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21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA
23 WESTERN DIVISION

24 IN RE: USC STUDENT HEALTH
25 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 MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT:
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT**

Date: January 6, 2020
Time: 1:30 PM
Hon. Stephen V. Wilson

1 **NOTICE OF MOTION**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that on January 6, 2020, at 1:30 p.m., or as soon
4 thereafter as the matter may be heard by the Honorable Stephen V. Wilson in
5 Courtroom 10A of the above-entitled court, located at 350 West First Street, Los
6 Angeles, California 90012, Plaintiffs in these consolidated actions will and hereby do
7 move the Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for an
8 Order:

- 9 1. Granting final approval of the proposed Settlement;
10 2. Certifying the Settlement Class;
11 3. Finding that Notice to the Class was directed in a reasonable manner;
12 4. Reserving and continuing jurisdiction with respect to Plaintiffs’ motion for
13 service awards to the Plaintiffs and attorneys’ fees, costs, and expenses to
14 Class Counsel;
15 5. Reserving and continuing jurisdiction with respect to implementation and
16 enforcement of the terms of the Settlement; and
17 6. Appointing Plaintiffs as Class Representatives and Hagens Berman Sobol
18 Shapiro LLP, Girard Sharp LLP, Lieff Cabraser Heimann & Bernstein LLP,
19 as Co-Lead Class Counsel, and Sauder Schelkopf LLC, and Kohn, Swift &
20 Graf, P.C. as Additional Class Counsel (collectively, “Class Counsel”).

21 This motion is based on the attached supporting memorandum; the declarations
22 submitted herewith and referenced below, with exhibits; the pleadings and papers on
23 file in this action, including those submitted by the Parties in support of Plaintiffs’
24 Motion for Preliminary Approval, [Dkt. 67]; Plaintiffs’ Renewed Motion for
25 Preliminary Approval, [Dkt. 139]; and any further papers filed in support of this
26 motion, as well as arguments of counsel and all records on file in this matter.

1 DATED: November 18, 2019.

Respectfully submitted,

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1 **I. INTRODUCTION AND SUMMARY**

2 Plaintiffs, by and through Interim Class Counsel, respectfully request the Court
3 enter an order granting final approval of their proposed class action settlement (the
4 “Settlement”) with Defendants Dr. George Tyndall, the University of Southern
5 California, and the Board of Trustees of the University of Southern California¹ to
6 resolve claims of sexual abuse by Tyndall during his tenure as an obstetrician-
7 gynecologist at the USC student health center. The Settlement requires Defendants to
8 pay \$215 million in non-reversionary cash (net of attorneys’ fees and costs) to pay
9 Class Member claims, and provides for robust, expert-crafted equitable relief so the
10 events leading to this litigation will never occur at USC again.

11 The Settlement is an outstanding result that achieves this litigation’s central
12 goals of accountability through fair compensation of victims and meaningful
13 institutional change at USC. It provides real, swift, and certain compensation for
14 thousands of women—from a guaranteed minimum of \$2,500 cash up to \$250,000
15 each—via a claims process empowering class members to choose whether and how
16 much to engage in the process and tell their stories. The Settlement also ensures
17 unprecedented institutional change at USC via implementation of best practices and
18 independent oversight. In fact, this Settlement is the largest-ever class resolution of
19 sexual assault claims and the first to incorporate equitable relief reforms as a novel
20 and material way to hold an institution accountable.

21 The notice campaign was robust and Class Member response has been
22 overwhelmingly positive. Direct notice was delivered to 12,702 Class Members pre-
23 identified through USC’s existing health center records (which cover only part of the
24
25
26

27 ¹ In this brief, “USC” refers collectively to Defendants University of Southern
28 California and the Board of Trustees of the University of Southern California.

1 class period).² Direct notice was also delivered to 152,801 potential Class Members.³
2 A state-of-the-art media indirect notice campaign ensured further reach. An
3 informative Settlement Website (<https://www.usctyndallsettlement.com>) provided
4 Class Members with detailed information about the Settlement, including equitable
5 relief, in English, Spanish, and Chinese.

6 The Settlement’s claims process was straightforward by design—no action for
7 Tier 1, a simple claim form for Tier 2, and a simple claim form and interview for Tier
8 3. The claim form was designed to be completed by claimants without having to hire
9 an attorney; however, for those Class Members who did want attorney guidance,
10 Interim Class Counsel provided that assistance, without reducing Class Members’
11 compensation by deducting attorneys’ fees or costs from their individual awards.

12 Class Member reaction to the Settlement was overwhelmingly positive.
13 Thousands of Class Members made Tier 2 and Tier 3 claims. A total of 774 Class
14 Members submitted timely and potentially valid opt-outs, and *not a single Class*
15 *Member objected to the Settlement*.⁴ Such overwhelmingly positive reaction is rare,
16 and especially notable in a case involving such sensitive issues. The Settlement also
17 garnered the support of key USC student leaders.⁵

18 The \$215 million Settlement Amount will adequately compensate all Class
19 Members. While the claim award amounts have not yet been determined,⁶ calculations
20

21 _____
22 ² Declaration of Jennifer M. Keough in Support of Final Approval (“Keough FA
Decl.”) at ¶ 13.

23 ³ Keough FA Decl. at ¶ 13.

24 ⁴ Keough FA Decl. at ¶¶ 39–42. A handful of attorneys filed what they styled as
“objections” prior to this Court’s preliminary approval of the Settlement. Those filings
were not valid objections pursuant to Fed. R. Civ. P. 23(e)(5), and this Court properly
25 rejected them as premature. [Dkt. 124].

26 ⁵ Statement of USC Student Leaders in Support of Proposed Settlement [Dkt. 129-
5].

27 ⁶ The claim award amounts have not yet been determined because the claim
adjudication process cannot begin until the Special Master has been appointed. *See*
28 [Dkt. 152].

1 based on the current known claim numbers and reasonable estimates of average claim
2 awards show that the Settlement Amount will suffice to pay all claims.⁷ As of this
3 filing, 18,782 Tier 1 Claims, 1,746 Tier 2 Claims, and 1,197 Tier 3 Claims have been
4 submitted.⁸ While the confirmation and de-duplication of submitted claims is still
5 ongoing, we have estimated a range of outcomes using average claim award amounts.

6 If, for example, we use the most conservative claim number count,⁹ and
7 estimate that Tier 2 Claimants each receive an average award of \$15,000; and Tier 3
8 Claimants each receive an average award of \$125,000, the total amount awarded will
9 be \$192,650,000, leading to a Pro Rata Increase of approximately 9% for all Claims.¹⁰

10 On the other hand, if we use the most liberal claim number count¹¹, the total
11 amount awarded would be \$215,420,000.¹² Since that total is only slightly more than
12 the Settlement Amount, a Pro Rata Decrease of approximately 3% for all Claims
13 would be applied in this scenario, meaning Tier 2 and Tier 3 award amounts would
14

15
16 ⁷ See Keough FA Decl. ¶¶ 53–56.

