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13
 14 UNITED STATES DISTRICT COURT
 15 CENTRAL DISTRICT OF CALIFORNIA
 16 WESTERN DIVISION

18 Jenny Lisette Flores., *et al.*,
 19 Plaintiffs,
 20 v.
 21 William Barr, Attorney General of the
 22 United States, *et al.*,
 23 Defendants.

Case No. CV 85-4544-DMG-AGR_x

**PLAINTIFFS’ PARTIAL
 OPPOSITION TO DEFENDANTS’
 MOTION TO EXCLUDE EVIDENCE
 AND FOR AN EVIDENTIARY
 HEARING**

[HON. DOLLY M. GEE]

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2 **PLAINTIFFS’ PARTIAL OPPOSITION TO DEFENDANTS’ MOTION TO**
3 **EXCLUDE EVIDENCE AND FOR AN EVIDENTIARY HEARING**

4 I. INTRODUCTION

5 On June 28, 2019, Plaintiffs filed a Motion to Enforce the Settlement
6 (“Motion”) regarding the detention of class members at Homestead
7 (“Homestead”). [Doc. # 578]. In support of the Motion, Plaintiffs filed redacted
8 exhibits, including the Declarations of Hope Frye, Dr. Ryan Matlow, and Dr.
9 Marsha Griffin, and report of Dr. Nancy Wang. [Doc. # 578-1].
10

11
12 On June 10, 2019, this Court referred the Motion to the Special Monitor
13 (“Monitor”) for a Report and Recommendation pursuant to Paragraph A.2 of the
14 Appointment Order [Doc. ## 553]. On August 2, 2019, Defendants’ filed their
15 Response in Opposition (“Opposition”) to the Motion [Doc. # 609], and a Motion
16 to Exclude Plaintiffs’ Declarations and Request for an Evidentiary Hearing Before
17 the Special Master (“Motion to Exclude”). [Doc. # 612]. On August 6, 2019, the
18 Court referred the Motion to Exclude to the Monitor. [Doc. # 616]. Plaintiffs file
19 this Partial Opposition to the Motion to Exclude, addressing each of the four
20 declarations Defendants seek to exclude from consideration, and Defendants’
21 request for an evidentiary hearing.
22
23
24

25 As Plaintiffs explain in the concurrently filed Plaintiffs’ Reply to Defendants’
26 Opposition to Motion to Enforce (“Reply”) [Doc. # 629] , the factual disputes raised
27 by Defendants are inconsequential to adjudication of the Motion. Reply at 2
28

1 There are no material factual disputes with regards Defendants’ written policies
2 that undeniably result in (i) denials and delays in class members being promptly
3 released to sponsors under Paragraph 14 of the Settlement, (ii) the majority of class
4 members (those with potential sponsors) not being expeditiously or slowly transferred
5 to available and appropriate licensed placements under Paragraphs 12A and 19, and
6 (iii) class members not having adequate telephonic contact with parents or other
7 sponsors under Exhibit 1 Paragraph 11 of the Settlement.
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11 II. ARGUMENT

12 A. The Declaration of Hope Frye is based on personal knowledge and her
13 statements are either not hearsay or fall within a hearsay exception.

14 Defendants move to exclude testimony in the Declaration of Hope M. Frye
15 (Frye Declaration) filed in support of Plaintiffs’ Motion to Enforce. [Doc. #578-1]-1,
16 at 16-21 (Pls.’ Ex. 2).

17 Defendants do not identify any particular statement in the Frye Declaration they
18 claim “lacks foundation, is not based on personal knowledge, [or] calls for
19 speculation.” This is the same boilerplate objection this Court previously rejected and
20 should reject again.¹
21
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24

¹ See Court Order June 27, 2017 at 6 [Doc. # 363] (“The Court will not parse through
25 each declaration...and try to determine which statements Defendants believe...lack
26 foundation, and then decide...if a proper foundation has been laid. See, e.g., *Stonefire
27 Grill, Inc. v. FGF Brands, Inc.*, 987 F. Supp. 2d 1023, 1033 (C.D. Cal. 2013) (‘...the
28 Court will not scrutinize each objection and give a full analysis of identical objections
raised as to each fact.’)...The Court therefore OVERRULES Defendants’ myriad
blanket...foundation objections.”).

