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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Ilsa Saravia, as next friend for A.H., a minor, and on behalf of herself individually and others similarly situated,

Plaintiff,

v.

Merrick Garland, Attorney General, *et al.*,

Defendants.

Case No. 3:17-cv-03615-VC

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF SETTLEMENT REGARDING PLAINTIFF'S CLAIM FOR EQUAL ACCESS TO JUSTICE ACT FEES AND COSTS

Date: June 10, 2021
Time: 2:00PM
Courtroom 4, 17th Floor
The Honorable Vince Chhabria

LAW OFFICES OF HOLLY S. COOPER
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NOTICE OF MOTION AND MOTION FOR APPROVAL OF SETTLEMENT REGARDING PLAINTIFF'S CLAIM FOR EQUAL ACCESS TO JUSTICE ACT FEES AND COSTS

PLEASE TAKE NOTICE that on June 10, 2021 at 2:00PM, or soon thereafter in accordance with General Order No. 72-5, Plaintiff will and hereby does move the Court for approval of a settlement resolving Plaintiff's claim for Equal Access to Justice Act ("EAJA") fees, costs, and expenses relating to this action ("Fees and Costs Settlement Agreement"). This motion is made pursuant to 28 U.S.C. §§ 2412(a)(1), (b), and (d)(1)(A); Federal Rules of Civil Procedure 23 and 54(d); and Rule 54-5 of the Local Rules of Practice in Civil Proceedings before the United States District Court for the Northern District of California for entry of an order approving the agreement awarding Plaintiff one million, nine hundred and fifty thousand dollars ($1,950,000)—$31,165.41 which are payable pursuant to 28 U.S.C. § 2412(a)(1), and fees and expenses in the amount of $1,918,834.60, which are payable pursuant to the EAJA, 28 U.S.C. § 2412(d)—in full and complete satisfaction of any claims by Plaintiff for costs, attorneys' fees, and litigation expenses, including any interest in connection with the above captioned case.

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the concurrently filed Declaration of Martin Schenker in Support of Plaintiff's Motion, the concurrently filed Declaration of William Freeman in Support of Plaintiff's Motion, the concurrently filed Motion of Stephen Kang in Support of Plaintiff's Motion, the concurrently filed Declaration of Holly S. Cooper in Support of Plaintiff's Motion, and the concurrently filed Declaration of Amy Belsher in Support of Plaintiff's Motion, and all other pleadings and papers on file in this action and such other argument or evidence that the Court may consider.

MEMORANDUM OF POINTS AND AUTHOROTIES

I. STATEMENT OF ISSUES TO BE DECIDED

1. Whether the Parties' agreement to resolve Plaintiff's entitlement to fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, for $1,950,000 as reflected in the Parties' Fees and Costs Costs Settlement Agreement is reasonable?

II. INTRODUCTION

Plaintiff Ilsa Saravia, by and through her counsel of record, respectfully seek approval of the Fees and Costs Settlement agreed upon during a mediation before Magistrate Judge Laurel Beeler on April 22, 2021, and finalized in a Fees and Costs Settlement Agreement on May 27, 2021. *See* Declaration of Martin Schenker ("Schenker Decl.") ¶ 7, Ex. A. Defendants Merrick Garland, Attorney General of the United States; Jean King, Director of the United States Executive Office for Immigration Review; Xavier Becerra, Secretary of the Department of Health and Human Services of the United States; JooYeun Chang, Acting Assistant Secretary of the Administration for Children and Families; Cindy Huang, Director of the Office of Refugee Resettlement; Alejandro Mayorkas, Secretary of the Department of Homeland Security; Tae D. Johnson, Acting Director of U.S. Immigration and Customs Enforcement; Tracy Renaud, Director of U.S. Citizenship and Immigration Services (collectively, "Defendants," and together with Plaintiff, the "Parties") have agreed to pay, and Plaintiff has agreed to accept, subject to the Court's approval, one million nine hundred and fifty thousand dollars ($1,950,000) in full and complete satisfaction of any claims by Plaintiff for costs, attorneys' fees, and litigation expenses, including any interest in connection with this lawsuit.

