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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  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT  
AND TO DIRECT CLASS NOTICE;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT

Date: April 1, 2019  
Time: 1:30 p.m.  
Ctrm: 10A  
Hon. Stephen V. Wilson

1 **NOTICE OF MOTION**

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

3 **PLEASE TAKE NOTICE THAT** on April 1, 2019 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 a) Granting preliminary approval of the proposed class action settlement that  
10 would resolve this litigation;  
11 b) Approving the proposed notice program, including the proposed forms of  
12 notice, and directing that notice be disseminated in accordance with the  
13 proposed program; and  
14 c) Setting a final approval hearing and certain other dates in connection with  
15 the settlement approval process.

16 This motion is based upon this Notice; the Memorandum of Points and  
17 Authorities in Support; the Joint Declaration of Class Counsel and the attached  
18 exhibits, which includes the Settlement Agreement; the Declaration of Hon. Layn  
19 Phillips; the Declarations of Plaintiffs Betsayda Aceituno, Jane Doe F.M., Jane Doe  
20 M.V., Jane Doe A.N., Jane Doe H.R., Mehrnaz Mohammadi, Jane Doe M.S., Jane  
21 Doe 4, Jane Doe A.D., Jane Doe C.N., Jane Doe A.R., and Shannon O’Conner; the  
22 Declaration of Plaintiffs’ Notice Program Expert, Jennifer M. Keough from JND  
23 Legal Administration LLC, and attached exhibits, along with the proposed notices  
24 themselves; and any further papers filed in support of this motion, as well as  
25 arguments of counsel and all records on file in this matter.

1 DATED: February 12, 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 to preliminarily approve their proposed class action settlement (the “Settlement”) with  
4 Defendants Dr. George Tyndall, the University of Southern California, and the Board  
5 of Trustees of the University of Southern California<sup>1</sup> to resolve claims of sexual abuse  
6 by Tyndall during his tenure as an obstetrician-gynecologist at the USC student health  
7 center. The Settlement requires USC to pay \$215 million in non-reversionary cash  
8 (net of attorneys’ fees and costs) to pay Class member claims, and provides for robust,  
9 expert-crafted equitable relief going forward to ensure that the events that led to this  
10 litigation never occur at USC again.

11 The Settlement is an outstanding result that achieves this litigation’s central goal  
12 of accountability through fair compensation of victims and institutional change at  
13 USC. And it does so in a timely and compassionate manner. It provides real, immedi-  
14 ate, and certain compensation for thousands of women—no less than \$2500 and up to  
15 \$250,000 each—while allowing *them* to choose whether and how much to engage in  
16 the process and tell their stories. And it ensures meaningful institutional change at  
17 USC via implementation of best practices and independent oversight.

18 For decades, Tyndall used his position of trust and authority as an obstetrician-  
19 gynecologist at the USC student health center to perpetrate pervasive sexual abuse and  
20 harassment of female patients. Despite evidence that USC knew or should have known  
21 about Tyndall’s conduct, USC kept Tyndall on, giving him continued access and  
22 opportunity to abuse his female patients. Tyndall’s pattern of abusive conduct did not  
23 come to public light until May 2018, when news reports first revealed Tyndall’s  
24 misconduct. Lawsuits followed, including the federal class actions consolidated in this  
25 case.

26 From the outset, Interim Class Counsel were driven to move this case forward

27 <sup>1</sup> 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 with a singular focus: holding Tyndall and USC accountable, in two ways. First,  
2 obtaining fair compensation for victims without forcing them to endure the emotional  
3 toll, risks, and delays of litigation, including having to re-live their trauma in a public,  
4 adversarial forum. Second, effecting lasting institutional change at USC by  
5 implementing best practices and ensuring independent oversight. To achieve those  
6 dual ends, Interim Class Counsel retained and consulted with experts experienced in  
7 working with sexual assault victims, diagnosing and treating PTSD, and crafting and  
8 implementing institutional policy changes to prevent sexual abuse in educational and  
9 medical contexts. Interim Class Counsel also consulted with the special master who  
10 oversaw the settlement allocation process in the successful *Johns Hopkins* sex abuse  
11 class action,<sup>2</sup> among others. Interim Class Counsel also conducted extensive  
12 interviews of all named Plaintiffs and numerous other Tyndall victims to ensure a  
13 comprehensive understanding of the scope and nature of the abuse, to learn what  
14 issues were of greatest importance to the victims, and to best address them in a  
15 compassionate and sensitive manner. For its part, USC too expressed a strong and  
16 immediate desire to focus on fairly compensating Tyndall's victims in a non-  
17 adversarial manner accounting for its important relationship with these women.

18 With these shared goals in mind, the parties conducted early informal discovery  
19 and engaged a highly respected and experienced mediator, Hon. Layn R. Phillips, who  
20 successfully mediated the Michigan State sex abuse scandal cases. Following a full-  
21 day, in-person mediation session with Judge Phillips, the parties, along with USC's  
22 insurers, had frequent, ongoing discussions amongst each other and with Judge  
23 Phillips to narrow the issues in dispute. After this intensive information gathering,  
24 expert consultation, and negotiation, the parties reached an agreement-in-principle and  
25 term sheet outlining the contours of a class settlement. As the parties negotiated the  
26 details of the Settlement, Interim Class Counsel sought and received more information

27  
28 <sup>2</sup> *Jane Doe No. 1 v. Johns Hopkins Hosp.*, No. 24-C-13-001041 (Md. Cir. Ct. 2014).

1 from USC and its data experts, and continued to consult with subject-matter experts  
2 concerning the appropriate design, process, and language for the Settlement claims  
3 process.

4 The end result is the Settlement before the Court today, which meets the goal of  
5 accountability through fair compensation and meaningful institutional change. While  
6 no amount of money can ever fully compensate victims for the abuse they suffered at  
7 Tyndall's hands, the Settlement provides substantial monetary compensation to Class  
8 members, coupled with lasting institutional change to ensure something like this will  
9 never happen again at USC.

10 Some key features are:

11 Accountability: Defendants will pay a total sum of \$215 million to the Class, net  
12 of attorneys' fees and costs. USC will implement institutional changes to protect  
13 students and prevent abuse. These changes were developed by leading experts in the  
14 field, and include policy and procedure changes at the Student Health Center;  
15 appointment of an Independent Women's Health Advocate; and convention of a Task  
16 Force—including an independent expert (retained and paid by Interim Class Counsel)  
17 specializing in university best practices related to prevention and response to sexual  
18 assault and misconduct—to recommend university-wide changes to prevent sexual  
19 violence on campus.

20 Immediacy and Certainty: Providing compensation to Class members should  
21 not take years of risky and re-traumatizing litigation. The Settlement offers guaranteed  
22 relief to victims far more quickly than protracted litigation with its uncertain results.

23 Choice and Sensitivity: The Settlement's three-tier claims structure allows Class  
24 members to choose whether and in how much detail they wish to tell their story. Tier 1  
25 is for those who do not wish to engage; every Class member is eligible for a  
26 guaranteed minimum \$2,500 payment, no questions asked. Those payments will be  
27 automatically sent to all known Class members; any other Class member need only  
28

1 submit a simple statement of class membership to claim her Tier 1 payment. In  
2 addition to the guaranteed minimum, every Class member is eligible to make a claim  
3 for up to \$250,000. Those who wish to tell their story in writing on a simple claim  
4 form are eligible for up to \$20,000 (Tier 2). And those who choose to further engage  
5 by providing an interview are eligible for up to \$250,000 (Tier 3). All Tier 2 and 3  
6 claims will be evaluated by a Court-appointed independent Special Master who will  
7 also make all allocation decisions.

8 *Simplicity*: The Settlement’s claims process is simple by design—no action for  
9 Tier 1, simple claim form for Tier 2, simple claim form and interview for Tier 3. This  
10 is to make the process easier and more comfortable for victims, and to ensure they can  
11 complete it without having to hire an attorney. To the extent any Class member wants  
12 help navigating even this simple process, Interim Class Counsel stand prepared to  
13 provide all necessary assistance, without reducing Class Members’ compensation by  
14 taking any attorneys’ fees or costs out of it.

15 *Privacy*: The Settlement structure and process is designed to provide a safe,  
16 private place for victims to tell their stories—to the extent and in the way they  
17 choose—and get compensation for the harms they suffered without having to go  
18 through invasive, adversarial, public, slow, and risky litigation.

19 \* \* \*

20 For all these reasons, Plaintiffs and Interim Class Counsel submit that the  
21 Settlement is not just fair, reasonable, and adequate—it is an outstanding result for the  
22 Class. Plaintiffs respectfully request that the Court (1) grant preliminary approval,  
23 (2) direct notice to the Class, and (3) schedule a fairness hearing.

## 24 **II. BACKGROUND AND PROCEDURAL HISTORY**

### 25 **A. Factual Background**

26 This litigation arises from Tyndall’s alleged abuse of women at USC’s student  
27 health center and USC’s corresponding inaction. Plaintiffs allege that, over his nearly  
28

1 30 years as an obstetrician-gynecologist at the student health center, Tyndall abused  
2 his position of trust and authority to molest, harass, and abuse young women. As  
3 alleged in the Consolidated Class Action Complaint [Dkt. 47], Tyndall committed a  
4 range of abuse, from invasive touching of patients' bodies (including nonconsensual  
5 vaginal penetration) to offensive racial and sexual statements, to taking photographs of  
6 women's genitalia—all under the guise of medical treatment but without clear medical  
7 justification. Plaintiffs further allege that USC gave Tyndall access and opportunity to  
8 abuse Class members, and, despite receiving numerous complaints about Tyndall's  
9 misconduct over the years, failed to adequately investigate or remedy the ongoing  
10 abuse.

