

1 Several months later, the court concluded that county officials were violating prisoners'
2 constitutional rights with regard to inmate opportunities for exercise and recreation, the adequacy
3 of the law library, and the lack of a trusty program for female inmates. ECF No. 163-2 at 403-12
4 (Order of Nov. 12, 1976). The court granted preliminary injunctive relief to plaintiffs on the
5 exercise and library claims and summarily adjudicated the female trusty program claim in
6 plaintiffs' favors. *Id.*

7 In 1979, the court entered a comprehensive Consent Decree binding on the county
8 officials and their successors. ECF No. 163-1 at 60-109 (Nov. 2, 1979 Consent Decree). In 1987,
9 the court ordered the clerk to administratively terminate this case "without prejudice to the right
10 of the parties to reopen the proceedings for the entry of any stip[ulation], mot[ion], ord[er] or any
11 other purpose required to obtain a final or interim determination of the litigation." ECF No. 94 at
12 5 (docket entry No. 93).

13 Defendants later moved to terminate the decree; the motion was denied, and the Decree
14 remains in force. ECF No. 135 (Order of April 2, 2013 denying defendants' motion to terminate
15 the Decree), *aff'd* by *Hedrick v. Grant*, 648 Fed. App'x. 715 (9th Cir. 2016).

16 In October 2016, plaintiffs filed a motion to enforce the Decree, alleging that defendants
17 (successors-in-office to the original defendants) were violating various provisions of that
18 agreement. Plaintiffs further alleged that these violations of the Decree also violated inmates'
19 constitutional rights. Lastly, plaintiffs alleged additional constitutional violations (denial of
20 necessary outside medical and mental health care, unduly risky medication practices, denial of
21 necessary psychosocial treatment, denial of confidentiality and language interpretation for
22 medical and mental health services, denial of out-of-cell time to segregated prisoners). ECF No.
23 163. In addition to seeking enforcement of the Decree, plaintiffs asked the court to issue further
24 remedial orders in the form of six "plans" to remedy these alleged constitutional violations: an
25 Intake Screening Plan, a Health Care Implementation Plan, a Suicide Prevention Plan, a Staffing
26 Plan, an Inpatient Care Plan, and an Exercise and Recreation Plan. *Id.* at 60.

27 At the hearing on the motion to enforce, the court directed the parties to settlement
28 conference. ECF No. 201. Thereafter, the parties engaged in many settlement conferences with

1 Magistrate Judge Kendall Newman from May 5, 2017 through May 18, 2018. Judge Newman
2 also toured the Jail with counsel for the parties. ECF No. 206. Through these negotiations, the
3 parties agreed on an Amended Consent Decree (ACD). The court granted final approval of the
4 ACD on January 30, 2019. ECF No. 258.

5 Class counsel represents that, since that time, they have monitored conditions at the Jail
6 and defendants' compliance with the ACD. That monitoring has consisted of (1) reviewing
7 defendants' quarterly document productions, (2) conducting seven monitoring tours of the Jail,
8 (3) corresponding with and interviewing hundreds of class members, (4) reviewing the medical
9 and mental health records of dozens of class members, and (5) retaining an expert mental health
10 consultant to assess the Jail's mental health and suicide prevention systems. ECF No. 269-1,
11 Grunfeld Dec., ¶ 10. Counsel documented their findings from the monitoring in seven reports
12 and additional letters to defendants. *Id.* In these communications, class counsel asserted that
13 defendants were not complying with the ACD's staffing requirements, especially with regard to
14 mental health positions. Counsel reported that defendants had a practice of cycling certain
15 severely mentally ill class members in and out of the Jail's safety and step-down cells for weeks
16 or months at a time. Counsel also asserted that class members who needed more intensive mental
17 health treatment than the Jail could provide were being placed in restrictive housing instead of
18 being transferred to a facility capable of treating them. The County contests that the Jail was or is
19 not in substantial compliance with the ACD.

20 According to class counsel, they began to focus their efforts on the Jail's mental health
21 and suicide prevention systems after two inmates died from suicide and one from a fentanyl
22 overdose during one year.

23 With the ACD set to terminate on January 30, 2023 (unless counsel successfully moved
24 for its extension), class counsel approached defendants in July 2022 to discuss a negotiated
25 extension. In a letter to defendants, class counsel wrote that, while defendants had made
26 significant progress toward compliance with many provisions of the ACD, the Jail's mental
27 health program remained out of compliance. ECF No. 269-2, Freedman Dec., Ex. B.

28 ///

1 The court entered a stipulated order on September 26, 2022, extending the ACD's
2 duration until May 31, 2023 in order to allow the parties time to negotiate. ECF No. 267. After
3 five months of discussions, the parties have agreed on the proposed SACD. ECF No. 269-2, ¶¶ 4-
4 5. In ordering preliminary approval of the SACD on March 9, 2023, the court directed defendants
5 to publish notice of the SACD to class members on the county's website, placing it in all Jail
6 facilities (including particular locations), making copies of the SACD available in the Jail law
7 library, and making it available to class members upon request. ECF No. 274. The notice
8 informed class members of their right to file objections to the SACD by April 14, 2023.
9 Defendants submitted an affidavit attesting to their compliance with the court's order regarding
10 the notice. ECF No. 276.