This proposed sum breaks down as follows: fees and expenses in the amount of $1,918,834.60, which are payable pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d) and costs in the amount of $31,165.41, which are payable pursuant to 28 U.S.C. § 2412(a)(1). Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, Plaintiff now moves for the Court's approval of this settlement regarding EAJA fees and costs (the "Fees and Costs Settlement Agreement"). The Settlement meets the requirements for judicial approval under Rule 23 and should be approved by the Court.

III. FACTUAL AND PROCEDURAL BACKGROUND

This lawsuit began with 2017 Government operations to detain undocumented Central American immigrants allegedly involved with gangs and transport them to high-security detention centers, often far away from their homes. Many of the targets of these operations were children, mostly boys aged 15 to 17, who had entered the United States as unaccompanied minors, had been

previously apprehended by the Department of Homeland Security ("DHS") and transferred to the custody of the Office of Refugee Resettlement of the Department of Health and Human Services ("HHS"), and later released to live with a parent or other sponsor while they contested removal. These Sponsored UCs were entitled to special protections pursuant to the Trafficking Victims Protection Reauthorization Act (the "TVPRA"), including that a UC detained by federal immigration authorities be "placed in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(b)(3) & (c)(2)(A).

Despite these statutory protections, ICE rearrested dozens of Sponsored UCs without notice to their parents or immigration attorneys. The "evidence" forming the basis for these rearrests consisted almost entirely of uncorroborated, multiple-hearsay statements from unidentified local law enforcement personnel. Typical were allegations that a child had been seen in an area "frequented by gang members," had worn clothing purportedly associated with gang membership, had allegedly "self-admitted" gang membership, or had written the country code for El Salvador into a school notebook. Whenever any allegation of gang affiliation was made, ORR consistently overrode its own decision matrix and automatically placed the child in secure facilities, without notice, hearing or other opportunity to rebut the allegations.

A. Procedural History

This case was originally brought by Plaintiff Saravia on behalf of a single minor, A.H., on June 22, 2017. *See* Pl. Pet., ECF No. 3. At a hearing on A.H.'s motion for a temporary restraining order, the Court observed that ORR had fallen short of its obligation to investigate information it had received about A.H. before placing him in a secure facility. *See* 6/29/2017 Hr'g Tr., ECF No. 22, at 5:11-6:4. Shortly thereafter, Plaintiff's counsel discovered that the Government's conduct extended far beyond A.H.'s individual case and that the Government was systematically re-arresting unaccompanied children based on gang allegations. On August 11, 2017, Plaintiff filed an amended petition, which added two named Plaintiffs, and sued on behalf of three minor children and sought to represent a putative class challenging the Government's above-described

practices.[1] *See* Pls. First Am. Pet., ECF No. 31. The Parties engaged in expedited discovery, including the production of a significant volume of documents by the Government. *See* Joint Disc. Br., ECF No. 36.

Plaintiff moved for a preliminary injunction and provisional class certification on September 25, 2017, after which the Court held two hearings during which the Government presented witnesses and Plaintiffs had the opportunity for cross-examination. *See* Pl. Mot., ECF No. 61; *see also* 10/27/2017 Hr'g Tr., ECF No. 98; 11/1/2017 Hr'g Tr., ECF No. 170. On November 20, 2017, the Court issued an order granting a class-wide preliminary injunction for a provisionally certified class of Sponsored UCs requiring that the Government establish changed circumstances or dangerousness at a *Saravia* Hearing to justify the Sponsored UC's rearrest and to support continued detention. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197-98 (N.D. Cal. 2017). A series of *Saravia* Hearings were held following the issuance of the Court's Order. ***Nearly 90%*** of Sponsored UCs who were detained at the time of the Order prevailed at their hearings and were released to their prior sponsors. *See* Defs. Chart re: *Saravia* Hearings, ECF No. 124-1. The Government appealed the Order, and, on October 1, 2018, the Ninth Circuit affirmed the Court's preliminary injunction. *See Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

