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7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **EASTERN DIVISION**

11
12 SIGMA BETA XI, INC.; ANDREW
M., by and through his next friend
13 DENISE M., on behalf of himself and
all others similarly situated; JACOB
14 T., by and through his next friend
HEATHER T., on behalf of himself
15 and all others similarly situated; J.F.,
by and through her next friend CINDY
16 MCCONNELL, on behalf of herself
and all others similarly situated,

17 Plaintiffs,

18 v.

19 COUNTY OF RIVERSIDE; MARK
20 HAKE, Chief of the Riverside County
Probation Department, in his official
21 capacity; BRYCE HULSTROM, Chief
Deputy of the Riverside County
22 Probation Department, in his official
capacity,

23 Defendants.
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Case No. 5:18-cv-01399-JGB-JEM

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

*[Declaration of Sylvia Torres-Guillén
(and attached exhibits) and Proposed
Order Filed Concurrently Hereto]*

Hearing Date: August 26, 2019
Hearing Time: 9 a.m.
Complaint Filed: July 1, 2018
Trial Date: Nov. 19, 2019

Judge: Hon. Jesus G. Bernal
Mag. Judge: John E. McDermott

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Attorneys for Plaintiffs

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on August 26, 2019, or on such date as may
3 be specified by the Court, in the courtroom of the Honorable Jesus G. Bernal,
4 United States District Court for the Central District of California, 3470 Twelfth
5 Street, Riverside, California, Plaintiffs Sigma Beta Xi, Inc., Andrew M., Jacob T.,
6 and J.F. (together, “Plaintiffs”), on behalf of themselves and the class, hereby move
7 for an order preliminarily approving the terms of the proposed class action
8 settlement reached with Defendants, and to authorize the mailing and other forms of
9 notice to the class members.

10 This motion for preliminary approval (the “Motion”) is unopposed and made
11 on the grounds that the proposed settlement is fair, adequate, and reasonable, and
12 that the class notice fairly and adequately informs the class members of the
13 proposed settlement, their right to object, and the date and time of the final approval
14 hearing.

15 This Motion is based upon this Notice of Motion, the Memorandum of Points
16 and Authorities in support thereof, the Declaration of Sylvia Torres-Guillén (and the
17 exhibits attached thereto), the unopposed proposed Preliminary Approval Order, all
18 of the papers and pleadings on file in this action, and any further evidence presented
19 to the Court at the time of the hearing.

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1 This motion is made following the conference of counsel pursuant to Central
2 District of California Local Rule 7-3.

3
4 Dated: July 24, 2019

5 By: /s/ Sylvia Torres-Guillén

6 ACLU FOUNDATION OF SOUTHERN
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8 Sylvia Torres-Guillén
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10 Alexis Piazza

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In July 2018, Plaintiffs Sigma Beta Xi, Inc., Jacob T., J.F., and Andrew M. (together, “Plaintiffs”) filed this lawsuit challenging the legality of the Youth Accountability Team (“YAT”) program which places children as young as 12 years old under probation supervision for “pre-delinquent” school misconduct, including childish behavior such as “failure/refusal to follow directives (actively or passively),” “incurability,” school truancy and other behavior that falls into the broad category of “status offenses” under California Welfare & Institutions Code § 601 (“Section 601”). Plaintiffs contend that the program violates the constitutional rights of youth in several ways, for example by failing to give them adequate or accurate notice, by failing to provide them with counsel, and by subjecting them to probation jurisdiction under California Welfare and Institutions Code § 601, the terms of which are unconstitutionally vague on its face and as applied by the County. Plaintiffs also contend that the YAT program imposed intrusive and unconstitutional contract conditions that allowed officers to search youth in overly broad terms and restricted their expressive and associational rights. Plaintiffs contend that Black and Latinx children are disproportionately referred to the YAT program, and a disproportionate number of referrals for black and Latinx students are for the lowest-level offenses, in violation of California Government Code § 11135, which prohibits disparate impact discrimination.

After several months of extensive arms-length negotiations, Plaintiffs have reached final settlement terms with Defendants County of Riverside, Mark Hake, and Bryce Hulstrom (“Defendants”).¹ A copy of the Settlement Agreement (the “Agreement”) is attached as Exhibit A to the declaration of Sylvia Torres-Guillén.

¹ Together, the Plaintiffs and Defendants are referred to as the “Parties.”

1 The Agreement reflects the Parties' deliberative, conscientious efforts to
2 agree upon injunctive relief that substantially limits and reforms the YAT program,
3 and to make other positive changes in the way the County operates its juvenile
4 informal probation programs. Major changes achieved by the Settlement
5 Agreement include:

- 6 • Youth will no longer be referred to the YAT program for allegedly violating
7 Section 601.
- 8 • Effective July 1, 2019, the County will terminate YAT probation for
9 any youth who is currently on YAT probation under Section 601 and
10 will notify the youth and the parent or guardian that the youth continues
11 to be eligible for diversion under California Welfare and Institutions
12 Code § 654 ("Section 654").² The case files for all youth who were
13 referred and/or placed on YAT probation without an underlying
14 application for a petition to the juvenile court will be identified, sealed,
15 and destroyed. This effectively means that all members of the class will
16 have their records expunged so that there will be no record of them
17 having participated in any informal diversion program.
- 18 • All youth referred to the YAT program will receive appointed defense
19 counsel at no cost. These defense counsel will now be part of the YAT
20 team and will provide advice and information to the youth throughout
21 the process.
- 22 • The County will provide more accurate, complete, and informative
23 notice to youth referred to the YAT program and their parents or
24

25 _____
26 ² As the program is currently operated, youth who participate in the YAT program
27 are prohibited in the future from participating in another diversion program under
28 California Welfare and Institutions Code § 654 as an alternative to charges in
juvenile court. This Settlement will effectively remove that prohibition for youth
who were placed in the YAT program for alleged violations of Section 601.