11 However, that compliance came into question when class member Mary Abbott filed
12 objections to the SACD. ECF No. 278 at 8-9. In her objections, she represented that: (1) the Jail
13 did not make the SACD available in the law library for inmate review, (2) some of the notices
14 that were posted in the Jail pertained to the ACD, not the SACD, and noted a comment due date
15 of December 30, 2018, and (3) the notice is misleading because it gives short shrift to the changes
16 from the ACD to the SACD, notably the omission of many of the ACD's provisions, including
17 requirements that the Jail take steps to enhance inmate recreation opportunities, increase medical
18 staff, and accommodate disabled inmates.

19 Based on Ms. Abbot's submission, the court ordered defendants to re-do the notice and
20 extended the comment period through June 31, 2023. ECF No. 281. On May 23, 2023,
21 defendants submitted an affidavit confirming the posting of notice of the SACD in compliance
22 with the court's order. ECF No. 283. Two class members submitted objections to the SACD:
23 Mary Abbot and Brittany Keeton. ECF No. 285-1 at 9-22 (Abbot materials) & 24-35 (Keeton
24 materials). Ms. Abbot objects on the following grounds:

- 25 1. The SACD is difficult to read, repetitive, long, and confusing; and
- 26 2. The SACD drops nearly all of the ACD's provisions regarding physical healthcare,
27 women's health, exercise and recreation, ADA facility access, and education.

28 ///

1 *Id.* at 9-10. Ms. Keeton argues that she was denied necessary psychiatric medication in the Jail
2 for 8 days, was denied accommodation for breastfeeding, faced rudeness from staff after she cut
3 her own hair, and was denied treatment for post-partum depression. *Id.* at 26-30. She would like
4 the SACD revised to include provisions requiring mandatory round-the-clock medical staffing.
5 *Id.* at 26.

6 The Jail's Captain, Allan Garza, has submitted a declaration contradicting some of the
7 claims made by Ms. Keeton. ECF No. 286. According to Captain Garza, his investigation of her
8 claims showed that, rather than being denied her medication, Ms. Keeton refused it. *Id.* Nor was
9 she lactating at the time of her incarceration. *Id.*

10 **II. Analysis**

11 In the Ninth Circuit, there is a "strong judicial policy" favoring settlement of complex
12 class action litigation. *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). Such
13 settlements should be approved if "fundamentally fair, adequate and reasonable." *Id.*; *see also*
14 Fed. R. Civ. P. 23(e)(2) (providing that the court may approve a settlement binding on class
15 members if, after hearing, it determines that the settlement is fair, reasonable, and adequate). The
16 decision to approve or reject a settlement proposal is committed to the trial judge's discretion and
17 will only be reversed if discretion was clearly abused. *Id.*

18 Review of a proposed class settlement proceeds in two phases. *True v. Am. Honda Motor*
19 *Co.*, 749 F. Supp. 2d 1052, 1062 (C.D. Cal. 2010). At the preliminary stage, the court determines
20 whether the proposed agreement is within the range of possible approval and whether notice
21 should be sent to class members. *Id.* at 1063. The court has issued preliminary approval of the
22 SACD and now is presented with the second and final stage of approval.

23 At this stage, the Ninth Circuit has directed courts to consider various factors:

24 [T]he strength of plaintiffs' case; the risk, expense, complexity, and likely duration
25 of further litigation; the risk of maintaining class action status throughout the trial;
26 the amount offered in settlement; the extent of discovery completed, and the stage
27 of the proceedings; the experience and views of counsel; the presence of a
governmental participant; and the reaction of the class members to the proposed
settlement.

28 *Class Plaintiffs v. Seattle*, 955 F.2d at 1291. These factors are not exclusive. *Torrisi v. Tucson*

1 *Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993). Rule 23(e)(2) provides a list of similar
2 factors the court should consider in making the ultimate determination of whether a settlement is
3 “fair, adequate, and reasonable”:

- 4 (A) whether the class representatives and class counsel have adequately
5 represented the class;
6 (B) whether the proposal was negotiated at arm’s length;
7 (C) whether the relief provided for the class is adequate, taking into account:
8 (i) the costs, risks, and delay of trial and appeal;
9 (ii) the effectiveness of any proposed method of distributing relief to the
10 class, including the method of processing class-member claims;
11 (iii) the terms of any proposed award of attorney’s fees, including timing of
12 payment; and
13 (iv) any agreement required to be identified under Rule 23(e)(3); and
14 (D) whether the proposal treats class members equitably relative to each other.

15 The court finds that, considering all of these factors, the SACD is fundamentally adequate,
16 reasonable, and fair.

17 The SACD represents a compromise to stave off further litigation. With the ACD set to
18 expire, the parties disagreed as to whether defendants were in substantial compliance with it. To
19 extend it would have required further litigation, which plaintiffs could have lost. Instead,
20 plaintiffs’ counsel reached agreement with defendants to reduce the scope of the consent decree
21 and focus it on mental health issues for a period of two additional years past the ACD’s expiration
22 (the new expiration date is January 31, 2025). According to class counsel, the SACD “addresses
23 the most significant areas of non-compliance” that class counsel had found in the course of its
24 monitoring efforts, providing for “two additional years of Defendants being bound by substantial
25 obligations relating to mental health and suicide prevention.” ECF No. 285 at 11.