1 Ms. Frye’s Declaration is based on her personal observations: “Between March
2 25-28, I led a *Flores* visit to an ORR facility for unaccompanied children located on
3 the Homestead Job Corps facility site, adjacent to the Homestead Air Base in
4 Homestead, Florida (“Homestead”). Frye Decl. ¶ 3. “L.W....HHS Lead Program
5 Coordinator and manager of Homestead greeted us, led the facility tour, and answered
6 questions during a meeting following the tour.” *Id.* ¶ 5. These statements are sufficient
7 to lay the foundation for personal observations she describes while visiting and being
8 toured throughout Homestead. Statements that are personal observations by Ms. Frye,²
9 are admissible. Fed. R. Evid. 602.
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13 Defendants seek to exclude twenty paragraphs of Ms. Frye’s declaration as
14 hearsay: ¶¶ 6-7, 9, 17-19, 22-29, and 31-36, as well as several additional phrases.
15 [Doc. # 612-2]. Defendants do not sufficiently explain why each statement in these
16 paragraphs is hearsay. Nevertheless, Plaintiffs address Defendants’ hearsay objections
17 to the extent they are discernible.
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23 ² See, e.g., Frye Decl., ¶ 26 (“During our visit, we encountered children ... who spoke
24 indigenous languages and were not fluent in Spanish and M who is blind.” (Frye
25 Decl., ¶ 17); “We were taken to a small windowless room tucked in the corner of the
26 medical building. The room had four beds and nothing more.”; To the extent these
27 statements includes personal observations by Ms. Frye, they are not hearsay and
28 admissible. See, e.g. Frye Decl. ¶ 36 (“Of the 13 indigenous children we saw, five
were not fluent enough in Spanish to be interviewed. They spoke Mam, Q’eqchi, and
K’iche.”).

1 Statements made by detained children and employees at Homestead meet the
2 standards of the Residual exception to the hearsay Rule. Fed. R. Evid 807. The
3 statements have “circumstantial guarantees of trustworthiness,” in that they are in a
4 sworn statement made under penalty of perjury, by a member of the Bar, who has
5 special professional responsibilities of honesty.³ The statements are offered as
6 evidence relating to the operation of the Homestead. They are probative in that they
7 deal with practices by the on-site manager of the facility and a licensed clinician,
8 shared in the context of a tour and in-person question and answer session, and in the
9 sworn declarations of children.
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13 Statements by “W” and “O” are not hearsay. Fed. R. Evid. 801(d)(2). “An
14 Opposing Party’s Statement” is not hearsay if “[t]he statement is offered against an
15 opposing party and: (A) was made by the party in an individual or representative
16 capacity; (B) is one the party manifested that it adopted or believed to be true; (C) was
17 made by a person whom the party authorized to make a statement on the subject; (D)
18 was made by the party’s agent or employee on a matter within the scope of that
19 relationship and while it existed....” Fed. R. Evid. 801(d)(2).
20
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23 In the alternative, W’s and O’s statements may be viewed as falling within
24 Federal Rule of Evidence § 803(2) involving a “statement of the declarant’s then-
25
26

27 ³ See, e.g., Rules of Professional Conduct 8.4(c) (“It is professional misconduct for a
28 lawyer to...engage in conduct involving dishonesty, fraud, deceit, or reckless or
intentional misrepresentation.”).

1 existing state of mind (such as motive, intent, or plan)...but not including a statement
2 of memory or belief to prove the fact remembered or believed.” Statements about
3 Homestead’s policies and practices by its employees or contractors address
4 Defendants’ plans and intentions and are not hearsay.
5

6 Defendants also seek to exclude as hearsay statements regarding detained
7 children. [Doc. 612-1]. Children’s statements are not hearsay because they may
8 establish not the truth of the matter asserted, but the class member’s state of mind.
9 *See, e.g.*, Frye Decl. ¶ 8 (“Children understand that they are not free to leave and have
10 been told that they will be arrested by local police and ICE and deported, if they do.”).
11 Other statements are admissible as “present sense impressions.” Fed. R. Evid. §
12 803(1). *See, e.g.*, Frye Decl. ¶ (“Children uniformly reported that enforcement of
13 Homestead’s rules was severe, and that they feared the repercussions of any
14 infraction.”)
15
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17