17 ⁸ Keough FA Decl. ¶¶ 44-49; 53. We say “as of this filing” because the Claims
18 Administrator is still continuing to receive timely-postmarked claims sent by mail,
19 verifying Class Member status, and the de-duplication and fraud analysis has not been
20 completed, so the final claim counts may differ slightly. Late claims will be allowed at
21 the Special Master’s discretion. See Agmt. § 6.7.

22 ⁹ Keough FA Decl. at ¶ 55. The most conservative claim number count means
23 assuming no undeliverable notice packets will be delivered (12,702 were deliverable),
24 and all currently unconfirmed Tier 1, Tier 2, and Tier 3 forms are duplicative or
25 invalid (3,597 match Potential Class Members on the Notice List), which equals
26 16,299 total claimants.

27 ¹⁰ See Keough FA Decl. at ¶¶ 55-56. This \$192,650,000 total comes from summing
28 \$40.75 million for Tier 1 (16,299 x \$2,500); \$23.52 million for Tier 2 (1,568 x
\$15,000); and \$135 million for Tier 3 (10,80 x \$125,000) then subtracting \$6.62
million to offset Tier 1 payments already received by 2,648 Tier 2 and 3 claimants.

¹¹ Keough FA Decl. at ¶ 53. The most liberal claim number count means assuming
all undeliverable notice packets are eventually delivered (13,670 Pre-Identified Class
Members), and all unconfirmed Tier 1, Tier 2, and Tier 3 forms are valid (5,112 forms
submitted), which equals 18,782 total claimants.

¹² See Keough FA Decl. at ¶¶ 53-54. This \$215,420,000 total comes from summing
\$46.96 million for Tier 1 (18,782 x \$2,500); \$26.19 million for Tier 2 (1,746 x
\$15,000); and \$149.63 million for Tier 3 (1,197 x \$125,000) then subtracting \$7.36
million to offset Tier 1 payments already received by 2,943 Tier 2 and 3 claimants.

1 decrease by 3% below their initial allocation.¹³ Plaintiffs submit the actual amount of
2 claim awards will likely be between these two calculations.

3 Plaintiffs and Interim Class Counsel submit that this Settlement is not only fair,
4 reasonable, and adequate, but an outstanding result for the Class. Plaintiffs
5 respectfully request that the Court certify the class for settlement purposes.

6 **II. SETTLEMENT TERMS**

7 **A. The Class Definition.**

8 The Class consists of all women who were seen by Dr. George M. Tyndall at
9 USC's student health center between August 14, 1989, and June 21, 2016: (a) for
10 Women's Health Issues;¹⁴ (b) whose treatment by Tyndall included an examination by
11 him of her breast or genital areas; or (c) whose treatment included the taking of
12 photographs of her unclothed or partially clothed body.

13 **B. The Settlement's Benefit to Class Members.**

14 **1. \$215 Million to Compensate Class Members.**

15 Defendants will pay \$215 million (the "Settlement Amount"), net of attorneys'
16 fees and costs,¹⁵ making this the largest ever class action settlement of sexual assault
17 claims. None of the money will revert to USC or Tyndall.

18 **a. Three-Tier Structure Built Around Claimant Choice.**

19 The Settlement's three-tier structure allows Class Members to choose how
20 much they want to engage with the claims process. Those who do not want to revisit
21 private, traumatic events can simply keep the guaranteed Tier 1 payment of \$2,500.
22 Those who choose to provide additional information in a claim form about their
23

24 ¹³ See Keough FA Decl. at ¶ 54.

25 ¹⁴ Women's Health Issues includes but is not limited to any issue relating to breast,
26 vaginal, urinary tract, bowel, gynecological, or sexual health, including contraception
and fertility. See Amended Settlement Agreement ("Agmt.") [Dkt. 129-1] § 3.2. A list
of Women's Health Issues is available to Class Members on the Settlement Website.

27 ¹⁵ Agmt. § 8.1. Defendants will pay Class Counsel's attorneys' fees and costs
28 separately from and in addition to the \$215 million Settlement Amount, in an amount
to be determined by the Court. See *infra* Section III.C.

1 experience with Tyndall and how it affected them are eligible for up to \$20,000, and
2 those who choose to participate in an interview are eligible for up to \$250,000. The
3 Three Member Panel, including the Special Master¹⁶, OB/GYN, and forensic
4 psychologist, will evaluate claims and allocate awards to Tier 2 and Tier 3 Claimants.
5 Agmt. §§ 6.4, 6.5.

6 The claim form was designed to be completed by Claimants without having to
7 hire an attorney. To the extent any Class Member required help navigating this simple
8 process, however, Interim Class Counsel assisted them, and that assistance came at no
9 cost to Class Members.¹⁷

10 The 12,702 Class Members pre-identified through USC's existing health center
11 records will be automatically mailed a Tier 1 payment check for \$2,500 on the
12 Effective Date.¹⁸ The Notice informed Class Members whether they were pre-
13 identified as Class Members. Agmt. § 6.4(a)(i). Those Class Members who could not
14 be pre-identified were required to submit a simple signed Statement of Class
15 Membership Form. Agmt. § 6.4(a)(ii). As of this filing, 5,112 potential Class
16 Members have submitted membership forms.¹⁹ Tier 1 payments of \$2,500 will be sent
17 to confirmed Class Members on the Effective Date.

20
21 ¹⁶ The Parties propose that Hon. Irma Raker (Ret.), who supervised the
22 administration of the *Johns Hopkins* sex-abuse settlement, or alternatively, Hon. Irma
23 E. Gonzalez (Ret.) be appointed as the Special Master. *See* [Dkt. 69].

24 ¹⁷ Joint Decl. of Counsel at ¶ 17. Interim Class Counsel assisted nearly 500 Class
25 Members who contacted them directly or via the
26 ClassCounsel@USCTyndallSettlement.com email address

27 ¹⁸ The Effective Date is the date on which the time for filing an appeal from the
28 Court's final approval of the Settlement has either expired without an appeal being
filed, or if later, after any appeal has been fully resolved. Agmt. § 2.16. *See also*
Keough FA Decl. at ¶ 13, this number may be slightly higher at the time of
distribution based on additional delivered notices.

¹⁹ Keough FA Decl. at ¶ 44–45, however, 1,515 claims need further analysis as the
de-duplication and fraud analysis has not been completed.

1 Each Class Member had the option to submit an online or written Claim Form
2 describing her experience with Tyndall, the impact on her, and the harm she suffered
3 for a Tier 2 Claim. Agmt. § 6.4(b). The Three Member Panel will assess each Claim
4 Form, and if it is determined to be credible, will award a Tier 2 payment between
5 \$7,500 and \$20,000, subject to Pro Rata Adjustments. *Id.* Agmt. § 6.4(b). As of this
6 filing, 1,746 Tier 2 claims have been submitted.²⁰

7 Each Class Member who, in addition to the written Claim Form, is willing to
8 provide information about her experience and its impact in an interview will be
9 considered for a Tier 3 Claim. Agmt. § 6.4(c). The Three Member Panel, will assess
10 each Claim Form and interview, and if they are determined to be credible will award a
11 Tier 3 payment between \$7,500 and \$250,000, subject to Pro Rata Adjustments. *Id.* As
12 of this filing, 1,197 Tier 3 claims have been submitted.²¹

13 Claimants may appeal the Committee's decision to the Special Master; such
14 appeals will involve a one-on-one interview with the Special Master, who will then
15 decide the appeal. The Special Master's decisions on appeals will be final. Agmt. §
16 6.6.

17 **b. Pro Rata Adjustment to Ensure Fairness and Maximum**
18 **Money Distributed to Class Members.**

19 The Amended Settlement Agreement provides that the Three Member Panel
20 will not consider either the number or amount of other Claim Awards or the total
21 Settlement Amount when making their Claim Award determinations. Agmt. §§
22 6.5(b)(ii), 6.5(c)(iv). The Claims Administrator will calculate the total sum of all
23 Claim Awards, compare that sum to the Settlement Fund, and calculate and apply any
24 Pro Rata Adjustments. Agmt. § 6.5(d).²²

25 ²⁰ Keough FA Decl. at ¶ 46.

26 ²¹ Keough FA Decl. at ¶ 47.

27 ²² Because the Administrative Expenses are paid out of the Settlement Fund, the
28 amount of the Settlement Fund at the time of the Pro Rata Adjustment calculation will
be less than \$215 million. As previously noted, attorneys' fees and costs are not

1 If the sum of the Claim Awards is less than the Settlement Fund, the Claims
2 Administrator will calculate and apply the Pro Rata Increase to all Tier 1, Tier 2, and
3 Tier 3 Claim Awards. Agmt. § 6.5(d)(i). The Pro Rata Increase will be calculated to
4 increase all Claim Awards by the same percentage until the total sum of all Claim
5 Awards equals the Settlement Fund, or until all Claim Awards have been increased by
6 50%, whichever occurs first. *Id.*

7 If the total sum of the Claim Awards exceeds the Settlement Fund, the Claims
8 Administrator will calculate and apply the Pro Rata Reduction to all Tier 2 and Tier 3
9 Claim Awards. Agmt. § 6.5(d)(ii). The Pro Rata Reduction will be calculated to
10 reduce all Tier 2 and Tier 3 Claim Awards by the same percentage until the sum of all
11 Claim Awards equals the Settlement Fund, or until all Tier 2 and Tier 3 Claim Awards
12 have been reduced by 25%, whichever occurs first. *Id.* Under no circumstances are
13 Tier 1 Claim Awards subject to Pro Rata Reduction. *Id.* In accordance with the
14 Court's request, the Notice and the Settlement Website include examples to explain
15 the potential Pro Rata Adjustments to Class Members.

16 **2. Requiring and Enforcing Robust Policy Changes at USC.**

17 A key feature of the Settlement is unprecedented equitable relief to Class
18 Members through sweeping reforms at USC and its health facilities, designed by
19 experts to ensure that the sort of abuse alleged in this case can never happen again at
20 USC. Agmt. Exs. B and C. Plaintiffs' Motions for Preliminary Approval [Dkt. 67 and
21 139] discussed these provisions at length. These Equitable Relief Measures add
22 substantial value to the Settlement by ensuring meaningful institutional change will be
23 implemented at USC.²³

24
25
26 _____
deducted from the Settlement Fund but will be paid separately by USC in an amount
determined by the Court. Agmt. ¶ 8.1.

27 ²³ See, e.g., Statement of USC Student Leaders in Support of Proposed Settlement
[Dkt. 129-5].

1 Since the Court's grant of preliminary approval, implementation of the equitable
2 reforms is underway. Class Counsel have selected Nancy Chi Cantalupo to serve as
3 the Independent Consultant and Task Force Member.²⁴ Professor Cantalupo has
4 extensive knowledge and experience with best practices for prevention of and
5 response to sexual assault and misconduct on university campuses.²⁵ She is an
6 accomplished scholar and administrator who has worked with student victims of
7 sexual harassment and gender-based violence, implemented campus-wide reforms,
8 and consulted with President Obama's White House Task Force to Protect Students
9 from Sexual Assault as well as various legislators.

10 In her role to date, Prof. Cantalupo has joined USC's Task Force for its 2019
11 AAU Campus Climate Survey on Sexual Assault and Misconduct at USC.²⁶ Prof.
12 Cantalupo has visited the USC campus in September, October, and November 2019 to
13 participate in Task Force meetings.²⁷ The Task Force has now received the results of
14 the Campus Climate Survey, and Prof. Cantalupo has worked with the other members
15 to review the data and to produce a report on the result and recommendations for
16 change.²⁸ Prof. Cantalupo has been working to identify opportunities for USC to
17 improve its practices, education, and policies, and developing recommendations for
18 practices and policies for implementation in light of the survey results.²⁹ Prof.
19 Cantalupo has also met with faculty, students, and leaders on campus to discuss issues
20 of gender-based violence and sexual assault, and included information learned from
21 those meetings in her recommendations and feedback.³⁰

22
23
24 ²⁴ See Joint Decl. of Counsel at ¶ 7.

25 ²⁵ Joint Decl. of Counsel at ¶ 5.

26 ²⁶ Joint Decl. of Counsel at ¶ 8.

27 ²⁷ Joint Decl. of Counsel at ¶ 9.

28 ²⁸ See Campus Climate Report: 2019 AAU Survey Results (Oct. 15, 2019),
<https://studenthealth.usc.edu/campus-climate-report-2019-aau-survey-results/>.

²⁹ Joint Decl. of Counsel at ¶ 10.

³⁰ Joint Decl. of Counsel at ¶ 11.