11 Tyndall's decades-long pattern of abuse first came to light in May 2018 via the  
12 *Los Angeles Times*.<sup>3</sup> Based on interviews with patients, health center employees, and  
13 Tyndall himself, the *Times* reported in detail on Tyndall's history of abuse, as well as  
14 USC's knowledge of it and its failure to adequately respond. Scores of patients and  
15 health center employees complained about Tyndall, while USC appears to have  
16 missed or ignored repeated red flags: (1) coworkers of Tyndall who complained to  
17 supervisors about Tyndall inappropriately touching and photographing patients during  
18 exams; (2) patients who sent letters to the health clinic's oversight committee;  
19 (3) chaperones who complained to the University about Tyndall's conduct; and  
20 (4) patients who complained to other clinic employees, who in turn reported it to their  
21 supervisors.

22 USC admitted in a statement that it had received eight complaints about Tyndall  
23 between 2000 and 2014<sup>4</sup>—although the evidence suggests it had received many more.  
24

25 <sup>3</sup> See *Los Angeles Times*, A USC Doctor Was Accused of Bad Behavior With Young  
26 Women For Years. The University Let Him Continue Treating Students (May 16,  
2018), available at <http://www.latimes.com/local/california/la-me-usc-doctor-misconduct-complaints-20180515-story.html>.

27 <sup>4</sup> See University of Southern California Press Room, Statement of Facts, May 15,  
28 2018, available at <https://pressroom.usc.edu/statement-of-facts-may-15-2018/>.

1 USC further admitted that “[s]everal of the complaints were concerning enough that it  
2 is not clear today why the former health center director permitted Tyndall to remain in  
3 his position,” and expressed regret over the then-director’s failure to “elevate these  
4 complaints for proper investigation.”

5 Tyndall’s abuse of patients continued until 2016, when a nurse, whose previous  
6 complaints about Tyndall had been ignored, took her concerns to the campus’s crisis  
7 center. Following that report, along with a near-inadvertent discovery in Tyndall’s  
8 office of photographs of patients’ genitalia, USC finally told Tyndall not to return to  
9 the health center, and in 2017 USC allowed him to quietly resign with a financial  
10 payout.

## 11 **B. Procedural History**

### 12 **1. Initial Complaint Filings and Consolidation.**

13 Soon after the news broke about Tyndall, lawsuits were filed in federal and state  
14 courts. On August 13, 2018, this Court consolidated the federal cases<sup>5</sup> under Rule  
15 42(a) and appointed Interim Class Counsel under Rule 23(g). [Dkt. 45.] On August 28,  
16 2018, Plaintiffs filed their Consolidated Class Action Complaint. [Dkt. 47.]<sup>6</sup>

### 17 **2. Intensive Information Gathering.**

18 Soon after consolidation, the parties began discovery. USC informed Interim  
19 Class Counsel that it wished to explore an early and comprehensive resolution of the  
20 claims of Tyndall’s former patients.<sup>7</sup> Given the parties’ early focus on resolution,  
21

22 <sup>5</sup> *Sutedja v. USC*, No. 2:18-cv-04258-SVW-GJS (C.D. Cal. filed May 21, 2018); *Doe*  
23 *A.T. v. USC*, No. 2:18-cv-04940-SVW-GJS (C.D. Cal. filed June 4, 2018); *Jane Doe*  
24 *1 v. Tyndall*, No. 2:18-cv-05010-R-AGR (C.D. Cal. filed June 5, 2018); *O’Conner v.*  
*USC*, No. 2:18-cv-05125-JFW-AS (C.D. Cal. filed June 8, 2018); *Jane Doe J.L. v.*  
*USC*, No. 2:18-cv-06115-SVW-GJS (C.D. Cal. filed July 13, 2018).

25 <sup>6</sup> Sixty-six cases against Defendants are also pending in Los Angeles County Superior  
26 Court and consolidated before Judge Carolyn Kuhl under the lead case caption *Jane*  
*Doe 5 v. Tyndall*, No. BC705677 (Cal. Super. Ct. filed May 25, 2018). The settlement  
27 proposed here resolves one of the state court class actions, *Jane Doe 1 v. USC*, No.  
28 BC713383 (Cal. Super. Ct., filed July 9, 2018).

<sup>7</sup> Joint Decl. ¶ 9; see also Tr. of Aug. 13, 2018 Hr’g at 9 (USC represented that “it’s  
looking first and foremost to resolve these issues as expeditiously as it can”).

1 Interim Class Counsel's aim was gathering the information necessary to be fully  
2 informed and knowledgeable in negotiating a settlement on behalf of the Class,  
3 including the size of the putative class, the scope and nature of Plaintiffs' injuries, and  
4 the availability and completeness of USC's records concerning Tyndall's treatment of  
5 patients.

6 In August 2018, Plaintiffs served 58 requests for production and interrogatories  
7 on USC and noticed the deposition of USC pursuant to Rule 30(b)(6). USC responded  
8 by producing USC's Tyndall-related records, including patient and nurse complaints,  
9 going back to the 1990s. Joint Decl. ¶ 11. USC also provided details on its health  
10 center and registrar records and the number of class members, and made its data and  
11 recordkeeping experts available to answer questions. Joint Decl. ¶ 12.

12 During this time, Interim Class Counsel independently sought guidance from a  
13 number of experts. These included specialists experienced in working with sexual  
14 assault victims, allocating a class settlement fund to such victims, and designing and  
15 implementing institutional changes to prevent sexual abuse in educational and medical  
16 contexts. Joint Decl. ¶ 13.

17 Similarly, Interim Class Counsel interviewed and continuously gathered  
18 information from hundreds of Tyndall victims, including the named Plaintiffs. Joint  
19 Decl. ¶ 14. From them, Interim Class Counsel obtained a comprehensive  
20 understanding of the nature and scope of the victims' injuries, as well as their input  
21 and feedback on how to structure settlement terms and claims processes in a way that  
22 best met their needs and priorities. Prior to signing the agreement-in-principle term  
23 sheet, Interim Class Counsel also discussed its terms with each named Plaintiff and  
24 received unequivocal support and approval from everyone.<sup>8</sup> Plaintiffs all support the  
25

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26 <sup>8</sup> See Declarations of Betsayda Aceituno, Jane Doe F.M., Jane Doe M.V., Jane Doe  
27 A.N., Jane Doe H.R., Mehrnaz Mohammadi, Jane Doe M.S., Jane Doe 4, Jane Doe  
28 A.D., Jane Doe C.N., Jane Doe A.R., and Shannon O'Conner. Videos of class  
representatives are also available at: <https://youtu.be/MvQNagLYWrI>;  
[https://youtu.be/WWhPtftT\\_p0](https://youtu.be/WWhPtftT_p0); and <https://youtu.be/n72nl5Gmw-I>.



1 Settlement—not only because it provides substantial financial compensation for their  
2 injuries, as well as equitable relief that will prevent similar harm from coming to  
3 others, but also because it allows them to put this trauma behind them. *Id.*

### 4 **3. Mediation with the Hon. Layn R. Phillips.**

5 The parties engaged one of the most well-respected and experienced mediators  
6 in the country: Hon. Layn R. Phillips, who successfully mediated the Michigan State  
7 sex-abuse cases. In August 2018, the parties, along with Defendants’ insurers,  
8 participated in a full-day in-person mediation session with Judge Phillips. They  
9 prepared lengthy mediation briefs concerning the merits of their claims and defenses,  
10 including research on jury awards and settlement amounts in comparable cases. That  
11 first day ended without agreement, but the parties agreed to continue working.  
12 Thereafter, they had frequent discussions, both directly and through Judge Phillips, to  
13 narrow issues. Joint Decl. ¶ 17; Phillips Decl. ¶ 9. The parties reached an agreement-  
14 in-principle and a term sheet outlining the essential terms of the settlement on  
15 October 18, 2018. Joint Decl. ¶¶ 17–18; Phillips Decl. ¶ 11.

16 More intensive work followed—more discovery, more expert consultation, and  
17 more negotiation, some through Judge Phillips—as the parties continued to work  
18 through the details of the agreement, with particular attention to the claims structure  
19 and equitable relief. Joint Decl. ¶ 19; Phillips Decl. ¶¶ 10–12. During this time,  
20 Interim Class Counsel sought and received from USC and its data consultants further  
21 information on class size and composition, and the availability and contents of  
22 pertinent records. Joint Decl. ¶ 19; Phillips Decl. ¶ 10. They also continued to consult  
23 with experts concerning the appropriate design, process, and language for the  
24 Settlement Claims process and notice to ensure it is sensitive and compassionate to  
25 claimants, and to ensure the Settlement would provide meaningful equitable relief.  
26 Joint Decl. ¶ 19.