18 Defendants seek to exclude portions of Ms. Frye’s Declaration as “improper
19 legal conclusions and improper lay witness opinions. ” Fed. R. Evid. § 701 (opinion
20 testimony of lay witnesses is permissible if “(a) rationally based on the witness’s
21 perception; (2) helpful to clearly understanding the witness’s testimony or determining
22 a fact in issue ... and (c) not based on scientific, technical, or other specialized
23 knowledge within the scope of Rule 702.”)
24
25

26 Defendants object to the following:
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- 1 • observing the Homestead facility to be “markedly stark, almost entirely devoid
2 of foliage, and memorable for a drab, institutional quality” (¶ 10);
3
- 4 • describing the noise level in every building she entered as “disturbingly high”
5 (¶ 10);
6
- 7 • describing the buildings she entered as “unclean, and many areas smelled
8 strongly of mildew” (¶ 10);
9
- 10 • describing concrete dormitory buildings she viewed firsthand as “dilapidated”
11 (¶11);
12
- 13 • describing the dormitories she entered and viewed as having “few windows”;
14 children having “few” belongings in plastic boxes kept under their beds; and
15 “the rooms are barren” (¶ 12);
16
- 17 • describing one building she entered as a “cavernous room...appears to have
18 been an airplane hangar” (¶ 13);
19
- 20 • describing a communal bathroom she entered as “large” room with “deep smell
21 of mildew” (¶ 14);
22
- 23 • describing a communal sleeping area she observed as “immense” and observing
24 that “the secluded location” of the bathroom would make “it difficult if not
25 impossible” for Homestead staff to ensure children’s safety” (¶ 15);
26
- 27 • “In all but name, Homestead is a secure facility.” (¶ 8).
28

- 1 • describing two dirt fields and a small basketball area as “appeared wholly
2 insufficient to accommodate the exercise needs of the hundreds of children
3 being held at Homestead” (¶ 16);
- 5 • describing a personal observation of Homestead’s school as a “rather
6 makeshift” tent divided into “mostly small” rooms, and the sound created by
7 “some 2,000” children as a “a din” (¶ 30).

9 The above-quoted words and phrases are not opinions but descriptions of what
10 Ms. Frye observed. They are “rationally based on the witness’s perception and ...
11 helpful to clearly understanding the witness’s testimony or determining a fact in issue;
12 [or] the determination of a fact in issue....” Fed. R. Evid. 701. These statements are
13 not offered as expert or non-expert opinions.

14
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16 **B. The Declaration of Marsha Rae Griffin, M.D. is admissible as expert
17 opinion on the effects of detention on children**

18 Defendants argue that Dr. Griffin’s “reliance on hearsay and other inadmissible
19 evidence is impermissible because she is a lay witness and her declaration must be
20 based on her personal knowledge.” Motion to Exclude at 8:20-25.

21
22 The purpose of Dr. Griffin’s declaration is simply to offer evidence of the harm
23 caused by Defendants’ policies of limiting release to sponsors with pre-existing
24 relationships with their sponsors which obviously indefinitely extends detention for
25 these children, and lengthy detention in an unlicensed facility because Defendants
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1 refuse to transfer children with sponsors to properly licensed facilities. *See*
2 Declaration of Dr. Marsha Rae Griffin (“Griffin Dec.”) [Doc. 578-1] Ex. 6 at ¶ 4.
3

4 Each statement utilized by Dr. Griffin in her declaration is either not hearsay
5 under Fed. R. Evid. 801(d)(2), or falls under a hearsay exception. *See, e.g.*, Ex. 6 at 70
6 ¶ 8, 9 (“present sense impression,” Fed. R. Evid. 803(1)); ¶ 6 (“medical diagnosis or
7 treatment,” Fed R. Evid. 803(4)).
8

9 As a result of her personal observations Dr. Griffin offered her assessment that
10 “[c]hildren detained even for short periods experience significant negative physical
11 and emotional symptoms ...” Griffin Dec., Ex. 6 at 71 ¶ 11. Her personal observations
12 and evidence procured at various ORR facilities allowed her to deduce that children in
13 detention suffer as a result of their confinement. Defendants agree that Dr. Griffin
14 based her opinions not on irrelevant matters but on “her personal experiences talking
15 to minors in facilities ...” Motion to Exclude [Doc. # 612] at 11: 1-2.
16
17

18 Dr. Griffin’s declaration satisfies each element of Federal Rule of Evidence 702
19 allowing her to provide an expert opinion. Dr. Griffin’s “expert scientific, technical, or
20 other specialized knowledge will help [the Court] to understand the evidence or to
21 determine a fact in issue.” Fed. R. Evid. 702(a). As represented in her declaration, Dr.
22 Griffin’s specialized knowledge as a Professor of Pediatrics “[who] studies the effects
23 of immigration enforcement on border community, its children and on those children
24 held in detention,” will effectively assist the Court in determining whether extended
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1 detention at Homestead caused by. Defendants’ challenged policies negatively
2 impacts class members.