1 USC has started to implement other components of the Settlement's equitable
2 relief provisions, including a reform of its Student Health Center's operating and
3 oversight procedures, and the implementation of a new sexual misconduct and
4 violence prevention program.³¹ The Parties are continuing to work on additional relief
5 included in the Settlement, including the appointment of an Independent Women's
6 Health Advocate.³² Together, these and the other measures included in the Settlement
7 will bring about change on USC's campus that will be real and lasting.

8 **C. Attorneys' Fees Will Be Paid in Addition to the Settlement Amount**
9 **After Final Approval.**

10 Defendants agreed to pay all attorneys' fees and costs separately from and in
11 addition to the \$215 million payment to the Class. Agmt. § 8.1. Class Member
12 recoveries will not be reduced to pay for attorneys' fees or costs. Interim Class
13 Counsel will apply for an award of attorneys' fees and reimbursement of costs after
14 the Special Master files a Report on the Claims Process. They have agreed not to
15 request more than \$25 million. *Id.* Any fee award will be determined by the Court, and
16 Class Members will have the opportunity to review and comment on or object to the
17 fee petition as provided for in Fed. R. Civ. P. 23(h). *See In re Mercury Interactive*
18 *Corp. Sec. Litig.*, 618 F.3d 988 (9th Cir. 2010). Approval of the Settlement will not be
19 contingent on the Court approving fees and costs. Agmt. § 8.1.

20 **D. Notice to the Class.**

21 The Notice Plan was carried out pursuant to this Court's June 12, 2019
22 preliminary approval order. [Dkt. 148]. On July 11, 2019, the Notice Administrator
23 provided direct mail notice to 12,702 pre-identified Class Members and 152,801
24 potential Class Members.³³

25
26
27 ³¹ Joint Decl. of Counsel at ¶ 6.

³² Joint Decl. of Counsel at ¶ 12.

³³ Keough FA Decl. ¶¶13-15.

1 By July 11, 2019, the Settlement Website was created to include information
2 about the Settlement, key deadlines, and access to important documents, such as the
3 Notice (in multiple languages), Amended Settlement Agreement, and this Court’s
4 orders.³⁴ As of November 14, 2019, the website has had over 36,473 unique visitors.³⁵
5 The website’s FAQs page provides answers to Frequently asked Questions, and was
6 frequently updated throughout the Notice period in response to questions from Class
7 Members and changing circumstances such as the California Legislature’s passage of
8 AB 1510, which was enacted on October 2, 2019, that extended the California civil
9 action statute of limitations for damages in certain circumstances.³⁶

10 Multiple email accounts were created for Class Counsel to respond to questions
11 from Class Members.³⁷ A toll-free telephone support line also has been available, with
12 both automated and live operators, to provide answers to frequently asked questions
13 by Class Members.³⁸ Additionally, the notice was published in media likely to be
14 viewed by Class Members, including the *Daily Trojan* and USC’s alumni magazine
15 and newsletters, and as part of a digital media notice campaign utilizing Facebook,
16 LinkedIn, and Twitter banners and advertising—an online campaign that reached
17 almost 900,000 Women 18–54 years old.³⁹

18 **III. ARGUMENT**

19 In order to grant final approval to a class action settlement, the Court must
20 determine that the settlement agreement is “fair, reasonable, and adequate” under Rule
21 23(e)(2). Here, the Settlement readily meets those requirements, and merits approval.
22 As the Court recognized at the preliminary approval stage, the Settlement Class meets
23 the requirements of Rule 23(a) and 23(b)(3) and should be certified. [Dkt.148 at 2].
24

25 ³⁴ The Settlement Website can be visited at <https://www.usctyndallsettlement.com/>.

26 ³⁵ Keough FA Decl. ¶ 31.

27 ³⁶ Keough FA Decl. ¶ 30.

28 ³⁷ Keough FA Decl. ¶¶ 32-33.

³⁸ Keough FA Decl. ¶ 33.

³⁹ Keough FA Decl. ¶¶ 16–17.

1 **A. The Settlement is Fair, Reasonable, and Adequate, and Should Be**
2 **Finally Approved.**

3 Rule 23 of the Federal Rules of Civil Procedure governs a district court’s
4 analysis of the fairness of a settlement of a class action. *See* Fed. R. Civ. P. 23(e). A
5 court may approve the parties’ settlement only after it determines that it is “fair,
6 reasonable, and adequate.” Fed. R. Civ. P. 23(e). Rule 23(e)(2), which was amended
7 as of December 1, 2018, provides that a district court should approve a proposed
8 settlement after considering several factors.

9 When the Rule was amended, the Advisory Committee recognized that the
10 various Circuits had previously generated their own lists of factors to consider in
11 determining whether a settlement is fair, reasonable, and adequate.⁴⁰ The Committee
12 has clarified that this new list of factors does not “displace” existing factors, but
13 instead aims to “focus the court and the lawyers on the core concerns of procedure and
14 substance that should guide the decision whether to approve the proposal.” Adv. Cmt.
15 Note R. 23. An evaluation of these factors here confirms that both the procedure used
16 in negotiating the Settlement and the substance of the resulting Settlement are fair,
17 reasonable, and adequate, and thus merit final approval.

18 **1. Rule 23(e)(2)(A): The Class Representatives and Class Counsel**
19 **Have Vigorously Represented the Class.**

20 As amended, Rule 23(e) requires a Court to ensure that in a proposed
21 settlement, “the class representatives and class counsel have adequately represented
22 the class.” Fed. R. Civ. P. 23(e)(2)(A). Considerations at this stage can include “the
23 nature and amount of discovery in this or other cases, or the actual outcomes of other

24 _____
25 ⁴⁰ In the Ninth Circuit, those factors included: (1) the strength of the plaintiffs’
26 case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the
27 risk of maintaining class action status throughout the trial; (4) the amount offered in
28 settlement; (5) the extent of discovery completed and the stage of the proceedings; (6)
the experience and views of counsel; (7) the presence of a governmental participant;
and (8) the reaction of the class members to the proposed settlement. *See Hanlon v.*
Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998).

1 cases,” which “may indicate whether counsel negotiating on behalf of the class had an
2 adequate information base.” Adv. Cmt. Note R. 23.

3 In the context of class action settlements, “formal discovery is not a necessary
4 ticket to the bargaining table where the parties have sufficient information to make an
5 informed decision about settlement.” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234,
6 1239 (9th Cir. 1998) (quotation marks omitted). Further, the speed with which the
7 parties reached a resolution is not a concern as “an early resolution may demonstrate
8 that the parties and their counsel are well prepared and well aware of the strength and
9 weaknesses of their positions and of the interests to be served by an amicable end to
10 the case.” *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d
11 935, 967 (N.D. Ill. 2011); *see also Brown v. 22nd District Agricultural Assoc.*, No. 15-
12 cv-2578-DHB, 2017 WL 2172239, at *8 (S.D. Cal. May 17, 2017).

