so that they can read it, if they wish.

16 The Plaintiffs' proposed methods of providing notice are nearly identical to
17 those which courts have approved in similar circumstances. *See e.g. Jones v.*
18 *Gusman*, 296 F.R.D. 416, 467 (E.D. La. 2013) (notice of settlement of jail class
19 action provided to all inmates located in jail on specific day and posted in many
20 places throughout the Jail); *Gaddis v. Campbell*, 301 F. Supp. 2d 1310, 1314

1 (M.D. Ala. 2004) (“notice was conspicuously posted on community bulletin
2 boards in every dormitory in every Corrections Department prison, as well as in
3 the law libraries and dining areas of each facility. The notice was also served
4 individually on each inmate in segregation”); *Cody v. Hillard*, 88 F. Supp. 2d
5 1049 (D.S.D. 2000) (notices were posted in each prison living area and were hand
6 delivered to segregated prisoners, notice was read to illiterate prisoners and
7 translated for those who did not speak English, copies of settlement agreement
8 were available in prison libraries and upon request); *Austin v. Hopper*, 15 F. Supp.
9 2d 1210, 1219 (M.D. Ala. 1998) (settlement notice posted on bulletin boards in all
10 prison dormitories, dining halls and law library and provided to individual inmates
11 who not likely to receive it in this manner); *also, Simpao v. Gov't of Guam*, 369 F.
12 App'x 837, 838 (9th Cir. 2010) (notice of class action settlement that included
13 publishing twice weekly for four weeks in two local newspapers of ”significant
14 general circulation” is appropriate); *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d
15 1338, 1351 (9th Cir. 1980) (notice of settlement published in English and Spanish
16 13 times in one week in two major local newspapers); *Frlekin v. Apple Inc.*, 309
17 F.R.D. 518, 527 (N.D. Cal. 2015) (“[i]ndividual [class] notice [of settlement] by
18 regular mail plus newspaper notice is preferred by the Court”). The Court should
19 approve the notices in the form proposed by the Plaintiffs and order notice
20 provided as they request.

E. The Fairness Hearing, Deadlines, Procedures and Briefing Schedule

The Parties also respectfully ask that the Court schedule a Final Approval Hearing, and they propose the following sequence of events, deadlines, and briefing schedule:

	Event	Timing or Deadline
1.	Deadline for posting Notice of Proposed Class Action Settlement throughout the Jail and hand delivery of notice to all current inmates.	Not later than thirty (30) days after Court's preliminary approval of settlement.
2.	Deadline for Defendants and Plaintiffs' counsel to post a copy of the Notice of Proposed Class Action Settlement and a copy of the parties' Settlement Agreement on their respective websites.	Not later than thirty (30) days after Court's preliminary approval of settlement.
3.	Deadline for publication of Notice of Proposed Class Action Settlement in English and Spanish on three separate dates in the Tri-Cities Herald.	Wednesday, June 1, 2016
4.	Deadline for filing objections	Monday, June 20, 2016.
5.	Deadline for attorneys representing objectors to serve and file notices of appearance.	Monday, June 20, 2016.
6.	Deadline for objectors or their attorneys to serve and file notice of intent to appear and speak at Final Approval Hearing.	Monday, June 20, 2016.
7.	Deadline for Class Counsel to file Plaintiffs' motion for final approval and response to any objections or opposition memorandum filed by any	Wednesday, July 13, 2016

	Event	Timing or Deadline
2	objector.	
4	8. Final Approval Hearing in United States Courthouse in Richland, Washington.	1:30 p.m., July 20, 2016.
6	9. Deadline for Class Counsel to file motion for award of attorneys’ fees and costs.	Not later than thirty days after the Court’s final approval of the settlement.
7	10. Deadline for Appointment of Monitor.	Not later than thirty days after the Court’s final approval of the settlement.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter the proposed Preliminary Approval Order agreed to by the parties as Exhibit 1 to the Settlement Agreement.

Respectfully submitted this 28th day of March, 2016.

ATTORNEYS FOR PLAINTIFFS

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on March 28, 2016, I electronically filed the foregoing
3 with the Clerk of the Court using the CM/ECF system, which will send notification
4 of such filing to the following:

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DATED this 28th day of March, 2016.

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