26 The SACD includes all of the critical mental health provisions that were already in the
27 ACD. Additionally, the SACD provides for the appointment of a third-party monitor and
28 provides enhanced protections to some aspects of mental health care in the Jail. ECF No. 285-2
at 3-5, 7-8, 19-20, 22-23, 29-34. The parties have selected Jackie Clark to act as monitor and
have submitted Ms. Clark’s CV; she has significant experience in correctional healthcare. *Id.* at
11-12. Under the SACD, defendants will provide Ms. Clark with access to all documents relating
to their compliance with the SACD and allow her periodic Jail tours. Ms. Clark will also
investigate inmate complaints about defendants’ compliance and provide periodic reports on

1 compliance.

2 The parties have agreed to cap fees for class counsel at \$75,000/year, which is \$40,000
3 less than the cap provided for in the ACD. This reduction reflects class counsel's decreased
4 duties from the smaller scope of the SACD and the delegation of some duties to Ms. Clark, who
5 is also entitled to payment under the SACD. The parties did not discuss fees until they had
6 reached agreement "on all of the substantive provisions" of the SACD. ECF No. 285 at 14.

7 Class counsel conducted substantial work investigating conditions at the Jail prior to
8 entering into settlement talks with defendants. They note that they disagree with defendants as to
9 whether defendants have substantially complied with the ACD. If class counsel opted to ask the
10 court to find that defendants had not substantially complied, the court could have sided with
11 defendants and declined to extend the ACD past its January 30, 2023 expiration date. In the
12 meantime, inmates would continue to suffer due to what plaintiffs' counsel characterizes as
13 mental health treatment inadequacies and suicide prevention failures at the Jail; plaintiffs' counsel
14 notes that two inmates killed themselves within a three-month period at the end of 2021.

15 Despite their substantial work on the matter, plaintiffs' counsel had less-fully-developed
16 evidence of defendants' noncompliance in other areas covered by the ACD, such as those
17 concerning exercise, medical and dental care, disability accommodations, and inmate grievances.
18 This lack of evidence increased the risk that plaintiffs would lose a motion to extend the duration
19 of the ACD. Thus, the SACD presents a reasonable bargain to include and enhance the
20 provisions on which plaintiff's believed they had good evidence that defendants needed to do
21 better at the expense of issues on which plaintiffs' case for compelling action by defendants was
22 weaker.

23 There is no indication that the parties have colluded; rather, they have engaged in serious
24 negotiations for several months to reach agreement on the SACD. Plaintiffs' counsel is highly
25 experienced in prisoner civil rights litigation, including complex class actions, and their efforts in
26 litigating the case over the last several years reflect that. Their experience and evident
27 competence are further indications that the compromise they have reached with defendants is a
28 fair one.

1 In light of the foregoing considerations, the court finds that the settlement is fair,
2 adequate, and reasonable, despite the objections raised by Ms. Abbott and Ms. Keeton. These
3 objections are focused on the central compromise reached by the parties – reducing the scope of
4 the consent decree in exchange for additional years of the County being bound by its provisions
5 (some enhanced) concerning mental health care at the Jail. While it may have been optimally
6 beneficial to class members to continue with the ACD as it was, that agreement was set to expire.
7 The compromise plaintiffs’ counsel made with defendants by dropping some of the ACD’s
8 provisions was not made for nothing; in exchange the class receives additional years of
9 protections from the SACD without having to litigate to obtain them.

10 **III. Order**

11 Accordingly, it is hereby ORDERED that:

- 12 1. The parties’ June 13, 2023 Joint Motion for Final Approval of Second Amended
13 Consent Decree (ECF No. 285) is GRANTED.
- 14 2. The court approves the Notice of the Second Amended Consent Decree provided with
15 the parties’ June 13, 2023 motion (attached as Exhibit A).
- 16 3. No later than 15 days after the entry of this order, defendants shall post the Notice of
17 the Second Amended Consent Decree, attached as Exhibit B, in the booking area of
18 the Jail and in a place where all incarcerated people being booked into the Jail can see
19 it, in all housing units, in the Jail’s library, in the area of the Jail where defendants
20 provide mental health care to incarcerated people, and in the Jail Handbook.
21 Defendants shall ensure that one or more copies of the SACD are available to class
22 members in the Jail’s library and shall make additional copies available to class
23 members upon request.
- 24 4. This case shall remain open and the court shall retain jurisdiction to enforce the terms
25 of the Second Amended Consent Decree for the term and under the conditions set
26 forth in sections XI and XII of the Second Amended Consent Decree. Once the matter
27 is terminated under those provisions, this case shall be ordered dismissed with
28 prejudice.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. This order shall apply to defendants, their agents, employees, and successors in office.

Dated: September 13, 2023



EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE