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21 *Attorneys for PLAINTIFF MICHAEL GARCIA and the Plaintiff Class*

22 UNITED STATES DISTRICT COURT
 23 FOR THE CENTRAL DISTRICT OF CALIFORNIA

24 MICHAEL GARCIA on behalf of
 25 himself and others similarly situated,

26 Plaintiff,

27 vs.

28 LOS ANGELES COUNTY SHERIFF'S
 DEPARTMENT, a public entity, et al.,

Defendants.

Case No. : CV 09-08943 DMG (SHx)

PLAINTIFF'S NOTICE OF MOTION
 AND MOTION FOR AWARD OF
 ATTORNEYS' FEES AND
 EXPENSES RELATED TO CLASS
 ACTION SETTLEMENT WITH
 COUNTY OF LOS ANGELES

Date: July 28, 2017

Time: 10AM

Courtroom: 8C

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, Plaintiff
4 Michael Garcia, on behalf of himself and the Plaintiff class, seeks an award of
5 counsel fees and expenses in the amount of \$200,000. Plaintiff and Defendants
6 County of Los Angeles, Los Angeles County Sheriff’s Department, Sheriff Baca in
7 his official capacity (collectively, “County Defendants”) reached a settlement of
8 Plaintiff’s claims in which the parties agreed that Plaintiff’s counsel shall be
9 entitled to such an award. The Court granted preliminary approval of that
10 settlement on April 13, 2017. (Dkt. No. 432.)

11 Plaintiff’s claims in this action are based on allegations that he requested
12 special education services, but none were available or provided to him during his
13 detention in Los Angeles County Jail (“LACJ”) facilities. (Dkt. No. 1 ¶ 1). Further,
14 Plaintiff alleged that as a result of Defendants’ failure to provide these services,
15 eligible students are denied meaningful access to the high school education
16 program offered at LACJ. (Dkt. No. 1 ¶ 1-2).

17 In December 2009, Plaintiff filed this lawsuit against Defendants Los
18 Angeles County Sheriff’s Department, County of Los Angeles, Los Angeles
19 County Office of Education, Los Angeles Unified School District, California
20 Department of Education, and Hacienda La Puente Unified School District for
21 violations of the Individuals with Disabilities Education Act (“IDEA”), the
22 Americans with Disabilities Act (“ADA”), Section 504 of the Rehabilitation Act of
23 1973, the Due Process and Equal Protection Clauses of the Fourteenth Amendment
24 of the United States Constitution, the California Constitution, and California law.
25 (Dkt. No. 1).

26 On or about April 29, 2010, the Court entered an Order granting Plaintiff’s
27 Motion for Class Certification for a class defined pursuant to Rule 23(b)(2) of the
28 Federal Rules of Civil Procedure for purposes of injunctive and declaratory relief

1 as follows:

2 All students who are or were eligible for special education
3 and related services under 20 U.S.C. § 1400 et seq. while
4 detained in any Los Angeles County Jail
5 (“LACJ”) facility, and who: (a) are currently detained at
6 any LACJ facility; b) are detained at any LACJ facility in
7 the future. (Dkt No.135).

8 The Court went on to appoint the Disability Rights Legal Center (“DRLC”) and
9 Milbank Tweed Hadley & McCloy, LLP (“Milbank”) as class counsel. (Dkt
10 No.135)

11 The Parties engaged in extensive discovery and motion work. In addition to
12 substantial written discovery, including interrogatories, requests for admissions,
13 and requests for production of documents, which resulted in the combined
14 production of approximately hundreds of documents , Plaintiffs deposed four
15 County of Los Angeles officials and the County of Los Angeles’ expert witness.
16 Declaration of Anna Rivera In Support of Motion for Attorney Fees (“Rivera
17 Decl.”) ¶6. The County of Los Angeles deposed the Named Plaintiff as well as
18 Plaintiff’s expert witness. Rivera Decl. ¶6. Due to disagreements that arose during
19 the discovery process, the Parties met and conferred on many occasions. Rivera
20 Decl. ¶6. Plaintiffs’ counsel also filed a discovery motion. Rivera Decl. ¶6.

21 In addition to extensive discovery, the parties also filed cross-motions for
22 summary judgment. (Dkt. Nos. 195 and 208). Plaintiffs successfully challenged
23 County Defendants’ Motion for Summary Judgment as to Plaintiffs’ claims under
24 the IDEA. The Court ruled on these motions on or about January 19, 2011. (Dkt.
25 Nos. 305 and 306 Tentative Ruling on Motions for Summary Judgment and Order
26 Adopting Tentative Ruling, respectively) Rivera Decl. ¶7.

