Steve W. Berman (*pro hac vice*)
HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101
(206) 623-7292
steve@hbsslaw.com

Annika K. Martin (*pro hac vice*)
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013
(212) 355-9500
akmartin@lchb.com

Daniel C. Girard (SBN 114826)
GIRARD SHARP LLP
601 California Street, Suite 1400
San Francisco, California 94108
(415) 981-4800
dgirard@girardsharp.com

Interim Class Counsel and Plaintiffs' Executive Committee
[Additional Counsel Listed on Signature Page]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

IN RE: USC STUDENT HEALTH CENTER LITIGATION

No. 2:18-cv-04258-SVW

[Consolidated with:
No. 2:18-cv-04940- SVW-GJS,
No. 2:18-cv-05010-SVW-GJS,
No. 2:18-cv-05125-SVW-GJS, and
No. 2:18-cv-06115-SVW-GJS]

PLAINTIFFS' NOTICE OF MOTION AND RENEWED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND TO DIRECT CLASS NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

Date: June 17, 2019
Time: 1:30 p.m.
Hon. Stephen V. Wilson

NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on June 17, 2019, or as soon thereafter as the matter may be heard by the Honorable Stephen V. Wilson in Courtroom 10A, located at 350 West First Street, Los Angeles, California 90012, Plaintiffs in these consolidated actions will and hereby do move the Court, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for an Order:

a) Granting preliminary approval of the proposed class action settlement that would resolve this litigation;

b) Approving the previously proposed notice program, including the newly updated proposed forms of notice, and directing that notice be disseminated in accordance with the previously proposed program; and

c) Setting a final approval hearing and certain other dates in connection with the settlement approval process.

This motion is based upon this Notice; the following Memorandum in support of the Renewed Motion; the Amended Settlement Agreement; the Supplemental Declaration of Jennifer M. Keough and attached exhibits; the Declaration of Annika K. Martin; the Statement of USC Student Leaders in Support of Proposed Settlement; the initial Memorandum of Points and Authorities in Support [Dkt. 67]; the Joint Declaration of Class Counsel and the attached exhibits [Dkt. 67-1]; the Declaration of Hon. Layn Phillips [Dkt. 67-4]; the Declarations of Plaintiffs Betsayda Aceituno [Dkt. 67-5], Jane Doe 4 [Dkt. 67-6], Jane Doe C.N. [Dkt. 67-7], Jane Doe A.D. [Dkt. 67-8], Jane Doe F.M. [Dkt. 67-9], Mehrnaz Mohammadi [Dkt. 67-10], Jane Doe A.N. [Dkt. 67-11], Jane Doe H.R. [Dkt. 67-12], Jane Doe M.V. [Dkt. 67-13], Jane Doe M.S. [Dkt. 67-14], Jane Doe A.R. [Dkt. 67-15], and Shannon O'Conner [Dkt. 67-16]; the Declaration of Plaintiffs' Notice Program Expert, Jennifer M. Keough from JND Legal Administration LLC [Dkt. 67-3];Plaintiffs' Reply in Support of Notice of Motion and Motion for Settlement Approval [Dkt. 85]; and any further papers filed in

support of this motion, as well as all arguments of counsel and records on file in this matter.

DATED: May 23, 2019.

Respectfully submitted,

HAGENS BERMAN SOBOL SHAPIRO LLP

By /s/ Steve W. Berman
Steve W. Berman
Shelby R. Smith
1301 Second Avenue, Suite 2000
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594
Email: steve@hbsslaw.com
Email: shelby@hbsslaw.com

Elizabeth A. Fegan
Whitney Siehl
HAGENS BERMAN SOBOL SHAPIRO LLP
455 N. Cityfront Plaza Dr., Suite 2410
Chicago, IL 60611
Telephone: (708) 628-4949
Facsimile: (708) 628-4950
Email: whitneys@hbsslaw.com
Email: emilyb@hbsslaw.com

Christopher R. Pitoun
HAGENS BERMAN SOBOL SHAPIRO LLP
301 N. Lake Ave, Suite 920
Pasadena, CA 91101
Telephone: (213) 330-7150
Facsimile: (213) 330-7152
Email: christopherp@hbsslaw.com

Daniel C. Girard
Elizabeth A. Kramer
GIRARD SHARP LLP
601 California Street, Suite 1400
San Francisco, California 94108
Telephone: (415) 981-4800
Facsimile: (415) 981-4846
Email: dgirard@girardsharp.com
Email: ekramer@girardsharp.com

Plaintiffs' Executive Committee and Interim Class Counsel

Joseph G. Sauder
SAUDER SCHELKOPF LLC
555 Lancaster Avenue
Berwyn, Pennsylvania 19312
Telephone: (610) 200-0580
Facsimile: (610)727-4360
Email: jgs@sstriallawyers.com

Jonathan Shub
KOHN SWIFT & GRAF, P.C.
1600 Market Street. Suite 2500
Philadelphia, PA 19103-7225
Telephone: (215) 238-1700
Facsimile: (215) 238-1968
Email: jshub@kohnswift.com

Proposed Additional Class Counsel

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

RULES

OTHER AUTHORITIES

I. INTRODUCTION AND SUMMARY

Plaintiffs, by and through Interim Class Counsel, file this motion seeking to have the Court grant preliminary approval to the attached Amended Settlement Agreement, Exhibit 1. The Amended Settlement Agreement, together with this brief, addresses and responds to specific questions and concerns the Court raised with the Original Settlement Agreement filed on February 12, 2019 [Dkt. 67-2] (the "Original Settlement Agreement") in its April 18, 2019 Order Denying Plaintiffs' Motion for Preliminary Approval of a Class Action Settlement and Motion to Appoint Special Master [Dkt. 124].

Plaintiffs respectfully submit that the Amended Settlement Agreement meets the requirements of Rule 23(e)(1) and that the Court should direct notice to the Class so that the thousands of women harmed by Dr. Tyndall's misconduct can obtain objective information about the Settlement and each exercise her own individual due process right to decide whether to participate, opt out, or object to the Settlement.

