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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**

17 SCOTT MILES STOUT AND DERRICK  
ALLEN FELTON, individually and on behalf  
18 of all others similarly situated,

19 Plaintiffs,

20 v.

21 THE GEO GROUP, INC., a Florida  
corporation, doing business in California as  
22 GEO CALIFORNIA, INC.; SDCC MIDDLE  
BLOCK, LLC, a Delaware limited liability  
23 company; and DOES 1-20, inclusive,

24 Defendants.

Case No. 37-2019-00000650-CU-CR-CTL

Assigned for All Purposes to:  
Judge Kenneth J. Medel  
Dept. C-66

**CLASS ACTION**

**MEMORANDUM IN SUPPORT OF  
MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT AND  
REQUEST FOR AWARD OF  
ATTORNEYS' FEES AND EXPENSES**

(UNLIMITED CIVIL MATTER)  
IMAGED FILE

(Mandatory eFILE Case)

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Complaint Filed: January 4, 2019

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1     **I.     INTRODUCTION**

2             Plaintiffs and appointed Class Representatives Scott Miles Stout and Derrick Allen Felton  
3 present for final approval an unprecedented and outstanding settlement obtained on behalf of an  
4 often-forgotten segment of the population – pretrial detainees with mobility disabilities. They allege  
5 that Defendants The GEO Group, Inc. (“GEO”) and SDCC Middle Block (“Middle Block”) violated  
6 California civil rights statutes by failing to remove architectural barriers at the Western Region  
7 Detention Facility (“Facility”) and breached their contractual obligations to accommodate  
8 physically disabled detainees. Plaintiffs, who are physically disabled individuals formerly housed  
9 at the Facility, brought this class action for statutory damages under California’s Unruh Civil Rights  
10 Act and Disabled Persons Act and for an injunction ordering Defendants to remediate the alleged  
11 barriers. Through this settlement, Plaintiffs have accomplished both goals of this lawsuit – class  
12 members will receive substantial damages – the average settlement amount will exceed \$40,000 per  
13 Class Member and Plaintiffs have forced Defendants to make the Facility compliant by remediating  
14 nearly 100 architectural barriers.

15             With the assistance of two skilled mediators after years of hard-fought litigation and on the  
16 eve of trial, the parties reached a settlement that provides Settlement Class Members<sup>1</sup> pro-rata  
17 payments from an \$8 million fund based on the days each spent at the Facility while physically  
18 disabled. If money remains in the end, the remaining money will be redistributed to successfully  
19 located Class Members. The settlement has already forced Defendants to remediate all alleged  
20 architectural barriers that Plaintiffs identified at the Facility on floors GEO houses physically  
21 disabled detainees.

22             On April 28, 2023, the Court preliminarily approved the proposed Settlement. ROA No. 443.  
23 The Court-approved notice plan has been implemented, and the Parties now seek final approval of  
24 the settlement, an award of attorneys’ fees, costs and expenses, approval of Class Representatives’  
25 incentive awards, and entry of judgment.

26  
27  
28             <sup>1</sup> All capitalized terms have the same meaning as in the Settlement Agreement, filed on April 11, 2023.

1 The resulting Settlement fully accomplishes Plaintiffs' litigation goals and represents an  
2 excellent recovery for the Class—a point confirmed by the claims submitted by Class Members to  
3 date and the absence of any opt-outs or objections to date. *See* Declaration of Lara Jarjoura  
4 (“Jarjoura Decl.”), ¶¶ 20-23, filed concurrently herewith.

5 Additionally, the attorneys' fees, costs and expenses requested by Class Counsel readily  
6 meet applicable standards. Under the Settlement, Class Counsel seek \$2,640,000 in attorneys' fees,  
7 which amounts to 33% of the Settlement Fund, and reimbursement of expenses of up to  
8 \$240,237.12. This is well within the accepted range of attorney fee awards in class action  
9 settlements.

10 The proposed Settlement is fair, reasonable, and adequate and warrants final approval.  
11 Plaintiffs respectfully request an order granting final approval of the Settlement and awarding the  
12 requested attorneys' fees, costs, and expenses, and the Class Representatives' incentive awards.