27 In the summer of 2011, the Parties began settlement negotiations. The
28 Parties participated in extensive arms-length settlement negotiations, which
included extensive written negotiations, multiple in-person meetings, telephonic

1 settlement negotiations, and multiple in-person settlement conferences with Judge
2 Terry J. Hatter Jr., who acted as a settlement officer in this case. Rivera Decl. ¶8.

3 Concurrently with the instant case, Los Angeles Unified School District
4 commenced a civil action (“Related Case”) in the United States District Court for
5 the Central District of California, Case No. 2:09-cv-09289-VBF-CT appealing the
6 decision of the California Office of Administrative Hearings (“OAH”) which
7 found that, pursuant to California Education Code section 56041, the LAUSD was
8 the entity legally responsible for providing Plaintiff Michael Garcia with a free
9 appropriate public education (“FAPE”) while he was incarcerated in the LACJ.
10 The District Court in the Related Case subsequently entered orders affirming the
11 OAH decision.

12 LAUSD appealed that order to the United States Court of Appeals for the
13 Ninth Circuit. At the request of the Ninth Circuit Court of Appeals in the Related
14 Case, the California Supreme Court agreed to decide the certified question: “Does
15 California Education Code section 56041 - which provides generally that for
16 qualifying pupils between the ages of eighteen and twenty-two, the school district
17 where the child’s parent resides is responsible for providing special education and
18 related services – apply to children who are incarcerated in county jails?”

19 In light of the Related Case, this Court stayed the Lawsuit pending the
20 ultimate outcome of the Related Case. (Dkt. No. 357). On or about December 12,
21 2013, the California Supreme Court issued a seminal decision, holding that the
22 assignment of responsibility for providing special education to eligible county jail
23 inmates between the ages of 18 and 22 years is governed by the terms of California
24 Education Code Section 56041.

25 On January 28, 2014, finding that the District Court’s ruling in the Related
26 Case was consistent with the California Supreme Court’s answer to the certified
27 question, the Ninth Circuit Court of Appeals affirmed the District Court’s decision
28 affirming the 2009 decision of the administrative law judge.

1 Subsequent to this decision, the Parties renewed their settlement negotiations
2 and worked diligently to finalize the terms of the proposed Settlement Agreement.
3 On or about February 9, 2017 the Parties entered into a written Settlement
4 Agreement (“Agreement”). Rivera Decl. ¶11, Exhibit A.

5 The main terms in this Agreement require the County Defendants to
6 establish a system by which eligible students will be identified and provided access
7 to special education services. To that end, the County Defendants have agreed to
8 implement and maintain several key procedures to inform inmates of the
9 availability and method of requesting special education services—procedures that
10 had not previously existed. These procedures include, *inter alia*:

- 11 • Administering a questionnaire to all newly booked 18-22 year old
12 individuals who are processed through the LACJ Inmate Reception Center
13 aimed at identifying those inmates who would like to receive special
14 education services while in the LACJ.
- 15 • Forwarding to the charter school currently providing educational services in
16 the LACJ the names of those individuals who affirmatively state they would
17 like to receive educational services while in jail.
- 18 • Distributing an informational pamphlet to inmates during inmate processing
19 and displaying on all televisions in the Inmate Reception Center information
20 on the availability of special education services and how to request them.
- 21 • Modifying the Inmate Grievance//Service Request Form to include a box
22 titled “Special Education/IEP.” Individuals will be able to check this box if
23 they wish to receive special education services while in the LACJ.
- 24 • Designating an employee or employees who will facilitate the provision of
25 special education services.

26 In addition to establishing systems to ensure that students are eligible for
27 special education, the Agreement also calls for monitoring of this Agreement. This
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1 includes, *inter alia*, an obligation for the LASD to provide reports which must
2 include: (1) the names, and dates of birth, of all individuals who have been
3 provided with special education and related services in the reporting period; (2) the
4 numbers of IEP meetings held at the LACJ, if any; (3) the names of school districts
5 that have sought access to the LACJ, if any; and (4) the number of administrative
6 due process hearings conducted at the LACJ, if any. The Court granted
7 preliminary approval of the settlement agreement on April 13, 2017. (Dkt. No.
8 432.)