On November 15, 2018, Plaintiff filed a Second Amended Petition (the "SAP"), which, among other things, added new factual allegations based on information that Plaintiff learned through discovery and other events following the Court's Order. *See* SAP, ECF No. 164. The SAP, which is the operative pleading, sets forth four claims for class-wide relief:

Claim 1 challenges the rearrest of Sponsored UCs based on allegations of gang affiliation in violation of the Fourth Amendment, the TVPRA, and the Administrative Procedure Act (5 U.S.C. § 706(2)). *See* SAP, ¶¶ 108-116. The rearrests of Sponsored UCs are not (and do not purport to be) based on cause that the UCs have committed any federal crime. *See id.* ¶¶ 47-49, 65. Instead, they are styled as administrative arrests relying on the UCs' status as a non-citizen and purported "removability." *See id.* This claim alleges that, because Class Members were

[1] The other two named Plaintiffs were later dismissed. As used hereinafter, "Plaintiff" refers to Ilsa Saravia, suing as next friend for A.H.

already arrested for their alleged removability at the time they first came to the United States (in many cases years prior to the rearrest at issue), it is unreasonable and unlawful for the Government to rearrest them based on the same removability charge absent changed circumstances or dangerousness. *See id*. ¶¶ 112-13.

Claim 2 challenges the Government's systematic violation of the procedural due process clause of the Fifth Amendment. *See* SAP, ¶¶ 117-23. As this Court held, and the Ninth Circuit affirmed, "due process requires the government to give the minor a prompt hearing before an immigration judge or other neutral decision-maker, where the government must set forth the basis for its decision to rearrest the minor, and where the minor and his sponsor may seek to rebut the government's showing." *Saravia*, 280 F. Supp. 3d at 1194. The results of *Saravia* Hearings to date further validate this holding and demonstrate the importance of the procedural safeguards sought by this claim. *See* SAP, ¶ 94; *see also* Defs. Chart re: Saravia *Hearings*, ECF No. 124-1. There can be no dispute that Class Members have weighty liberty interests in freedom from confinement and family unity, which are encroached by the challenged rearrests. *See* SAP, ¶¶ 105, 119-20.

Claim 3 challenges the conditions of Class Members' confinement under the substantive Due Process Clause and the TVPRA. *See* SAP, ¶¶ 124-30. This claim alleges that, given the flimsiness and unreliability of the Government's allegations of gang affiliation, holding Class Members in secure (or, in most cases, any) confinement was unreasonable. *See id*. ¶¶ 127-29. Indeed, ORR regularly overrode the recommendations of its own placement matrix to place Class Members in secure facilities, rather than in the less restrictive facilities the matrix advised based on these Class Members' circumstances. *See id*. ¶ 41. Detaining these minors in secure facilities violates the Due Process Clause because it is a "punitive" restriction on liberty that bears no reasonable relationship to any legitimate governmental purpose. *See id*. ¶ 129. The Government's detention practices also violate the TVPRA, which requires that children be placed in the "least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A).

Claim 4 challenges the Government's policy or practice to deny, revoke, and obstruct UCs' access to immigration benefits on the basis of alleged gang affiliation, in violation of the APA and

the Due Process Clause of the Fifth Amendment. *See* SAP, ¶¶ 131-35; 5 U.S.C. § 706(2)(A), (D); U.S. Const. Am. V. The Government acts arbitrarily in violation of the APA by considering allegations of gang affiliation in determining immigration benefit eligibility, acts in excess of its statutory authority in violation of the APA by rejecting the state court factual determinations in denying benefits based on allegations of gang affiliation, and violates procedural due process by failing to provide procedural safeguards when denying or revoking immigration benefits to eligible unaccompanied minors on the basis of gang allegations. *See* SAP, ¶¶ 132-34.

B. Merits and Fee Settlement Negotiations

On January 29, 2019, counsel for the Government reached out to class counsel to discuss the possibility of mediation. The parties engaged in initial negotiations for several months, and also engaged in settlement discovery through the summer of 2019.