## 13 **II. SUMMARY OF LITIGATION**

### 14 **A. Factual Background and Procedural History**

15 GEO is a private prison operator with annual revenues exceeding \$2.3 billion. Second  
16 Amended Complaint (“SAC”), ¶ 13. It operates a pretrial detention facility in downtown San Diego,  
17 the Western Region Detention Facility (the “Facility”), which houses individuals awaiting trial. *Id.*  
18 GEO leases the Facility from SDCC Middle Block, LLC, a subsidiary of Holland Partner Group  
19 Management, Inc., a Washington-based real estate investment and development company with  
20 annual revenues exceeding \$2 billion. *Id.*, ¶ 14. Middle Block owns and manages the Facility. *Id.*

21 GEO agreed to provide a detention facility that complied with disability laws when it entered  
22 into a contract with the federal government in 2000. *Id.*, ¶ 22. The contract, which has been  
23 repeatedly renewed, re-commits GEO to its obligations set forth in state and federal statutes. *Id.*,  
24 ¶¶ 23, 97–98. For years, GEO has taken taxpayer money to provide an ADA-compliant facility but  
25 has failed to provide such a facility. *See* Declaration of Timothy G. Blood in Support of Preliminary  
26 Approval, ROA No. 450 (“Blood Preliminary Approval Decl.”), ¶ 7. Each year it falsely reported  
27 to the federal government that it was complying with its contractual obligations to provide an ADA-  
28 compliant facility, even though it was not doing so. *See id.*

1 Plaintiffs allege that they and class members, physically disabled individuals who require a  
2 mobility aid (*e.g.*, wheelchairs, crutches, and walkers), encountered numerous architectural barriers  
3 each day while housed at the Facility that caused them “difficulty, discomfort, or embarrassment”  
4 within the meaning of California Civil Code section 55.56.

5 Plaintiffs allege that Defendants violated California’s Unruh Civil Rights Act, Civil Code  
6 section 51, *et seq.*, the Disabled Persons Act, Civil Code section 54, *et seq.*, based on their failure  
7 to remove architectural barriers, and further allege that Defendants breached their contractual  
8 obligations to accommodate the needs of these people. *See generally* SAC, ¶¶ 68–106. Plaintiffs  
9 seek statutory damages for Defendants’ Unruh Act and Disabled Persons Act violations and an  
10 injunction ordering Defendants to remediate alleged barriers in the Facility. *See id.*, Prayer for  
11 Relief.

12 Plaintiff Stout filed the initial complaint on January 4, 2019. Blood Preliminary Approval  
13 Decl., ¶ 7. The complaint was amended on two occasions. *Id.*, ¶¶ 8–9. The operative Second  
14 Amended Complaint was filed on October 3, 2019, which includes Mr. Felton as a named plaintiff  
15 and class representative and replaces the former Facility owner with Middle Block, the current  
16 owner. *Id.*, ¶ 9.

17 The case has been heavily litigated. For example, in December 2019, GEO filed a motion to  
18 strike claims for injunctive relief and specific performance, which was denied by the Court on July  
19 24, 2020. *Id.*, ¶ 10. On February 19, 2020, Plaintiffs filed a motion for class certification, which the  
20 Court granted on July 24, 2020. *Id.*, ¶ 11. On December 11, 2020, the Court denied Plaintiffs’ motion  
21 for summary judgment. On August 27, 2021, the Court denied Defendants’ motion for summary  
22 adjudication of the contract causes of action. *Id.*, ¶ 11. On April 1, 2022, the Court denied  
23 Defendants’ motion for judgment on the pleadings. *Id.*, ¶ 13.

24 The trial date was continued three times at Defendants’ request. *Id.*, ¶ 23. After the discovery  
25 and law and motion cut-off date had passed, and with the trial date only months away, Defendants  
26 moved to reopen discovery so that they could conduct independent medical exams on physically  
27 disabled class members and depose as many class members as they wished. *Id.*, ¶ 22. Plaintiffs  
28 vigorously opposed Defendants’ motion given that Defendants had years of opportunity to depose



1 class members, but chose not to until the last minute, and also in light of class members' physical  
2 conditions. *Id.* The Court denied Defendants' motion to reopen discovery on August 18, 2022. *Id.*

### 3 **B. Settlement Negotiations**

4 The Parties discussed settlement on numerous occasions. Blood Preliminary Approval Decl.,  
5 ¶ 24. Throughout those discussions, the Parties exchanged significant amounts of information,  
6 including the substantial discovery obtained from Defendants. *Id.* They participated in mediated  
7 settlement discussions with the Honorable Judge Leo Papas (Ret.), in February 2021 and May 2021,  
8 but were unable to reach a negotiated resolution at that time. *Id.* Judge Papas continued to work with  
9 the Parties after the May 2021 mediation. *Id.* On July 15 and 27, and August 15, 2022, the Parties  
10 attended a third, fourth, and then fifth mediation before mediator Scott Markus. *Id.*

11 The Parties negotiated the written terms and details of the Settlement Agreement and  
12 exchanged numerous drafts of settlement documents. *Id.*, ¶ 25. Class Counsel believe the Settlement  
13 represents an excellent outcome for the Class and readily meets the fair, reasonable and adequate  
14 standard. *Id.*, ¶ 33.