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- guardians, using a template attached to the Agreement.
- YAT contracts will be more individualized, will focus more on positive development, and will not contain search terms or associational limits. There shall be a presumption against drug or alcohol testing. Drug and alcohol testing will be very limited to cases where a direct nexus between the condition and the alleged offense is established to warrant that provision or where subsequent incidents of drug or alcohol use by the youth have been identified. The County will use a template contract attached to the Agreement. YAT records for participating youth will be sealed or destroyed either automatically or pursuant to certain procedures, depending on the case type, and with assistance of counsel.
 - Riverside County will no longer have YAT offices in middle schools or high schools.
 - The Riverside County Probation Department (“Probation Department”) will modify its policies and provide extensive training, as described in the Agreement.
 - The membership of the Juvenile Justice Coordinating Council (“JJCC”), which oversees the YAT program, will now have at least 45% community representation, and the County will provide at least \$7 million in funding to community organizations, i.e., \$1.4 million on an annual basis for five years beginning in fiscal year 2020/2021.
 - Two experts who have decades of experience between them in positive youth development, understanding how probation departments function, and creating transformational change in probation departments will jointly monitor the County’s compliance with the Agreement for five years.

The Parties believe that the Settlement Agreement is fair and reasonable, and that the Agreement will bring many positive changes. Accordingly, the Parties ask

1 the Court to grant this Motion and enter an order that (1) preliminarily approves the
2 proposed settlement, (2) approves the form, method and plan of the proposed
3 settlement class notice, and (3) schedules a final approval hearing and related
4 deadlines.

5 **II. PROCEDURAL BACKGROUND**

6 Plaintiffs filed their initial complaint on July 1, 2018. (ECF No. 1.) On
7 September 13, 2018, they moved for class certification and appointment of class
8 counsel. (ECF Nos. 33.) Defendants stipulated to class certification and
9 appointment of class counsel. (ECF Nos. 35.) Shortly thereafter, the Court issued
10 an order granting the motion, certifying the class and appointing Plaintiffs' counsel
11 as class counsel. (ECF No. 37.) The Court's order defined the class as:

12 All children in Riverside County who have been referred to
13 the Riverside County Youth Accountability Team ("YAT")
14 program pursuant to Cal. Welf. & Inst. Code § 601, and who
15 have either been placed on a YAT contract or have been
referred but not yet placed on a YAT probation contract.

16 (*Id.*, p. 2:8-12.) Plaintiffs filed a First Amended Complaint (the "FAC") on
17 September 26, 2018.³

18 Since November 2018, the Parties have been engaged in informal discovery
19 and serious, arms-length settlement discussions, which have occurred over the
20 course of nearly twenty in-person meetings and additional telephonic meetings.
21 (Torres-Guillén Decl., ¶ 9.) On July 23, 2019, the Parties agreed to final settlement
22 terms. (*Id.*, ¶ 13.) A copy of the final Agreement is attached to the declaration of
23 Sylvia Torres-Guillén as Exhibit 1. (*Id.*, Ex. 1.)

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27 ³ The FAC did not add or remove claims, or make major changes, apart from
28 clarifying that the class had been certified and that Andrew M., in addition to the
other individual plaintiffs, was also a class representative.

1 III. THE PROPOSED SETTLEMENT

2 The Parties' settlement is detailed and expansive. It makes significant
3 changes to the way the County operates the YAT program and other non-court-
4 ordered juvenile probation supervision programs, and it provides additional training
5 and monitoring. It also increases community involvement and funding to
6 community organizations. In exchange, class members will agree to release
7 Defendants from liability for the claims for declaratory or injunctive relief brought
8 in this lawsuit. The major terms of the Settlement Agreement are summarized
9 below.

10 A. Changes to the Youth Accountability Team and Other Programs and 11 Policies

12 1. Referrals to YAT and YAT Contracts Will No Longer Include Youth Alleged to Violate Section 601

13 One of Plaintiffs' core allegations was that youth whose referrals were based
14 on California Welfare and Institutions Code section 601 (i.e., the class members)
15 should not be referred to YAT probation because they were often accused of only
16 minor school misbehavior not warranting involvement by law enforcement. Under
17 the Agreement, Defendants have agreed that these youth will no longer be referred
18 to the YAT program or other non-court-ordered probation supervision programs,
19 and that Defendants will no longer accept such referrals from schools or other
20 sources. (Agreement, ¶ III(A)-(B).)

21 The only children who will be referred to or placed in the YAT program and
22 similar programs are those referred under California Welfare and Institutions Code
23 Section 602 ("Section 602"), which only covers circumstances involving allegations
24 of purported criminal violations. (*Id.*) The Agreement also provides comprehensive
25 constitutional protections for youth referred and/or placed in the YAT program or
26 any other non-court-ordered supervision program for allegedly violating Section
27 602. (*Id.*, ¶ III(C).)