9 Under Rule 23(h) of the Federal Rules of Civil Procedure, Class Counsel
10 requests approval of the negotiated settlement award for reasonable attorneys' fees
11 and costs in the amount of \$200,000 for work performed in this case with regard to
12 claims against the County Defendants. It is well settled that a plaintiff who
13 prevails in a civil rights action should ordinarily recover reasonable attorneys' fees.
14 *See, e.g. Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) (applying 42 U.S.C.
15 §1988). Plaintiff brought legal claims under numerous statutory provisions that
16 authorize an award of reasonable attorneys' fees and costs to prevailing plaintiffs.
17 *See, e.g.,* 42 U.S.C. §12205 (authorizing attorney's fees award to prevailing party
18 in ADA lawsuit); 29 U.S.C. §794(a) (authorizing attorney's fees award to
19 prevailing party in Section 504 lawsuit).

20 Plaintiff is plainly the "prevailing party" here because he secured a
21 substantial and important settlement agreement, enforceable in and by this Court.
22 *See Barrios v. California Interscholastic Federation*, 277 F.3d 1128, 1134 (9th Cir.
23 2002) (recognizing party prevails by obtaining enforceable judgment, consent
24 decree, or judicially enforceable settlement agreement). Furthermore, the
25 \$200,000 figure reached in the settlement agreement is fair and reasonable and
26 should be approved. Plaintiff's lodestar in this case, which is the reasonable
27 number of hours spent multiplied by a reasonable hourly rate for each attorney who
28

1 worked on the case, is \$537,279.25.¹ The \$200,000 in fees is just over 37% of
2 Class Counsel’s actual lodestar.

3 **II. THE NEGOTIATED AWARD IS REASONABLE UNDER THE**
4 **LODESTAR APPROACH**

5 The starting point for computation of attorneys’ fees in civil rights cases is
6 the “lodestar.” The lodestar is computed by multiplying the number of hours
7 reasonably expended by the reasonable hourly rates. *See Hensley*, 461 U.S. at 433.
8 The “resulting product is presumed to be the reasonable fee to which counsel is
9 entitled.” *Pennsylvania v. Delaware Valley Citizens Council for Clean Air*, 478
10 U.S. 546, 564 (1986) (internal quotations omitted). Where, as here, Plaintiffs
11 obtained substantial results, the “attorney should recover a fully compensatory fee .
12 . . . encompass[ing] all hours reasonably expended on the litigation. . . .” *Hensley*,
13 461 U.S. at 435.

14 **A. The Number of Hours Are Reasonable**

15 Here, Class Counsel expended nearly 770 hours on this matter as it related to
16 County Defendants, which is documented in the detailed billing records in the
17 declarations filed with this motion. Rivera Decl. ¶59, Ex. J; Declaration of Samir
18 L. Vora (“Vora Decl.”) ¶17, Ex. A. These hours were reasonable and necessary to
19 the successful litigation of this case on behalf of Plaintiff and the Settlement Class,
20 including for the work necessary to investigate and develop Plaintiffs’ claims,
21 secure class certification, secure discovery needed for trial (including work
22 required for multiple meet and confers, and successful motion to compel
23 discovery), prepare a motion for summary judgment, achieve a resolution that
24

25 ¹ Class counsel’s lodestar reflects total attorneys’ fees incurred up to
26 approximately October 2011, when the class action was primarily placed on hold
27 while the courts considered LAUSD’s appeal in the Related Case. In the exercise
28 of billing discretion, the hours referenced herein do not reflect fees associated with
reaching settlement after the California Supreme Court decision, which includes
drafting the preliminary approval motion and the instant motion for attorneys’ fees
and costs.

1 remedies violations of the civil rights of every student who is eligible for special
2 education in the LA county jail, and seek an award of attorneys' fees and costs
3 pursuant to federal and state law. Rivera Decl. ¶69. These hours were particularly
4 reasonable and necessary given the significance of the matters at issue. Rivera
5 Decl. ¶69. In addition, although several attorneys worked on the matter, it must be
6 emphasized that "broad-based class litigation often requires the participation of
7 multiple attorneys." *Davis v. City & Cnty. of San Francisco*, 976 F.2d 1536, 1544
8 (9th Cir. 1992); *Probe v. State Teachers' Ret. Sys.*, 780 F.2d 776, 785 (9th Cir.
9 1986).