3
4 “[E]xperts are permitted wide latitude to offer opinions under Rule 702.”
5 *United States v. Xunmei Li*, 2013 U.S. Dist. LEXIS 170335 (Arizona District Court
6 Dec. 3, 2013) (“When an expert is testifying on a non-scientific subject based on his
7 or her experience in a specialized area, the exacting standards of *Daubert* ‘simply are
8 not applicable to this kind of testimony, whose reliability depends heavily on
9 experience of the expert, rather than the methodology or theory behind it”). Gathering
10 personal experiences from class members regarding their experiences and current
11 physical, emotional, and psychological feelings is an appropriate way for Dr. Griffin
12 to formher opinions about the impact on class members of extended detention. *United*
13 *States v. Abu-Jihaad*, 553 F. Supp.2d 121, 126 (D. Conn. 2008) (“Mr. Kohlmann has
14 conducted first-hand interviews of several leaders of terrorist organizations and has
15 reviewed reams of information ... on which he will offer testimony”).

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19
20 Dr. Griffin is an expert in her area with over ten (10) years’ experience studying
21 the effects of immigration enforcement and childhood detention and attending several
22 visits to detention facilities. She used reliable firsthand experiences in conjunction
23 with her professional background and knowledge to reach her conclusions.

24
25 Defendants argue that the issue in Plaintiffs’ Motion is not whether Defendants’
26 failure “to ensure an expeditious and safe release may negatively affect a child’s
27 mental and physical health.” Motion to Exclude at 12:6-9. Defendants are partially
28

1 correct inasmuch as Plaintiffs do *not* have to prove medical or mental health harm to
2 class members by Defendants’ failure to comply with the Settlement beyond the fact
3 that many class members are harmed by not being promptly released and most are
4 never transferred to a licensed facility. On the other hand, while not necessary to
5 adjudicate Plaintiffs’ legal claims, the Court may consider the medical and mental
6 health harms suffered by class members because they are not released or transferred to
7 licensed facilities.

10 **C. The Declaration of Ryan Matlow, Ph.D. is admissible expert opinion on**
11 **the effects of detention on children**

12 In March 2019, Dr. Matlow attended a *Flores* site visit to Homestead. The
13 purpose of his monitoring visit was to interview class members and “assess their
14 mental health and physical wellness ...” Dec. of Ryan Matlow, Ph.D, (“Matlow
15 Dec.”) [Doc. # 578-1], Ex. 7 at 86.

17 Defendants argue that Dr. Matlow “must have personal knowledge rationally
18 based on his perception – not based on his expertise as a psychologist.” Motion to
19 Exclude at 13. Dr. Matlow does offer his opinions based on his personal knowledge
20 rationally based on his perceptions. Matlow Dec., at 86.

23 Defendants assert “[a]lthough he lists his accolades and qualifications as a
24 psychologist, he never states that his declaration is based on his expertise, or that he
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1 used any reliable methods or principals in arriving at his opinions in this case, as
2 required under Rule 702.” Motion to Exclude at 14:9-12.⁴

3
4 Dr. Matlow clearly possesses specialized knowledge about the issues discussed
5 in his declaration.⁵ *See Hangarter v. Provident Life & Accidents Ins. Co.*, 373 F.3d
6 998, 1017 (9th Cir. 2004) (Daubert factors (peer review, publication, potential error
7 rate, etc.) are not applicable to testimony whose reliability depends heavily on the
8 knowledge and experience of the expert, rather than the methodology); *Kumbo Tire v.*
9 *Carmicahel*, 526 U.S. 137, 150 (1999) (“Engineering testimony rests upon scientific
10 foundations, the reliability of which will be at issue in some cases ... In other cases,
11 the relevant reliability concerns may focus upon personal knowledge or experience.”)

