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

25 **IN RE USC STUDENT**
26 **HEALTH CENTER**
27 **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]

JOINT DECLARATION OF STEVE W. BERMAN, ELIZABETH A. KRAMER, AND ANNIKA K. MARTIN IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND TO DIRECT CLASS NOTICE

1 Steve W. Berman, Elizabeth A. Kramer, and Annika K. Martin jointly declare:

2 1. We serve as Interim Class Counsel in this consolidated action and
3 submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of
4 the Class Action Settlement and to Direct Class Notice. We have personal
5 knowledge of the facts set forth below, and if called upon to do so, could and would
6 testify competently thereto.

7 2. The settled claims relate to alleged sexual abuse and harassment by Dr.
8 George Tyndall during his lengthy tenure as an obstetrician-gynecologist at USC's
9 student health center. Plaintiffs allege, among other things, that USC should have
10 taken remedial action in response to complaints of Tyndall's misconduct, and that
11 its failure to do so enabled Tyndall to continue his offensive, harmful treatment of
12 female USC students for many years.

13 3. The \$215 million Settlement before the Court achieves the litigation's
14 goal of accountability through fair compensation of these victims as well as
15 institutional change at USC to prevent similar violations in the future. The three-
16 tiered structure for monetary relief provides for automatic payments to class
17 members who do not file a claim, while those who are comfortable telling their
18 story are eligible to receive up to \$250,000 each. No portion of the \$215 million to
19 be paid by USC will revert to USC or be used to pay attorneys' fees. We
20 negotiated the Settlement at arms' length under the supervision of a highly
21 respected mediator, and believe the benefits obtained under the Settlement meet all
22 requirements for approval.

23 **Litigation and Investigative Activities**

24 4. The *Los Angeles Times* broke the Tyndall story in May 2018. After
25 USC responded with a series of public statements, victims of Tyndall began filing
26 lawsuits in federal and state courts. The federal cases filed by our firms were:
27 *Sutedja v. USC*, No. 2:18-cv-04258-SVW-GJS (C.D. Cal. filed May 21, 2018); *Doe*

1 *A.T. v. USC*, No. 2:18-cv-04940-SVW-GJS (C.D. Cal. filed June 4, 2018); *Jane*
2 *Doe 1 v. Tyndall*, No. 2:18-cv-05010-R-AGR (C.D. Cal. filed June 5, 2018);
3 *O’Conner v. USC*, No. 2:18-cv-05125-JFW-AS (C.D. Cal. filed June 8, 2018); *Jane*
4 *Doe J.L. v. USC*, No. 2:18-cv-06115-SVW-GJS (C.D. Cal. filed July 13, 2018).

5 Attorneys at our firms engaged in substantial factual and legal work that informed
6 the preparation of each complaint filed in this litigation.

7 5. In addition, 66 cases against Defendants are pending in Los Angeles
8 County Superior Court and consolidated before Hon. Carolyn Kuhl under the lead
9 case caption *Jane Doe 5 v. Tyndall*, No. BC705677 (Cal. Super. Ct.). The
10 Settlement Agreement at issue here resolves one of the state court class actions,
11 *Jane Doe 1 v. USC*, No. BC713383 (Cal. Super. Ct. filed July 9, 2018). Plaintiff’s
12 counsel in that case participated in the negotiations of this Settlement, and the
13 plaintiff in that case reviewed and approved the Settlement Agreement.

14 6. On August 13, 2018, the parties appeared before this Court on
15 Plaintiffs’ motion for consolidation and for appointment as Interim Class Counsel.
16 The Court concluded the hearing by stating, “I know this is not your typical case,
17 but on the other hand it has to be resolved in some way.”

18 7. Also on August 13, 2018, the Court consolidated the federal cases
19 under Rule 42(a). (ECF No. 45.) On August 28, 2018, we filed the Consolidated
20 Complaint. (ECF No. 47.)

21 8. Each Plaintiff agreed to serve in a representative capacity and
22 communicated diligently with us, sharing her story, reviewing complaint
23 allegations, and consulting with us on settlement.