The key changes and additional information are:

1. **Claim Distribution Process.** The Amended Settlement Agreement clarifies the process by which claim awards are distributed to Class members, including the timing and procedure for calculating and applying any pro rata adjustments to awards.
2. **Risks of Trial.** Plaintiffs offer a more fulsome analysis of the risks of proceeding to trial.
3. **Equitable Relief.** The Amended Settlement Agreement now incorporates, and the proposed notice now describes, the final and full equitable relief as agreed to in the Equitable Relief Committee Report.
4. **Claims Adjudication.** The Amended Settlement Agreement reflects the modifications suggested by the Court to the claims adjudication process, including the use of a three-member panel to adjudicate claims (instead of

solely the Special Master), with appeals heard by the Special Master.

For the reasons set forth below, Plaintiffs respectfully request that the Court grant their motion. Should the Court require additional information or explanation, Interim Class Counsel stand ready to provide it whether by hearing or brief.

II. PROCEDURAL HISTORY

This case is the consolidation of several actions brought against Defendants stemming from Dr. Tyndall's abuse of his patients at USC's health center. On February 12, 2019, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement and to Direct Class Notice. [Dkt. 67]. In that motion, Plaintiffs presented for the Court's preliminary consideration under Rule 23(e)(2) a proposed Rule 23(b)(3) and (b)(2) class action settlement with Defendants to resolve these claims. The proposed settlement includes compensation for all Class members of up to $250,000 per class member (with no reduction for attorneys' fees or costs) and equitable relief in the form of sweeping institutional reforms at USC designed to prevent future misconduct and abuse.

Using a three-tiered structure, the Settlement was designed to allow women to choose the extent to which they wished to participate in the claim administration process (if at all). Class members can receive a Tier 1 award in the amount of $2,500 no questions asked, submit additional information in writing for a Tier 2 award of up to $20,000, or participate in an interview about their experience to receive a Tier 3 award of up to $250,000. Recognizing the traumatic nature of the conduct at the heart of this case, the parties designed the settlement to compensate Class members for the harms they endured, while allowing individuals to select an award tier (and participation level) based on their willingness to discuss their experiences of abuse. Class members who choose to provide more detail are eligible for higher-tier compensation, but no Class member is excluded from participation in the settlement or from compensation because of her reluctance to discuss her abuse. And, unlike in

litigation, the Settlement offers substantial compensation without subjecting any Class member to invasive discovery or adversarial cross examination by Defendants. In addition to financial compensation, the Original Settlement Agreement provided for substantial equitable relief in the form of numerous reforms to policies and procedures at USC and its health center, though at the time the Settlement was submitted to the Court, the details were not yet finalized because the Equitable Relief Committee had not yet finished its work.

On April 1, 2019, the Court held a hearing on the motion at which it identified several areas of the proposed Settlement about which it had questions or concerns. Following the hearing, the Court issued a minute order on April 18, 2019, denying Plaintiffs' preliminary approval motion without prejudice, but noted that it took "no issue with the substantive terms of settlement between Plaintiffs and Defendants," and "believes that the proposed settlement, as is, ultimately may be fair and reasonable under the prevailing standards." [Dkt. 124] (the "Order") at 10.

The Court directed the parties to those aspects of the proposed Settlement about which it sought additional information, and ordered them to file a renewed motion within 30 days of the Order, "addressing the Court's concerns with the proposed settlement and proposed notice to class members." *Id*. Following issuance of the Order, the Parties negotiated and entered into the Amended Settlement Agreement, which, along with this brief, is intended to address and resolve the Court's questions and concerns.[1]

III. DISCUSSION

In its Order, the Court identified three "informational deficiencies" with the proposed Settlement and papers in support: first, the Court expressed concern that the

[1] Plaintiffs incorporate into this renewed motion the memorandum of points and authorities which accompanied their original motion for preliminary approval. [Dkt. 67]. That brief includes the relevant legal standard and a description of the terms of the Original Settlement Agreement. With the exception of the changes discussed herein, the other material terms of the settlement remain unchanged.

proposed Settlement did not "adequately explain the calculations of any pro rata reductions in Tier 2 and Tier 3 claim awards," including "when such a pro rata adjustment will be made during the claims administration process or who will be calculating the ultimate pro rata adjustments." Order at 4–5. Second, the Court found that the parties had insufficiently described "the true substantive risks of proceeding to trial," and requested "a more direct assessment of the substantive strength of Plaintiffs' claims and what defenses are available to Defendants." *Id.* at 5–6. Third, the Court was concerned that the proposed Settlement did not "contain all of the requisite details about the equitable relief to be imposed upon USC as part of the settlement," noting that the Equitable Relief Committee work was not yet finalized. *Id.* at 6–7.

The Court also identified two "procedural defects" relating to the proposed claim administration process. *Id.* at 7. Specifically, the Court expressed concern about the "contemplated authority of the Special Master to make all claims determinations in her own discretion," and the proposed appeal system, under which the Special Master would be responsible for adjudicating all appeals of claim determinations. *Id.* at 7–8.

Plaintiffs address each issue in turn.

A. The Amended Settlement Agreement Clarifies the Timing, Procedure, and Potential Effect of the Pro Rata Adjustments.

The Court expressed concern that the proposed Settlement did not "adequately explain the calculations of any pro rata reductions in Tier 2 and Tier 3 claim awards," and asked that the parties provide certain procedural and substantive detail. Procedurally, the Court asked the parties to indicate who will be calculating the pro rata adjustments, and when. Substantively, the Court asked the parties to provide—to the extent possible "even in a rough sense"—estimates of the expected number of claims and ranges of payouts, and the estimated effect of pro rata reduction, including the scenario "where the largest possible number of eligible class members seek a Tier 3 award." *Id.* at 4–5.