13 In other words, the parties need not unearth every last fact of a case before they
14 can settle it; rather, they must learn as much as necessary to ensure that claims are not
15 undervalued or settled prematurely. The relevant analysis is whether the parties have
16 undertaken sufficient steps given the context and circumstance of a particular case to
17 make a reasonable, informed decision to settle Class members’ claims. The parties
18 have done so here.

19 From the outset, Tyndall’s alleged conduct was widely reported in a number of
20 in-depth investigative news articles—many of which included statements from
21 Tyndall’s patients, coworkers, USC administrators, and Tyndall himself. The vigorous
22 investigation by Interim Class Counsel, including interviewing hundreds of former
23 Tyndall patients, reviewing data from USC, and consulting with experts, ensured that
24 they were thoroughly informed and able to negotiate a sensitive and compassionate
25 Settlement and Settlement Claims process. In light of the foregoing, the Settlement
26 meets the considerations of Rule 23(e)(2)(A).

2. **Rule 23(e)(2)(B): The Settlement Resulted from Informed Arm’s-Length Negotiations.**

Under Rule 23(e)(2)(B), the Court considers whether the Settlement was “negotiated at arm’s length.” Fed. R. Civ. P. 23(e)(2)(B). The Court considers the “conduct of the negotiations.” Adv. Cmt. Note R. 23. “[T]he involvement of a neutral or court-affiliated mediator or facilitator in those negotiations may bear on whether they were conducted in a manner that would protect and further the class interests.” *Id.* Additionally, the Court may look at “the treatment of any award of attorneys’ fees, with respect to both the manner of negotiating the fee award and its terms.” *Id.*

The close participation of Judge Layn Phillips in the settlement negotiation process underscores the procedural fairness of the Settlement. *See also Fed. Ins. Co. v. Caldera Med., Inc.*, No.2:15-cv-00393-SVW, 2016 WL 5921245, at *5 (C.D. Cal. Jan. 25, 2016) (this Court noted that “[t]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive”).

The parties negotiated attorneys’ fees for Class Counsel only after reaching agreement on the monetary relief for the Class.⁴¹ “The fact that the parties . . . did not discuss attorneys’ fees until all other issues were virtually finalized, is also indicative of a fair and arm’s-length process.” *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 2006); *Sadowska v. Volkswagen Grp. of Am., Inc.*, No. 11-CV-00665-BRO, 2013 WL 9600948, at *8 (C.D. Cal. Sept. 25, 2013) (approving settlement and finding agreement on fees and expenses reasonable where “[o]nly after agreeing upon proposed relief for the Class Members, did the parties discuss attorneys’ fees, expenses, and costs”); *Rodriguez v. Farmers Ins. Co. of Ariz.*, No. 09-CV-06786-JGB, 2013 WL 12109896, at *5 (C.D. Cal. Aug. 4, 2013) (same).

Therefore, the Settlement meets the considerations of Rule 23(e)(2)(B).

⁴¹ *See* Declaration of Honorable Layn Phillips [Dkt. 67-4] at ¶ 11.

1 **3. Rule 23(e)(2)(C): The Relief Under the Settlement Is**
2 **Outstanding.**

3 Amended Rule 23(e) (2)(C) requires a court to consider whether the relief
4 provided for the class is adequate by considering the “costs, risks, and delay of trial
5 and appeal”; “the effectiveness of any proposed method of distributing relief to the
6 class, including the method of processing class member claims”; “the terms of any
7 proposed award of attorneys’ fees, including timing of payment”; and “any
8 agreements to be identified under Rule 23(e).” Fed. R. Civ. P. 23(e)(2)(C)(i)-(iv). All
9 of these substantive considerations are satisfied here. The Settlement provides
10 substantial compensation to all Class Members, distributed via a fair and
11 compassionate claims process, and a Settlement amount that will not be reduced by
12 attorneys’ fees and costs. The Settlement further provides unprecedented equitable
13 relief to ensure lasting institutional changes at USC with independent oversight.

14 **a. Rule 23(e) (2)(c)(i): The Relief Provided for the Class is**
15 **Substantial, Particularly in Light of the Costs, Risks, and**
16 **Delay of Trial.**

17 Under Rule 23(e)(2)(c)(i), the Court must consider “costs, risks, and delay of
18 trial and appeal.” While Plaintiffs believe in the strength of their case, they also
19 recognize that litigation is uncertain, making compromise of claims in exchange for
20 the Settlement’s certain, immediate, and substantial benefits, including privacy for
21 Class Members, an unquestionably reasonable outcome.

22 There are risks inherent to any litigation, including that a particular plaintiff
23 could lose her case. Additionally, as evidenced in the pending state court cases, in
24 litigating their claims, Plaintiffs would be subject to discovery that raises major
25 privacy concerns. Defendants likely would seek to take victims’ testimony through
26 deposition or at trial. Women who filed suit using a Jane Doe pseudonym would risk
27 having their identities revealed.
28

1 A related significant cost of litigation for Class Members is the substantial
2 emotional toll that litigating through trial would impose on each victim. Testifying
3 requires victims to publicly re-live and recount the traumatic experiences they
4 endured. Resolving this case through the Settlement allows Class Members the choice
5 to put this behind them instead of re-living painful memories for years in protracted
6 litigation. This Settlement obviates the risks and delays of litigation in exchange for
7 privacy, choice, immediacy, guaranteed monetary compensation, and accountability.
8 The Settlement therefore meets the considerations of Rule 23(e)(2)(C)(i).

9 **b. Rule 23(e)(2)(c)(ii): The Settlement Claims Process Is**
10 **Efficient, Accurate, and Sensitive to Claimants' Needs**
and Privacy.

11 Rule 23(e)(2)(c)(ii) asks whether the methods of distribution and claims
12 processing are effective. Class Members have received direct notice of the Settlement
13 claims process and benefits through the Court-approved notice program. The
14 Settlement claims process detailed above is uniquely designed to provide an
15 accessible, safe, and private way for Class Members to tell their stories—to the extent
16 and in the way they choose—and receive compensation for the harms they suffered.
17 The three-tier structure centered on claimant choice is a creative way to maximize
18 payments and simplicity while also allowing for fuller inquiry and greater payment for
19 those who want it. Therefore, the Settlement meets the considerations of Rule
20 23(e)(2)(C)(ii).