24 9. USC told us that it wished to explore an early and comprehensive
25 resolution of the claims brought in this litigation. Our initial aim, therefore, was to
26 gather the information required to be fully informed and knowledgeable in
27 negotiating a possible settlement. That information included the size of the putative

1 class, the scope and nature of Plaintiffs' injuries, and the availability and
2 completeness of USC's records concerning Tyndall's treatment of patients. To
3 ensure that we had an adequate factual basis for negotiating, we propounded 58
4 document requests to USC in addition to noticing a Rule 30(b)(6) deposition.

5 10. At the time we served this discovery, several in-depth investigative
6 news articles had already revealed extensive information about Tyndall's
7 misconduct and USC's related knowledge and inaction. As a result, there was
8 never a genuine dispute about the fact that Tyndall sexually abused his female
9 patients for decades or that USC knew of and failed to adequately respond to
10 Tyndall's conduct. We consequently negotiated at all times under a well-informed
11 presumption that Tyndall committed the alleged abuses and that USC was aware of
12 and failed to address them. Against that backdrop, reaching a fair and informed
13 resolution mainly required a clear understanding of: (1) the nature of Tyndall's
14 abuse, including the types of injury inflicted and extent of harm his victims
15 suffered; and (2) the scope of abuse, including how many women he abused.

16 11. In this litigation, USC produced a core set of documents consisting of
17 its Tyndall-related records, including patient and nurse complaints, dating to the
18 1990s. These records confirmed that Tyndall engaged in a range of misconduct,
19 which in some cases included abusive physical contact with women and in other
20 cases involved offensive remarks or questioning.

21 12. USC also provided details on its health center and registrar records and
22 the number of class members, and made its data and recordkeeping experts
23 available to answer our questions about the university's records relating to Tyndall
24 and his patients. Through this process, we gained a comprehensive understanding
25 of the size of the class and of the content and completeness of USC's patient
26 records.

27 13. We sought further guidance from several experts, including specialists

1 experienced in working with sexual assault victims, diagnosing and treating PTSD,
2 allocating a fund to victims of trauma, and designing and implementing institutional
3 changes to prevent sexual abuse in educational and medical settings. We consulted,
4 among other individuals, the special master who oversaw the allocation process in
5 the recent Johns Hopkins sex abuse settlement, to inform negotiations relating to a
6 claims structure.

7 14. At the same time, attorneys at our firms continued to handle intakes
8 and interviews with hundreds of Tyndall's victims. Through these communications
9 we sought to understand not only the victims' personal experiences but also their
10 views on what terms any settlement of this litigation should contain.

11 **Mediation and Negotiation Under the Supervision of Judge Phillips**

12 15. Our thorough and focused investigation enabled us to come to the
13 mediation table with a fulsome understanding of the strengths and weaknesses of
14 the claims and defenses in this litigation.

15 16. In August 2018, the parties, along with Defendants' insurers,
16 participated in a full-day mediation session with Hon. Layn R. Phillips (Ret.), who
17 previously mediated the recent Michigan State sex abuse cases. The parties
18 prepared lengthy mediation briefs concerning the merits of the claims and defenses.
19 As part of this process, we extensively researched jury awards and settlement
20 amounts in comparable cases involving large-scale abuse. The parties were unable
21 to reach an agreement at the mediation but agreed to keep working toward a fair
22 resolution.

23 17. After the mediation, the parties and insurers engaged in frequent
24 discussions, both directly and through Judge Phillips, to narrow the issues in
25 dispute and work toward a resolution. The negotiations were hard fought, and
26 conducted at arms' length by experienced counsel. This intensive period of
27 information gathering, expert consultation, and negotiation eventually resulted in an

1 agreement in principle and a term sheet outlining the contours of a settlement.

2 18. The parties signed the settlement term sheet on October 18, 2018.
3 Before we signed it, each Plaintiff in the Consolidated Complaint provided her
4 informed approval of the term sheet. The Plaintiffs support the Settlement because
5 it provides substantial compensation for their injuries, together with changes in
6 USC's practices that will prevent similar harm to others, and because it allows them
7 to put traumatic events behind them.

