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

16 IN RE: USC STUDENT HEALTH
17 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' REPLY IN
SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

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

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1 **I. INTRODUCTION**

2 Plaintiffs, by and through Interim Class Counsel, respectfully submit this reply
3 in support of their motion for final approval of their proposed class action settlement
4 (“Settlement”) with Defendants to resolve claims of Dr. George Tyndall’s alleged
5 decades-long pattern of sexual abuse during his tenure as an obstetrician-gynecologist
6 at the USC student health center. The \$215 million Settlement is the largest ever class
7 action settlement of sexual abuse claims and the first to incorporate extensive
8 equitable relief reforms to effectuate lasting institutional change.

9 There is tremendous support for the Settlement among Class Members. No
10 Class Member filed an objection to the Settlement and there is no opposition to
11 Plaintiffs’ motion for final approval of the Settlement. The positive reaction to the
12 Settlement and broad support of the Class Members is especially notable in a case
13 involving the sensitive issues of sexual abuse and harassment.

14 Plaintiffs take this opportunity to update the Court regarding the number of
15 valid claims to provide a closer approximation of the range of claims award outcomes,
16 based on the number of valid exclusions and the on-going confirmation and de-
17 duplication of submitted claims, and to provide clarity regarding the timing of USC’s
18 funding of the Escrow Account.¹ The \$215 million non-reversionary Settlement will
19 fairly, reasonably, and adequately compensate all Class Members. The equitable relief
20 reforms require USC to improve its campus policies and procedures and ensure that
21 the types of abuse alleged in this case can never happen again at USC. Therefore,
22 Plaintiffs and Interim Class Counsel respectfully request that the Court grant their
23 motion for final settlement approval, certify the Settlement Class, appoint the
24 undersigned as Class Counsel, and appoint Plaintiffs as Class Representatives.

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27 ¹See Addendum to the Amended Settlement Agreement, *inter alia* amending
Sections 4.4 and 6.4 (a)(i)-(ii) (“Addendum to ASA”).

1 **II. ARGUMENT**

2 **A. The updated claims analysis shows the \$215 million Settlement**
3 **will fairly, adequately, and reasonably compensate Class**
4 **Members.**

5 The \$215 million Settlement is sufficient to satisfy all claims based on the
6 updated claims analysis. As of the date of filing this reply, 17,919 Tier 1 Claims²,
7 1,720 Tier 2 Claims, and 1,232 Tier 3 Claims have been submitted.³ 207 claims have
8 been removed from the estimate of the de-duplicated claims due to erroneous filings.⁴
9 The claims validation analysis is still ongoing; therefore, the final claims number
10 determination, which the Claims Administrator expects to complete in January 2020,
11 may differ slightly.⁵

12 A total of 801 Class Members submitted timely and potentially valid opt-outs.⁶
13 Of those exclusions, 537 were from Pre-Identified Class Members.⁷ To reach the
14 updated claims award estimates, the Claims Administrator used average award
15 estimates for Tier 2 and Tier 3 (\$15,000 and \$125,000 respectively)⁸ and subtracted
16 the 537 potentially valid exclusions of Pre-Identified Class Members from the number
17 of total claims.⁹

18 ² Supplemental Declaration of Jennifer M. Keough in Support of Final Approval
19 (“Keough Supp. Decl.”) at ¶ 53, fn 5.

20 ³ Keough Supp. Decl. at ¶¶ 44, 53, fn 5. The number of claims are updated from
21 Plaintiffs’ motion for final settlement approval [Dkt. 155] as additional timely claims
22 were received, the claimants were able to change Tiers, and the claims validation
23 analysis is ongoing.

24 ⁴ Keough Supp. Decl. at ¶ 44.

25 ⁵ *Id.* The claims validation process is still ongoing for the following reasons: valid
26 claims are still being received, claimants are able to switch Tiers, the Claims
27 Administrator is updating claims that are missing data or have multiple Tiers selected,
28 and the Claims Administrator continues to receive address updates daily from the Pre-
Identified Class Members whose mail was undeliverable.

⁶ Keough Supp. Decl. at ¶ 42.

⁷ *Id.*

⁸ Keough Supp. Decl. at ¶ 53; *See also* [Dkt. 152]. The Tier 2 and Tier 3 claim
award amounts have not been determined because the Special Master has not yet been
appointed to begin the claim adjudication process.