27 Negotiations concerning the equitable relief provisions in particular were  
28

1 informed by Interim Class Counsel’s consultations with experts, including Dr. Charol  
2 Shakeshaft, Nancy Cantalupo, Glenn Lipson, Dr. Julia Lamb, and Dr. Judy Ho. Joint  
3 Decl. ¶ 27. These experts, who specialize in crafting policies and procedures for  
4 disclosure, reporting, and prevention of sexual violence on campus, in treatment of  
5 and communication with victims of sexual violence, and in obstetrics and gynecology,  
6 reviewed multiple drafts of the parties’ competing proposals concerning equitable  
7 relief, participated in numerous conferences with Interim Class Counsel to provide  
8 comments and guidance on the proposals, and provided numerous written resources  
9 during negotiation and drafting. Joint Decl. ¶ 27. Together they ensured Interim Class  
10 Counsel’s negotiation of the equitable relief provisions were well informed and  
11 focused on achieving the best practicable changes at USC to ensure similar abuse  
12 never happens again.

### 13 **III. THE TERMS OF THE PROPOSED SETTLEMENT.<sup>9</sup>**

#### 14 **A. The Class Definition.**

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

#### 20 **B. The Settlement’s Benefits to Class Members.**

##### 21 **1. \$215 Million to Compensate Class Members.**

22 Defendants will pay \$215 million (the “Settlement Amount”), net of attorneys’  
23

24  
25 <sup>9</sup> Unless otherwise specified, all capitalized terms in this brief have the meaning  
attributed to them in the Settlement Agreement.

26 <sup>10</sup> “Women’s Health Issues” includes but is not limited to any issue relating to breast,  
27 vaginal, urinary tract, bowel, gynecological, or sexual health, including contraception  
and fertility. *See* Settlement Agreement (“Agmt.”) § 3.2. A list of Women’s Health  
28 Issues is attached as Exhibit A to the Settlement, and will also be available to class  
members on the settlement website.

1 fees and costs,<sup>11</sup> making this the largest ever class action settlement of sexual assault  
2 claims. None of the money will revert to USC.

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

4 The Settlement's three-tier structure allows Class members to choose how much  
5 they want to engage with the claims process. Those who do not want to revisit a  
6 private, traumatic event can simply keep the guaranteed Tier 1 payment of \$2,500.  
7 Those who choose to provide additional information in a claim form about their  
8 experience with Tyndall and how it affected them are eligible for up to \$20,000, and  
9 those who choose to provide an interview are eligible for up to \$250,000. The Special  
10 Master and her team of experts will evaluate claims and allocate awards to Tier 2 and  
11 Tier 3 claimants. Agmt. § 6.4.

12 This focus on choice ensures that all Class members receive compensation  
13 while giving each Class member the autonomy to decide for herself how involved she  
14 wants to be in the settlement process.

15 The process is purposefully simple: no action for Tier 1, simple claim form for  
16 Tier 2, simple claim form and interview for Tier 3. This is designed to make the  
17 process easier and more comfortable for claimants, and to ensure they can complete it  
18 without having to hire an attorney to help. To the extent any Class member requires  
19 help navigating this simple process, however, Interim Class Counsel stand prepared to  
20 provide all necessary assistance, without reducing Class Member's compensation by  
21 taking attorneys' fees or costs out of it.<sup>12</sup>

22 Payment for each Class member will be determined as follows:

23 **Tier 1:** Every Class member is eligible for a Tier 1 payment of \$2,500,  
24 simply by virtue of being a Class member. The Tier 1 payment is simply  
25 a guaranteed minimum payment; all Class members are also eligible to

26 <sup>11</sup> Agmt. § 2.35. Defendants will pay Class Counsel's attorneys' fees and costs  
27 separately from and in addition to the \$215 million Settlement Amount, in an amount  
28 to be determined by the Court. *See* Section III(D), below.

<sup>12</sup> Of course, Class members are also free to retain individual counsel to represent and  
assist them, at their own expense. *See* Fed. R. Civ. P. 23(c).

1 make claims for Tier 2 or Tier 3 payments.<sup>13</sup> Under no circumstances will  
2 a Class member be required to return a Tier 1 payment. Agmt. § 6.4(a).

3 Due to limitations in USC's records, Class members will receive their  
4 Tier 1 payments in one of two ways:

5 (i) Those Class members identified through USC's existing health  
6 center records (which cover the majority of the class period), will be  
7 automatically mailed a Tier 1 payment check for \$2,500 on the Effective  
8 Date.<sup>14</sup> The Notice will inform Class members whether they have been  
pre-identified as Class members through USC's records. Agmt.  
§ 6.4(a)(i).

9 ii) Those Class members who cannot be identified through USC's  
10 records must submit (online or by mail) a simple signed Statement of  
11 Class Membership Form. The Claims Administrator will then confirm  
12 student status or, for non-students, evaluate the claimant's evidence of  
13 Class membership. Tier 1 payments of \$2,500 will be sent on the  
Effective Date or upon confirmation of Class membership, whichever is  
earlier. Agmt. § 6.4(a)(ii).

14 **Tier 2:** Each Class member has the option to submit an online or written  
15 Claim Form describing her experience with Tyndall, the impact on her,  
16 and the harm she suffered. The Special Master's team will assess each  
17 Claim Form, and if determined credible, and that the conduct or  
18 statements described fall outside the scope of accepted medical standards  
of care applicable during the relevant time, or that the conduct or  
19 statements are otherwise actionable, the Special Master will award a Tier  
20 2 payment between \$7,500 and \$20,000, subject to Pro Rata  
Adjustments.<sup>15</sup> Agmt. § 6.4(b).

21 \_\_\_\_\_  
22 <sup>13</sup> Because the Tier 1 payment is an initial payment, if a claimant is awarded a Tier 2  
23 or Tier 3 payment, the amount of the Tier 1 payment will be deducted from the higher-  
24 tier award. For example, a claimant who receives a \$2,500 Tier 1 payment check, and  
25 who also makes a Tier 3 claim and is awarded \$250,000, would receive a Tier 3  
26 payment check for \$247,500, which represents her \$250,000 Tier 3 award less the  
27 initial Tier 1 \$2,500 payment she already received. The pendency of a Tier 2 or 3  
28 claim will not affect the timing of a claimant's Tier 1 payment.

<sup>14</sup> The Effective Date is 14 days after the date of the Court's final approval of the  
Settlement, unless any appeal of final approval is noticed, in which case the Effective  
Date is the date such an appeal has been fully resolved and final approval upheld.

<sup>15</sup> Depending on how many Class members make higher-tier claims, Tier 2 and Tier 3  
payments could end up lower or higher than the stated minimums and maximums, due  
to pro rata adjustments. *See* Section III(B)(1)(c), below.

1           **Tier 3:** Tier 3 is for Class members who, in addition to the written Claim  
2 Form, are willing to provide information about their experience and its  
3 impact in an interview by the Special Master’s team. That team will  
4 assess each Claim Form and interview, and if determined credible, and  
5 that the conduct or statements described fall outside the scope of accepted  
6 medical standards of care applicable during the relevant time, or that the  
7 conduct or statements are otherwise actionable, the Special Master will  
8 award a Tier 3 payment between \$7,500 and \$250,000, subject to Pro  
9 Rata Adjustments. Agmt. § 6.4(c).

10                   **b. Tier 2 and 3 Claims Will Be Assessed and Allocated by an**  
11                   **Experienced Special Master and Expert Team.**

12           The Court-appointed Special Master<sup>16</sup> will call upon experts in relevant medical  
13 issues and the unique needs of sexual trauma survivors to assist in reviewing,  
14 processing, and allocating Tier 2 and 3 claims. Agmt. § 2.45. The Special Master and  
15 her team will be mindful of the needs of sexual assault victims and how past trauma  
16 can affect victims’ memories and communications, and take those factors into account  
17 when performing the analysis necessary to determine damages and allocate  
18 consistently and fairly amongst claimants. Joint Decl. ¶ 23. This approach of relying  
19 on an experienced special master, aided by knowledgeable experts, was successfully  
20 employed in similar settlements.<sup>17</sup> Joint Decl. ¶ 22.

21           The parties propose that Hon. Irma Raker (Ret.), who supervised the  
22 administration of the *Johns Hopkins* sex-abuse settlement, or alternatively, Hon.  
23 Irma E. Gonzalez (Ret.), be appointed as the Special Master. Once appointed, the  
24 Special Master, in consultation with the parties and experts, will develop protocols for  
25 interviews and other communications with Tier 2 and 3 claimants. Joint Decl. ¶ 24–25.

26  
27  
28  

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<sup>16</sup> Plaintiffs file a separate Motion for Appointment of Special Master concurrently with this motion.

<sup>17</sup> See, e.g., *Jane Doe No. 1, et al. v. Johns Hopkins Hospital, et al.*, No. 24-C-13-001041 (Md. Cir. Ct. 2014) (class action settlement of claims of surreptitious photographing and inappropriate touching brought by former patients against gynecologist Dr. Nikita Levy and Johns Hopkins University); *Jane Doe 30’s Mother v. Bradley*, 64 A.3d 379 (Del. Super. Ct. 2012) (class settlement of the claims of 7,000 former patients who were sexually abused by their doctor).

1 This ensures the best and most compassionate process for Class members, and that the  
2 process will be efficient and practical for the Special Master. The Special Master will  
3 also hear and decide the appeals of any claimants who wish to challenge their Claim  
4 Award. The Special Master’s decisions on appeals will be final. Agmt. § 6.6.