8 19. With the term sheet in place, the parties continued the painstaking
9 work of negotiating the terms of a settlement agreement. Turning to Judge Phillips
10 for assistance where necessary, the parties negotiated the details of claims structure
11 and equitable relief provisions. During this time, at our request, USC and its data
12 experts furnished us additional information on class size and composition, and the
13 availability and contents of pertinent records. We also continued to consult with
14 independent experts—regarding the design, mechanics, and language of the Notice
15 and claims process to ensure they would be effective and sensitive to claimants, and
16 regarding how best to fashion meaningful equitable relief.

17 20. The parties executed the Settlement Agreement on February 12, 2019.

18 **The Special Master**

19 21. The Settlement provides for the appointment of a Special Master who,
20 aided by a team of knowledgeable experts, will supervise the claims process and
21 determine and resolve individual claims. Under the Settlement, a claimant may ask
22 the Special Master to reconsider an award decision, but the Special Master's
23 decisions on individual awards will be final and cannot be appealed to this Court.

24 22. This approach of relying on an experienced special master, aided by
25 knowledgeable experts, was successfully employed in similar settlements of sexual
26 assault claims, including the recent Johns Hopkins settlement. *Jane Doe No. 1, et*
27 *al. v. Johns Hopkins Hospital, et al.*, No. 24-C-13-001041 (Md. Cir. Ct. 2014).

1 23. The Special Master and her team will be mindful of the victims’ needs
2 and of how past trauma can affect their memories and communications, and will
3 consider these factors among others when performing the analysis necessary to
4 determine claim amounts and allocate the fund consistently and fairly among
5 claimants.

6 24. The parties propose that Hon. Irma Raker (Ret.)—who supervised
7 administration of the Johns Hopkins settlement—or alternatively, Hon. Irma E.
8 Gonzalez (Ret.) be appointed as the Special Master.

9 25. Once appointed, the Special Master, in consultation with the parties
10 and experts, will develop protocols for interviews and other communications with
11 claimants.

12 **Equitable Relief for the Benefit of USC Students**

13 26. An important component of the Settlement is its set of provisions
14 requiring USC to take specific steps to ensure that patients at its student health
15 center will not encounter wrongful behavior similar to what the class members here
16 encountered. The Settlement’s equitable relief provisions appear at paragraphs 4.1-
17 4.3 of the parties’ agreement.

18 27. To inform and assist our negotiation and drafting of these provisions,
19 we consulted several experts with relevant knowledge and experience: Dr. Charol
20 Shakeshaft, Nancy Cantalupo, Glenn Lipson, Dr. Julia Lamb, and Dr. Judy Ho.
21 These experts, who specialize in crafting policies and procedures for disclosure,
22 reporting, and prevention of sexual violence on campus, in treatment of and
23 communication with victims of sexual violence, and in obstetrics and gynecology,
24 reviewed multiple drafts of the parties’ competing proposals concerning equitable
25 relief, participated in numerous conferences with Interim Class Counsel to provide
26 comments and guidance on the proposals, and provided numerous written resources
27 during negotiation and drafting.

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Notice to the Class

28. The parties have agreed upon proposed forms of notice and a notice program that comport with due process and the requirements of Rule 23. The proposed notice program is laid out in the Declaration of Jennifer M Keough with proposed notices attached.

29. To ensure that all women who may have seen Tyndall for treatment learn about the Settlement and their rights, notice will be mailed to all women who were USC students during the class period and whose contact information is contained in USC’s records. The notice will also be published in media likely to be viewed by class members, such as the *Daily Trojan* and USC’s alumni magazine, and as part of an online notice campaign that JND will supervise.

30. We selected JND to serve as the notice provider after a competitive bidding process. JND is experienced and qualified to carry out the notice program in this case.

31. In addition, USC will cause notice of the Settlement to be provided to the appropriate federal and state authorities as required by the Class Action Fairness Act, 28 U.S.C. § 1715.

Appointment of Settlement Class Counsel; Attorneys’ Fees and Costs

32. We are qualified to serve as settlement class counsel under Rule 23(g). Collectively, we have decades of experience successfully representing plaintiffs and aggrieved classes in complex class action litigation, including in sexual misconduct cases. Detailed information about our firms can be found at Docket Entry No. 34, which contains our motion for consolidation and for appointment as Interim Class Counsel.

33. Defendants will pay attorneys’ fees and reimburse litigation costs separately from the \$215 million Settlement, in an amount to be determined by the Court.