Procedural questions. The Amended Settlement Agreement now includes the

additional details the Court requested about the calculation of the pro rata adjustments. Specifically, once all the Tier 2 and Tier 3 Claim Awards have been determined, the Claims Administrator will calculate the total sum of all the Claim Awards and compare that sum to the Settlement Fund.[2] (Because the Administrative Expenses are paid out of the Settlement Fund, the amount of the Settlement Fund at the time of Pro Rata Adjustment calculation will be less than $215 million.)[3]

If the total sum of the Claim Awards is *less* than the Settlement Fund, the Claims Administrator will calculate and apply the Pro Rata Increase to all Tier 1, Tier 2, and Tier 3 Claim Awards. *Id.* The Pro Rata Increase will be calculated to increase all Claim Awards by the same percentage until the total sum of all Claim Awards equals the Settlement Fund, or until all Claim Awards have been increased by 50%, whichever occurs first.[4]

If the total sum of the Claim Awards *exceeds* the Settlement Fund, the Claims Administrator will calculate and apply the Pro Rata Reduction to all Tier 2 and Tier 3 Claim Awards. *Id.* The Pro Rata Reduction will be calculated to reduce all Tier 2 and Tier 3 Claim Awards by the same percentage until the total sum of all Claim Awards equals the Settlement Fund, or until all Tier 2 and Tier 3 Claim Awards have been reduced by 25%, whichever occurs first.[5] Under no circumstances are Tier 1 Claim Awards subject to Pro Rata Reduction. *Id.*

To address the Court's concern that Claim Award determinations might be impacted by consideration of the Settlement Amount, Order at 5, the Amended

---

[2] Amended Settlement Agreement ¶ 6.5(d).

[3] As previously noted, attorneys' fees and costs are not deducted from the Settlement Fund but will be paid separately by USC in an amount determined by the Court. Amended Settlement Agreement ¶ 8.1.

[4] *Id.* Therefore, claimants could receive up to a maximum of $3,750 for Tier 1, $30,000 for Tier 2, and $375,000 for Tier 3 Claim Awards.

[5] *Id.* Therefore, the minimum amount a claimant could receive under the settlement would be $2,500 for Tier 1 (i.e. no reduction) and $5,625 for Tier 2 and Tier 3. Limiting the Pro Rata Reduction to 25% is a new term of the settlement.

Settlement Agreement explicitly provides that neither the Special Master nor the Panel will consider either the number or amount of other Claim Awards or the total Settlement Amount when making their Claim Award determinations.[6] Nor are they involved in the calculation of Pro Rata Adjustments.[7]

Substantive questions. As the Court recognized, estimating the potential "ultimate number of claims" and the "potential likelihood and quantity of a pro rata adjustment to the Tier 2 and Tier 3 awards," necessarily can only be done "in a rough sense" at this stage. Order at 4. As an initial matter, the parties structured the claims program so that at the time of final approval, the Court will know, with certainty, the total number of claims made at each Tier.[8] While those numbers will not provide the total dollar value of those claims (except for Tier 1), it will provide the Court with insight into the volume and distribution among Tiers of the claims.

To provide at least "rough" information to the Court at this time, Interim Class Counsel worked with JND Legal Administration LLC ("JND"), the proposed Notice and Settlement Administrator, to develop a range of pro rata adjustment scenarios.[9] Based on information provided by Defense counsel and their data experts, JND estimates that there are approximately 15,000 Class members.[10] Given the unique nature of this case, it is difficult to predict how many of the 15,000 will apply for enhanced Tier 2 and/or Tier 3 awards. JND believes, and Class Counsel agree, that the illustration below presents a realistic scenario. For the purposes of this example, the illustration assumes that (i) 3,000 Class members make Tier 2 Claims, which receive average award of $15,000; and (ii) 1,000 Class members make Tier 3 Claims, which

---

[6] *Id.* ¶¶ 6.5(b)(ii) and 6.5(c)(iv).

[7] *Id.* ¶ 6.5(d).

[8] This is so because the claim filing deadline is prior to final approval. *See* schedule in Attachment A to this brief.

[9] *See* Supplemental Declaration of Plaintiffs' Notice Program Expert, Jennifer M. Keough ("Supp. Keough Decl."), attached as Ex. 2.

[10] *Id.* ¶ 4.

receive average awards of $125,000.

Initial Calculation to Determine Total Aggregate Award Amount:

15,000 Tier 1 x $2,500	$37.5 million
3,000 Tier 2 x $15,000	$45 million
1,000 Tier 3 x $125,000	$125 million
Less Tier 1 Offset for 4,000 Tier 2 and 3 claimants who already received a $2,500 Tier 1 payment	($10 million)
Total Aggregate Award Amount:	$197.5 million[11]

Calculation to Determine Pro Rata Adjustment Amount:

Settlement Fund[12]	$210 million
Aggregate Award Amount	$197.5 million
Percentage difference	6% Increase

Calculation to Apply Pro Rata Adjustment:

15,000 Tier 1 x ($2,500 + 6% = $2,650)	$39.75 million
3,000 Tier 2 x ($15,000 + 6% = $ 15,900)	$47.7 million
1,000 Tier 3 x ($125,000 + 6% = $ 132,500)	$132.5 million
Less Tier 1 Offset for 4,000 Tier 2 and 3 claimants who already received a $2,500 Tier 1 payment	($10 million)
Total Aggregate Award Amount Plus 6% Pro Rata Increase:	$209.95 million

[11] *Id.* ¶ 7.

[12] This represents the Settlement Fund as of the date of the pro rata calculation, by which point the Settlement Fund will have been reduced to pay for Administrative and Notice costs incurred up to that date, per Am. Settlement Agmt. ¶ 2.44. Solely for the purposes of this example, we have reduced the Settlement Fund by $5 million to reflect Notice and Administration costs.

Based on the assumed number of claims filed, the number of claims that fall into the different categories and the average award amounts, the Settlement Fund would be sufficient to pay all claims in full in this example and all payments would receive a pro rata increase.

While JND believes the above example represents a reasonably conservative estimate, JND also provides the Court (and ultimately the potential Class members) with five additional examples of different claim filing scenarios to demonstrate how the pro rata adjustments could be affected, either up or down, if the filing rates and payout amounts are different than above.[13]

The proposed Long Form Notices have also been updated to more fully explain to Class members how the pro rata adjustments would work as part of the claims administration process. The proposed Long Form Notices are included in the Supplemental Declaration of Jennifer Keough, which is attached as Exhibit 2.