28

1 **2. Defense Counsel Will Now Be Provided for All Youth Referred to**
 2 **YAT**

3 Defendants have agreed to provide defense counsel at no cost from the
 4 County's Office of the Public Defender for all youth referred to the YAT program or
 5 other non-court-ordered supervision programs. (Agreement, ¶ IV(A)-(F).)⁴ The
 6 Parties also agreed that, within seven days of executing the Agreement, the parties
 7 will file a joint application to the Presiding Judge of the Riverside County Juvenile
 8 Court, requesting that the Court appoint counsel for all youth in YAT-related cases
 9 or any non-court ordered supervision programs.

10 The Parties agreed that youth who are referred to the YAT program or any
 11 other non-court-ordered supervision program will consult with counsel before
 12 meeting with the Probation Department or deciding whether to participate in the
 13 program. (Agreement, ¶ IV(F).) The role of legal counsel will be to advocate for
 14 and protect the rights of the youth client, including ensuring that the youth (1)
 15 understands all applicable legal rights, (2) understands the potential consequences
 16 and benefits of either entering the program or proceeding to court, and (3) is able to
 17 knowingly, voluntarily, and intelligently make a decision regarding participation.
 18 (*Id.*, ¶ IV(B).) If, after consultation with counsel, the youth chooses to enter the
 19 program, defense counsel's representation shall continue through the end of the
 20 program, and will also include representation to ensure that, as permitted or required
 21 by law, the youth's records and files are timely sealed and/or destroyed. (*Id.*, ¶
 22 IV(F).)

23 **3. Defense Counsel Will Now Be Part of the YAT Team**

24 Defendants have agreed that defense counsel will be a part of the YAT team
 25 or any other non-court-ordered supervision program team. (Agreement, ¶ IV(A).)

26
 27 _____
 28 ⁴ The County may provide outside counsel where it would best serve the youth's
 interest, such as when there is a potential conflict of interest. (Agreement, ¶ IV(E).)

1 Defense counsel will then be able to work with the team to ensure that the youth
2 receives the resources and supports the youth has requested or needed as part of the
3 YAT program or any other non-court-ordered supervision.

4 **4. Robust Notice Will Be Provided to Youths and Their**
5 **Parents/Guardians**

6 The Parties agreed that youth will be afforded due process in all contacts with
7 Defendants related to the YAT program or any other non-court-ordered supervision
8 program. (Agreement, ¶ V(A).) As such, before assigning any youth to the YAT
9 program, the Probation Department shall determine that there is probable cause to
10 believe the youth committed the alleged offense that is the basis for the petition.

11 (Agreement, ¶ V(A)(1).)

12 When a youth is referred to the YAT program, the Probation Department will
13 provide the youth and the youth's parent or guardian(s) with an easy-to-understand
14 notice, available in English and Spanish, that includes: (a) the charges and
15 allegations made against the youth; (b) a description of the YAT program; (c) notice
16 that information regarding the youth's participation may be disclosed to the juvenile
17 court in future proceedings; (d) notice that the youth's information will be stored in
18 County records, unless the records are later sealed or destroyed; (e) the criteria for
19 successful completion of the program; and (f) the right to have certified
20 interpretation at YAT program meetings. (Agreement, ¶ V(A)(2)-(3).)

21 If the youth chooses to participate, the Probation Department must also
22 provide notice of completion of the program and/or notice if the youth is in danger
23 of not completing the program. (Agreement, ¶ V(A)(9)-(10).) Additional
24 protections and procedures are required in special circumstances involving
25 accommodations for disabilities, or where the Probation Department seeks to
26 impose drug or alcohol testing and in other circumstances more fully described in
27 the Agreement. (See Agreement, ¶ V(A)(4), (6), (7).)

28

1 **5. Training and Guidelines Will Ensure Reliability of Risk Assessments**

2 The Probation Department currently uses the Ohio Youth Assessment System
3 for Diversion (“OYAS”) to determine whether youth referred to the YAT program
4 should be put on a YAT contract or should receive lesser interventions. (Agreement,
5 ¶ VI(A).) The two lesser inventions are (1) a 30-day consequence agreement, or (2)
6 “counsel and close,” i.e., providing an advisory/warning to the youth and closing the
7 case. (*Id.*)

8 The Agreement provides training and guidelines aimed at ensuring reliability
9 and consistency in officers’ use of the OYAS system or any other risk assessment
10 system, should the Probation Department change systems. (*Id.*, ¶ VI(A)(1)-(2).) This
11 training and assessment will also protect against any explicit or implicit racial biases.

12 **6. YAT Contracts Will Provide Constitutionally Sufficient Notice,**
13 **Focus on More Positive Development, and Exclude Allegedly**
14 **Unconstitutional Terms**

15 Plaintiffs allege that the form of contracts used by the YAT program fail to
16 provide adequate notice to the youth and parent or guardian(s), include
17 unconstitutional terms, and focus on punitive measures to obtain the child’s
18 compliance. The Agreement reforms these contracts and the process for developing
19 them.

20 Under the Agreement, when a youth decides to participate in the YAT
21 program, the youth’s contract will be jointly developed by the youth, the youth’s
22 parent or guardian(s), defense counsel, and the YAT probation officer, based on the
23 template attached to the Agreement as Exhibit A. (Agreement, Ex. 1(A).) The
24 contract will provide information including the charges or allegations against the
25 youth, positive development goals, identification of the youth’s strengths, resources
26 for the youth and other terms relating to the youth’s participation. (*Id.*, ¶ VII(A)(1)-
27 (2) (list of information included in contracts), Ex. 1(A) (contract template).)
28

1 No YAT contract shall include the following terms: (1) tour of a correctional
2 facility; (2) prohibitions against the child associating with particular persons;⁵ or (3)
3 searches of the child’s person, vehicle, premises, cell phone, or other personal
4 possession. (Agreement, ¶ VII(A)(5)(a)-(c).)