21 **c. Rule 23(e)(2)(c)(iii): The Terms of the Proposed Award**
22 **of Attorney's Fees Puts Class Members First.**

23 Under Rule 23(e)(2)(C)(iii), the Court must consider whether “the terms of any
24 proposed award of attorneys’ fees, including time of payment” are reasonable. Here,
25 the Settlement provides that Defendants will pay Interim Class Counsel’s attorneys’
26 fees and costs separately, without any reduction of the Settlement Amount or Class
27 Member recoveries. The Court alone will decide attorneys’ fees and costs, and
28

1 approval of the Settlement will not be contingent on the Court approving fees and
2 costs in any particular amount. Agmt. § 8.1. Interim Class Counsel will move for fees
3 and costs after the Special Master files a Report on the Claims Process and will not
4 seek an amount greater than \$25 million. Class Members will have the opportunity to
5 review and comment on or object to the fee petition as provided by Fed. R. Civ. P.
6 23(h) and consistent with *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988
7 (9th Cir. 2010). Class Counsel will provide notice of their motion and the opportunity
8 to object via the Settlement Website.

9 **d. Rule 23(e)(2)(c)(iv): There Are No Undisclosed Side**
10 **Agreements.**

11 Under Rule 23(e)(2)(C)(iv), the Court must consider any agreements to be
12 identified under Rule 23(e)(3). Rule 23(e)(3) requires the parties seeking approval for
13 a class action settlement to “file a statement identifying any agreement made in
14 connection with the proposal.” There are no agreements to disclose under Rule
15 23(e)(3) and the settlement meets the considerations of Rule 23(e)(2)(C)(iv).

16 **4. Rule 23 (e)(2)(D): The Settlement Treats Class Members**
Equitably Relative to Each Other.

17 Rule 23(e)(2)(D) requires that the Court consider whether “the proposal treats
18 class members equitably relative to each other.” This factor is intended to ensure that a
19 proposed settlement does not include “inequitable treatment of some class members
20 vis-a-vis others.” Adv. Cmt. Note R. 23.

21 By design, the Settlement treats Class Members equitably by presenting each of
22 them with the same choices within the three-tier structure. All Class Members are
23 eligible to receive the same guaranteed minimum Tier 1 \$2,500 compensation solely
24 by virtue of being a Class Member. All Class Members who choose to submit a Tier 2
25 or 3 claim are eligible for awards up to \$20,000 or \$250,000, respectively. For Tier 2
26 and 3 claims, the Panel makes a claim award determination within the range for each
27 Tier based on the information provided by each claimant.

1 Additionally, as the Court noted, “if the proposed settlement prescribed a three-
2 person committee to make claims determinations”—which the parties did at the
3 Court’s direction—it “would find the settlement treats class members equitably toward
4 each other under Rule 23(e)(2)(D).” [Dkt. 124 at 8]. The Settlement thus ensures that
5 Class Members are treated equitably relative to each other and meets the
6 considerations of Rule 23(e)(2)(D).

7 Therefore, for the reasons detailed above, the Settlement satisfies all the Rule
8 23(e)(2) factors in favor of final settlement approval.

9 **B. The Court Should Certify the Settlement Class.**

10 In its June 12, 2019 Order, the Court found that it would likely be able to certify
11 the Settlement Class. [Dkt.148] at 3. Plaintiffs briefly address these elements below.

12 **1. The Class Meets the Requirements of Rule 23(a)**

13 Under Rule 23(a), the proponent of class certification must show that the
14 proposed class meets the requirements of (1) numerosity, (2) commonality, (3)
15 typicality, and (4) adequacy.

16 **a. The Class Is Sufficiently Numerous.**

17 Rule 23(a)(1) is satisfied when “the class is so numerous that joinder of all
18 members is impracticable.” Fed. R. Civ. P. 23(a)(1). It is undisputed that the Class
19 consists of at least 18,782 women living around the United States and the world. The
20 large size of the Class and the geographic disparity of its members render joinder
21 impracticable here. Therefore, Rule 23(a)(1)’s numerosity requirement is satisfied.

22 **b. There Are Common Questions of Both Law and Fact.**

23 “Federal Rule of Civil Procedure 23(a)(2) conditions class certification on
24 demonstrating that members of the proposed class share common ‘questions of law or
25 fact.’” *Stockwell v. City & Cty. of San Francisco*, 749 F.3d 1107, 1111 (9th Cir. 2014).
26 The “commonality requirement has been ‘construed permissively,’ and its
27 requirements deemed ‘minimal.’” *Estrella v. Freedom Fin. Network*, No. C 09-03156

1 SI, 2010 WL 2231790, at *25 (N.D. Cal. June 2, 2010) (quoting *Hanlon*, 150 F.3d at
2 1020).

3 Further, courts have found commonality satisfied in sex abuse class actions. *See*
4 *Jane Doe 30's Mother v. Bradley*, 64 A.3d 379, 385–86 (Del. Super. Ct. 2012); *Jane*
5 *Doe 2 v. The Georgetown Synagogue-Kesher Israel Congregation*, No. 2014 CA
6 007644 B, slip op. at 14 (D.C. Super. Oct. 24, 2018). In a case like this one, where the
7 exact factual circumstances of each class member's injury may vary, commonality
8 exists where a course of conduct subjects all class members to a similar risk or threat
9 of harm. *See, e.g., D.G. v. Devaughn*, 594 F.3d 1188, 1196 (10th Cir. 2010).

10 Many of the questions common to the Class focus on Defendants' conduct, and
11 include: whether Tyndall engaged in sexual harassment, invasion of privacy, assault,
12 and battery; whether Tyndall's alleged wrongful conduct was committed within the
13 scope of his employment at USC; whether USC had knowledge of Tyndall's wrongful
14 conduct; whether USC facilitated Tyndall's pattern and practice of sexual harassment,
15 invasion of privacy, assault, and battery; whether USC or Tyndall engaged in conduct
16 designed to suppress complaints or reports regarding Tyndall's conduct; whether USC
17 negligently retained or supervised Tyndall; whether USC ratified Tyndall's conduct;
18 and whether USC is vicariously liable for Tyndall's conduct. The answers to such
19 questions are the same as to each Class Member, and these answers are central to the
20 litigation. Therefore, Rule 23(a)(2)'s commonality requirement is satisfied.

21 **c. Plaintiffs' Claims Are Typical.**

22 Rule 23(a)(3) requires that "the claims or defenses of the representative parties
23 are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "The test of
24 typicality is 'whether other members have the same or similar injury, whether the
25 action is based on conduct which is not unique to the named plaintiffs, and whether
26 other class members have been injured by the same course of conduct.'" *Parsons v.*
27 *Ryan*, 754 F.3d 657, 685 (9th Cir. 2014). The same course of conduct that injured
28

1 Plaintiffs injured other Class Members. While the precise circumstances of each Class
2 Member’s interaction with Tyndall may vary, all allege claims concerning USC’s duty
3 to reasonably supervise Tyndall during his tenure. Thus, Rule 23(a)(3)’s typicality
4 requirement is met.