B. The Relief Available to Class Members under the Settlement is Substantial in Light of the Risks of Going to Trial.

The Court asked the Parties to provide additional information about and analysis of the "true substantive risks of proceeding to trial." Order at 5. Although Plaintiffs' original motion for preliminary approval included some discussion of the risks attendant to trial, *see* [Dkt. 67] at 26-28, the Court sought additional information, specifically "some assessment of the potential range of recovery for class members if they were to seek recovery in an individual action," and "a more direct assessment of the substantive strength of Plaintiffs' claims and what defenses are available to Defendants," apart from the statute of limitations defense. Order at 5–6. The Court

[13] *Id.* ¶ 8, and Exhibit A. The five alternative scenarios range from a low of $116.25 million in total Settlement awards, resulting in a pro rata increase of 50% (*see* Alternative Scenario 3), to a high—or "worst-case"—of $266.25 million in total Settlement awards, resulting in a pro rata decrease of approximately 22.4% (*see* Alternative Scenario 5). Note that under the terms of the Amended Settlement Agreement, the Pro Rata Decrease will not exceed 25%. Am. Settlement Agmt. ¶ 6.5(d).

acknowledged that "the parties answered many of the Court's questions on these topics during the hearing on Plaintiffs' motion for preliminary approval," but asked that those answers be included in this renewed motion to "memorialize these concerns" and to "provide the parties with an opportunity to address them to the class members as well." Order at 6.

As the Court recognized, it is difficult to quantify with certainty the damages award any particular plaintiff might recover at trial before a jury. The injuries here are largely psychological and, to some degree, physical, rather than financial. The allegations against Dr. Tyndall include, for example, making inappropriate sexual comments to patients; performing unnecessary pelvic examinations without a chaperone present; performing unnecessary and inappropriate digital penetration of patients; and unnecessary and inappropriate touching of patients' breasts without explanation or medical justification. Class members have also alleged that Dr. Tyndall made them embarrassed, uncomfortable, or afraid. Many of his patients were fearful to schedule future gynecological appointments with *any* physician because of the trauma Dr. Tyndall inflicted. These types of injuries do not always readily map onto clear legal claims and predictable jury verdicts. While it often seems somewhat arbitrary for juries to place a dollar value on physical injuries of any kind (e.g., a lost limb), it is all the more difficult for a jury to value claims where the injury is less physically concrete (albeit no less serious), as is the case for some of the women harmed here.

Estimating individual jury awards is challenging here because the impact of Tyndall's conduct (and sex abuse generally) on a particular individual can vary. Over the course of this litigation, Interim Class Counsel consulted with experts familiar with the psychological and emotional effects of trauma and abuse. Those experts explained that individuals who suffer from similar trauma and abuse can exhibit a range of responses, based on numerous factors including the individual's background, prior experiences, and values. This is one reason the Settlement provides for holistic review

of each Class member who seeks the Tier 2 and 3 awards, rather than rotely applying a dollar value to each kind of conduct (e.g. $X for inappropriate comments, $Y for unnecessary pelvic exam). While the latter process would be administratively simpler (and more predictable), it fails to account for the range of ways different women experienced the same misconduct. *See* Exhibit 3 (Decl. of Annika K. Martin).

For example, the proposed Class includes women who were not necessarily physically abused, but who may have been exposed to inappropriate comments; who have been photographed by Dr. Tyndall for allegedly non-medical purposes; or who claim that they were injured simply by learning that their physician was an alleged abuser (as will likely be the case for a number of Tier 1 claimants). All these women were harmed, and all are entitled to compensation, but the reality is that a jury might not assign a high dollar value to these claims, especially in an individual case. For many Class members, the guaranteed $2,500 Tier 1 payment may be more than that Class member would recover from a jury—even before deducting the significant financial costs of litigation (including attorneys' fees and costs, expert costs, and other costs of litigation) as discussed in more detail below.

For cases involving greater harm, research shows that the recovery obtained in the Class settlement is consistent with similar verdicts in analogous individual cases. For example, in *McClure v. Dalton*, a jury in Orange County awarded two plaintiffs a combined total of $177,000 for claims that a physician inappropriately touched them during examinations, *see* 42 Causes of Action 2d 409 (Orange Cty. Super. Ct. 2000). In *Howsom v. Ricci*, a jury awarded the plaintiff $427,650 based on a claim that the defendant physician unnecessarily and negligently performed a rectal examination during an appointment, committing a sexual battery. 29 Trials Digest 79, 1993 WL 794315 (San Diego Cty. Super. Ct. 1993). And in *Prendergast v. Ricci*, a jury awarded over $100,000 to a plaintiff who claimed that her physician performed an inappropriate rectal exam and sexually assaulted her during the exam. 30 Trials Digest

57, 1994 WL 847897 (San Diego Cty. Super. Ct. 1994).[14] While the record is not clear, it is likely that attorneys' fees and case costs, as well as expert costs, came out of the awards in each of these cases, thus reducing the amount available to the victim—likely substantially—as would be the case for individual litigants here.

While in some sexual misconduct cases, plaintiffs have won very large verdicts, the lion's share of those verdicts typically consisted of punitive, rather than compensatory, damages. *See, e.g.*, *Rosenberg v. Encino-Tarzana Regional Med. Ctr.*, No. BC364189 (Los Angeles Cty. Super. Ct. 2011) (verdict against hospital for over $67 million, $65 million of which were punitive damages, based on failure to fire nursing assistant who later assaulted patient by digital penetration). While the nature of the allegations against Defendants here might well give rise to punitive damages, they are of limited value for assessing the potential range of results for three reasons.

First, in order to obtain punitive damages from USC, California law would require a plaintiff to prove to a jury by the higher standard of clear and convincing evidence that USC had advance knowledge of Dr. Tyndall's unfitness and continued to employ him with conscious disregard for student safety. *See* Cal. Civ. Code § 3294(b).[15] While Plaintiffs believe the evidence against Defendants is strong, proving as much to a jury, and under a more demanding evidentiary standard, is far from a sure bet.

Second, the purpose of punitive damages is to punish defendants for egregious conduct, not to compensate the victim. "Indeed, a plaintiff is not '*entitled*, as of right' to an award of punitive damages," even if the jury finds the defendant "guilty of oppression, fraud, or malice" under Cal. Civ. Code § 3294(a). *Ferguson v. Lieff,*

[14] The parties ultimately agreed to settle the case for $100,000 with the malpractice carrier after the jury returned a partial verdict awarding over $100,000 in damages but before it finished redeliberating a causation question.