5 **c. Pro Rata Adjustment to Ensure Fairness and Maximum**  
6 **Money Distributed to Class Members.**

7 Once the Special Master has considered and determined awards for all Tier 2  
8 and 3 claims, if the total amount of all Tier 2 and 3 payments is less than the amount  
9 remaining in the settlement fund after payment of the Administration Costs and Tier 1  
10 payments (“Settlement Balance”), then all Claim Awards—Tier 1, Tier 2, and Tier  
11 3—will be increased pro rata until the Settlement Balance is reached or all Claim  
12 Awards have been increased by 50%, whichever occurs first. Agmt. § 2.33. In other  
13 words, final awards could reach up to \$3,750, \$37,500, and \$375,000 for each  
14 respective tier.

15 If the Settlement Balance is not fully disbursed after a 50% Pro Rata Increase,  
16 the parties will notify the Court and propose further means of distributing the  
17 remainder. Agmt. § 6.9. That may include providing additional notice of the  
18 Settlement to non-participating Class members or distributions to appropriate *cy pres*  
19 recipients. That said, there will be no *cy pres* distribution unless the Court finds that  
20 the parties have in good faith exhausted all reasonable efforts to distribute the  
21 remaining funds to the Class. Agmt. § 6.9.

22 If, on the other hand, once the Special Master has considered and determined  
23 awards for all submitted Tier 2 and 3 claims, the sum of all Tier 2 and 3 payments  
24 exceeds the Settlement Balance, then Tier 2 and 3 Claim Awards—but not the Tier 1  
25 payments—will be reduced pro rata until the Settlement Balance is reached. Under no  
26 circumstances will the Tier 1 payments be reduced.

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

28 A critical feature of the Settlement is equitable relief requiring USC to take

1 specific measures to ensure that similar abuse and misconduct will not happen again.  
2 *See* Agmt. Ex. B (Equitable Relief Measures). Negotiations concerning the equitable  
3 relief provisions were informed by Interim Class Counsel’s extensive consultations  
4 with experts specializing in crafting policies and procedures for disclosure, reporting,  
5 and prevention of sexual violence on campus, in treatment of and communication with  
6 victims of sexual violence, and in obstetrics and gynecology. Joint Decl. ¶ 27.

7 The resulting Equitable Relief Measures reflect the parties’ mutual intent that  
8 USC adopt and implement adequate operating and oversight procedures for  
9 identification, prevention, and reporting of improper sexual or racial conduct at  
10 campus operations with a nexus to USC’s Student Health Center. Agmt. Ex. B ¶ 1.  
11 This will be accomplished via the following important provisions:

12 An Equitable Relief Committee to Finalize Details. While the parties, in  
13 consultation with experts, were able to reach agreement on the broad strokes of  
14 equitable relief, as well as many details, they also recognized (and experts  
15 recommended) that additional time, review, and subject-matter expertise was  
16 necessary to finalize some more specific details of the provisions to ensure both  
17 feasibility and effectiveness. Accordingly, the first action item, which is already  
18 underway, is the immediate designation of an Equitable Relief Committee to finalize  
19 the details and implementation of the Equitable Relief Provisions. Agmt. Ex. B ¶ 6.  
20 The Committee will consist of three individuals: (1) an expert in university best  
21 practices related to prevention and response to sexual violence on campus designated  
22 by Plaintiffs; (2) a USC designee; and (3) a third individual chosen by the first two,  
23 who will serve as chair of the Committee. *Id.* The Committee will complete its work  
24 by April 13, 2019. *Id.* That permits time for the final details of equitable relief to be  
25 included in the Notice and considered by the Court at final approval.

26 An Independent Women’s Health Advocate. This independent (non-USC)  
27 individual, to be selected jointly by the parties and approved by the Court, will serve a  
28

1 three-year term. Agmt. Ex. B ¶ 2. While the precise nature and scope of the  
2 Advocate's duties will be finalized by the Equitable Relief Committee, the Advocate's  
3 responsibilities will include ensuring compliance with the various policy reforms set  
4 forth in the Equitable Relief Provisions, including changes to the USC Student Health  
5 operating and oversight procedures, and the implementation of a new sexual  
6 misconduct and sexual violence prevention program. *Id.* The Advocate also will  
7 receive and monitor all complaints of improper sexual or racial conduct reported by  
8 any patient, student, or personnel at the Student Health Center. *Id.* If the Advocate  
9 believes the requirements and goals of the Equitable Relief Measures are not being  
10 sufficiently addressed by USC, she can raise those concerns to Class Counsel, the  
11 Special Master, and ultimately, the Court, for resolution. *Id.* ¶ 7.

12 An Independent Consultant on the Task Force. An Independent Consultant,  
13 selected and compensated by Class Counsel, and having expertise in university best  
14 practices related to prevention and response to sexual assault and misconduct, will be  
15 put on the USC Task Force responsible for conducting a wide-ranging climate survey  
16 of USC students as well as existing USC policies and procedures for the disclosure,  
17 reporting, and response to sexual violence on campus, and make recommendations of  
18 changes to implement in light of the survey results. *Id.* ¶ 5. The report and  
19 recommendations of the Task Force will be released publicly to the USC community.  
20 *Id.* If the Independent Consultant believes the requirements and goals of the Equitable  
21 Relief Measures are not being sufficiently addressed by USC, she can raise those  
22 concerns to Class Counsel, the Special Master, and ultimately, the Court, for  
23 resolution. *Id.* ¶ 7.

24 Changes to USC Student Health Procedures. USC has agreed to adopt and  
25 implement a series of detailed operating and oversight procedures for identifying,  
26 preventing, and reporting any alleged improper sexual or racial conduct at USC  
27 Student Health. *Id.* ¶ 3. These include, among others, pre-hiring background checks of  
28



1 all new personnel who are expected to have direct patient interaction; annual  
2 verifications of credentials of all clinical personnel; annual education and performance  
3 reviews concerning, identifying, reporting, and preventing improper sexual and/or  
4 racial conduct; and the adoption and implementation of “Sensitive Exam” practices  
5 consistent with medical best practices. *Id.* Further, USC will ensure that its medical  
6 personnel act consistently with the best practice standards recognized by the SCOPE  
7 program of the American College of Obstetricians and Gynecologists. *Id.* ¶ 1.  
8 Sufficient staffing so all female patients can see a female physician, as well as patient  
9 literature informing patients of what to expect during a visit and how to report  
10 inappropriate conduct will be provided. *Id.* ¶ 3. The Independent Women’s Health  
11 Advocate is responsible for ensuring compliance with these provisions, and has  
12 recourse to Class Counsel, the Special Master, and the Court should she feel these  
13 measures are not being sufficiently implemented. *Id.* ¶¶ 2,7.

14 New Sexual Misconduct and Violence Prevention Program. USC will expand  
15 the services of its Relationship and Sexual Violence Prevention program to include a  
16 new training program designed to prevent sexual misconduct and sexual assault,  
17 including bystander training. *Id.* ¶ 4.

18 \* \* \*

19 Taken together, these Equitable Relief Measures ensure meaningful institutional  
20 change will be implemented at USC so that something like this never happens again.  
21 These changes will incorporate the positive changes USC has already made or  
22 committed to making, and implement additional changes developed and overseen by  
23 independent experts that will be most practicable and effective for the specific needs  
24 of the USC structure and community.

### 25 **C. Procedure for Opting Out or Objecting to the Settlement.**

26 Any Class member who decides to opt out of the Class must submit a timely  
27 written request for exclusion on or before the Opt-Out Deadline, in the manner  
28

1 specified in the Notice and Preliminary Approval Order. All requests for exclusion  
2 must be signed with a handwritten signature by the woman seeking to exclude herself  
3 from the class. Any Class member whose request for exclusion is defective will be  
4 notified and given an opportunity to cure. Agmt. § 3.6.

5 Likewise, any Class member who wishes to object to the Settlement, or the  
6 application of Class Counsel for an award of attorneys' fees and costs and/or for  
7 service awards for Plaintiffs, must timely do so in the manner specified in the  
8 Preliminary Approval Order and in any subsequent notice or order regarding the  
9 application for attorneys' fees and costs and/or for service awards to Plaintiffs.

10 **D. Attorneys' Fees Will Be Paid in Addition to the Settlement Amount**  
11 **After Final Approval and After Claims Process.**

12 Defendants agreed to pay all attorneys' fees and costs separately from and in  
13 addition to the \$215 million payment to the Class. Agmt. § 8.1. Class member  
14 recoveries will not be reduced to pay for attorneys' fees or costs. Interim Class  
15 Counsel will not apply for an award of attorneys' fees and reimbursement of costs and  
16 expenses until after final approval and after implementation of the claims procedure.  
17 *Id.* They have agreed not to request more than \$25 million. *Id.* Any fee award will be  
18 decided by the Court, and Class members will have the opportunity to review and  
19 comment on or object to the fee petition as provided for in Federal Rule of Civil  
20 Procedure 23(h). *See also In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988  
21 (9th Cir. 2010). Approval of the Settlement will not be contingent on the Court  
22 approving fees and costs in any particular amount. Agmt. § 8.1.