12
13
14 Defendants claim that “[t]he absence of reliable principals and methods is
15 especially problematic here, where a particular problem could have more than one
16 cause.” Motion to Exclude at 14:20-23. Dr. Matlow relied on his experience and
17 interview skills to assess the cause of certain class members’ anxiety. Interviewing is a
18 reliable method and principle used to elicit class member information. *See, e.g., Dukes*
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22
23 ⁴ Defendants also argue that he “fails to describe methodology; fails to disclose all of
24 his prior testimony; fails to mention any error rate associated with his methodology;
25 and fails to assert, let alone show, that his work is replicable, reliable, or grounded in
peer-reviewed principles.” *Id.* at 14:14-19.

26 ⁵ Dr. Matlow has specialized knowledge in the following areas: “addressing the
27 impacts of stress, trauma, and adversity in children, families, and communities,”
28 ...and “trauma-focused psychological evaluation and therapy for children and
families.” Dec. of Ryan Matlow, Ph.D, Ex. 7 at 85.

1 v. *Wal-Mart, Inc.*, F.R.D. 189, 198 (C.D. Cal 2004) (it is reasonable to rely on
2 statements of others obtained through an interview when the interview is conducted by
3 an expert). The method of engaging in interviews to assess a child’s experience, and
4 analyzing the surrounding environment, “is of a type reasonably relied upon by
5 experts in the [psychiatric] field in forming opinions or inferences upon the subject.”
6
7
8 *United States v. Jawara*, 462 F.3d 1173, 1190 (9th Cir. 2006).

9 **D. Dr. Ewen Nancy Wang’s Report is admissible expert opinion, is based on**
10 **data provided by Defendants and utilizes a reliable methodology**

11 Defendants move to exclude Dr. Wang’s cover letter and Program Report.
12 Motion to Exclude (Doc. #612) at 17.

13 Defendants object that “Plaintiffs’ cover letter from Dr. Wang...is not a
14 declaration as is defined by L.R. 7-6 and 7-7.” Motion to Exclude at 17:28 – 18:3. The
15 argue that even if Plaintiffs had submitted the cover letter as a declaration, the
16 document filed neither qualified Dr. Wang as an expert nor provided any evidence of
17 the reliability of the methodology Dr. Wang employed in forming her reports. *Id.* at
18 18:3-6.⁶

19 As discussed above, the “district court has ‘broad latitude’ in deciding the
20 appropriate factors to consider in determining reliability.” *Kumho*, 526 U.S. at 141-42.
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27 ⁶ Although Plaintiffs contend that Dr. Wang’s initial cover letter is adequate, Plaintiffs
28 concurrently file with this Opposition as Exhibit 1 an amended Cover Letter signed
under penalty of perjury and Report addressing Defendants’ concerns.

1 “The circumstances of the particular case will dictate which factors the district court
2 should consider in making its determination. *Id.* at 150.

3
4 Dr. Wang’s Report meets the standards of Rule 702:

5 “*My scholarly expertise is in health services research with a focus on Social*
6 *Emergency Medicine, or the intersection of vulnerable populations with the*
7 *Health Care system. I am additionally affiliate faculty in the Human Rights in*
8 *Trauma Mental Health program at Stanford. My team has over 10 years of*
9 *experience using national and statewide datasets to analyze population-wide*
10 *access to specialty care and health outcomes. We have been funded by the*
11 *National Institute of Health, as well as by various external and internal grants.”⁷*

12
13
14 Cover Letter, Plfs’ Ex. Vol. 1 at p. 53 (italics added). The addendum to the Cover
15 letter filed herewith elaborates:

16
17 Specifically, I use national and statewide datasets to analyze population-wide
18 epidemiologies of different acute and emergent health conditions. The datasets
19 that I use include governmental datasets such as the Agency for Health Care
20 Research and Quality’s (AHRQ), Health Care Cost and Utilization Project
21 (HCUP) data. I have published and presented my research widely as evidenced
22
23 by my publications, reports and abstract presentations. My expertise is evident
24

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27 ⁷ Notably, Defendants misstate Dr. Wang’s expertise – “Dr. Wang claims to have
28 expertise in emergency medicine and not as a statistician or data analyst.” Motion to Exclude [Doc. # 612] at 19:11 – 26.