The parties participated in a settlement conference before Judge Beeler on July 16, 2019. *See* Minute Order dtd. 7/17/19, ECF No. 226. Following the settlement conference, the parties exchanged several draft settlement agreements and participated in numerous conference calls. On December 9, 2019, the parties participated in a second settlement conference before Judge Beeler. *See* Minute Order dtd. December 9, 2019, ECF No. 231. Additional settlement negotiations ensued over several months, involving telephone conversations and the exchange of roughly a dozen complete drafts of a proposed settlement agreement. The negotiations were at times difficult, with the respective parties asserting competing proposals and expressing strongly held and divergent views. After many months of back-and-forth, the parties subsequently reached an agreement in principle in early 2020, and finalized the agreement on September 15, 2020.

Following the approval of the merits settlement and the entry of final judgment, the Parties continued to diligently negotiate at arm's length to resolve Plaintiff's claim for attorneys' fees and costs under the EAJA. At the Parties' request, this Court referred their dispute over fees and costs to Magistrate Judge Laurel Beeler (ECF No. 255), who conducted a settlement conference at which the Parties reached an agreement on April 22, 2021 (ECF No. 259). The proposed Fees and Costs Settlement Agreement currently before the Court will have no impact on the merits settlement or final judgment ordered by the Court. It pertains only to Plaintiff's request for fees and costs under

the EAJA.

On May 27, 2021, the Parties executed the proposed Fees and Costs Settlement Agreement. Schenker Decl. ¶ 7, Ex. A. Consistent with this Agreement, Defendants have agreed to pay Plaintiff $1,950,000 to settle claims for attorneys' fees and costs incurred in this litigation, subject to the Court's approval. *Id.* ¶ 4. Ninety days after the Court's approval of this Fees and Costs Settlement Agreement or ninety days after Defendants' receipt of Plaintiff's payment processing information upon the Court's approval, whichever is later, Defendants will transfer these funds to Plaintiff. *Id*.

IV. THE COURT SHOULD APPROVE THE SETTLEMENT AMOUNT FOR FEES, EXPENSES, AND COSTS

"In a certified class action, the court may award reasonable attorneys' fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). Here, Plaintiffs and Defendants reached a Fees and Costs Settlement Agreement. Schenker Decl. ¶ 7, Ex. A. Because the Parties have agreed to an attorneys' fee and costs award, the Court's task is to determine whether the agreed-upon amount is reasonable, using the fees potentially awardable under the relevant fee-shifting statute or statutes as a benchmark. *See In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011) (reasonableness of fees must be considered against the backdrop of the American Rule, subject to fee-shifting statutes and other exceptions to this rule).

Here, the EAJA is the applicable fee-shifting statute and relevant benchmark as it applies to lawsuits against the United States government or any agency, including governmental officials in their official capacity. *See* 28 U.S.C. § 2412(d)(1); *see also Scarborough v. Principi*, 541 U.S. 401 (2004).[2] The Court's task is made simpler because the Parties bifurcated negotiations

[2] As the Court has already approved the merits settlement, Plaintiff has secured substantial relief enforceable in and by this court. *See Barrios v. California Interscholastic Federation*, 277 F.3d 1128, 1134 (9th Cir. 2002) (recognizing a party prevails by obtaining enforceable judgment, consent decree, or judicially enforceable settlement agreement). The Court need not analyze Defendants' potential defenses to a fee award because Defendants have agreed to pay the agreed-upon amount. *See Gutierrez v. Barnhart*, 274 F.3d 1255, 1258 (9th Cir. 2001) (substantial justification of government position is a defense under EAJA).

regarding the merits and fees, and did not reach agreement regarding fees until well after the Parties settled their dispute regarding the merits and this Court's approval thereof. (ECF No. 249.) This obviates any concern about Plaintiff's counsel's interest in attorneys' fees being pitted against class members' interest in obtaining complete relief. *Cf. Knisley v. Network Associates, Inc.*, 312 F.3d 1123, 1125 (9th Cir. 2002) ("One risk of class action settlements is that class counsel may collude with the defendants, tacitly reducing the overall settlement in return for a higher attorney's fee.").