23 **IV. THE CLASS ACTION SETTLEMENT PROCESS, AS AMENDED.**

24 While the Court is well-familiar with long-standing class action settlement  
25 approval procedure, given the newly-effective amendments to Rule 23 governing class  
26 settlements, Plaintiffs respectfully set out here the new process.

27 Pursuant to Federal Rule of Civil Procedure 23(e), class actions "may be settled  
28 ... only with the court's approval." Rule 23(e)(2) sets forth the criteria the court must

1 consider in determining whether a proposed class settlement merits approval. But  
2 because the court must also consider the perspective of the class members who would  
3 be bound by a settlement, the approval process is a three-step process. Further, where,  
4 as here, no class had been certified prior to settlement, consideration of class  
5 certification is folded into the three-step settlement approval process. The resulting  
6 combined approval/certification process is as follows:

7 *First*, the Court must make a preliminary determination of whether a settlement  
8 satisfies the criteria set out in Rule 23(e) (2). At the same time, the Court must  
9 determine whether it has a basis for concluding that it likely will be able, after the final  
10 approval hearing, to certify the class under the standards of Rule 23(a) and (b). If the  
11 answer to both questions is “yes,” the Court proceeds to step two.

12 *Second*, the Court directs combined<sup>18</sup> notice of the proposed Class and the  
13 Settlement to class members pursuant to Rule 23(c) (2)(B) and 23(e) (1), which  
14 includes a period for class members to voice objections to the settlement, opt out of  
15 the proposed class, or to indicate their approval by making claims.

16 *Third*, the Court holds a hearing to make its final determination of whether the  
17 settlement is fair, reasonable, adequate under the criteria set forth in 23(e) (2); and  
18 whether the class merits certification.

19 As detailed below, this Settlement meets the standard for preliminary approval  
20 set by 23(e) (1), and Plaintiffs have established a basis for the Court to certify the  
21 Class, so notice should be directed to the Class.

## 22 **V. THE PROPOSED SETTLEMENT MERITS NOTICE AND** 23 **SCHEDULING FOR FINAL APPROVAL.**

24 As a matter of “express public policy,” federal courts favor and encourage  
25 settlements, particularly in class actions, where the costs, delays, and risks of

26 <sup>18</sup> Advisory Committee’s Note on the 2018 Amendments to Fed. R. Civ. P. 23 (“Adv.  
27 Cmte. Note”), Subdivision (c)(2) (“It is common to send notice to the class  
28 simultaneously under both Rule 23(e)(1) and Rule 23(c)(2)(B), including a provision  
for class members to decide by a certain date whether to opt out. This amendment  
recognizes the propriety of this combined notice practice.”).

1 continued litigation might otherwise overwhelm any potential benefit the class could  
2 hope to claim. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir.  
3 1992) (noting the “strong judicial policy that favors settlements, particularly where  
4 complex class action litigation is concerned”); *see also* 4 Herbert B. Newberg & Alba  
5 Conte, *Newberg on Class Actions* (“*Newberg*”) § 11:41 (4th ed. 2002) (same,  
6 collecting cases). This is even more so where, as here, the case concerns an  
7 institutional failure to implement adequate practices and policies, and “[a] settlement  
8 is vastly superior to a litigated outcome, which would have been a non-consensual  
9 process not likely to result in an improved attitude or atmosphere . . . .” *Peoples v.*  
10 *Annucci*, 180 F. Supp. 3d 294, 308 (S.D.N.Y. 2016) (approving class action settlement  
11 in litigation challenging prison’s solitary confinement practices).<sup>19</sup>

12 Indeed, the few other courts that have considered class action settlements of sex  
13 abuse claims found they merited approval. In *Doe v. The John Hopkins Hosp.*, the  
14 Circuit Court of Maryland approved a class settlement of claims of surreptitious  
15 photographing and inappropriate touching brought by former patients against  
16 gynecologist Dr. Nikita Levy and Johns Hopkins University. No. 24C13001041, 2014  
17 WL 5040602 (Md. Cir. Ct. Sep. 19, 2014). And in *Jane Doe 30’s Mother v. Bradley*,  
18 the Superior Court of Delaware approved a class settlement of the claims of 7,000  
19 former patients who were sexually abused by Dr. Earl Bradley at Beebe Medical  
20 Center from 1994 through 2009. 64 A.3d 379 (Del. Super. Ct. 2012).<sup>20</sup> Most recently,  
21 in *Lecenat v. Perlitz*, No. 3:13-cv-01132-RNC (D. Conn. Feb. 11, 2019), the U.S.  
22 District Court for the District of Connecticut granted preliminary approval to a class  
23 action settlement under Rule 23 involving claims of sexual abuse of children at a  
24 school in Haiti.<sup>21</sup>

25 \_\_\_\_\_  
26 <sup>19</sup> Internal citations and quotations omitted throughout unless otherwise indicated.

27 <sup>20</sup> While the *Johns Hopkins* and *Bradley* courts considered class certification under  
28 state law, Md. Rule 2-231 and Del. Super. Ct. Civ. R. 23 largely track the federal Rule  
23, making their analyses instructive here.

<sup>21</sup> Opinion attached as Ex. 1.

1           **A. The Contemporary Rule 23(e) Standard.**

2           Rule 23 of the Federal Rules of Civil Procedure governs a district court’s  
3 analysis of the fairness of a settlement of a class action. *See* Fed. R. Civ. P. 23(e).  
4 Effective December 1, 2018, amended Rule 23(e) (2) states that a district court should  
5 approve a proposed settlement:

6                     only after a hearing and only on finding that it is fair, reasonable, and  
7 adequate after considering whether:

8                     (A) the class representatives and class counsel have adequately  
9 represented the class;

10                    (B) the proposal was negotiated at arm’s length;

11                    (C) the relief provided for the class is adequate, taking into account:

12                    (i) the costs, risks, and delay of trial and appeal;

13                    (ii) the effectiveness of any proposed method of distributing relief to the  
14 class, including the method of processing class-member claims;

15                    (iii) the terms of any proposed award of attorneys’ fees, including timing  
16 of payment; and

17                    (iv) any agreement required to be identified under Rule 23(e)(3); and

18                    (D) the proposal treats Class members equitably relative to each other.

19           The Advisory Committee recognized that the various Circuits had  
20 independently generated their own lists of factors to consider in determining whether a  
21 settlement is fair, reasonable, adequate,<sup>22</sup> and made clear that the “goal of this  
22 amendment is not to displace any [Circuit-specific] factor, but rather to focus the court  
23 and the lawyers on the core concerns of procedure and substance that should guide the  
24 decision whether to approve the proposal.”

25           In the absence of caselaw applying and interpreting the amended Rule 23(e) (2),

26 <sup>22</sup> In the Ninth Circuit, those factors included: “the strength of the plaintiffs’ case; the  
27 risk, expense, complexity, and likely duration of further litigation; the risk of  
28 maintaining class action status throughout the trial; the amount offered in settlement;  
the extent of discovery completed and the stage of the proceedings; the experience and  
views of counsel; the presence of a governmental participant; and the reaction of the  
Class members to the proposed settlement.” *See Hanlon v. Chrysler Corp.*, 150 F.3d  
1011, 1026 (9th Cir. 1998).

1 and because the *Hanlon* factors are similar, caselaw in this Circuit applying the  
2 *Hanlon* factors remains instructive here. That said, following the instructions of the  
3 Advisory Committee, Plaintiffs will “present the settlement to the court in terms of a  
4 shorter list of core concerns, by focusing on the primary procedural considerations and  
5 substantive qualities that should always matter to the decision whether to approve the  
6 proposal.” *Id.* As detailed below, the Settlement passes both procedural and  
7 substantive muster, and merits preliminary approval.

8 **B. The Settlement Was the Result of a Thorough, Informed, Fair**  
9 **Negotiation Process.**

10 As amended, Rule 23(e) requires a Court to ensure that in a proposed  
11 settlement, “the class representatives and class counsel have adequately represented  
12 the class” and that “the proposal was negotiated at arm’s length.” Fed. R. Civ. P. 23(e)  
13 (2)(A), (B). The Advisory Committee explains that these factors “identify matters that  
14 might be described as ‘procedural’ concerns, looking to the conduct of the litigation  
15 and of the negotiations leading up to the proposed settlement.”

16 Considerations at this stage can include “the nature and amount of discovery in  
17 this or other cases, or the actual outcomes of other cases,” which “may indicate  
18 whether counsel negotiating on behalf of the class had an adequate information base.”  
19 *Id.* Also important is the “conduct of the negotiations.” *Id.* “[T]he involvement of a  
20 neutral or court-affiliated mediator or facilitator in those negotiations may bear on  
21 whether they were conducted in a manner that would protect and further the class  
22 interests.” *Id.* Finally, the Court may look at “the treatment of any award of attorneys’  
23 fees, with respect to both the manner of negotiating the fee award and its terms.” *Id.*

24 All of these procedural concerns are satisfied here.

25 **1. Interim Class Counsel Had All Information Necessary to**  
26 **Negotiate on Behalf of the Class.**

27 “In the context of class action settlements, ‘formal discovery is not a necessary  
28 ticket to the bargaining table’ where the parties have sufficient information to make an

1 informed decision about settlement.” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234,  
2 1239 (9th Cir. 1998). Indeed, courts have expressly “decline[d] the invitation” to  
3 “require formal discovery before presuming that a settlement is fair,” noting instead  
4 that “[i]n some cases, informal discovery will be enough for class counsel to assess the  
5 value of the class’ claims and negotiate a settlement that provides fair compensation.”  
6 *In re NFL Players’ Concussion Injury Litig.*, 821 F.3d 410, 436–37 (3d Cir. 2016).  
7 Preliminary approval may be appropriate where the parties “have not reached the  
8 discovery stage of litigation” so long as they “possess adequate information  
9 concerning the strengths and weaknesses of Plaintiffs’ claims.” *In re NFL Players’*  
10 *Concussion Injury Litig.*, 301 F.R.D. 191, 199 (E.D. Pa. 2014); *see also id.* at n.6  
11 (“Courts have preliminary approved class action settlements where litigation is in its  
12 early stages and minimal discovery has occurred.” (collecting cases)).