1 also by my participation as a manuscript reviewer for international and national
2 journals, and grants. Lastly, my research acumen and experience is also evident
3 in my function as a mentor and teacher of research methods to trainees.
4

5 Ex. 1.

6 Dr. Wang's Program Report simply provides an analysis of raw data provided
7 by Defendants to Plaintiffs to make the data meaningful and accessible to the Special
8 Master and the Court. Dr. Wang's report synthesizes the data into a digestible and
9 usable format,. Plaintiffs are concurrently filing an addendum by Dr. Wang with her
10 sworn statement affirming that the entire contents of the original cover letter and
11 addendum are true and correct, including an additional description of methodology,
12 and Dr. Wang's CV.
13
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15
16 The addendum further describes the methodology used in her Report, and notes
17 that the methodology "is very standard and does not involve any advanced data
18 manipulation or modeling." *Id.* She declares:
19

20 Our data plan was to first identify and follow each individual contained in the
21 records through the different stages of ORR status (Referral, Discharge, Census
22 and Transfer); second, to verify the data and compute custody characteristics
23 and third, to aggregate and visualize descriptors of the class members held in
24 custody.
25

26 Identification of individuals: We initially ensured that each person in the data
27 had a unique Alien Number (AN). ANs were compared across datasets for
28

1 consistency in the following individually descriptive variables: first name, last
2 name, sex, date of birth, country of origin, date of referral to ORR, date of
3 admittance into ORR, date of discharge from ORR. Some ANs only occurred
4 once in the dataset, and so no confirmation of accuracy was possible; in these
5 cases DOJ information was used as is. For ANs occurring more than once in the
6 dataset, the majority of the records were consistent. For ANs that had
7 inconsistent data in multiple occurrences, these were evaluated on a
8 probabilistic match. Records without the predetermined criteria established for
9 the match were excluded. For instance, if name and birthdate were inconsistent,
10 then the AN was excluded from our dataset.

11 Data was also examined for other inconsistencies. Impossible values, such as
12 birthdate later than admittance into ORR, when identified were replaced with
13 possible values in records provided, or if no other record available, made blank.
14 Dates outside the range of the dataset were also treated this way. If date of
15 admission into ORR custody was missing, the date of referral to ORR custody
16 was used as date of admission. ANs that did not have a discharge record, but
17 also, did not appear in the census for more than 1 year were eliminated from the
18 dataset (approximately 3000 records, mostly admitted before 2018). The level
19 of data entry errors leading to these above-described errors was on the order of
20 3%. In all cases where data could not be used, the result is that fewer
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1 individuals are represented in the final dataset of individuals held in ORR
2 custody rather than more.

3
4 Custody characteristics were calculated using dates and locations provided in
5 the dataset. Length of ORR custody was calculated using the difference in the
6 date of admittance into ORR custody and the date of discharge, or in cases of
7 no discharge, the date of the latest census. Both the day of admittance and the
8 day of discharge were included in the length of custody. A custody dataset was
9 created with a record for each AN at each month from January 2018 to July
10 2019 and their custody status at that time. Using this dataset, it is possible to
11 determine how many class members were in ORR custody each month, how
12 many were admitted, and how many were discharged, for example.

13
14 We use standard SAS Statistical software for data formatting and analysis. We
15 use Tableau data visualization software to create the charts and tables provided.

16
17
18 Plaintiffs' Ex. 1.

19
20 Finally, Defendants take issue with Dr. Wang's opinion that occasional visual
21 inspections of detention sites are not an effective means of assessing compliance.
22 Motion to Exclude at 19-20. The opinion that "occasional visual inspections" does not
23 provide reliable data in a system caring for thousands of children is hardly the type of
24 conclusion that should be subject to "peer review," as Defendants suggest is
25 necessary. Based on her vast experience analyzing data to determine healthy
26 outcomes, Dr. Wang explains:
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1 Having reviewed the terms of the settlement and carefully analyzed the data
2 that the government is currently providing to Class Counsel, we believe it is
3 urgently important for the relevant agencies to provide additional data points in
4 order to assess compliance with specific provisions of the settlement.