[15] Obtaining an award of punitive damages against Dr. Tyndall individually would be more straightforward, but as a practical matter, a plaintiff would be unlikely to actually recover any such damages given Dr. Tyndall's limited financial assets.

Cabraser, Heimann & Bernstein, 69 P.3d 965, 971 (Cal. 2003) (quoting *Brewer v. Second Baptist Church*, 197 P.2d 713 (Cal. 1948)); *see also State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003) ("It should be presumed a plaintiff has been made whole for his injuries by compensatory damages . . . ."); *Adams v. Murakami*, 813 P.2d 1348, 1357 (Cal. 1991) ("An award of punitive damages, though perhaps justified for societal reasons of deterrence, is a boon for the plaintiff.").

Third, USC would likely argue that due process limitations would place some limit on the amount of punitive damages victims could recover long before tens of thousands of individual plaintiffs recovered them. *See generally BMW of N. Amer. v. Gore*, 517 U.S. 559 (1996) (excessive punitive damage award can "enter the zone of arbitrariness that violates the Due Process Clause of the Fourteenth Amendment"). Thus, while the first—or tenth—victim to reach a jury might well recover punitive damages from USC, USC would likely argue that at some point due process limits were implicated.

Turning to the question of providing "a more direct assessment of the substantive strength of Plaintiffs' claims and what defenses are available to Defendants," other than statute of limitations, there are several defenses that Defendants would likely raise as a case proceeded to trial. There are, of course, risks inherent to any litigation, chief among them that a particular plaintiff could lose her case. As Interim Class Counsel explained in their original papers and during the hearing on the original motion, in Plaintiffs' view there is substantial evidence that Dr. Tyndall's behavior with his patients was inappropriate, and that USC knew or should have known about it. *See* [Dkt. 67-2] at 4-9. Interim Class Counsel interviewed hundreds of former patients of Dr. Tyndall to learn about his conduct during exams and, with the assistance of an expert in gynecology, confirmed that Dr. Tyndall's conduct during those exams was inappropriate. Interim Class Counsel also learned through informal, pre-settlement discovery of a number of complaints that had been

made by patients of Dr. Tyndall that Plaintiffs believe USC did not adequately investigate. Pursuant to the Court's Order, Defendants now have submitted those complaints to the Court under seal for in camera review. *See* Order at 6; [Dkt. 124] at 127. Most of the relevant documents submitted in camera to the Court were previously produced to Interim Class Counsel and were considered in the mediation and settlement process. Nothing in USC's recent submission changes Plaintiffs' confidence in the Settlement, which has always been predicated on Plaintiffs' belief that the evidence clearly establishes that USC knew about Dr. Tyndall's misconduct and chose not to act, and is therefore liable for the harm Class members suffered.

Nevertheless, Tyndall has vehemently denied that his conduct was wrongful or ever departed from the standard of care. *E.g.*, [Dkt. 78], Tyndall's Non-Opposition to Preliminary Approval at 2-4 (denying any wrongful conduct). At any trial Tyndall would point to the guidance of the American College of Obstetrics and Gynecology ("ACOG") Committee on Gynecologic Practice, which advises gynecologists to ask about a patient's sexual orientation, history, activities, and partners.[16] ACOG also advises gynecologists to ask about the patient's sexual practices, functioning, and satisfaction, including the type of sexual contact and use of protection. So Tyndall would argue that, while some patients may find such questions uncomfortable, he was specifically following the recognized standard of care.

Plaintiffs maintain that Tyndall's invasive questions and comments to patients went far beyond any acceptable practice. But regardless, establishing that a specific incident violated the standard of care, standing alone, might be insufficient to prevail at trial. For example, as to their claims for intentional infliction of emotional distress, Plaintiffs would need to show that: (1) the conduct was sufficiently outrageous and made with the intent to cause, or with reckless disregard of the probability of causing,

[16] https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Gynecologic-Practice/Sexual-Health

severe emotional suffering; (2) they suffered severe emotional distress; and (3) actual and proximate causation. *See, e.g.*, *Freeman v. United States*, No. 13-CV-02421-WHO, 2014 WL 1117619, at *6 (N.D. Cal. Mar. 19, 2014) (dismissing intentional infliction of emotional distress claim even where physician allegedly breached standard of care).

Tyndall has also disputed that he ever engaged in improper touching, and could argue that it is standard practice for gynecologists to make contact with a patient's genitalia and that a pelvic exam frequently requires a gynecologist to insert fingers or a device into the patient's vagina to properly assess her health. Tyndall could further argue that under ACOG guidelines, a breast exam requires a physician to apply pressure while moving his fingers across the breast to properly check for masses. [17] Therefore, again, Tyndall would argue at trial that his actions were consistent with the applicable standard of care. Even if the jury disagreed, Plaintiffs might still need to prove more to prevail on their claims based upon inappropriate touching. For instance, a gender violence claim under California Civil Code § 52.4 requires a showing that the act rose to the level of a criminal offense or was done under coercive conditions. *Harper v. Lugbauer*, No. 11-CV-01306-JST, 2014 WL 1266305, at *18 (N.D. Cal. Mar. 21, 2014), *aff'd*, 709 F. App'x 849 (9th Cir. 2017). That standard of criminality would present a high hurdle for many of the alleged incidents, such as Tyndall's taking photographs of patients' genital areas. *See Agent Anonymous v. Gonzalez*, No. 16-CV-0374 W (BLM), 2016 WL 8999471, at *4 (S.D. Cal. Dec. 14, 2016) (secret videotaping does not constitute gender violence).

The pending actions in Los Angeles Superior Court confirm the serious risks and burdens that plaintiffs would face by going to trial. *See generally* Exhibit 4 (Joint Status Conference Report for April 29, 2019 Hearing). Even putting aside that the

[17] https://www.acog.org/Patients/FAQs/Mammography-and-Other-Screening-Tests-for-Breast-Problems.

state court has indicated its willingness to entertain early motions for summary judgment on the statute of limitations, *id.* at 3, USC will also seek early adjudication of other issues, including scope of employment, and USC's actual or constructive knowledge of Tyndall's misconduct conduct. *Id.* at 11.