The Court should approve the Parties' agreed-upon amount of $31,165.41 in costs and $1,918,834.60 in fees and expenses because the agreed-upon amount is reasonable and fair. The Parties engaged in arms' length negotiations, including a six month-long exchange of offers and counter-offers, before arriving at a final agreement with the assistance of Magistrate Judge Beeler. Schenker Decl. ¶ 6. Further, the award of fees and costs will be paid directly to Plaintiff's counsel and will not affect the merits settlement benefitting the class or any other relief ordered to an individual class member.

Under these circumstances, "the agreed amounts for attorneys' fees and expenses . . . are presumed to be reasonable." *Wehlage v. Evergreen at Arvin LLC*, No. 4:10-CV-05839-CW, 2012 WL 4755371, at *1 (N.D. Cal. Oct. 4, 2012); *see also Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) ("A request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee."); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF(HRL), 2008 WL 4820784, at *3 (N.D. Cal. Nov. 5, 2008) (citation omitted) ("A court should refrain from substituting its own value for a properly bargained-for agreement."); *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 695 (N.D. Ga. 2001) (absent evidence of collusion or detriment to a party, the court "should give substantial weight to a negotiated fee amount, assuming that it represents the parties' best efforts to understandingly, sympathetically, and professionally arrive at a settlement as to attorney's fees"). The Ninth Circuit has "made clear that 'since the proper amount of fees is often open to dispute and the parties are compromising precisely to avoid litigation, the court need not inquire into the reasonableness of the fees at even the high end with precisely the same level of scrutiny as when the fee amount is litigated.'" *Laguna v. Coverall N.*

Am., Inc., 753 F.3d 918, 922 (9th Cir. 2014) (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 966 (9th Cir. 2003)) (vacated and dismissed as moot because the parties subsequently reached a settlement regarding the appeal).

A. The Amount of Attorneys' Fees and Expenses Is Reasonable

The agreed upon amount of $1,918,834.60 in fees and expenses is reasonable when compared to a lodestar. "The lodestar method [for calculating a reasonable attorneys' fee] is most appropriate where the relief sought is 'primarily injunctive in nature,' and a fee-shifting statute authorizes 'the award of fees to ensure compensation for counsel undertaking socially beneficial litigation.'" *Laguna*, 753 F.3d at 922 (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). A lodestar figure is "presumptively reasonable." *Cunningham v. Cty. of Los Angeles*, 879 F.2d 481, 488 (9th Cir. 1988) (citation omitted).

Here, the settlement amount is a fraction of the fees actually incurred by Class Counsel, which as set forth below, exceeds $2.7 million. After contentious litigation that has lasted for over three years, including a motion for a temporary restraining order, amended complaints, successful preliminary injunction and defense of same before the Ninth Circuit, and intensive settlement negotiations and discovery, the total amount of Plaintiff's attorneys' fees well-exceeds $1.9 million when considering all relevant EAJA statutory and enhanced rates. *See* Schenker Decl. ¶¶ 21-30; Freeman Decl. ¶¶ 3, 15-20; Kang Decl. ¶¶ 18-23; Cooper Decl. ¶¶ 19-23; Belsher Decl. ¶¶ 13-15. Plaintiff's fee request is all the more reasonable because the Parties' negotiations only concerned hours billed through March 2020, thus excluding the hours billed to brief the preliminary and final approval motions (ECF Nos. 237, 246), the associated implementation of the terms of the class settlement, and the fees and costs negotiations themselves. Schenker Decl. ¶ 31; Freeman Decl. ¶¶ 15; Kang Decl. ¶¶ 18; Cooper Decl. ¶¶ 19; Belsher Decl. ¶¶ 13. Should the Parties have failed to reach agreement on EAJA fees and costs, Plaintiff's requested fees would have included the *full* time spent by class counsel past March 2020. Schenker Decl. ¶ 32. Such a request would be reasonable considering the complex nature of litigation a class action lawsuit against a government agency that vigorously defended its policy. Nevertheless, Plaintiff has agreed to accept approximately 70% of the fees actually incurred through March 2020 as part of

the agreed-upon settlement.