⁹ Keough Supp. Decl. at ¶¶ 44, 53, fn 5. The calculation for the number of Tier 1
Claims in Plaintiffs’ motion for final settlement approval [Dkt. 155] came from adding
the total Pre-Identified Class Members plus the number of class membership claims

1 Therefore, for the most conservative claim number count,¹⁰ the updated
 2 calculation for the total amount awarded is \$207.4 million leading to a Pro Rata
 3 Increase of approximately 1% for all Claims.¹¹ For the most liberal claim number
 4 count,¹² the updated calculation for the total amount awarded is \$217.2 million.¹³ A
 5 Pro Rata Decrease would be applied in this scenario, decreasing Tier 2 and Tier 3
 6 award amounts 4% below their initial allocation.¹⁴ Plaintiffs submit the actual amount
 7 of claim awards will likely be between these two calculations.

8 The Settlement amount will therefore be sufficient to satisfy all claims. Within
 9 10 days of the Effective Date, Defendants will deposit \$50 million into the Escrow
 10 Account, applicable towards costs of administration and any and all Tier 1 Awards.¹⁵
 11 Beginning not later than 10 days after the Effective Date, Tier 1 Awards will be
 12 mailed to Pre-Identified Class Members and confirmed self-identified Class

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 15 received (13,670, + 5,112 = 18,782). The original calculation inadvertently did not
 16 subtract the number of timely and potentially valid exclusions of Pre-Identified Class
 17 Members from the total number of claims. Therefore, the correct and updated number
 18 of total Tier 1 Claims is 17,919 ((13,670- 527) + 4,786 = 17,919).

19 ¹⁰ Keough Supp. Decl. at ¶ 55. The most conservative claim number count means
 20 assuming no undeliverable notice packets to Pre-Identified Class Members will be
 21 delivered (12,689 were deliverable) minus the 537 Pre-Identified Class Members that
 22 submitted a timely and potentially valid exclusion, and assuming all currently
 23 unconfirmed Tier 1, Tier 2, and Tier 3 forms are duplicative or invalid (3,645 match
 24 Potential Class Members on the Notice List), which equals 15,797 total claimants,

¹¹ See Keough Supp. Decl. at ¶¶ 55–56. This \$207.4 million total comes from
 summing \$39.5 million for Tier 1 (15,797 x \$2,500); \$24.6 million for Tier 2 (1,638 x
 \$15,000); and \$150.4 million for Tier 3 (1,203 x \$125,000) then subtracting \$7.1
 million to offset Tier 1 payments already received by 2,841 Tier 2 and 3 claimants.

¹² Keough Supp. Decl. at ¶ 53. The most liberal claim number count means
 assuming all undeliverable notice packets are eventually delivered (13,670 Pre-
 Identified Class Members), minus the 537 Pre-Identified Class Members that
 submitted a timely and potentially valid exclusion, and all unconfirmed Tier 1, Tier 2,
 and Tier 3 forms are valid (4,786 forms submitted), which equals 17,919 total
 claimants.

¹³ See Keough Supp. Decl. at ¶ 53. This \$217.2 million total comes from summing
 \$44.8 million for Tier 1 (17,919 x \$2,500); \$25.8 million for Tier 2 (1,720 x \$15,000);
 and \$154 million for Tier 3 (1,232 x \$125,000) then subtracting \$7.4 million to offset
 Tier 1 payments already received by 2,952 Tier 2 and 3 claimants.

¹⁴ Keough Supp. Decl. at ¶ 54.

¹⁵ Addendum to ASA ¶ 2.

1 Members.¹⁶ Once the Special Master and her Panel submits their proposed Claim
2 Awards to the Court, Defendants will deposit the balance of the Settlement amount
3 plus interest into the Escrow Account within 10 days.¹⁷

4 Based on the updated claims analysis, Plaintiffs and Interim Class Counsel
5 submit that this Settlement is not only fair, reasonable, and adequate, but an
6 outstanding result for the Class. Plaintiffs respectfully request that the Court grant
7 final approval of the Settlement and certify the class for settlement purposes.

8 **III. CONCLUSION**

9 The Parties’ historic Settlement is more than just fair, reasonable, and
10 adequate—it is an outstanding result for the Class. The Settlement achieves the goals
11 of this litigation—accountability and intuitional change—in two important ways. First,
12 it provides fair compensation through a claims process that allows Class Members to
13 choose whether and how much to engage in the process. Second, the Settlement
14 includes unprecedented equitable relief through the campus-wide implementation of
15 best practices for preventing and addressing sexual abuse and harassment, along with
16 independent oversight to ensure real and lasting change at USC. Plaintiffs respectfully
17 request that the Court grant their motion for final settlement approval, certify the
18 Settlement Class, appoint the undersigned as Class Counsel, and appoint Plaintiffs as
19 Class Representatives.

20 DATED: December 23, 2019.

Respectfully submitted,

21 HAGENS BERMAN SOBOL SHAPIRO LLP

22 By /s/ Steve W. Berman

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27 ¹⁶ Addendum to ASA at ¶ 4.

¹⁷ Addendum to ASA at ¶¶ 2-3.

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