5 **d. Plaintiffs and Class Counsel Will Fairly and Adequately**
6 **Protect the Interests of the Class.**

7 Rule 23(a)(4) requires that the named Plaintiffs and Class Counsel “will fairly
8 and adequately represent the interests of the class.” Fed. R. Civ. P. 23(a)(4). Courts
9 consider two questions to evaluate whether the adequacy of representation
10 requirement of Rule 23(a) (4) is satisfied: “(1) Do the representative plaintiffs and
11 their counsel have any conflicts of interest with other class members, and (2) will the
12 representative plaintiffs and their counsel prosecute the action vigorously on behalf of
13 the class?” *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). The answer to
14 each of those questions satisfies Rule 24(a)(4)’s adequacy requirement.

15 Plaintiffs agreed to serve in a representative capacity, communicated diligently
16 with Interim Class Counsel, and continue to act in the best interests of the Class
17 Members—all of whom have an interest in obtaining relief for their claims. Various
18 Plaintiffs visited Tyndall at the student health center at different times within the class
19 period. There are no conflicts between individual Plaintiffs and the Class.

20 Interim Class Counsel are qualified to serve as Class Counsel as they
21 collectively have decades of experience successfully representing plaintiffs and
22 aggrieved classes in complex class action litigation, including in sexual misconduct
23 cases. *See* [Dkt. 34.] Accordingly, Rule 23(a)(4) is satisfied, and, for the same reasons,
24 Plaintiffs respectfully request the Court appoint Interim Class Counsel as Class
25 Counsel and Plaintiffs as Class representatives pursuant to Fed. R. Civ. P. 23(g)
26
27
28

1 **2. The Class Meets the Requirements of Rule 23(b)(3).**

2 Once the prerequisites of Fed. R. Civ. P. 23(a) are satisfied, the Court must
3 determine if one of the subparts of Rule 23(b) is also satisfied. As to the predominance
4 and superiority requirements of Rule 23(b)(3), when “[c]onfronted with a request for
5 settlement-only class certification, a district court need not inquire whether the case, if
6 tried, would present intractable management problems . . . for the proposal is that there
7 will be no trial.” *Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997) (explaining
8 that subdivision 23(b)(3)(D) drops out of the analysis).

9 **a. Common Issues of Law and Fact Predominate.**

10 The predominance analysis “focuses on the relationship between the common
11 and individual issues in the case, and tests whether the proposed class is sufficiently
12 cohesive to warrant adjudication by representation.” *Ehret v. Uber Techs., Inc.*, 148 F.
13 Supp. 3d 884, 894-95 (N.D. Cal. 2015) (quoting *Abdullah v. U.S. Sec. Assocs.*, 731
14 F.3d 952, 964 (9th Cir. 2013)).

15 Common questions of law and fact predominate here. All Class Members have
16 Title IX claims that USC’s failure to discipline Tyndall amounts to unlawful
17 discrimination.⁴² Because of this shared federal claim, a choice-of-law analysis would
18 be superfluous and unnecessary.⁴³ All of the claims center on Tyndall’s alleged
19 misconduct and that of USC, which conduct is common to all Class Members;
20 whether and when USC had notice of Tyndall’s abusive conduct and statements;
21 whether and when USC should have taken corrective action; why it failed to do so;
22 whether Tyndall’s conduct was medically justified; and whether his conduct can be
23

24 ⁴² See Tr. of Aug. 13, 2018 Hr’g at 6 (“[T]he court makes this observation: It does
25 seem established, although it isn’t necessarily intuitive, that the Title IX does apply to
26 this type of complaint”).

26 ⁴³ Additionally, because the conduct at issue occurred in California, all Class
27 Members could assert colorable claims under California law. See *Ehret v. Uber Techs,*
28 *Inc.*, 68 F. Supp. 3d 1121, 1131–32 (N.D. Cal. 2014); *Clothesrigger, Inc. v. GTE*
Corp., 191 Cal. App. 3d 605, 615–16 (1987).

1 vicariously imputed to USC. *See Doe v. The Johns Hopkins Hosp.*, No. 24C13001041,
2 2014 WL 5040602, at *2 (Md. Cir. Ct. Sept. 19, 2014) (common questions included
3 vicarious liability and when university knew of doctor’s behavior). Much of the same
4 evidence would be necessary to establish liability in each victim’s case, if brought
5 individually.

6 In contrast to these numerous common issues, the individual questions are few,
7 and generally only concern issues of individual damage calculation. Such differences
8 that “go primarily to damages . . . cannot destroy predominance.” *Ambriz v. Coca Cola*
9 *Co.*, No. 14-CV-00715-SVW, 2015 WL 12683823, at *4 (C.D. Cal. Mar. 11, 2015).
10 Thus, issues common to the class predominate.

11 **b. Class Treatment Is Superior in This Case.**

12 Rule 23(b)(3) also requires a class action to be “superior to other available
13 methods for fairly and efficiently adjudicating the controversy.” The Settlement allows
14 all Class Members to receive compensation efficiently, instead of limiting recovery to
15 women willing to step forward as a plaintiff. Collective action is plainly superior in
16 cases involving traumatic injuries, as victims of assault or abuse often do not wish to
17 subject themselves to litigation, whether to avoid making their experience public,
18 having to testify about it, or having to confront their abuser in court. *See, e.g., Doe v.*
19 *Roman Catholic Diocese of Covington*, No. 03-CI- 00181, 2006 WL 250694, at *5
20 (Ky. Cir. Ct. Jan. 31, 2016); *Bradley*, 64 A.3d at 385. Thus, the class action serves as a
21 valuable, vastly superior mechanism in cases like these, where those individuals who
22 choose to come forward and speak up may obtain justice for those who cannot.

23 The Settlement is also specifically designed so that Class Members do not have
24 to wholly surrender control of their claims. The Settlement instead contemplates
25 individualized consideration of particular claims through the Panel’s administration of
26 the three-tiered Settlement structure. This focus on claimant choice is a creative way
27 to maximize payments and simplicity, while allowing for fuller inquiry and greater
28

1 payment for those who want it. This proposed process incorporates the efficiency of
2 the class mechanism with the particular needs of Class Members in this case. Because
3 the class action device provides the superior means to effectively and efficiently
4 resolve this controversy, and as the other requirements of Rule 23 are each satisfied,
5 certification of the Class under Rule 23(b)(3) is appropriate.