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. To require otherwise would defeat one of the  
16 central tenets of dispute resolution: the opportunity to fairly settle strong claims  
17 without the costs of full-fledged litigation. The relevant analysis doesn’t depend on the  
18 page count of document productions, nor the hours of depositions taken—instead a  
19 court should ask whether the parties have undertaken sufficient steps given the context  
20 and circumstance of a particular case to make a reasonable, informed decision to settle  
21 Class members’ claims. The answer to that question here is “yes.”

22 From the outset, Tyndall’s conduct was widely reported in a number of in-depth  
23 investigative news articles—many of which included statements from Tyndall’s  
24 patients, coworkers, USC administrators, and Tyndall himself. These sources revealed  
25 extensive information about Tyndall’s misconduct and USC’s knowledge and  
26 inaction.<sup>23</sup> There never was any real dispute that Tyndall sexually abused his female

27  
28 <sup>23</sup> In fact, the Los Angeles Times hosts a page devoted solely to its coverage of the  
Tyndall story, available at <http://www.latimes.com/local/california/la-me-usc-george->

1 patients for decades and that USC knew and failed to adequately respond. As a result,  
2 at all times Interim Class Counsel negotiated with a well-informed *presumption* that  
3 Tyndall committed the alleged abuses and USC knew about and failed to address it.  
4 Against that backdrop, reaching a fair, informed resolution of this case principally  
5 required a clear understanding of: (1) the nature of Tyndall’s abuse, including the  
6 types of injury inflicted and extent of harm his victims suffered; and (2) the scope of  
7 abuse, including how many women he abused.

8 To learn this information, Interim Class Counsel vigorously investigated. USC’s  
9 records—which Interim Class Counsel studied—demonstrated that Tyndall engaged in  
10 a range of misconduct, which in some cases included abusive physical contact with  
11 women and in other cases involved offensive questioning or remarks. Joint Decl. ¶ 11.  
12 They also met and interviewed hundreds of Tyndall’s former patients to learn  
13 firsthand about their trauma. Interim Class Counsel also obtained from USC  
14 information about its student health center records, including access to USC’s own  
15 data experts, allowing Class Counsel to determine class size and the content and  
16 completeness of USC’s records. Joint Decl. ¶ 12.

17 Further, before and during the negotiations, Interim Class Counsel consulted  
18 with a number of experts, including specialists in working with sexual assault victims,  
19 diagnosing and treating PTSD, and crafting and implementing institutional policy  
20 changes to prevent sexual abuse in educational and medical contexts—as well as the  
21 special master who oversaw the settlement allocation process in the successful *Johns*  
22 *Hopkins* sex abuse class action,<sup>24</sup> among others. And this was to ensure Interim Class  
23 Counsel was thoroughly informed and able to take all those variables into account  
24 when negotiating the appropriate design, structure, and language for the Settlement  
25 Claims process to ensure it is sensitive and compassionate to Class members. *Cf. Doe*

26  
27 [tyndall-sg-storygallery.html](#), which currently links to over forty different articles  
published since May 2018.

28 <sup>24</sup> *Jane Doe No. 1 v. Johns Hopkins Hosp.*, No. 24-C-13-001041 (Md. Cir. Ct. 2014).



1 *#1 by Parent #1 v. New York City Dep't of Educ.*, No. 16-cv-1684, 2018 WL 3637962,  
2 at \*11 (E.D.N.Y. July 31, 2018) (parties “did not engage in formal discovery” yet  
3 counsel “nonetheless conducted a thorough investigation,” including by meeting with  
4 class members, reviewing documents, and consulting with a child psychologist).

5 Nor is the speed with which the parties reached a resolution a concern: “an early  
6 resolution may demonstrate that the parties and their counsel are well prepared and  
7 well aware of the strength and weaknesses of their positions and of the interests to be  
8 served by an amicable end to the case.” *In re AT & T Mobility Wireless Data Servs.*  
9 *Sales Tax Litig.*, 789 F. Supp. 2d 935, 967 (N.D. Ill. 2011); *see also Brown v. 22nd*  
10 *District Agricultural Assoc.*, No. 15-cv-2578-DHB, 2017 WL 2172239, at \*8 (S.D.  
11 Cal. May 17, 2017) (approving settlement “notwithstanding an abbreviated discovery  
12 period” where parties “negotiated the Settlement with ample knowledge of the  
13 strength and weaknesses of this case and the amounts necessary to compensate Class  
14 members for their estimated damages” and “engaged in extensive good-faith, arms-  
15 length negotiations, including a full-day early neutral evaluation session before the  
16 Court”).

17 In sum, Interim Class Counsel’s focused, thorough investigation of the  
18 necessary information required for settlement here enabled them to come to the  
19 mediation table with a fulsome understanding of the strengths and weaknesses of the  
20 claims. Joint Decl. ¶ 15. Devoting time and effort to further discovery of already-  
21 established facts such as who at USC knew what when would have led to delay and  
22 the development of cumulative evidence without advancing the parties’ ability to  
23 reach a fair resolution. For these reasons, Judge Phillips concluded this litigation was  
24 fit for prompt resolution. Phillips Decl. ¶ 13.

## 25 **2. The Settlement Was Negotiated at Arm’s Length with the** 26 **Assistance of an Experienced, Neutral Mediator.**

27 The close involvement of Judge Phillips throughout the settlement negotiation  
28 process underscores the procedural fairness of the Settlement. *See Adv. Cmte. Note*

1 (“[T]he involvement of a neutral or court-affiliated mediator or facilitator in those  
2 negotiations may bear on whether they were conducted in a manner that would protect  
3 and further the class interests.”); *see also Fed. Ins. Co. v. Caldera Med., Inc.*, No.  
4 2:15-cv-00393-SVW-PJW, 2016 WL 5921245, at \*5 (C.D. Cal. Jan. 25, 2016)  
5 (Wilson, J.) (“The assistance of an experienced mediator in the settlement process  
6 confirms that the settlement is non-collusive”).

### 7 **3. Attorneys’ Fees Were Negotiated Separately and After** 8 **Monetary Relief for the Class.**

9 Notably, the parties negotiated attorneys’ fees for Class Counsel only *after*  
10 reaching agreement on the monetary relief for the Class. Phillips Decl. ¶ 11. “The fact  
11 that the parties ... did not discuss attorneys’ fees until all other issues were virtually  
12 finalized, is also indicative of a fair and arm’s-length process.” *Lucas v. Kmart Corp.*,  
13 234 F.R.D. 688, 693 (D. Colo. 2006); *Sadowska v. Volkswagen Grp. of Am., Inc.*, No.  
14 CV 11-00665, 2013 WL 9600948, at \*8 (C.D. Cal. Sept. 25, 2013) (approving  
15 settlement and finding agreement on fees and expenses reasonable where “[o]nly after  
16 agreeing upon proposed relief for the Class Members, did the parties discuss  
17 attorneys’ fees, expenses, and costs”); *Rodriguez v. Farmers Ins. Co. of Ariz.*, No. CV  
18 09-06786, 2013 WL 12109896, at \*5 (C.D. Cal. Aug. 4, 2013) (same).

### 19 **C. The Settlement Is Not Just Adequate—It Is Outstanding.**

20 Rule 23(e) (2)(C) and (D) “focus on what might be called a ‘substantive’ review  
21 of the terms of the proposed settlement.” Adv. Cmte. Note R. 23. Specifically,  
22 amended Rule 23(e) (2)(C) requires a court to consider whether “the relief provided  
23 for the class is adequate, taking into account ... the effectiveness of any proposed  
24 method of distributing relief to the class, including the method of processing class-  
25 member claims” and “the terms of any proposed award of attorneys’ fees, including  
26 timing of payment.” Fed. R. Civ. P. 23(e) (2)(C)(ii), (iii). And amended Rule 23(e)  
27 (2)(D) considers whether “the proposal treats Class members equitably relative to each  
28 other.”

1 All these substantive considerations are satisfied here. The Settlement achieves  
 2 the core goal of the litigation: accountability. It does so by providing substantial  
 3 compensation to all Class Members, distributed via a fair and compassionate claims  
 4 process, and by treating Class members equitably relative to one another. And it does  
 5 so by requiring lasting institutional changes at USC, with independent oversight.