5 There will be a presumption against including contract terms allowing drug or
6 alcohol testing. (Agreement, ¶ V(A)(4).) Such terms may only be provided if there
7 is a direct nexus between the condition and the alleged offense, or where subsequent
8 incidents of drug or alcohol usage have been identified. (*Id.*, ¶ V(A)(4), VII(A)(6).)
9 When such terms are included, additional notice and safeguards are required. (*Id.*)

10 The contracts must be translated into another language when needed for the
11 youth or the youth’s parent or guardians. (Agreement, ¶ VII(A)(3).) The Probation
12 Department must also provide accommodations for students with disabilities. (*Id.*, ¶
13 VII(A)(3)-(4).)

14 **7. The Probation Department Will Provide Increased Protections**
15 **Regarding Record Collection, Creation, and Retention**

16 The Parties agreed that the Probation Department will not collect or maintain
17 information on youth who do not fall under Welfare & Institutions Code § 601 or §
18 602. (Agreement, ¶ VIII(A).) For those referred to the YAT program under Section
19 601, the Probation Department will retain only information that is obtained in the
20 application for a petition, and only for the period of time required by the Probation
21 Department’s retention policy. (*Id.*) No information about youth referred under
22 Section 601 will be maintained in any gang-related intelligence databases, nor will
23 the Probation Department seek or obtain information related to the immigration
24 status of the youth or their parents or guardian(s). (*Id.*, ¶ VIII(B)-(C).)

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28 ⁵ The Settlement Agreement provides an exception for co-participants, victims, or
witnesses related to the alleged referral offense. (Agreement, ¶ VII(A)(5)(b).)

1 For youth referred under Section 602, the Probation Department will seek to
2 minimize the amount of information requested and retained from the youth and the
3 youth's parent or guardian, and it will maintain confidentiality over the records as
4 provided by applicable law. (Agreement, ¶ VIII(D)(2)-(3).) Youth and their parents or
5 guardians will have the right to inspect the information retained, and the Probation
6 Department must provide notice prior to obtaining certain information concerning health
7 or mental health. (*Id.*, ¶ VIII(D)(2)-(3).)

8 **8. The Department Will Provide Data for Analysis of Referrals,**
9 **Participation, and Outcomes in YAT**

10 The Parties agreed that the Probation Department will provide the Juvenile
11 Justice Coordinating Council ("JJCC") and the County Executive Officer annual
12 analyses of anonymized data regarding referrals, participation and outcomes for
13 youth in the YAT program or any other non-court-ordered juvenile supervision
14 program, including disaggregation by race and ethnicity to track and address racial
15 disparities. (Agreement, ¶ IX(A)-(B).) Written reports will be publicly available.
16 (*Id.* ¶ IX(B).) These reports and analyses will allow the JJCC, the County, and
17 others to evaluate the effectiveness of the program and identify disparities and
18 problems.

19 The report shall include information collected by the Probation Department
20 throughout the year. Specifically, within 180 days of the effective date of the
21 Agreement, the Defendants shall, on a quarterly basis, collect and analyze data
22 regarding youth who are placed into the YAT program or any other non-court-
23 ordered supervision program. (Agreement, ¶ IX(A).) Defendants' analysis shall
24 disaggregate the collected data by race/ethnicity, gender, age at time of alleged
25 offense, and foster youth status. (*Id.*) The written reports will be published and
26 maintained at the Probation Department website. (*Id.*, ¶ IX(B).)

27
28

1 **9. The Department Will Conduct YAT-Specific Training and Modify**
 2 **Certain Policies and Public Information**

3 The Parties agreed that the Probation Department will create a mandatory
 4 training program for those involved in the YAT program and similar programs and
 5 to personnel assigned to juvenile intake functions. (Agreement, X(D).) The
 6 Defendants agreed to provide such training on a yearly basis on the modified
 7 policies and procedures reflected in the Agreement. (*Id.*, ¶ X(B), (D).) The training,
 8 which will be led by experts Scott MacDonald and Naomi Goldstein, will
 9 emphasize: positive youth development, identifying needed educational supports,
 10 learning about youth responses to trauma, and increasing cultural competence and
 11 awareness of implicit bias. (*Id.*, ¶ X(D), Ex. 1(B).)

12 The County will revise all policies, procedures and public information to
 13 conform to the terms of the Agreement. (Agreement, ¶ X(A), (C).) Defendants will
 14 also incorporate all the existing policies, processes and/or operating procedures,
 15 whether written or unwritten, into their new training program. (*Id.*, X(A).)

16 **10. Seven Million Dollars of Funding Will Be Provided to Community-**
 17 **Based Organizations to Serve Youth Referred to or in the YAT**
 18 **Program, and Membership on the Juvenile Justice Coordinating**
 19 **Council Will Be Expanded to Allow for Greater Community Input**

20 The JJCC is a County body composed of representatives from the Probation
 21 Department, law enforcement agencies, schools, social service agencies, and
 22 community service providers. The JJCC's role is to oversee and distribute funding
 23 for County programs, including the YAT program, that are funded through the
 24 Juvenile Justice Crime Prevention Act.