5
6 In particular, it does not appear that ORR or Homestead collects or records
7 quantifiable data that would permit ORR, the Special Master, or Class Counsel
8 to monitor Homestead's success or failure in making and recording efforts
9 aimed at the prompt release of minors, as required by Paragraph 18 of the
10 Settlement. Analyzing this data is likely the most accurate, cost-effective, and
11 effective way to monitor compliance with the Settlement. The size of the class,
12 the widespread dispersal of the class members, the large number of facilities,
13 and the security measures taken to detain the class, all combine to make
14 occasional visual inspections a far less accurate and effective means to assess
15 compliance with this provision, than reports that can be prepared based upon
16 contemporaneous agency records of the entire class.

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21 Plfs' Ex., Vol. 1 at 54 [Doc. 578-1].

22 Dr. Wang's cover letter, Program Report, and addendum, are reliable, are based
23 solely on data provided by Defendants, and are helpful to the Court. Defendants'
24 motion to exclude them should be denied.

25
26 **E. An Evidentiary Hearing is not necessary to adjudicate the pending**
27 **Motion to Enforce challenging Defendants' acknowledged policies.**
28

1 An evidentiary hearing is unnecessary to adjudicate Plaintiffs’ Motion which
2 challenges undisputed policies. These policies are expressed in Defendants’ published
3 Rules and Guides, and are confirmed by the Declaration of Jallyn Sualog, the Deputy
4 Director of the Office of Refugee Resettlement. [Doc. # 609-1].
5

6 Although Plaintiffs in general are not opposed to an evidentiary hearing should
7 the Special Monitor or the Court find one necessary, Defendants never identify
8 genuine disputes of material fact necessary to adjudicate the Motion. Defendants state
9 they have submitted “a responsive declaration, as well as evidence that undermines
10 the credibility of several of Plaintiffs’ declarants.” Opp. at 22:4-6. The fact that
11 Defendants have submitted a responsive declaration and evidence that may undermin
12 the credibility of some parts of Plaintiffs’ declarations, does not mean Defendants
13 have placed material facts in dispute such that the Motion could not be adjudicated
14 without an evidentiary hearing.
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18 Whether class members saw their counselors once, twice, three, or four times a
19 month to facilitate their release, would not change the fact that Defendants’ policy
20 with regards release is, as written, inconsistent with the options for release under
21 Paragraph 14 of the Settlement, nor would it change the fact that Defendants’ policy
22 of only expeditiously transferring minors to licensed facilities if they have special
23 needs or are in “Category 4”—*i.e.* have no sponsors—is inconsistent with the terms of
24 the Settlement. This would be true even if class members saw their counselors every
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1 day, or told visiting doctors they were experiencing no mental health issues as a result
2 of their lengthy detention.

3
4 Nothing will be served by a hearing other than to have Defendants' witnesses
5 confirm their policies, or Plaintiffs, if their attendance can even be accomplished,
6 confirm they were by and large treated in conformity with Defendants' policies.
7

8 III. CONCLUSION

9 Whether or not Defendants offered evidence contradicting some of the
10 declarations filed by Plaintiffs, or reasons why doctors' declarations or Dr. Wang's
11 report should be excluded, the fact remains that Defendants have adopted certain
12 policies that block some class members from prompt release and many from transfer
13 to licensed facilities in a way that conflicts with the terms of the Settlement.
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16 Neither Plaintiffs nor Defendants have argued that in practice Defendants do
17 not follow their policies challenged in the Motion.
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19 To resolve the Motion does not require an evidentiary hearing. Unless the
20 Special Monitor or the Court believe otherwise, the Motion may be submitted and
21 decided without the need for any hearing at all.
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Dated: August 23, 2019

Respectfully submitted,

CENTER FOR HUMAN RIGHTS AND
CONSTITUTIONAL LAW

Peter A. Schey
Carlos Holguín
Laura N. Diamond
Rachel Leach

USF SCHOOL OF LAW IMMIGRATION CLINIC
Bill Ong Hing

LA RAZA CENTRO LEGAL, INC.
Stephen Rosenbaum

/s/Peter Schey _____
Class Counsel for Plaintiffs

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CERTIFICATE OF SERVICE

I, Peter Schey, declare and say as follows:

I am over the age of eighteen years of age and am not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 256 S. Occidental Blvd., Los Angeles, CA 90057, in said county and state.

On August 23, 2019 I electronically filed the following document(s):

- **PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO EXCLUDE EVIDENCE AND FOR AN EVIDENTIARY HEARING**

with the United States District Court, Central District of California by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

*/s/Peter Schey
Attorney for Plaintiffs*