### 15 **C. Discovery**

16 Defendants produced substantial discovery over the course of the litigation, with Plaintiffs  
17 at times filing discovery motions. *Id.*, ¶ 15. Plaintiffs successfully made multiple requests under the  
18 Public Records Act and FOIA relating to the Facility. *Id.* Both Class Representatives sat for  
19 depositions, Plaintiffs took two person most knowledgeable depositions of each Defendant, and the  
20 Parties completed nearly all expert discovery including five expert depositions. *Id.*, ¶¶ 15–20, 26.  
21 Plaintiffs' accessibility expert also inspected the Facility and reviewed photographic evidence of  
22 inside the Facility. *Id.*, ¶ 16.

### 23 **D. Preliminary Approval Order**

24 On April 28, 2023, the Court granted preliminary approval of the Settlement. ROA No. 443.  
25 The Court also approved the form and method of class notice. *Id.*

## 26 **III. THE SETTLEMENT TERMS AND RELIEF**

27 The following is a summary of the terms of the settlement as reflected in the Settlement  
28 Agreement ("SA") and its exhibits.

1           **A.       The Settlement Class**

2           The proposed settlement is on behalf of the following certified Class:

3                 All disabled persons and persons with qualifying medical conditions that require  
4                 the use of ambulatory aids who are or were housed at the Facility since January  
5                 4, 2017.

6           SA, § II 34. During discovery, Class Counsel engaged Dr. Allen Chen, who is board certified in  
7           Physical Medicine and Rehabilitation, and Pain Medicine, to review medical records and identify  
8           members of the Settlement Class and the number of days each had a Mobility Disability while  
9           housed at the Facility. *Id.*, § II 8.

10           The Class Representatives are Scott Miles Stout and Derrick Allen Felton. *Id.*, § II 9. Class  
11           Counsel are Timothy G. Blood and Leslie E. Hurst of Blood Hurst & O'Reardon, LLP. *Id.*, § II 7.

12           **B.       The Settlement Relief**

13                 **1.       The Non-Reversionary Settlement Fund**

14           The Settlement provides an \$8 million non-reversionary Settlement Fund. *Id.*, §§ II 37. Class  
15           members will be entitled to receive a proportionate share of the Settlement Fund based, in part, on  
16           the number of days he or she was housed at the Facility and was physically disabled. *Id.*, § III 2.2;  
17           *id.*, Ex. C.

18           Working in consultation with Plaintiffs' medical expert, Dr. Allen Chen, Plaintiffs' counsel  
19           were able to identify class members and the number of days they were housed at the Facility while  
20           physically disabled. *Id.*, § II 8. Class members who were not identified by Plaintiffs' counsel will  
21           be able to submit a claim for their proportionate share of the Settlement Fund. *Id.*, § II 4; *id.*, Ex. C.

22           In the event any portion of the Net Settlement Fund has not been distributed to Settlement  
23           Class members, the remaining balance shall be distributed to class members who have been  
24           successfully located in accordance with the Claims Protocol. *Id.*, § III 2.3.

25                 **2.       Remediation of Construction-Related Barriers**

26           GEO represents that it has remediated the construction-related barriers as alleged by  
27           Plaintiffs. SA, § III 1.1. GEO's cost of remediation was approximately \$300,000. *Id.*

28           Under the Settlement, GEO is providing Plaintiffs' expert access to the Facility or otherwise  
          providing information, including detailed photographs, from which Plaintiffs' expert can confirm

1 remediation of all alleged barriers was completed. *Id.*, § III 1.2. The Settlement also sets forth the  
2 procedure for the parties to resolve any unconfirmed remediation. *Id.*, § III 1.3.

3 To date, Defendants have provided Mr. Bishop with detailed photographs of the alleged  
4 architectural barriers at issue. Declaration of Timothy G. Blood in Support of Motion for Final  
5 Approval (“Blood Final Approval Decl.”), ¶ 17. Mr. Bishop has been able to confirm that certain  
6 barriers have been remediated, but the photographs have been inconclusive as to others. *Id.*  
7 Defendants currently plan on having a licensed architect provide additional photographs of the  
8 remaining architectural barriers, which Mr. Bishop will review and determine whether those barriers  
9 have been remediated, have not been remediated, or if additional photographic evidence is  
10 necessary. *Id.*

### 11 3. Release and Waiver

12 The Settlement contains a standard class action release, which releases Class member claims  
13 relating to the allegations in the Action. The Release will be effective only upon entry of the Final  
14 Approval Order. *Id.*, § III 3.6. For the named Plaintiffs, only, the Settlement contains a Civil Code  
15 section 1542 waiver. *Id.*, § III 3.4.