25 The County agreed to add five additional community representatives to the
 26 JJCC, to be appointed through the Riverside County Board of Supervisors.
 27 (Agreement, ¶ XI(A).) Plaintiff Sigma Beta Xi, Inc., will have an additional seat on
 28 the JJCC for two years. (*Id.*) The JJCC, in addition to its statutory duties, shall
 solicit and incorporate community feedback, review the data reports generated by

1 the County described in Section IX of the Agreement, develop action plans and
2 strategies to reduce disproportionalities in referrals and enrollment of youth in the
3 YAT program, evaluate the effectiveness of the program and services provided in
4 the YAT program, and identify potential improvements or modifications to
5 Defendants' policies and/or practices. (*Id.*)

6 The County will also provide a minimum of \$7 million to community-based
7 organizations that have focused on positive youth development practices and have
8 demonstrated effectiveness in providing affirmative, evidence-based supports or
9 services primarily to the Riverside County community on a voluntary basis.

10 (Agreement, ¶ XII.) Specifically, the County will provide \$1.4 million annually for
11 five years to these community-based organizations, subject to a request for proposal
12 process, including review by the JJCC. (*Id.*)

13 **11. YAT Case Files for Individual Youth Will Be Sealed or Destroyed,**
14 **Which Will Effectively Result in Expungement**

15 The Agreement provides a process to seal and/or destroy individual YAT case
16 files, which will differ for youth, depending upon how they were referred.

17 (Agreement ¶ XIII.) Specifically, within 180 days of the effective date of the
18 Agreement, all such files will be identified and specific action shall be taken. (*Id.*, ¶
19 XIII(A).)

20 For each youth referred to or placed on YAT probation *without* an application
21 for a petition, the Probation Department will identify, seal and destroy the youth's
22 YAT file within 180 days. (Agreement, ¶ XIII(A)(1).) For youth referred to or
23 placed on YAT *with* an application for a petition under the jurisdiction of Section
24 601, the Probation Department will maintain or destroy the youth's YAT file,
25 consistent with the department's two-year retention policy. Any such file that is
26 maintained will be destroyed immediately after the two-year time period has
27 elapsed. (*Id.*, ¶ XIII(A)(2).) Consistent with the terms of the Agreement, these
28

1 juvenile records will essentially be considered expunged once the Agreement has
2 been executed by the Parties.

3 For youth referred to or placed in the YAT program pursuant to Section 602,
4 the Probation Department will file an application to the Presiding Judge of the
5 Riverside County Juvenile Court, jointly with Plaintiffs, requesting that the
6 Riverside County Juvenile Court seal all juvenile case files that would be eligible
7 for sealing in accordance with applicable juvenile laws. (Agreement, ¶ XIII(A)(3).)

8 **12. The Department Will Agree to Enforcement Measures and**
9 **Monitoring**

10 The Agreement identifies specific records that Defendants will provide to
11 Class Counsel to certify that Defendants are complying with specific terms of the
12 settlement. (Agreement, ¶ XIV(A).) These records will include all amendments and
13 modifications to Defendants' departmental policies and procedures regarding the
14 YAT program or any other non-court-ordered supervision program administered by
15 the Probation Department, consistent with the Agreement. (*Id.*, ¶ XIV(A)(1).) All
16 awareness, educational, and outreach information created, drafted, or released by
17 Defendants reflecting the terms of the Agreement will be provided to Class Counsel.
18 (*Id.*, ¶ XIV(A) (2).) In addition, all template notifications sent to minors and/or their
19 parents and guardians and all template voluntary juvenile probation contracts used
20 in the YAT program or any other non-court-ordered supervision program
21 administered by Defendants will be provided to Class Counsel. (*Id.*, ¶ XIV(A)(3)-
22 (4).)

23 The Parties also agree that the Court should appoint Scott MacDonald and
24 Naomi Goldstein as qualified joint third-party monitors to ensure the County's
25 compliance with the Agreement. (*Id.*, ¶ XIV(B).) These two experts have decades
26 of experience between them in positive youth development, and understanding how
27 probation departments function and how to create transformational change in
28 probation departments. They will jointly monitor the County for five years and

1 provide the Court with the information necessary to oversee Defendants'
2 compliance during the period of time that the Court will maintain jurisdiction over
3 this case.

4 **B. The Plaintiffs and the Class Members Will Agree to a Release**

5 In exchange for the benefits conferred by the Settlement, the Plaintiffs and
6 Class Members agree to release Defendants from liability for the claims for
7 declaratory or injunctive relief brought in this lawsuit, as further described in the
8 Agreement. (Agreement, ¶¶ II(A), I(J).)

9 **C. The Parties Have Agreed to Payment of Attorneys' Fees and Costs**

10 Defendants agree to pay attorneys' fees and costs to Class Counsel of
11 \$1 million. The Parties have agreed that this is a fair, reasonable, and appropriate
12 amount, given the significant time and effort that Class Counsel has spent
13 investigating this case pre-litigation, drafting and developing the complex and
14 comprehensive pleadings, moving for class certification, conducting formal and
15 informal discovery, and drafting and negotiating a very detailed and complex
16 settlement at arms-length over a period of several months. (*See* Torres-Guillén
17 Decl., ¶¶ 9-10.)

18 The attorneys' fees are also fair, reasonable and appropriate given that Class
19 Counsel are highly experienced, well-regarded, skilled litigators who effectively
20 managed this complex class action; achieved an exceptional result for the thousands
21 of class members, protecting critical constitutional and civil rights; and was the
22 result of counsel's extensive and uncompensated effort since initiating their
23 investigation into the YAT program in 2015. (*See* Torres-Guillén Decl., ¶¶ 3-19,
24 Exs. 2-5.) The amount of fees sought is particularly reasonable considering that, as
25 a result of settlement negotiations, Plaintiffs have substantially discounted their fees
26 below their lodestar and the amount that they would have sought in the absence of a
27 settlement agreement. (*Id.*, ¶ 18.)

