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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 KINNEY KINMON LAU, et al.,

20 Plaintiffs,

21 v.

22 SAN FRANCISCO UNIFIED SCHOOL
23 DISTRICT,

24 Defendants.

25 UNITED STATES OF AMERICA,

26 Intervenors.

Case No. C70-0627 CW

JUDGE CLAUDIA WILKEN

27 **JOINT MOTION TO APPROVE MODIFIED CONSENT DECREE**

1 Plaintiff Kinney Kinmon Lau, et al. (“Private Plaintiffs”), Plaintiff-Intervenor United
2 States of America (“United States”) (collectively, “Plaintiffs”), and Defendant San Francisco
3 Unified School District (“SFUSD” or “District”) (collectively, “the Parties”), by and through
4 undersigned counsel, hereby jointly move the Court to approve and enter the proposed Modified
5 Consent Decree¹ (“MCD”) to replace and supersede the Order Modifying Consent Decree
6 entered by this Court on September 11, 2008 (“2008 Court Order”) [ECF No. 169]. In support of
7 this Motion, Private Plaintiffs, the United States, and SFUSD collectively state as follows:

8 1. On September 11, 2008, the Court entered the 2008 Order regarding SFUSD’s
9 English Learner (“EL”) Program in the above-captioned case, which approved and entered the
10 new Master Plan for Multilingual Education (“Master Plan”) jointly submitted by the Parties on
11 September 10, 2008 [ECF No. 168]. The 2008 Court Order modified and superseded a prior
12 order entered in this case on October 22, 1976. *See* 1976 Court Order (Ex. 1).

13 2. Since that time, SFUSD has worked to implement the Master Plan required by the
14 2008 Court Order, and Private Plaintiffs and the United States have monitored that
15 implementation. Where the Plaintiffs disputed or otherwise had concerns about SFUSD’s record
16 of compliance, they notified SFUSD and engaged in good faith negotiations regarding corrective
17 measures to ensure implementation of the Master Plan. Through this negotiation process, the
18 Parties determined that the disputed areas of compliance and several changed circumstances
19 would be best addressed by modifying the Master Plan in order to effectuate its underlying
20 purposes and SFUSD’s compliance with federal law. These circumstances include: changes in
21 SFUSD’s EL-related programs, processes, technology, and resources; challenges faced by
22

23 ¹ Consistent with N.D. Cal. L. R. Civ. Proc. 7.1(F), the proposed Modified Consent Decree is
24 attached to this Motion in PDF format as a proposed order, and a Word version has been sent to
the address on the court’s website for emailing such orders to the assigned judge.

1 SFUSD in complying with certain provisions of the Master Plan; and changes to state policy and
2 guidance for serving EL students since 2008.

3 3. The Parties' proposed MCD is the product of intensive, arm's length negotiations
4 regarding disputed provisions of the Master Plan in light of the foregoing changed circumstances
5 and what the Parties have learned under the Plan. Those negotiations, which concluded in May
6 2015, resulted in a revised EL plan that is targeted to those areas of compliance that require
7 additional attention before this case may be dismissed. This revised plan is the proposed MCD
8 that is the subject of this Motion. The proposed MCD incorporates many of the provisions of the
9 Master Plan, while enhancing SFUSD's obligations in certain areas and streamlining them in
10 others. In this way, the proposed MCD more effectively advances the objectives in the 2008
11 Court Order and Master Plan.

12 4. Private Plaintiffs, the United States, and SFUSD agree that the proposed MCD is
13 fair, adequate, reasonable, and consistent with federal law and public policy. *United States v.*
14 *State of Or.*, 913 F.2d 576, 580 (9th Cir. 1990), *distinguished on other grounds*, *United States ex*
15 *rel. McGough v. Covington Technologies Co.*, 967 F.2d 1391 (9th Cir. 1992). The Proposed
16 MCD is also faithful to the commitments made by SFUSD in the Master Plan in light of current
17 circumstances. Rather than litigate the disputed areas of compliance under that Plan, the Parties
18 have agreed upon the terms of the MCD and believe that their good faith implementation over
19 the next three school years will facilitate an effective and orderly resolution of this case.

20 WHEREFORE, for the reasons set forth above and in the attached Memorandum in
21 Support of the Parties' Joint Motion, the Parties request that the proposed MCD be approved and
22 entered by the Court.

1 Dated: June 24, 2015

Respectfully submitted,

2 /s/ Zoe M. Savitsky

3 U.S. Department of Justice for Plaintiff-Intervenor
United States of America

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CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2015, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following email addresses:

Christopher Ho: cho@las-elc.org

Mary Hernandez: mhernandez@ghsblaw.com

I also certify that on June 24, 2015, I sent a true and accurate copy of the foregoing document to the following non-CM/ECF participants by email:

Marsha Chien: mchien@las-elc.org

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Dated: June 24, 2015

/s/ Zoe M. Savitsky
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