### 16 4. Attorneys’ Fees, Costs, and Expenses, and Incentive Awards

17 Class Counsel applies for an award of attorney’s fees of \$2,640,000, which amounts to 33%  
18 of the Settlement Fund, up to \$240,237.12 in costs and expenses, and a service award of \$10,000  
19 for each of the two Class Representatives. *Id.*, §§ III 8.2, 8.5. *See Laffitte v. Robert Half Int’l Inc.*,  
20 231 Cal. App. 4th 860, 878 (2014) (approving percentage of fund method for attorney’s fees in  
21 California state class actions); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008)  
22 (observing that fee awards in class actions average around one-third of the recovery). The attorneys’  
23 fees and service awards will be paid from the Settlement Fund. *Id.*, § III 8.3. Class Members will  
24 have an opportunity to comment on or object to the fee petition consistent with California authority.  
25 *Id.*, §§ III 7.5-7.6; *see also Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260, 267 (2018).

### 26 5. Notice to the Class

27 Notice and Settlement administration expenses will be paid from the Settlement Fund. SA,  
28 § 6.1. This includes all Notice expenses, the costs of administering the Notice Plan, claims review,

1 and the costs of processing and distributing the Settlement Class Member Allocations. These  
2 expenses to date are approximately \$60,529.77. Jarjoura Decl., ¶ 24. Pursuant to the Notice Plan,  
3 Class Notice was provided to Settlement Class Members through a combination of Direct Mail  
4 Notice, Publication Notice, through the Settlement Website, and the Long Form Notice. *Id.*, ¶¶ 7-  
5 12; SA, § V.

#### 6 **IV. THE SETTLEMENT MERITS FINAL APPROVAL**

##### 7 **A. The Legal Standard for Final Approval**

8 Settlement of a class action requires court approval. Cal. Rules of Court 3.769. California  
9 has a strong judicial policy that favors settlement. *Hamilton v. Oakland Sch. Dist.*, 219 Cal. 322,  
10 329 (1933) (“it is the policy of the law to discourage litigation and to favor compromises”); *Rich*  
11 *Vision Ctrs., Inc. v. Bd. of Med. Exam’rs*, 144 Cal. App. 3d 110, 115 (1983) (there exists a “general  
12 policy of favoring compromises of contested rights”). This is particularly true in class actions where  
13 substantial resources can be conserved by avoiding the time, cost, and rigors of litigation. *In re*  
14 *Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 n.14 (2006) (“Public policy generally favors the  
15 compromise of complex class action litigation.”); *Cellphone Termination Fee Cases*, 180 Cal. App.  
16 4th 1110, 1125 (2009).

17 To warrant final approval, a class settlement must be fair, adequate, and reasonable. *Dunk v.*  
18 *Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal.  
19 App. 4th 734, 742–43 (2009). The court has “broad discretion” in determining whether to approve  
20 a proposed settlement. *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1389 (2010);  
21 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234–35 (2001).

22 In evaluating the fairness of a class settlement, courts consider several factors, including “the  
23 strength of [the] plaintiff’s case, the risk, expense, complexity and likely duration of further  
24 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,  
25 the extent of discovery completed and the stage of the proceedings, the experience and views of  
26 counsel, the presence of a governmental participant, and the reaction of the class members to the  
27 proposed settlement.” *Dunk*, 48 Cal. App. 4th at 1801; *Cellphone Termination*, 186 Cal. App. 4th  
28 at 1389. The court “is free to engage in a balancing and weighing of factors depending on the

1 circumstances of each case.” *Wershba*, 91 Cal. App. 4th at 245.

2 “[A] presumption of fairness exists where: (1) the settlement is reached through arm’s-length  
3 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act  
4 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is  
5 small.” *Dunk*, 48 Cal. App. 4th at 1802; *Cellphone Termination*, 186 Cal. App. 4th at 1389. The  
6 Settlement satisfies these requirements, so it is presumed to be fair, reasonable and adequate.