The statutory cap on fees under the EAJA for work performed in 2017 was $196.79/hour, $201.60/hour for work performed in 2018, $204.25/hour for work performed in 2019, and $207.78/hour for work performed in 2020. *See* 28 U.S.C. § 2412(d)(2)(A); Ninth Circuit Rule 39-1. In addition, enhanced rates should be applied to hours recorded by certain Plaintiff's counsel from Cooley LLP, ACLU of Northern California, ACLU Immigrants' Rights Project, and the Law Offices of Holly Cooper. Schenker Decl. ¶¶ 21, 25; Freeman Decl. ¶¶ 4, 8; Kang Decl. ¶ 6; Cooper Decl. ¶ 17. Mr. Riordan, Mr. Freeman, Ms. Harumi-Mass, Mr. Kang, Ms. Cooper, and Mr. Schenker are all entitled to enhanced rates due to their extensive experience, and those rates range from $411/hour to $1,350/hour based upon "prevailing market rates in the relevant community" of the Northern District of California. *Blum v. Stenson*, 465 U.S. 886, 895 (1984); *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008) ("Generally, when determining a reasonable hourly rate, the relevant community is the forum in which the district court sits"); *Nat. Res. Def. Council, Inc. v. Winter*, 543 F.3d 1152, 1160–61 (9th Cir. 2008) (affirming enhanced rate fee award for work conducted by senior partner at Irell & Manella LLP). Under this calculation, fees attributable to Cooley LLP are $1,279,659.42, those attributable to ACLU NorCal are $827,751.23, those attributable to ACLU Immigrants' Rights Project are $381,017.25, those attributable to Ms. Holly Cooper are $178,220.00, and those attributable to New York Civil Liberties Union are $43,911.91. Should the Court apply these rates, the total attorneys' fees would therefore be $2,710,559.45. The table below sets forth these figures:

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Fees at EAJA Rates	
Cooley Statutory Rates	$694,014.92[3]
NYCLU Statutory Rates	$43,911.55[4]
Enhanced Rates	
Cooley LLP Enhanced Rates	$585,644.50[5]
ACLU NorCal Enhanced Rates	$827,751.23[6]
ACLU Immigrants' Rights Project Enhanced Rates	$381,017.25[7]
Law Offices of Holly Cooper Enhanced Rates	$178,220.00[8]
Total	**$2,710,559.45**

And as noted previously, the amount requested by Plaintiff understates the fees to which Plaintiff is entitled because they do not include any fees incurred after March 30, 2020, even though substantial work by Class Counsel has continued. Schenker Decl. ¶ 31; Freeman Decl. ¶ 4; Kang Decl. ¶ 18; Cooper Decl. ¶ 19; Belsher Decl. ¶ 15. These fees could otherwise be compensable. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 981 (9th Cir. 2008) (quoting *In re Nucorp Energy, Inc.*, 764 F.2d 655, 659-660 (9th Cir. 1985)) ("In statutory fee cases, federal courts, including our own, have uniformly held that time spent in establishing the entitlement to and amount of the fee is compensable."); *Thompson v. Gomez*, 45 F.3d 1365, 1366 (9th Cir. 1995) (quoting *Clark v. City of Los Angeles*, 803 F.2d 987, 922 (9th Cir. 1986) ("Recoverable attorney's fees may include fees incurred while doing work on the underlying merits of the action ('merits fees') as well as fees incurred while pursuing merits fees ('fees-on-fees')."). Likewise, Plaintiff is otherwise entitled to an award of fees for time Class Counsel spent monitoring compliance with the merits settlement agreement. However, Plaintiff has agreed not to seek such fees as part of the Parties' agreement. *See Lucas v. White*, 63 F. Supp. 2d 1046, 1059 (N.D. Cal. 1999).

[3] Schenker Decl. ¶ 25.
[4] Belsher Decl. ¶ 13.
[5] Schenker Decl. ¶ 25.
[6] Freeman Decl. ¶ 15.
[7] Kang Decl. ¶ 23.
[8] Cooper Decl. ¶ 19.