6 **1. The Relief Provided for the Class Is Substantial, Particularly in**  
 7 **Light of the Costs, Risks, and Delay of Trial.**

8 The amended Rule instructs courts to consider the “costs, risks, and delay of  
 9 trial and appeal.” Fed. R. Civ. P. 23(e) (2)(C)(i). As the Advisory Committee  
 10 explained: “Often, courts may need to forecast the likely range of possible classwide  
 11 recoveries and the likelihood of success in obtaining such results. That forecast cannot  
 12 be done with arithmetic accuracy, but it can provide a benchmark for comparison with  
 13 the settlement figure.” Whether from the amended Rule or *Hanlon*, these risk/benefit-  
 14 related factors all counsel in favor of preliminary approval here.

15 **a. Litigation Is Invasive; Participation in this Settlement Is Not.**

16 The most significant cost of litigation for Class members is the substantial  
 17 emotional toll that litigating through trial would impose on each victim. Defendants  
 18 likely would seek to take victims’ testimony through deposition or at trial. Women  
 19 who filed suit using a Jane Doe pseudonym face having their identities revealed.  
 20 Testifying requires victims to publicly re-live and recount the traumatic experiences  
 21 they endured. The *Bradley* court recognized as much when it approved a class action  
 22 settlement of the claims of 7,000 former patients who were sexually abused by their  
 23 doctor:

24 [T]he emotional costs of litigation cannot be ignored. The victims in this  
 25 case are ... already traumatized. Further litigation would exacerbate the  
 26 trauma and very likely blow the lid off the patient confidentiality that has  
 been so carefully maintained and protected throughout the litigation thus  
 far. This settlement allows the victims to avoid paying these devastating  
 costs.

27 64 A.3d at 395–96.; *see also id.* at 404 (“With ... litigation behind them . . . all focus  
 28

1 can now be placed on picking up the pieces as best as possible.”). Resolving this case  
2 through the Settlement allows Class members the choice to put this behind them  
3 instead of re-living painful memories for years in protracted litigation. While public  
4 trials play an important societal role, a class settlement that preserves the privacy of  
5 those who need or prefer it plays an equally important role in resolving claims of  
6 victims without imposing the risk of further trauma and litigation that even a trial  
7 victory would impose. We no longer practice trial by ordeal, for good reason. The  
8 ordeals already undergone by class members should not be exacerbated as the price of  
9 justice.

10 **b. Litigation Is Slow, and By No Means a Slam Dunk.**

11 The Settlement’s significant benefits reflect the strength of Plaintiffs’ case on  
12 the merits and the likelihood that Plaintiffs would have been able to certify a litigation  
13 class, maintain certification through trial, and prevail on their claims. While Plaintiffs  
14 believe in the strength of their case, they also recognize that litigation is uncertain,  
15 making compromise of claims in exchange for the Settlement’s certain, immediate,  
16 and substantial benefits an unquestionably reasonable outcome.

17 The *Bradley* court found that sex abuse class action settlement of particular  
18 merit because: “This settlement was reached after careful investigation of the facts but  
19 without substantial litigation. Had the parties not reached this settlement, years of  
20 heated litigation awaited them. . . . This settlement allows the parties to avoid lengthy  
21 (several years at least) and costly litigation in favor of a fair and final resolution now.”  
22 64 A.3d at 395.. The *Johns Hopkins* court reached a similar conclusion, noting that  
23 “Notwithstanding Dr. Levy’s widely publicized misconduct, if the case were litigated  
24 further, the Plaintiffs would still face difficulties in establishing Johns Hopkins  
25 liability and proving damages” and “expensive and protracted litigation for years to  
26 come.” 2014 WL 5040602, at \*4; *see also Syed v. M-I, L.L.C.*, No. 1:12-cv-01718,  
27 2017 WL 714367, at \*9 (E.D. Cal. Feb. 22, 2017) (finding a wage-and-hour settlement  
28

1 fair and reasonable where litigation risks included “the court’s denial of certification  
2 of their Rule 23 proposed class”).

3 Here, if Interim Class Counsel were to prosecute these claims through trial and  
4 appeal, recovery would come, if at all, years in the future and at far greater risk and  
5 expense to the Class. While Plaintiffs are confident in the strength of their claims, they  
6 also recognize the potential risks and uncertainty attendant to any litigation. This  
7 Settlement obviates such risks and delays in exchange for privacy, choice, immediacy,  
8 guaranteed monetary compensation, and accountability.

9 **2. The Settlement Claims Process Is Efficient, Accurate, and**  
10 **Sensitive to Claimant’s Needs and Privacy.**

11 In assessing whether the “relief provided for the class is adequate,” courts also  
12 consider “the effectiveness of any proposed method of distributing relief to the class,  
13 including the method of processing class-member claims.” Fed. R. Civ. P. 23(e)  
14 (2)(C)(ii). As the Advisory Committee’s notes explain: “Often it will be important for  
15 the court to scrutinize the method of claims processing to ensure that it facilitates  
16 filing legitimate claims. A claims processing method should deter or defeat unjustified  
17 claims, but the court should be alert to whether the claims process is unduly  
18 demanding.”

19 Here, the Settlement claims process detailed above is uniquely designed to  
20 provide an accessible, safe, and private way for Tyndall’s victims to tell their stories—  
21 to the extent and in the way they choose—and get compensation for the harms they  
22 suffered. Its three-tier structure centered on claimant choice is a creative way to  
23 maximize payments and simplicity while also allowing for fuller inquiry and greater  
24 payment for those who want it.

25 **3. The Terms and Timing of the Proposed Award of Attorney’s**  
26 **Fees Puts Class Members First.**

27 Rule 23(e) (2)(C)(iii) provides that a court should consider “the terms of any  
28 proposed award of attorneys’ fees, including time of payment” when determining the

1 adequacy of relief. Here, the Settlement provides that Defendants will pay Interim  
2 Class Counsel’s attorneys’ fees and costs separately, without any reduction of the  
3 Settlement Amount. The Court alone will decide attorneys’ fees and costs, and Interim  
4 Class Counsel will not seek an amount greater than \$25 million. Class members will  
5 have the opportunity to comment on or object to any fee petition as set forth in Rule  
6 23(h). And approval of the Settlement will not be contingent on the Court approving  
7 fees and costs in any particular amount. *See* Agmt. § 8.1

8         The intended timing of Class Counsel’s request for attorneys’ fees here also  
9 puts Class members first. Ordinarily, Class Counsel would file their motion for an  
10 award of fees and costs at the same time as their final approval papers, and the fee  
11 motion would be heard and decided at the final approval hearing. Here, however,  
12 Class Counsel propose to file their motion for an award of fees and costs only *after*  
13 final approval is decided and the claims process is completed, so that the Court can  
14 evaluate that motion with benefit of full and complete information about settlement  
15 implementation and payments to the Class.

16         That said, Interim Class Counsel recognize that under Fed. R. Civ. P. 23 (h) and  
17 *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988 (9th Cir. 2010), Class  
18 members must be informed of the *amount* of fees Class Counsel intend to seek as part  
19 of the final approval process, and also have a right to review and consider the actual  
20 fee motion papers and object to the fee sought should they wish. Class Counsel will  
21 provide such notice (likely via posting on settlement website) and subsequent  
22 objection opportunity when they file their fees motion. This process complies with all  
23 fee notice requirements.

#### 24                 **4. There Are No Undisclosed Side Agreements.**

25         Amended Rule 23(e) (3) requires the parties seeking approval for a class action  
26 settlement to “file a statement identifying any agreement made in connection with the  
27 proposal.” The Settlement includes a side agreement that permits USC to terminate the  
28

1 Settlement if the number of Class members who opt out exceeds a certain threshold.  
2 Class action settlements often contain this type of provision,<sup>25</sup> and the side agreement  
3 will be filed publicly. Only the opt out trigger number will be confidential and filed  
4 with the Court in a sealed envelope. There are no other agreements to disclose under  
5 Rule 23(e) (3).

6 **5. The Settlement Treats Class Members Equitably Relative to**  
7 **Each Other.**

8 Finally, amended Rule 23(e) (2)(D) states that a court should consider whether  
9 “the proposal treats Class members equitably relative to each other.” This factor is  
10 intended to ensure that a proposed settlement does not include “inequitable treatment  
11 of some Class members vis-a-vis others.” Adv. Cmte. Note R. 23.

12 By design, the Settlement treats Class members equitably by presenting each of  
13 them with the same choices within the three-tier structure. All Class members are  
14 eligible to receive the same guaranteed minimum \$2,500 compensation solely by  
15 virtue of being a Class member. And all Class members who choose to submit a Tier 2  
16 or 3 claim are eligible for awards up to \$20,000 or \$250,000, respectively. For Tier 2  
17 and 3 claims, the Special Master makes a claim award determination within the range  
18 for each Tier based on the information provided by each claimant.

19 Moreover, this process is similar to the court-approved allocation process  
20 successfully employed in the *Johns Hopkins* class settlement, where, based on  
21 claimant interviews, the special master allocated claim payment amounts among the  
22 9,000 claimants within the ranges set for four claim categories.

23 The Settlement thus ensures that Class members are treated equitably relative to  
24 each other and meets the considerations of Rule 23(e) (2)(D).