28

1 **D. This Court Will Have Continuing Jurisdiction**

2 The Agreement provides that the District Court will retain jurisdiction to
3 oversee compliance with the Agreement, enforce the Agreement's terms, and hear
4 any disputes that cannot be informally resolved by the Parties pursuant to the
5 dispute resolution process set forth in the Agreement. (Agreement, ¶ XV.)

6 **IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL**

7 The Court shall grant final approval of a class action settlement if it is "fair,
8 reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). At preliminary approval stage,
9 the Court need only determine that the proposed settlement is potentially fair or
10 "within the range of possible approval." *True v. American Honda Motor Co.*, 749 F.
11 Supp. 2d 1052, 1063 (C.D. Cal. 2010); *see also Acosta v. TransUnion, LLC*, 243
12 F.R.D. 377, 386 (C.D. Cal. 2007).

13 To determine whether a class action settlement is potentially fair, courts in the
14 Ninth Circuit consider the following factors: (1) the strength of the plaintiff's case;
15 (2) the risk, expense, complexity, and likely duration of further litigation; (3) the
16 risk of maintaining class action status throughout the trial; (4) the extent of
17 discovery completed and the stage of the proceedings; (5) the amount offered in
18 settlement; (6) the experience and views of counsel; (7) the presence of a
19 governmental participant; and, (8) the reaction of the class members to the
20 settlement. *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003).

21 While there is heightened scrutiny in granting preliminary settlement approval
22 where a settlement class is stipulated to and class certification was not
23 independently litigated (*see, e.g., id.* at 952), the proposed settlement well meets any
24 heightened inquiry given the showing made during the class certification process,
25 the extensive arms-length negotiation process, the favorable settlement terms, and
26 the heavily discounted attorneys' fees.

27
28

1 **A. The Settlement was the Result of Informed, Non-Collusive, and Arms-**
2 **Length Negotiations Between Experienced Counsel**

3 Courts presume that a class action settlement was fair and reasonable when it
4 was the result of “non-collusive, arms’ length negotiations conducted by capable
5 and experienced counsel.” *In re Netflix Privacy Litig.*, No. 5:11-CV-00379 EJD,
6 2013 WL 1120801, at *4 (N.D. Cal. Mar. 18, 2013). “To determine whether there
7 has been any collusion between the parties, courts must evaluate whether ‘fees and
8 relief provisions clearly suggest the possibility that class interests gave way to self
9 interests,’ thereby raising the possibility that the settlement agreement is the result
10 of overt misconduct by the negotiators or improper incentives for certain class
11 members at the expense of others.” *Litty v. Merrill Lynch & Co.*, Case No. CV 14-
12 0425 PA (PJWx), 2015 WL 4698475, *108 (C.D. Cal. Apr. 27, 2015) (*quoting*
13 *Staton*, 327 F.3d at 961).

14 Here, settlement negotiations were conducted at arms’ length, with extensive
15 back-and-forth between the Parties on dozens of substantive points. The Parties
16 reached final settlement terms after nearly twenty in-person meetings and numerous
17 telephonic meetings over more than six months. (Torres-Guillén Decl., ¶ 9.) These
18 discussions were conducted by highly experienced, well-regarded counsel, with
19 significant experience in litigation, civil rights, juvenile justice, criminal justice,
20 class actions, and other complex litigation. (*Id.*, ¶ 19, Exs. 2-5.) Class Counsel
21 were able to achieve exceptional and comprehensive results for the class that
22 protects their constitutional and civil rights. (*Id.*, ¶¶ 15-19.)

23 Additionally, “[t]he parties must . . . have engaged in sufficient investigation of
24 the facts to enable the court to intelligently make an appraisal of the settlement.”
25 *Acosta*, 243 F.R.D. at 396 (internal quotation marks omitted). In this case,
26 negotiations were informed by extensive formal and informal discovery provided by
27 Defendants, thousands of pages of public records obtained by Plaintiffs prior to filing
28 the lawsuit, and Plaintiffs’ comprehensive independent investigations. (Torres-

1 Guillén Decl., ¶¶ 3-6.) Class counsel reviewed the information obtained and analyzed
2 the YAT program, including the manner it was being implemented, the youth targeted,
3 and the constitutional rights and violations implicated. (*Id.*, ¶¶ 4-5.) After carefully
4 assessing the issues and working closely with Plaintiffs and other members of the
5 class, Class Counsel developed a comprehensive plan to eradicate the problems in the
6 YAT program and put in place positive reforms. (*Id.*, ¶ 6.) Although Plaintiffs did
7 not conduct depositions, there were extensive day-long meetings with Defendants and
8 Defendants’ counsel to further assess, address, and correct the issues regarding how
9 the YAT program is operated and a myriad of other Probation Department policies
10 and procedures. Almost all of these meetings included high-level staff from the
11 Probation Department and the County who provided significant insight and
12 information regarding how the YAT program works and feedback on the feasibility of
13 proposed reforms. (*Id.*, ¶¶ 10, 12.) This substantial information, which was obtained
14 through careful investigation and review of all the documentary evidence, and
15 gathered through extensive meetings with Defendants and Defendants’ counsel, was
16 sufficient to give the parties a clear view of the strengths and weaknesses of their
17 respective cases. *See Lewis v. Starbucks Corp.*, No. 2:07-cv-00490-MCE, 2008 WL
18 4196690, at *6 (E.D. Cal. Sept. 11, 2008) (“[A]pproval of a class action settlement is
19 proper as long as discovery allowed the parties to form a clear view of the strengths
20 and weaknesses of their cases.”).