7 **B. The Settlement Is Fair, Reasonable and Adequate**

8 **1. The Settlement Resulted from Arm’s Length and Informed Negotiations**

9 The settlement was reached following arm’s-length negotiations that took place over five  
10 mediation sessions attended by Class Counsel and Defendants’ Counsel, and over eight months  
11 following the parties’ last mediation session. Blood Preliminary Approval Decl., ¶¶ 24–25. The  
12 parties exchanged numerous proposals and counterproposals, culminating in the Settlement  
13 Agreement. *Id.*

14 **2. Extensive Investigation and Discovery Have Been Conducted to Allow**  
15 **Thorough Evaluation of the Fairness of the Settlement**

16 The Court also must be satisfied that “investigation and discovery are sufficient to allow  
17 counsel and the court to act intelligently” in deciding whether to approve a settlement. *Dunk*, 48  
18 Cal. App. 4th at 1802; *Chavez*, 162 Cal. App. 4th at 53. Class counsel have diligently developed the  
19 facts and legal claims in this case. Blood Preliminary Approval Decl., ¶ 15. Class counsel conducted  
20 significant discovery into the alleged architectural barriers at the Facility, including physical  
21 inspections, Class members’ physical disabilities and their mobility aids, and Defendants’  
22 contractual obligations to comply with various disability laws, among other subjects. *Id.*, ¶¶ 15–21.  
23 The parties also conducted numerous depositions, including those of Plaintiffs, four PMK  
24 depositions of Defendants, and several expert depositions. *Id.*, ¶¶ 17–20. Plaintiffs were ready to try  
25 this case.

26 **3. The Settlement Is Reasonable Given the Value of the Claims Asserted**  
27 **and the Risks of Further Litigation**

28 The risk, expense, complexity, and duration of the case if further litigated rather than settled

1 weigh in favor of final approval of the settlement. This case involves four separate claims and  
2 presents several issues if litigation continues. *Id.*, ¶ 27.

3 For instance, damages awards for the Class under either the Unruh Act or Disabled Persons  
4 Act require proof that each Class member encountered an architectural barrier and experienced  
5 difficulty, discomfort, or embarrassment as a result. *Id.*, ¶ 28; *see* Cal. Civ. Code § 55.56(c). To  
6 receive damages for multiple violations from encountering the same architectural barrier, the Court  
7 has the discretion to consider the reasonableness of Class members' conduct and the possibility of  
8 mitigating damages. Blood Preliminary Approval Decl., ¶ 29.; *see* Cal. Civ. Code § 55.56(i). For  
9 their Unruh Act claim, Plaintiffs would prove that Defendants intentionally discriminated against  
10 Class members. Blood Preliminary Approval Decl., ¶ 30.

11 Notwithstanding the Unruh Act and Disabled Persons Act's broad application, no published  
12 California appellate authority has held that statutory damages are available under the Unruh Act or  
13 Disabled Persons Act for each day the class member is incarcerated and disabled. *Id.*, ¶ 31. When  
14 the parties reached agreement on settlement, Defendants had a pending renewed motion for  
15 judgment on the pleadings on this issue. *Id.*, ¶ 14. Defendants also signaled their intention to seek  
16 to decertify the class, either prior to trial or on appeal. *Id.*, ¶ 31.

17 Weighed against these risks, and coupled with the delays associated with continued  
18 litigation, the Settlement's benefits to the Class fall well within the range of reasonableness. The  
19 settlement will conserve the resources of the Parties and the Court and will ensure that Class  
20 Members receive the agreed-upon relief. If Plaintiffs' counsel litigated these claims against  
21 Defendants to conclusion, any recovery would come much later, and at a real risk that Class  
22 Members would receive nothing. *Id.*, ¶ 32. With this Settlement, Class Members receive significant  
23 damages payments for their Unruh Act and Disabled Persons Act claims. Further, the Settlement  
24 Agreement requires Defendants to remediate the alleged architectural barriers identified by  
25 Plaintiffs at the Facility, ensuring that current and future physically disabled detainees are housed  
26 in compliance with accessibility laws and regulations. *Id.*

#### 27 **4. The Experience and Views of Counsel**

28 Class Counsel have significant experience serving as court-appointed counsel in dozens of

1 class actions. *Id.*, ¶¶ 34–35; *see also* Blood Preliminary Approval Decl., Exs. 1–3. Class Counsel  
2 believe the settlement readily meets the fair, reasonable, and adequate standard. Blood Final  
3 Approval Decl., ¶ 33.

#### 4 **5. The Positive Reaction of Class Members Favors Final Approval**

5 A court should consider at final approval the reaction of the class to the settlement. *Dunk*,  
6 48 Cal. App. 4th at 1801. Here, the reaction here has been very positive. To date, no Class Member  
7 has opted out or objected to the Settlement. Jarjoura Decl., ¶¶ 20-23. This represents an endorsement  
8 of the settlement by the Settlement Class.