10 **B. The Hourly Rates and Costs Are Reasonable**

11 Both the California Supreme Court and the United States Supreme Court
12 have specifically held that fee awards to public interest attorneys who do not
13 charge their clients must be based on the prevailing billing rates of attorneys in
14 private practice with similar skills and experience. *See Blum v. Stenson*, 465 U.S.
15 at 895(holding that the legislative history of the civil rights statutes required that
16 hourly rates for public interest attorneys equal prevailing private market rates);
17 *Serrano v. Unruh*, 32 Cal. 3d 621, 640-44 (1982). The reasonable rate is derived
18 from the reasonable market value of their services in the community, *Blum*, 465
19 U.S. at 895 n.11; *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001), and is based
20 on current, rather than historic, hourly rates for Plaintiffs' attorneys, *Missouri v.*
21 *Jenkins*, 491 U.S. 274, 284 (1989). Plaintiffs' lodestar in this matter is composed
22 of the actual time expended on this litigation by the DRLC and Milbank. Further, a
23 judgment for costs may be awarded to the prevailing party. 28 U.S.C. § 2412(a)(1).
24 Recoverable expenses include all "costs that are ordinarily billed to a client,"
25 including "telephone calls, postage, air courier and attorney travel expenses." *Int'l*
26 *Woodworkers of Am., AFL-CIO, Local 3-98 v. Donovan*, 792 F.2d 762, 767 (9th
27 Cir. 1985).
28

1 As noted, Plaintiff and the Plaintiff Class were represented by two legal
2 organizations: DRLC and Milbank. DRLC has regularly and recently been
3 awarded rates comparable to rates charged by major Los Angeles law firms that
4 handle civil rights and comparable litigation. The rates for Milbank attorneys and
5 other personnel at that firm are also in line with such rates.

6 **1) DRLC's Rates Are Reasonable**

7 DRLC specializes in disability rights litigation and is extremely well
8 qualified and competent in this field. *See generally* Rivera Decl. ¶¶2-3. Class
9 Counsel has submitted documentation that the hourly rates used to compute their
10 lodestar are their customary, current hourly rates. *See generally*, Rivera Decl.,
11 ¶¶15-18, Vora Decl. ¶¶19-25. The hourly rates requested by DRLC are
12 comfortably within the rates charged by skilled counsel in the Southern California
13 market in similar complex civil litigation. Declarations regarding the prevailing
14 market rate in the relevant community are sufficient to establish a reasonable
15 hourly rate. *See Widrig v. Apfel*, 140 F. 3d 1207, 1209 (9th Cir. 1998); *Guam*
16 *Soc'y of Obstetricians & Gynecologists v. Ada*, 100 F. 3d 691, 696 (9th Cir. 1996),
17 *cert. denied*, 522 U.S. 949 (1997). The rates requested are reasonable as measured
18 by the rates charged by attorneys of comparable experience and skill in the Los
19 Angeles area. Experts have opined that DRLC's current and historical rates are
20 reasonable and are well within the prevailing hourly rates of other civil rights
21 litigation firms. Rivera Decl. ¶17.

22 In addition, several courts in California's Central District have found
23 DRLC's hourly rates to be reasonable. Rivera Decl. at ¶16 Exhibits B-I (Orders
24 approving DRLC's rates: *Michael Garcia v. Los Angeles County Sheriff's Dept.*,
25 Case No. CV 09-8943 MMM (SHx); *California in Communities Actively Living*
26 *Independent and Free, et al. v. City of Los Angeles et al.*, Case No. CV 09-0287
27 CBM (RZx); *Peter Johnson v. Los Angeles County Sheriff's Department*, Case No.
28 CV 08-03515 DDP (SHx); *Willits et al v. City of Los Angeles et al*, Case No. CV

1 10-5782 CBM (RZx); *Greater Los Angeles Agency on Deafness, Inc. et al v.*
2 *Krikorian Premiere Theaters, LLC*, Case No. CV 13-07172-PSG (ASx)). In light
3 of the above, and as set forth below and in the supporting declarations, DRLC's
4 rates are reasonable and well-justified.