And in early discovery in the state court cases, Defendants have sought information and documents from the plaintiffs that raise major privacy concerns. Tyndall has indicated his intent to seek an order compelling the medical records of each plaintiff. He claims that by suing him they placed their medical records at issue and waived privacy objections. If the state court sides with Defendants in such matters, plaintiffs would be forced to choose between divulging more information than they are comfortable revealing to Dr. Tyndall or relinquishing their rights. And even if the court limits the information Defendants can obtain in the early phases of litigation, privacy disputes—including disputes over sensitive medical and counseling records— will almost certainly continue to arise given the nature of these cases. As Plaintiffs explained in their prior brief and as the Court has recognized, there are "privacy concerns for class members who may wish to avoid an invasion into past trauma," Order at 7, including having to give testimony at deposition or trial. *See* [Dkt. 67] at 26-27.[18] Indeed, the state court has permitted the parties to begin proposing depositions, so state court plaintiffs may soon be subject to depositions.

Because Tyndall has limited financial resources, it would also be important for a plaintiff to be able to recover damages from the USC Defendants. But doing so requires proving that they had knowledge of Tyndall's conduct. Such proof would be more challenging in an individual case, as opposed to this class action case where the claims of many plaintiffs are aggregated, and the common threads of abuse and misconduct run throughout the case. Moreover, USC would likely argue that it did not

[18] Plaintiffs take no position on these disputes, but include them simply to inform the Court of the risks of litigating these cases.

have institutional knowledge of the abuse and was not on notice until, at a minimum, a sufficient number of women reported abuse.

Defendants would also likely attempt to limit damages with many of the plaintiffs by claiming that noneconomic injuries are limited to a $250,000 cap by California's Medical Injury Compensation Reform Act ("MICRA"), Cal. Civ. Code § 3333.2. Defendants would likely argue that as to at least some of the allegations for some of the plaintiffs, MICRA applies to limit damages because these involve claims of professional negligence in the context of a medical examination. Of course, much of the conduct alleged against Dr. Tyndall goes beyond the scope of professional negligence, including performing his negligent acts with a prurient interest, committing assault, battery, and sexual harassment, and performing procedures or prescribing medication without consent. Nevertheless, another challenge a plaintiff proceeding to trial could face would be ensuring that her claims are not limited by MICRA's cap.

In addition to the aforementioned challenges, and the overarching possibility that a plaintiff pursuing trial might not succeed or might receive a less favorable result, there are additional costs to consider. For example, there are costs involving delay of resolution. Additionally, any recovery that a plaintiff received could be substantially reduced by attorneys' fees and costs, as well as other costs of litigation, including expert costs, which in a case like this could be quite substantial.[19] It is not unusual for individual retainers to provide for recovery of all such costs, plus attorneys' fees on a contingency basis of around 30-40% of the recovery.

As a result, any recovery a plaintiff received in an individual case could have up to 40% in fees taken off the top immediately, followed by a reduction in the plaintiff's share by hundreds of thousands of dollars in cost reimbursements. Consequently, in order to receive a larger recovery from individual litigation than from class resolution,

[19] As an example, Plaintiffs have incurred approximately $200,100 in expert costs so far, and these represent only some of the experts that would be required to prove up an individual case.

a plaintiff would have to receive substantially more (likely more than double) through individual litigation than she would recover under class resolution.

By contrast, the class action mechanism provides for economies of scale, where the costs of litigation (including, for example, expert costs) are shared across the members of the class. Similarly, the Amended Settlement Agreement provides that the $215 million recovery for Class members will not be reduced to pay Interim Class Counsel their fees or costs. Agmt. ¶ 8.1. Instead, attorneys' fees and costs will be paid separately to ensure that Class members receive their full award with no reduction.

Even if this case proceeded toward trial as a class action rather than individual litigation, there are costs and risks unique to class litigation as well. As raised with the Court, were the case to proceed, Plaintiffs would likely move for issue certification under Rule 23(c)(4), focusing on liability issues. *See Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) ("When 'one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.'") (citation omitted); *see also* 2 William B. Rubenstein, Newberg on Class Actions § 4:90 (5th ed. 2012).

Assuming Plaintiffs prevailed at a class trial of common issues, Class members would still have to prove their individual damages in a second phase, subject to cross-examination and litigation of affirmative defenses. The Settlement, too, includes a damages prove-up process—but it will be conducted in private, without adversarial or intrusive procedures, and with simplified documentation and proof requirements.

Of course, one of the benefits of this—and any—Rule 23(b)(3) settlement is that any individual victim here who decides that pursuing individual litigation is right for her for whatever reason is free to opt out and do so. Clearly, some plan to, as is their due process right. The key from Plaintiffs' perspective is that no woman has to do so:

each can exercise her own right to choose, and each should be making that choice herself based on neutral, objective, Court-approved notice language explaining the options, not the promises of self-interested attorneys.

Finally, the importance of the equitable relief obtained in this Settlement cannot be ignored. None of the comparable civil sex abuse settlements has incorporated similar reforms, and the equitable relief here is a novel and material way of holding USC accountable – and one that is of paramount importance to Class members.[20] The true value of the reforms included in the equitable relief provisions cannot be quantified: not only do they provide relief to Class members, but they also reflect a promise to past, current, and future students that the University will not allow similar harm to befall its students again. An individual case would be unlikely to secure injunctive relief (if possible at all), let alone the same breadth and depth of reform, and a court would be unable to craft specifically-tailored, systemic relief as the experts on the Equitable Relief Committee have done here.

All litigation and trial involves risks and costs, and settlement by its very nature involves a compromise, balancing costs and risks against the value of, and realistic recovery on, a claim. Here, Plaintiffs believe that the Amended Settlement Agreement represents an excellent result for Class members that compares very favorably to what victims might receive in individual litigation, and with less risk or delay and none of the invasive discovery and adversarial cross examination.