21 The resulting Agreement is highly detailed and exceptionally favorable to the
22 class members and all other youth in Riverside County who may become involved
23 in the YAT program or other non-court-ordered probation supervision programs.
24 The Agreement also includes the creation of template documents that would be used
25 in the various stage of the YAT program, from the initial notice given to youth to
26 the actual YAT contract. (Agreement, Exs. 1(A).) It reflects both sides’
27 conscientious efforts to provide meaningful, beneficial changes in the YAT program
28 and any other non-court-ordered supervision program operated by the Probation

1 Department, and in related governmental processes. (Torres-Guillén Decl., ¶ 16.)
2 Class counsel also urged, fought for, and secured agreement from the County to
3 allow defense counsel to be part of the YAT team and to provide defense counsel to
4 all youth throughout the program. (*Id.*, ¶ 15.) This new right for all youth who are
5 referred to the YAT program or any other non-court-ordered probation supervision
6 to receive no-cost defense counsel will be historic. (*Id.*) In sum, this Agreement
7 amply demonstrates that the Parties’ negotiations were informed, arm’s-length, and
8 non-collusive.

9 **B. The Substantial Relief Provided by the Settlement Is Fair and**
10 **Reasonable Given the Strength of Plaintiffs’ Case and the Risks of**
11 **Litigation**

12 The law and the evidence fully support Plaintiffs’ claims that Defendants’
13 operation of the YAT program violates the constitutional rights of the class
14 members and that Section 601 is unconstitutionally vague. For example,
15 Defendants failed to give adequate notice to youth and their guardians about the
16 voluntary nature of the program, the basis of their referrals to the YAT program, the
17 requirements of the program, and the fact that participating in the program would
18 make them ineligible for diversion in the future. (*See* First Amended Complaint
19 (“FAC”), ECF No. 38, ¶¶ 8-9, 53-63, 76, 87-92, 99-104, 110-120, 141-147.)
20 Instead, youth were urged to agree to YAT contracts in highly coercive
21 environments (often at law enforcement offices) and without any legal counsel.
22 (*See id.*) These facts strongly support Plaintiffs’ theory that Defendants violated the
23 due process rights of youth referred to the YAT program. For class members—who
24 were referred pursuant to Section 601—this claim is even stronger because in
25 Riverside County there was little or no possibility of prosecuting these youth for this
26 kind of conduct, which is typically no more than minor childhood misbehavior.
27 (*See id.*, ¶¶ 40-52.) This is just one example of the strength of Plaintiffs’ claims.

28 Plaintiffs’ case was also strengthened by Defendants’ agreement to stipulate
to class certification and the appointment of class counsel. In September 2018, the

1 Court granted the motion, concluding that the class action satisfied the requirements
2 of numerosity, commonality, typicality, and adequacy, and that it was appropriate as
3 a Rule 23(b)(2) injunctive relief class to address the legal claims of potentially
4 thousands of youth who were referred and/or placed in the YAT program. (ECF No.
5 37.) Certification enabled Plaintiffs to seek class-wide declaratory and injunctive
6 relief on behalf of all class members.

7 The strength of Plaintiffs' claims, however, must be balanced against the
8 inherent risk of litigation, the complexity of the case, the fact that some of the legal
9 questions may present issues of first impression, the significant amount of time it
10 would take to litigate this case and the uncertainty of whether Plaintiffs would
11 obtain all the relief they seek.

12 By negotiating and agreeing to a comprehensive settlement, Plaintiffs have
13 eliminated the risk of litigation and ensured broad and substantial relief. That relief
14 includes significant changes to the way Defendants operate the YAT program and
15 other non-court-ordered supervision programs for Riverside County youth, along
16 with additional beneficial changes, such as providing additional community
17 oversight and funding to community organizations. (*See generally* Agreement;
18 Torres-Guillén, Decl. ¶ 15.) While some of this relief might have been obtained
19 through trial, the relief provided in the Agreement is much more extensive and
20 detailed than the injunctive relief that Plaintiffs could probably have obtained from
21 the Court. (*Id.*, ¶ 17.) The Parties' carefully negotiated settlement also has the
22 benefit of months of input from Defendants on what kind of policies and procedures
23 would be most effective and efficient in reforming the YAT program, along with
24 input from Plaintiffs on what kind of policies and procedures would cure the civil
25 rights violations and best help class members. (*Id.*, ¶¶ 12, 16.) It is unlikely that a
26 successful trial would have resulted in such extensive relief.

27 The Agreement will also provide relief much sooner than if the Parties
28 continued to litigate. (*See generally* Agreement.) The substantial and immediate

1 relief described in the Agreement weighs heavily in favor of preliminary approval.
2 *See Kim v. Space Pencil, Inc.*, No. C 11-03796 LB, 2012 U.S. Dist. LEXIS 169922,
3 at *15 (N.D. Cal. Nov. 28, 2012) (when a class settlement obtains “substantial and
4 immediate relief” to the class, that relief weighs “heavily in favor of its approval
5 compared to the inherent risk of continued litigation, trial, and appeal”).