9 Consideration of the above factors confirms that the Settlement is fair, reasonable, and  
10 adequate.

#### 11 **C. Class Notice Satisfied the Requirement of Due Process**

12 The manner of giving notice and the content of notice must “‘fairly apprise the prospective  
13 members of the class of the terms of the proposed settlement and of the options that are open to  
14 them in connection with the proceedings.’” *7-Eleven Owners for Fair Franchising v. Southland*  
15 *Corp.*, 85 Cal. App. 4th 1135, 1164 (2000) (citation omitted). An appropriate notice has a  
16 “‘reasonable chance of reaching a substantial percentage of the class members.’” *Wershba*, 91 Cal.  
17 App. 4th at 251 (citation omitted); *Cellphone Termination*, 186 Cal. App. 4th at 1392; *see also* Cal.  
18 Rules of Court 3.766.

19 The Court has already approved the class notice plan. Notice has been carried out in  
20 accordance with that plan. *See* Jarjoura Decl., ¶¶ 7-11. The notice plan was carefully tailored to  
21 reach Class Members and fairly apprise them of the Settlement. The notice provided a brief, clear,  
22 and thorough explanation of the case, the terms of the proposed Settlement, the maximum amount  
23 Plaintiffs’ Counsel may seek for attorneys’ fees, costs and expenses, the amount Plaintiffs may seek  
24 as an incentive award, the date, time, and place of the Fairness Hearing, the steps for Class Members  
25 to follow to opt out or object to the Settlement, and how to submit a claim form if necessary. The  
26 notice also described how to appear at the Fairness Hearing to object. *See* Cal. Rules of Court  
27 3.769(f).

28

1 Notice was mailed directly to Class members identified through a careful review of  
2 Defendants' records, and was also published in print in The San Diego Union Tribune and El Latino.  
3 SA, § 5.6. Eighty (80) Class members received direct notice via mail. Jarjoura Decl., ¶ 10. This  
4 readily satisfies California's notice requirements. *Wershba*, 91 Cal. App. 4th at 251.

5 **V. THE FEE AND EXPENSE REQUEST SHOULD BE APPROVED**

6 **A. The Requested Fee Is Reasonable Under the Percentage of Fund Approach**

7 The percentage method is often preferred because it focuses on the benefit conferred on the  
8 class resulting from the efforts of counsel, and thereby aligns the interest of the class with the interest  
9 of counsel. *See Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19, 48 (2000). Here, Class counsel  
10 request \$2,640,000 in attorneys' fees, which represents 33% of the settlement fund and is about the  
11 same as Plaintiff's counsel's lodestar, and costs and expenses in the amount of up to \$240,237.12.

12 In assessing whether the percentage requested is fair and reasonable, courts have considered  
13 the following factors: (1) the result achieved; (2) the skill required and quality of work by counsel;  
14 (3) the risk involved in the litigation and complexity of the issues; (4) the contingent nature of the  
15 fee; and (5) awards made in similar cases. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50  
16 (9th Cir. 2002); *see also Laffitte v. Robert Half Int'l, Inc.*, 1 Cal. 5th 480, 504 (2016).

17 **1. The Results Achieved**

18 ““Where a plaintiff has obtained excellent results, his attorney should recover a fully  
19 compensatory fee.”” *Hogar Dulce Hogar v. Cmty. Dev. Comm'n of City of Escondido*, 157 Cal.  
20 App. 4th 1358, 1369 (2007) (citation omitted). The settlement achieves Plaintiffs' primary goals of  
21 providing monetary damages to class members for the alleged violations of the Unruh Act and  
22 Disabled Persons Act and remediation of the construction-related barriers Plaintiffs identified at the  
23 Facility. Blood Final Approval Decl., ¶ 19. As to monetary damages, the settlement class members  
24 will receive an average first payment of approximately \$40,000 and a second payment distributed  
25 pro rata from whatever money remains unclaimed. *Id.*, ¶ 20. Defendants have also agreed to  
26 remediate nearly 100 architectural barriers Plaintiffs identified at the Facility. *Id.*, ¶ 21.