5 **2) Milbank's Rates Are Reasonable**

6 Milbank's rates are in line with the hourly rates of Milbank's peer firms,
7 which also are large New York-headquartered international firms at the top end of
8 the market. *Vora Decl.* ¶20. Thomson Reuters' Peer Monitor Public Rates program
9 compiles attorney and support staff hourly rates as publicly reported in court
10 filings throughout the country. The high hourly rate for partners based in New
11 York and California offices of Am Law 100 firms was \$1195/hour in 2012, for
12 associates it was \$990/hour, and for legal assistants and paralegals it was
13 \$665/hour. *Id.* ¶ 20. The data from this program confirms that the hourly rates
14 charged by Milbank in this litigation are in line with those charged by other top-
15 tier "Am Law 100" firms. *Id.*

16 Furthermore, courts routinely approve Milbank's hourly rates in fee
17 applications in commercial litigation. *Vora Decl.* ¶¶21-25, Exs.C-F.)² And courts
18 have awarded Milbank's fees in cases where it serves as pro bono counsel. For
19 example, on March 31, 2010, in *LV v. New York City Department of Education*,
20 Case No. 03 Civ. 9917, a district court awarded over \$1.2 million in attorneys' fees
21 to Milbank and Advocates for Children of New York for a case brought by
22 Milbank and Advocates for Children of New York under IDEIA. *Vora Decl.* ¶24,
23 Ex. E. There, the court awarded \$847,184.38 for work performed by Milbank
24 attorneys on a pro bono basis and the remainder for work performed by Milbank's
25 co-counsel. *Id.* The court found that \$600/hour was a reasonable rate for a Milbank
26 partner, \$225/hour to \$375/hour was a reasonable rate for a Milbank associate
27

28 ² Courts may look to precedent to determine reasonable rates. *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

1 depending on the associate's experience and contributions to the case, and that
2 \$150/hour was a reasonable rate for a Milbank paralegal. *Id.*

3 **III. THE ATTORNEYS FEES AWARD REQUIRED UNDER THE**
4 **SETTLEMENT IS REASONABLE**

5 The lodestar for Class Counsel – the number of hours reasonably expended on
6 this case times the reasonable hourly rate for each billing professional – is
7 \$537,279.25. The Settlement Agreement, however, provides that Defendants will
8 pay Class Counsel only \$200,000.00 as compensation for their work on the lawsuit
9 and for costs incurred during litigation. This represents a substantial discount—
10 nearly 63%—from the actual lodestar, to which Plaintiffs' Counsel would
11 ordinarily be entitled. As such, the attorneys' fees provided to Class Counsel under
12 the Settlement Agreement are eminently reasonable. Accordingly, the Court should
13 approve the amount agreed upon in the settlement of \$200,000.00 for attorneys'
14 fees and costs.

15 **IV. CONCLUSION**

16 For the foregoing reasons, this Court should award Plaintiff's counsel fees
17 and expenses in the amount of \$200,000.

18
19 Dated: June 8, 2017

Respectfully submitted,

21 /s/ Anna Rivera
22 **DISABILITY RIGHTS LEGAL CENTER**
23 Anna Rivera

—and—

24 **MILBANK TWEED HADLEY & McCLOY, LLP**
25 Linda Dakin-Grimm
26 Daniel M. Perry
27 Samir L. Vora

28 *Attorneys for Plaintiff MICHAEL GARCIA and
Plaintiff Class*

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MICHAEL GARCIA on behalf of
himself and others similarly situated,

Plaintiff,

vs.

LOS ANGELES COUNTY SHERIFF'S
DEPARTMENT, a public entity, et al.,

Defendants.

Case No. : CV 09-8943-DMG (SHx)

**[PROPOSED] ORDER GRANTING
PLAINTIFF MICHAEL GARCIA'S
MOTION FOR AWARD OF
ATTORNEY'S FEES AND COSTS
RELATED TO CLASS
SETTLEMENT WITH COUNTY OF
LOS ANGELES**

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The Court determines that, for the reasons stated in Plaintiffs’ Motion for Award of Attorney’s Fees And Expenses Related to Class Settlement with Defendants County of Los Angeles, Los Angeles County Sheriff’s Department, Sheriff Baca in his official capacity, an award of fees and expenses of \$200,000 to Class Counsel as compensation for their work on this lawsuit and as provided for in the Settlement Agreement with the Defendants County of Los Angeles, Los Angeles County Sheriff’s Department, Sheriff Baca in his official capacity is warranted. The Court therefore awards fees and expenses to Plaintiffs’ counsel in the amount of \$200,000.

IT IS SO ORDERED.

Dated: _____

HON. DOLLY M. GEE
United States District Court Judge