C. The Amended Settlement Agreement and Notice Now Sets Forth the Final Equitable Relief.

In its Minute Order, the Court indicated reluctance to approve the proposed settlement until it had final details about the equitable relief, including the conclusions

[20] *See* Declarations of Plaintiffs Betsayda Aceituno [Dkt. 67-5], Jane Doe 4 [Dkt. 67-6], Jane Doe C.N. [Dkt. 67-7], Jane Doe A.D. [Dkt. 67-8], Jane Doe F.M. [Dkt. 67-9], Mehrnaz Mohammadi [Dkt. 67-10], Jane Doe A.N. [Dkt. 67-11], Jane Doe H.R. [Dkt. 67-12], Jane Doe M.V. [Dkt. 67-13], Jane Doe M.S. [Dkt. 67-14], Jane Doe A.R. [Dkt. 67-15], and Shannon O'Conner [Dkt. 67-16]; *see also* Statement of USC Student Leaders in Support of Proposed Settlement, attached as Exhibit 5.

of the Equitable Relief Committee. Order at 7–8 (noting that preliminary approval would be "premature without having final agreement on all facets of relief to be imposed under the agreement"). Plaintiffs are now able to provide those details.

The Amended Settlement Agreement provides substantial equitable relief to Class members in the form of sweeping reforms at USC and its health facilities, designed by experts to ensure that the sort of abuse alleged in this case can never happen again. In order to implement these reforms, the equitable relief provisions of the Original Settlement Agreement, [Dkt. 67-2], Ex. B, provided for the formation of an Equitable Relief Committee consisting of three members: one selected by Plaintiffs, one selected by the USC Defendants, and one jointly selected by the two members designated by the parties. *See id.* ¶ 6. The Original Settlement Agreement charged that Committee with finalizing the details of implementing certain equitable relief provisions in the Settlement Agreement within 60 days of its execution. Agmt. Ex. B ¶ 6. As explained to the Court during the hearing, the reason for this was to ensure the Equitable Relief Provisions would be thorough, meaningful, and feasible. The Committee's purpose was to allow the specifics of the plan for change to be crafted not by lawyers but by experts with decades of experience in campus equity and the prevention of on-campus sexual abuse and gender-based violence. Additionally, the inclusion on the Committee of an expert selected by USC ensured that the reforms recommended by the Committee are workable, and can and will actually be implemented. This is especially so given that USC's expert on the Committee, Dr. Van Orman, is USC's Associate Vice Provost for Student Affairs and Chief Health Officer. In this way, the Equitable Relief Committee was able to harness the expertise of its members, along with firsthand knowledge and understanding of the specifics of USC's infrastructure, resources, and abilities. The result is that the finalized equitable relief set forth in the Report consists not of aspirational dreams, but of carefully considered, tailor-made reforms that the University can actually achieve, and that will

make a real difference for its students.

After the parties executed the Original Settlement Agreement on February 12, 2019, the Equitable Relief Committee went into action. Plaintiffs designated Charol Shakeshaft, Ph.D., and the USC Defendants designated Sarah Van Orman, M.D. to serve on the Equitable Relief Committee. Drs. Shakeshaft and Van Orman then jointly selected Dr. Chris Kilmartin as the third member of the Committee and to serve as its Chair.[21] The full Committee met and fulfilled its mandate to finalize those issues that the Original Settlement Agreement delegated to it.

The Committee produced a report titled "Implementation of Equitable Relief Settlement" (the "Report"), which provides specific, final details for implementing the reforms the Parties have agreed to. The Report is integrated into the Amended Settlement Agreement, and is attached to that document as Exhibit C. The Report provides concrete details including, among other things:

- Increased scrutiny and monitoring of health center employees, including pre-hiring background checks, credential verification, and annual education and performance reviews, *see* Report at 5–9;
- Improved health center patient practices, including updated sensitive exam practices and allowing students to select a physician based on gender, *see* Report at 10–11;
- New methods for collecting information about potential misconduct, including through the solicitation of patient feedback and implementation of plain-language notice for recognizing and reporting sexual harassment and gender-based violence, *see* Report at 13–15;
- The nature and scope of duties of the Independent Women's Health Advocate, *see* Report at 4; and

[21] The CVs of the Committee members are included as Appendices U, V, and W to their Report, which is attached as Exhibit C to the Amended Settlement Agreement.

- Development of new training programs for USC students and staff designed to prevent sexual misconduct and sexual assault, *see* Report at 16–18.

For each item, the Committee provided a detailed description of how USC is to implement the equitable relief, including deadlines by which each reform must be completed. *See generally* Report at 4–18.

The sole concern the Court expressed about the equitable relief provisions in the Original Settlement Agreement was that they be finalized and incorporated into the notice so Class members could be fully informed. That has now been done: the specific details of the reforms USC must undertake are now final, and the Amended Settlement Agreement incorporates the Committee's report, which allows the Court and Class members to know "exactly what USC's responsibilities [will] be on an ongoing basis to monitor, prevent, and respond to abuse committed by staff or other professionals employed by the school." Order at 7. Additionally, the proposed Notice to Class members attached to this submission, *see* Ex. 2, reflects the final equitable relief measures based on the Committee Report.

This equitable relief adds substantial value to the proposed Settlement, because it shows that USC does not just intend to pay a monetary settlement to make this case go away. Instead, it shows that USC is committed to (and will be held to) continued accountability to protect the well-being of future generations of students. The equitable relief designed by the expert Committee and contained in the Report will bring USC and its health services into compliance with best practices for addressing and preventing the serious problem of sexual harassment and gender-based violence on university campuses.

Finally, as noted, no other sex abuse settlement has ever included anything like the sweeping equitable relief obtained here.

D. Under the Amended Settlement Agreement, Claims Will Be Adjudicated By a Three-Member Panel, With Appeals Heard by the Special Master.

Finally, the Court in its Order identified "limited concerns about the procedures embodied by the proposed settlement administration." Order at 7. Under the Original Settlement Agreement, the Special Master, a retired judge with prior experience handling analogous claims of sexual abuse, would be responsible for adjudicating Class member claims. In performing that adjudication, the Special Master would rely on the assistance of subject-matter experts, including an OB/GYN and a forensic psychologist. The Court opined that "rather than granting one individual the sole discretion to make final credibility determinations and compensation assessments, it would be equitable to have a committee of three individuals" responsible for claims adjudication. *Id.* at 8. The Court proposed that claims be adjudicated by a three-member panel consisting of "the Special Master, the OB/GYN, and the forensic psychologist already contemplated to be included on the Special Master's team." *Id.*. Each panel member "could receive one 'vote' on issues such as whether the claimant's story is credible and the amount of compensation the claimant should receive based on the information and proof provided." *Id*. "[I]f the proposed settlement prescribed a three-person committee to make claims determinations in lieu of the Special Master's sole discretion, the Court would find that the settlement treats class members equitably toward each other under Rule 23(e)(2)(D) and that the settlement contains an adequate method of processing class-member claims under Rule 23(e)(2)(C)(ii)." *Id*.