27 These results strongly support the fees and costs requested by Class Counsel.  
28



1                                   **2. Skill Required and Quality of the Work**

2           This case required counsel skilled in class action litigation, of which Class Counsel have  
3 substantial experience and success. *Id.*, ¶ 22. Class Counsel faced novel questions of law which have  
4 not been addressed in either published California state or federal opinions, including those involving  
5 application of the Unruh Civil Rights Act and Disabled Persons Act to for-profit private detention  
6 facility operators or owners. *Id.*, ¶ 23. The parties completed fact discovery, which was often  
7 contested in motion practice, nearly completed expert discovery, and conducted extensive  
8 preparations for the imminent trial. *Id.*, ¶ 24. Only through outstanding skill and preparation could  
9 Class Counsel achieve this unprecedented result. *Id.*, ¶ 26.

10           The skill and competence of opposing counsel should also be considered when awarding a  
11 fee. *In re Equity Funding Corp. Sec. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977). Here, Class  
12 counsel faced excellent work by defense counsel Burke, Williams & Sorensen, LLP, and later Allen  
13 Matkins Leck Gamble Mallory & Natsis, LLP. Defense Counsel are well-resourced and staffed with  
14 attorneys highly experienced in litigating architectural-related disability discrimination cases,  
15 including those involving the Unruh Act and ADA.

16                                   **3. The Novelty and Difficulty of Issues**

17           The existence of novel and complex legal questions and the stage of the proceeding when  
18 the matter settles also should be considered when assessing Counsels' fee. *Blum v. Stenson*, 465  
19 U.S. 886, 898–99 (1984). This case presented Plaintiffs' Counsel with several difficult, novel issues  
20 to overcome, *see* section IV.B.3, *supra*, and settlement was not reached until just before trial, *see*  
21 Blood Preliminary Approval Decl., ¶ 23.

22                                   **4. Contingent Nature of the Case**

23           Attorneys whose compensation is dependent on success—who take a significant risk of no  
24 compensation—should expect a significantly higher fee than an attorney who is paid a market rate  
25 as the case goes along, win or lose. *Cazares v. Saenz*, 208 Cal. App. 3d 279, 288 (1989). As stated  
26 by the Supreme Court of California:

27                                   A contingent fee must be higher than a fee for the same legal services paid as they  
28                                   are performed. The contingent fee compensates the lawyer not only for the legal

1 services he renders but for the loan of those services. The implicit interest rate on  
2 such a loan is higher because the risk of default (the loss of the case, which cancels  
3 the debt of the client to the lawyer) is much higher than that of conventional loans.

4 *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132–33 (2001).

5 Class Counsel undertook this litigation on a purely contingent basis, thereby bearing the full  
6 risk of not recovering anything. Blood Final Approval Decl., ¶ 3. The fee should reflect this risk.

7 In California, attorneys' fee awards of 33% of the value of the recovery to the class are  
8 common. Indeed, "[e]mpirical studies show that, regardless whether the percentage method or the  
9 lodestar method is used, fee awards in class actions average around one-third of the recovery."  
10 *Chavez*, 162 Cal. App. 4th at 66 n.11 (citation and quotations omitted). In *Laffitte*, the Supreme  
11 Court upheld a fee award of 33% of the common fund and stated that an award of 33% "is within a  
12 historical range of 20 to 50 percent of a common fund." *Laffitte*, 1 Cal. 5th at 487.

13 Accordingly, a fees award representing 33% of the Settlement Fund—and which does not  
14 factor in the value of the Facility's remediation, the value of notice costs or the value of attorneys'  
15 fees and expenses—is within the range for class action fees, and further confirms that the fees sought  
16 are reasonable and should be approved.

#### 17 **5. The Requested Fee Is Also Reasonable Under the Lodestar Method**

18 "A lodestar cross-check ... provides a mechanism for bringing an objective measure of the  
19 work performed into the calculation of a reasonable attorney fee." *Laffitte*, 1 Cal.5th at 504. When,  
20 however, the percentage method results in a reasonable fee award, courts grant the award without  
21 performing a lodestar crosscheck. Nonetheless, the lodestar of Class Counsel is \$2,531,975.00,  
22 resulting in a minimal multiplier of 1.04%. Blood Final Approval Decl., ¶ 8. And this lodestar does  
23 not include other Plaintiffs' counsel's lodestar. *See, e.g.*, Declaration of Thomas Robertson in  
24 Support of Final Approval ("Robertson Final Approval Decl."), ¶ 7. The lodestar cross-check  
25 confirms the fee is reasonable. *See Wershba*, 91 Cal. App. 4th at 255 ("Multipliers can range from  
26 2 to 4 or even higher.").