6 **C. Plaintiffs Have Complied with All Additional Approval Factors**

7 **1. Plaintiffs Have Provided Adequate Notice Under Rule 23(b)(3)**
8 **and Rule 23(c)(2)(B)**

9 Class actions brought under Rule 23(b)(3) must satisfy the notice provisions of
10 Rule 23(c)(2), and upon settlement, “[t]he court must direct notice in a reasonable
11 manner to all class members who would be bound by the proposal[.]” The Notice and
12 notice program in this matter conformed to the mandates of Rule 23 and due process.
13 Rule 23(c)(2) prescribes the “best notice that is practicable under the circumstances,
14 including individual notice to all members who can be identified through reasonable
15 effort.” Fed. R. Civ. P. 23(c)(2). “The ultimate goal of giving notice is to enable Class
16 members to make informed decisions about whether to opt out or, in instances where a
17 proposed settlement is involved, to object or make claims.” Adv. Cmt. Note R. 23.

18 Here, the notice plan implemented after preliminary approval satisfies both Rule
19 23 and due process. Plaintiffs and JND have followed the approved notice procedures.
20 The Parties implemented the Court’s suggested changes to the content of the Notices
21 to ensure their full compliance with the requirements of Rule 23(c)(2)(B). The Notices
22 included all the information required under Rule 23(c)(2)(B): they informed Class
23 Members of the nature of the action, the class definition, the class claims, that a Class
24 Member may enter an appearance through an attorney, that the Court will grant timely
25 exclusion requests, the time and manner for requesting exclusion, and the binding
26 effect of final approval.

1 The notice campaign has been both procedurally and substantively successful.
2 JND, the Court-appointed Settlement Notice Administrator implemented a direct
3 notice campaign via mail and email, as well as a multifaceted indirect notice
4 campaign. Notice was mailed to 12,702 pre-identified Class Members and 152,801
5 potential Class Members⁴⁴ Notice was emailed to 11,318 pre-identified Class
6 Members and 113,432 potential Class Members.⁴⁵ Additionally, the Notice was
7 published in media likely to be viewed by Class Members, including the *Daily Trojan*
8 and USC’s alumni magazine, and through an online notice campaign utilizing
9 Facebook, LinkedIn, and Twitter banners.⁴⁶ Further, the Settlement Administrator
10 established the Settlement Website and set-up a toll-free number that individuals could
11 call to obtain information about the Settlement.⁴⁷ The Notice Administrator opines that
12 the notice program reached approximately 95% percent of Class Members.⁴⁸ Hence,
13 the notice process was adequate under Rule 23(c)(2).

14 **2. No Class Members Objected to the Settlement.**

15 Objections to proposed class settlements are governed by the procedures set
16 forth in Fed. R. Civ. P. 23(e)(5). No such objections to the Settlement were received.
17 Prior to this Court’s preliminary approval of the Settlement, a handful of attorneys
18 filed what they styled as “objections,” but those filings were not valid objections
19 pursuant to Fed. R. Civ. P. 23(e)(5), and this Court properly rejected them as
20 premature. [Dkt. 124].

21 The Court found those filings were “premature under Rule 24 for objections to
22 intervene at the preliminary approval stage, as all objections to the settlement
23 agreement are contemplated to be lodged after preliminary approval and before final
24

25 ⁴⁴ Keough FA Decl. at ¶ 13.

26 ⁴⁵ Keough FA Decl. at ¶ 15.

27 ⁴⁶ Keough FA Decl. at ¶¶ 16–17.

28 ⁴⁷ Keough FA Decl. at ¶ 33.

⁴⁸ Keough FA Decl. at ¶ 29.

1 approval.” *Id.* 9–10 (citing *Lane v. Facebook, Inc.*, No. C 08-3845 RS, 2009 WL
2 3458198 at *5 (N.D. Cal. Oct. 23, 2009)). None of those premature complaints about
3 the Settlement were re-lodged as objections during the time period for Class Member
4 objections.

5 **3. The Positive Response of Class Members to the Settlement** 6 **Favors Final Approval.**

7 Courts within the Ninth Circuit also give weight to the response of class
8 members. *See, e.g., In re Bluetooth Headset Prods. Liability Litig.*, 654 F.3d 935 (9th
9 Cir. 2011); *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528
10 (C.D. Cal. 2004). “The absence of a single objection . . . provides further support for
11 final approval of the Proposed Settlement.” *Nat’l Rural Telecomms.*, 221 F.R.D. at
12 529.

13 The overwhelmingly positive reaction from class members weighs in favor of
14 approval. Thousands of Class Members made claims, and their participation
15 demonstrates the Class’s support for the Settlement. Indeed, approximately 100
16 individuals who filed claims in state court have decided not to opt out of this
17 Settlement, but rather to participate as Class Members.⁴⁹ A total of 774 Class
18 Members opted out, exercising their option to bring their own cases, and not a single
19 Class Member objected to the Settlement. This positive reaction from the thousands of
20 Class Members is significant as it confirms that the Class supports the financial
21 compensation for their injuries, as well as the equitable relief that will prevent similar
22 harm to others at USC going forward.⁵⁰ The positive reaction of the Class strongly
23 favors approval of the Settlement.

24 **IV. CONCLUSION**

25 The Parties’ groundbreaking Settlement achieves this litigation’s central goals

26 ⁴⁹ Estimated by counsel based on a cross-reference of state plaintiffs to opt-outs.

27 ⁵⁰ *See also* Statement of USC Student Leaders In Support Of Proposed Settlement
28 [Dkt. 139–5].

1 of accountability and institutional change. First, the Settlement requires USC to pay
2 substantial compensation to Class Members for the pain they have endured, and in a
3 manner that allows the women to choose whether and how much they wish to be
4 involved. Second, the Settlement requires USC to improve its campus policies and
5 procedures, both as a sign of accountability, and to protect students on its campus
6 going forward. This is the largest ever class action settlement of sexual assault claims
7 and the first to incorporate equitable relief reforms to bring lasting institutional
8 change. In these ways, the Settlement is more than just fair, reasonable, and
9 adequate—it is an outstanding result for the Class.

10 For all the reasons stated above, and set forth in the initial motion [Dkt. 67] and
11 renewed motion [Dkt. 124], the Amended Settlement Agreement resolves this
12 litigation while providing outstanding equitable and monetary relief for Class
13 Members. For all these reasons, Plaintiffs respectfully request that the Court grant
14 their motion for final settlement approval, certify the Settlement Class, appoint the
15 undersigned as Class Counsel, and appoint Plaintiffs as Class Representatives.

16 DATED: November 18, 2019.

Respectfully submitted,

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