The Amended Settlement Agreement adopts the Court's suggested changes wholesale. Under the Amended Settlement Agreement, claims will be adjudicated by a three-member panel consisting of the Special Master, an OB/GYN, and a forensic psychologist. *See* Amended Settlement Agreement ¶ 2.32. The Parties, in consultation with the Special Master, will select the OB/GYN and forensic psychologist who will serve on the Panel. All three panel members will review each Tier 2 and Tier 3

submission, and then confer to determine the appropriate claim award. To the extent the Panel members do not agree about the appropriate award, the panel members will vote on the outcome, with each member receiving one vote, and with a majority (two votes) needed to select an appropriate award. This modified adjudication process proposed by the Court and adopted in the Amended Settlement Agreement readily meets the requirements of Rule 23.

Second, the Court considered the question of whether the "current appeals system embodied in the settlement agreement is fair for class members." Order at 8. Under the Original Settlement Agreement, all appeals were handled by the Special Master. The Court recognized that "[i]f the parties adopt the Court's suggestion to impose a three-person committee to adjudicate all claims determinations," as they have done in the Amended Settlement Agreement, "an appeals process might no longer be necessary at all." *Id.* at 9. Nevertheless, in order to be completely certain that the adjudication process is fair and adequate, the Amended Settlement Agreement reflects the Court's alternative suggestion that appeals be heard "before a single individual, such as the Special Master, as a second procedural mechanism above the committee's initial review and determination of an aggrieved class member's claim." *Id.* Accordingly, the Amended Settlement Agreement provides that claimants may appeal the Committee's decision to the Special Master, who will then decide the appeal. *See* Amended Settlement Agreement ¶ 6.6. Consistent with the Court's recommendation that if the Special Master is still responsible for overseeing the appeal process, the parties should "include the specific 'fair procedures' governing the reconsideration process," the Amended Settlement Agreement includes more detail explaining the appellate procedure, which involves a one-on-one interview of the claimant with the Special Master. *See id.*

Plaintiffs believe these modifications address the procedural questions raised by the Court, and that the Amended Settlement Agreement provides a fair, adequate, and

equitable claims adjudication process.

IV. CONCLUSION

This is a momentous, groundbreaking proposed settlement of great interest not just to the women affected and USC, but the entire community, and the Parties appreciate the Court's careful review and scrutiny of its terms. The Amended Settlement Agreement clarifies and expands upon some of the terms of the Original Settlement Agreement based on the Court's input. Ultimately, this Settlement holds USC accountable in two important ways. First, it ensures that USC will pay substantial compensation to Class members for the pain they have endured, and in a manner that allows the women to choose whether and how much they wish to be involved. Second, it ensures that USC will improve its campus policies and procedures, as a sign of accountability to the community, and to protect students on its campus going forward, critical relief obtained in none of the other sex abuse settlements. For all these reasons, Plaintiffs respectfully request that the Court (1) grant preliminary approval of the Amended Settlement Agreement, (2) direct notice to the Class, and (3) schedule a fairness hearing.

DATED: May 23, 2019.

Respectfully submitted,

HAGENS BERMAN SOBOL SHAPIRO LLP

By /s/ Steve W. Berman
Steve W. Berman

Shelby R. Smith
1301 Second Avenue, Suite 2000
Seattle, WA 98101
Tel.: 206-623-7292
Fax: 206-623-0594
Email: steve@hbsslaw.com
Email: shelby@hbsslaw.com

Elizabeth A. Fegan
Whitney Siehl
HAGENS BERMAN SOBOL SHAPIRO LLP
455 N. Cityfront Plaza Dr., Suite 2410
Chicago, IL 60611
Telephone: 708-628-4949
Facsimile: 708-628-4950
Email: beth@hbsslaw.com
Email: emilyb@hbsslaw.com

Jonathan D. Selbin
Annika K. Martin
Evan J. Ballan
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Tel.: (415) 956-1000
Fax: (415) 956-1008
Email: jselbin@lchb.com
Email: akmartin@lchb.com
Email: eballan@lchb.com

Joseph G. Sauder
Matthew D. Schelkopf
Lori G. Kier
SAUDER SCHELKOPF LLC
555 Lancaster Avenue
Berwyn, Pennsylvania 19312
Tel: (610) 200-0580
Fax: (610)727-4360
Email: jgs@sstriallawyers.com
Email: mds@sstriallawyers.com
Email: lgk@sstriallawyers.com

Jonathan Shub
KOHN SWIFT & GRAF, P.C.
1600 Market Street
Suite 2500
Philadelphia, PA 19103-7225
P: 215-238-1700
F: 215-238-1968
E: jshub@kohnswift.com

Proposed Additional Class Counsel

ATTACHMENT A

Plaintiffs propose the following schedule for further settlement proceedings:

Event	Date
Claims Administrator sends Notice ("Notice Date")	28 days after entry of preliminary approval order or July 1, 2019, whichever is later
Objection and Opt-out Deadline	90 days after Notice Date
Motion for Final Settlement Approval Due	No later than 49 days before Final Approval Hearing
Deadline to Submit Claim Forms and Statement of Class Membership Forms	120 days after Notice Date
Final Approval Hearing	November 11, 2019
Special Master files Report on Claims Process	28 days after completion of Claims Process
Motion for Award of Attorney's Fees, Costs, and Service Awards to Class Representatives ("Fee Motion") Due	14 days after Special Master files Report on Claims Process
Deadline to Object to Fee Motion	30 days after Fee Motion is filed and made available to Class Members on the Settlement Website
Reply in Support of Fee Motion Due	No later than 14 days before the Hearing on the Fee Motion
Hearing on Fee Motion	TBD