1           **B.       THE EXPENSE REQUEST IS FAIR AND REASONABLE**

2           Courts routinely allow recovery of pre-settlement litigation costs. *See Serrano v. Priest*, 20  
3 Cal. 3d 25, 35 (1977); *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003); *Rider v. San Diego*,  
4 11 Cal. App. 4th 1410, 1424 n.6 (1992); *see also H. Newberg & A. Conte, Newberg on Class Actions*,  
5 § 12.08, at 50-51 (2d ed. 1993). “Attorneys may recover their reasonable expenses that would  
6 typically be billed to paying clients in non-contingency matters.” *In re Omnivision Techs.*, 559 F.  
7 Supp. 2d 1036, 1048 (N.D. Cal. 2007); *see also Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).  
8 To date, Class Counsel has incurred expenses in the amount of \$225,037.12 that were “reasonably  
9 necessary to conduct the litigation.” Blood Final Approval Decl., ¶ 11. Class Counsel incurred these  
10 costs for mediation fees, filing fees, discovery, experts, travel, research services, document  
11 management services, photocopies, postage, and telephone charges. *Id.*, ¶ 14. All these expenses  
12 were reasonably and necessarily incurred and are of the sort of expense typically billed to paying  
13 clients in the marketplace. *Id.*, ¶ 13-14.

14           Expenses will increase, primarily from expert costs connected with the settlement. Class  
15 Counsel is responsible for paying Plaintiffs’ expert Paul Bishop’s fees in connection with  
16 confirming remediation of the Facility. *Id.*, ¶ 11. Mr. Bishop has agreed to cap further expenses in  
17 connection with remediation at \$12,000, which would include multiple reviews of Defendants’  
18 remediation of the Facility. *Id.* Class Counsel is also responsible for paying Dr. Chen’s fees for  
19 reviewing the medical files of Claims-Based Class Members who submit timely claims. *Id.* Class  
20 Counsel anticipate the additional expense incurred from Dr. Chen likely will not exceed \$3,200. *Id.*

21           In light of the additional anticipated expert fees, Class Counsel estimate they will incur up  
22 to \$240,237.12 in expenses. This amount is less than the \$275,000 amount in expenses the Parties  
23 agreed that Class Counsel could seek pursuant to the Settlement Agreement, *see* S.A. § 8.2, and any  
24  
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1 difference will be made available to Class Members. Class Counsel will provide the Court with an  
2 update on the amount of expenses incurred in their reply brief.

3 The Court should grant Plaintiffs' Counsel's requested expense reimbursement award of up  
4 to \$240,237.12.

5 **VI. THE SERVICE AWARDS ARE REASONABLE AND APPROPRIATE**

6 Courts routinely approve service awards to compensate named plaintiffs for the efforts they  
7 provide and the risks they incur during class action litigation. Defendants have seen the effort the  
8 Class Representatives put forth and agreed not to oppose the request for a \$10,000 service award  
9 for each of the Class Representatives. SA, § 8.5.

10 The requested service awards is made in recognition of the time and effort they expended on  
11 the Class's behalf. They have always promptly helped with this litigation and have been a valuable  
12 source of information. This amount falls within the range of incentive awards. *See, e.g., Cellphone*  
13 *Termination*, 186 Cal. App. 4th at 1380 (approving incentive payments of \$10,000 each). The  
14 amount requested is further based on the significant time the Class Representatives spent on this  
15 case, including numerous telephone calls with Counsel to prepare for their depositions, travelling to  
16 and attending their depositions, communicating with Counsel to respond to discovery. Blood Final  
17 Approval Decl., ¶ 18. The Class Representatives also spent time reviewing the complaints,  
18 consulting for settlement, and reviewing and questioning the terms of the settlement agreement. *Id.*  
19 This service award is fair and reasonable and should be approved.

20 **VII. CONCLUSION**

21 Plaintiffs respectfully request that the Court grant the Motion for Final Approval and enter  
22 a final judgment and order granting final approval of the Settlement, awarding the proposed  
23 attorneys' fees and costs award, and the Class Representatives' incentive awards.

24 Respectfully submitted,

25 Dated: August 15, 2023

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**CERTIFICATE OF SERVICE**

*Scott Miles Stout; Derrick Allen Felton v. The GEO Group, Inc.; SDCC Middle Block, LLC*

San Diego Superior Court – Central  
Case No. 37-2019-00000650-CU-CR-CTL

I hereby certify that on August 15, 2023, I electronically filed the foregoing with the Clerk of the Court using One Legal Online Court Services, and electronically served the foregoing upon the attorney of record for each party in this case at the e-mail address(es) registered for such service through One Legal Online Court Services. Parties may access this filing through the Court’s website.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 15, 2023.

*s/ Janet Kohnenberger*

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