6 **C. The Parties Do Not Anticipate Significant Objections from Class Members**

7 The Class Members have not yet been provided notice of the settlement, but
8 the named class representatives have all been consulted during negotiations and
9 have approved the terms of the Agreement. (Torres-Guillén Decl., ¶ 11.) Plaintiff
10 Sigma Beta Xi, Inc.—a non-profit organization that provides mentoring to youth
11 who have been involved in the YAT program and is interested in furthering their
12 best interests—has also approved the Agreement. (*Id.*) Given the significant
13 benefits to the Class members, the extensive rights vindicated for Riverside
14 County’s youth, and the comprehensive and transformative changes to the YAT
15 program, the Parties do not anticipate significant objections to the settlement, if any.

16 **V. THE NOTICE PLAN IS REASONABLE AND APPROPRIATE**

17 Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court
18 must direct the parties to provide notice of the proposed settlement “in a reasonable
19 manner” to all class members who would be bound by it. Fed. R. Civ.
20 P. 23(e)(1)(B). No specific procedure is required. “Notice is satisfactory if it
21 ‘generally describes the terms of the settlement in sufficient detail to alert those with
22 adverse viewpoints to investigate and to come forward and be heard.’” *Churchill*
23 *Vill., LLC*, 361 F.3d 566, 575 (9th Cir. 2004). For 23(b)(2) injunctive relief classes,
24 individual notice is not required. *Compare* Fed. R. Civ. P. 23(c)(2)(A) with
25 23(c)(2)(B).

26 The Parties’ proposed notice plan satisfies these requirements. The draft
27 notice comes in three versions. First, a short “postcard” notice, to be mailed to all
28 class members, will provide a basic summary of the case, and will direct the reader

1 to website materials for more information. (*See* Torres-Guillén Decl., Ex. 1(D).)
2 Second, a detailed notice, which will be posted online and in locations where YAT
3 probation officers are stationed, will provide a thorough description of the
4 settlement terms. (*Id.*) Third, a “kid-friendly” notice, which will also be posted
5 online and in locations where YAT probation officers are stationed, will describe the
6 settlement terms using language that has been drafted specifically to ensure it is
7 understandable to the youngest class members. (*Id.*) All three of these notices will
8 use easy-to-understand language, with special attention being given to the “kid-
9 friendly” version. All three of the notices will explain how the class members can
10 make objections, the deadline for doing so and the date and time of the final
11 approval hearing. (*Id.*)

12 A copy of the detailed and the “kid-friendly” notice will be posted in the
13 following locations: on the County’s website, on various County departments’
14 webpages, on the websites belonging to Class Counsel, and in the locations where
15 YAT officers are regularly stationed. (Agreement, ¶ XVI(A)(1)(a), (c), (d).) A
16 copy will also be provided to juvenile defense attorneys in the County’s Office of
17 Public Defender and the Alternate Defender. (*Id.*, ¶ XVI(A)(1)(b).) Lastly, a copy
18 of the “postcard” notice will be provided individually by first class mail to the youth
19 and/or parents or guardians of each youth whose records will be sealed or destroyed
20 pursuant to the Agreement. (*Id.*, ¶ XVI(A)(1)(e).)

21 The Parties have agreed upon a professional vendor, AB Data, to administer
22 the notice. (*Id.*, ¶ XVI(A); Torres-Guillén Decl., Ex. (1)D.) The firm has been in
23 business more than 30 years and has significant experience in class action
24 administration, including notice administration, publication of notice across various
25 media platforms, claims processing and distribution plans. (Torres-Guillén Decl.,
26 Ex. (1)D.) The firm is well equipped to administer this class notice, which is
27 significantly less complicated than in most cases because it does not involve money
28 payouts or coupons.

1 As described above, this notice procedure will provide notice in several
 2 locations where class members are likely to see it. This notice will also provide
 3 individual notice to the class members who are most likely to be individually
 4 affected and benefited by the Defendants' agreement to seal or destroy records. The
 5 Notice is reasonable and satisfies the requirements of Rule 23 for a 23(b)(2) class.

6 **VI. THE PROPOSED SCHEDULE OF EVENTS**

7 The Parties respectfully request that the Court adopt the following proposed
 8 schedule, upon granting this Motion, assuming that it is granted on the date of the
 9 hearing.⁶

<u>Date</u>	<u>Event</u>	<u>Timing</u>
Aug. 26, 2019	Hearing on Motion for Preliminary Approval	
Sept. 5, 2019	Deadline to complete notice to class	10 days after preliminary approval
Oct. 21, 2019	Last day for class members to object to settlement	45 days after notice is completed
Nov. 11, 2019	Parties will file a summary of any objections or responses received	20 days after last day to object
Nov. 11, 2019	Plaintiffs file Motion for Final Approval	65 days after posting of class notice
Dec. 9, 2019	Final Approval Hearing	28 days from filing of Motion for Final Approval

24 **VII. CONCLUSION**

25 Based on the forgoing, the Plaintiffs respectfully request that the Court grant
 26 this Motion and enter the proposed unopposed Preliminary Approval Order. The
 27

28 ⁶ Deadlines that land on weekends have been moved to the next business day.

1 proposed settlement that the Parties have carefully negotiated over the course of
2 several months is not only fair, reasonable, and adequate, but in fact provides
3 substantial and immediate benefits to the class of the type that might not be
4 available even after a successful trial.
5

6 Dated: July 24, 2019

7 By: /s/ Sylvia Torres-Guillén
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10 Sylvia Torres-Guillén
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