The Court should approve the agreed upon amount of $1,918,834.60 in fees and expenses pursuant to the Fees and Costs Settlement Agreement between the Parties because it is fair and reasonable.

B. Plaintiff's Costs Are Reasonable

Nontaxable costs may also be awarded to class counsel under Rule 23(h). *See* Fed. R. Civ. P. 23(h). The Court should similarly approve the agreed upon amount of $31,165.41 in costs pursuant to the Fees and Costs Settlement Agreement between the Parties because it is fair and reasonable. Here, the costs are *only* those incurred by Cooley LLP throughout this litigation, including filing fees, document preparation service, postage and delivery service, computerized legal research, audio and video conferencing services, copying expenses—all expenses that are routinely billed to clients and are recoverable under the EAJA. Schenker Decl. ¶ 22; *see Sneede by Thompson v. Coye*, 856 F. Supp. 526, 536 (N.D. Cal. 1994) (finding that Plaintiffs are entitled to recover "out-of-pocket costs" under an EAJA fee award). Like the fees discussed above, this amount only includes costs through March 2020, and does not include any costs incurred since that time. Schenker Decl. ¶ 26. Accordingly, the agreed upon settlement amount is but a fraction of the costs expended by Plaintiff and is reasonable and well-justified.

V. DIRECT NOTICE TO THE CLASS IS NOT REQUIRED

The Parties are not required to give direct notice of the proposed Fees and Costs Settlement Agreement. The Court certified the class under Rule 23(b)(2) of the Federal Rules of Civil Procedure. (ECF No. 249.) "Because Rule 23(b)(2) provides only injunctive and declaratory relief, 'notice to the class is not required.'" *In re Yahoo Mail Litig.*, No. 13-CV-4980-LHK, 2016 WL 4474612, at *5 (N.D. Cal. Aug. 25, 2016) (quoting *Lyon v. United States Immigration & Customs Enforcement*, 300 F.R.D. 628, 643 (N.D. Cal. 2014)); *see also Chan v. Sutter Health Sacramento Sierra Region*, No. LA CV15-02004 JAK (AGRx), 2016 WL 7638111, at *14 (C.D. Cal. June 9, 2016) (citing Fed. R. Civ. P. 23(c)(2)(A)). Furthermore, class members' rights will not be prejudiced by this Fees and Costs Settlement Agreement because they will still "receive the benefit of the injunctive relief" ordered by the Court pursuant to the merits settlement, and they

"do not release any statutory damages claims or claims for monetary relief." *Chan*, 2016 WL 7638111 at *13.

Class Counsel has used the websites of ACLU National, ACLU of Northern California, and NYCLU to communicate with class members and notify them of ongoing developments in this litigation. Plaintiff's motion for approval of the Fees and Costs Settlement Agreement, supporting documents, and Fees and Costs Settlement Agreement will be posted on these websites concurrent with this filing with the Court.

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court approve the Fees and Costs Settlement and award Class Counsel $1,950,000.00 as agreed upon by the Parties.

Dated: June 1, 2021

COOLEY LLP

/s/ Martin S. Schenker
Martin S. Schenker
Ashley K. Corkery
Evan G. Slovak

Dated: June 1, 2021

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA

/s/ William S. Freeman
William S. Freeman
Sean Riordan

Dated: June 1, 2021

AMERICAN CIVIL LIBERTIES UNION IMMIGRANTS' RIGHTS PROJECT

/s/ Stephen B. Kang
Stephen B. Kang

Dated: June 1, 2021

LAW OFFICES OF HOLLY COOPER

/s/ Holly S. Cooper
Holly S. Cooper

Dated: June 1, 2021

NEW YORK CIVIL LIBERTIES UNION FOUNDATION

/s/ Amy Belsher
Amy Belsher
Jessica Perry

Attorneys for Plaintiff

ATTESTATION

I hereby attest that concurrence in the filing of this document has been obtained from the Signatories of this document, pursuant to L.R. 5-1(i)(3).

Dated: June 1, 2021

/s/ *Martin S. Schenker*

Martin S. Schenker