25 \* \* \*

26 <sup>25</sup> See, e.g., *Chao v. Aurora Loan Servs., LLC*, No. C 10-3118 SBA, 2014 WL  
27 4421308, at \*3 n.2, \*7 (N.D. Cal. Sept. 5, 2014); *Multi-Ethnic Immigrant Workers*  
28 *Org. Network v. City of Los Angeles*, No. CV 07-3072 AHM (FMOx), 2009 WL  
1065072, at \*4 (C.D. Cal. Mar. 19, 2009).

1 For all the reasons detailed above, the Settlement satisfies all the Rule 23(e) (2)  
2 factors and preliminary approval is warranted here.

3 **VI. THE COURT WILL BE ABLE TO CERTIFY THE CLASS.**

4 In cases where a class has not been certified prior to settlement, the Court must  
5 also consider the prospect of class certification in determining whether to direct notice  
6 to the class. Adv. Cmte. Note R. 23(e)(2). While the ultimate decision on class  
7 certification is not made until the final approval hearing, at the preliminary approval  
8 stage the parties must nevertheless “ensure that the court has a basis for concluding  
9 that it likely will be able, after the final hearing, to certify the class.” Adv. Cmte. Note  
10 R. 23(e)(1). Rule 23 governs class certification; to be certified, a class must meet all of  
11 the requirements of Rule 23(a), and the requirements of one of the subsections of  
12 23(b). Here, Plaintiffs will seek certification under 23(b) (3). As described below, the  
13 Class readily meets the requirements of Rule 23.

14 The few courts that have considered certification of sex abuse class actions have  
15 granted certification, and indeed found class treatment particularly appropriate. In  
16 *Bradley*, the court certified a class of 7,000 former patients who were abused by their  
17 doctor, finding certification of their claims appropriate because: “the claims against  
18 the [] Defendants arising from the harm caused by Dr. Bradley were largely based on  
19 the same factual and legal predicates; [] with a potential class of as many as seven  
20 thousand (7000) children, the litigation of individual claims, even if aggregated in  
21 some form, would have been impractical and burdensome for all concerned; [] the  
22 case involved ... victims, ...all of whom would have been emotionally traumatized by  
23 separate litigation and trials; ...[] a class action ensures consistent and transparent  
24 resolution of all claims.” 64 A.3d at 385. Similarly, the *Johns Hopkins* court certified a  
25 class of over 12,000 former patients for claims of surreptitious photographing and  
26 inappropriate touching by their gynecologist. 2014 WL 5040602.



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

2                   **1. The Class Is Sufficiently Numerous.**

3           Rule 23(a)(1) is satisfied when “the class is so numerous that joinder of all  
4           Class members is impracticable.” Fed. R. Civ. P. 23(a) (1); *see also Ambriz v. Coca*  
5           *Cola Co.*, No. CV 14-00715 SVW, 2015 WL 12683823, at \*2-3 (C.D. Cal. Mar. 11,  
6           2015) (Wilson, J.) (joinder impracticable and numerosity met where putative class  
7           contained “about 86 members”). Tyndall practiced at USC’s student health facilities  
8           for over thirty years. The Class consists of approximately 14,000 to 17,000 women,  
9           whose identities are ascertainable through USC’s records. Many Class members have  
10           since graduated and dispersed around the United States and the world. The large size  
11           of the Class and the geographic disparity of its members render joinder impracticable  
12           here.

13                   **2. There Are Common Questions of Both Law and Fact.**

14           “Federal Rule of Civil Procedure 23(a)(2) conditions class certification on  
15           demonstrating that members of the proposed class share common ‘questions of law or  
16           fact.’” *Stockwell v. City & Cty. of San Francisco*, 749 F.3d 1107, 1111 (9th Cir. 2014).  
17           The “commonality requirement has been ‘construed permissively,’ and its  
18           requirements deemed ‘minimal.’” *Estrella v. Freedom Fin’l Network*, No. C 09-03156  
19           SI, 2010 WL 2231790, at \*25 (N.D. Cal. June 2, 2010) (quoting *Hanlon*, 150 F.3d at  
20           1020).

21           The Supreme Court has held that to satisfy commonality, “[e]ven a single  
22           [common] question’ will do.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359  
23           (2011). This is because “[w]hat matters to class certification . . . is not the raising of  
24           common questions -- even in droves -- but, rather, the capacity of a classwide  
25           proceeding to generate common *answers* apt to drive the resolution of the litigation.”  
26           *Id.* at 350 (emphasis in original). Thus, the putative class’s “claims must depend upon  
27           a common contention . . . of such a nature that it is capable of classwide resolution—  
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1 which means that determination of its truth or falsity will resolve an issue that is  
2 central to the validity of each one of the claims in one stroke.” *Id.* at 349.

3 Here, the claims of all Class members focus almost entirely on *Defendants’*  
4 conduct—that of Tyndall in his sexual abuse of the victims, and USC’s hiring,  
5 retaining, supervising, and failing to respond to complaints about Tyndall, as well as  
6 its failure to have appropriate policies and procedures in place to protect students from  
7 sexual assault. The circumstances of this case raise common questions of law and fact,  
8 the resolution of which will generate common answers “apt to drive the resolution of  
9 the litigation” for the Class as a whole. *Dukes*, 564 U.S. at 350. Because Plaintiffs  
10 allege that their and the Class’s “injuries derive from [D]efendants’ alleged ‘unitary  
11 course of conduct,’” they have “‘identified a unifying thread that warrants class  
12 treatment.’” *Sykes v. Mel Harris & Assocs. LLC*, 285 F.R.D. 279, 290 (S.D.N.Y.  
13 2012); *Syed*, 2017 WL 714367, at \*5 (“Commonality is generally satisfied where . . .  
14 the lawsuit challenges a system-wide practice or policy that affects all of the putative  
15 Class members.”).

16 Courts have found commonality satisfied in sex abuse class actions. *See*  
17 *Bradley*, 64 A.3d at 385–86 (granting certification of class action involving 7,000  
18 victims of physician sexual assault, acknowledging “the common threads that run  
19 through the claims” and finding commonality satisfied because victims’ claims “were  
20 largely based on the same factual and legal predicates”); *Jane Doe 2 v. The*  
21 *Georgetown Synagogue-Keshet Israel Congregation*, No. 2014 CA 007644 B, slip op.  
22 at 14 (D.C. Super. Oct. 24, 2018) (certifying a class of over 150 women surreptitiously  
23 videotaped disrobing and bathing in the National Capital Mikvah’s ritual bath by  
24 Rabbi Bernard Freundel, finding commonality satisfied because “Class members share  
25 common questions of law or fact, such as whether Defendant Freundel videotaped  
26 females without their consent and whether Defendant Freundel acted as an agent or  
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1 employee of any of the Defendants within the course and scope of his employment”).<sup>26</sup>

2 Here, some of the questions common to the Class include whether Tyndall  
3 engaged in sexual harassment, invasion of privacy, assault, and battery; whether  
4 Tyndall’s wrongful conduct was committed within the scope of his employment at  
5 USC: whether USC had knowledge of Tyndall’s wrongful conduct; whether USC  
6 facilitated Tyndall’s pattern and practice of sexual harassment, invasion of privacy,  
7 assault, and battery; whether USC or Tyndall engaged in conduct designed to suppress  
8 complaints or reports regarding Tyndall’s conduct; whether USC negligently retained  
9 or supervised Tyndall; whether USC ratified Tyndall’s conduct; and whether USC is  
10 vicariously liable for Tyndall’s conduct. The answers to such questions are the same  
11 no matter who in the Class asks them, or how many times they are asked, and the  
12 answers to these common questions are central to the litigation.

13 In a case like this, where the exact factual circumstances of each Class  
14 member’s injury may vary, commonality exists where a course of conduct subjects all  
15 Class members to a similar risk or threat of harm. *See, e.g., D.G. v. Devaughn*, 594  
16 F.3d 1188, 1196 (10th Cir. 2010) (“Though each Class member may not have actually  
17 suffered abuse, neglect, or the risk of such harm, Defendants’ conduct allegedly poses  
18 a risk of impermissible harm to all [proposed Class members].”); *Connor B. ex rel.*  
19 *Vigurs v. Patrick*, 272 F.R.D. 288, 295 (D. Mass. 2011) (commonality requirement  
20 satisfied by allegations of “specific policies and/or failures” that “resulted in specific  
21 harms to each named Plaintiff and that pose a continuing threat to the entire Plaintiff  
22 class”). Accordingly, Rule 23’s commonality requirement is satisfied here.

### 23 **3. Plaintiffs’ Claims Are Typical.**

24 Rule 23(a)(3) requires that “the claims or defenses of the representative parties  
25 are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a) (3). “The test  
26 of typicality is ‘whether other members have the same or similar injury, whether the  
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28 <sup>26</sup> Opinion attached as Ex. 2.

1 action is based on conduct which is not unique to the named plaintiffs, and whether  
2 other class members have been injured by the same course of conduct.” *Parsons v.*  
3 *Ryan*, 754 F.3d 657, 685 (9th Cir. 2014).

4 The same course of conduct that injured Plaintiffs injured other Class members.  
5 While the precise circumstances of each class member’s interaction with Tyndall may  
6 vary, all suffered harm from USC’s failure to address Tyndall’s behavior. Therefore,  
7 typicality is satisfied.

8 **4. Plaintiffs and Class Counsel Will Fairly and Adequately**  
9 **Protect the Interests of the Class.**

10 Courts ask two questions to evaluate whether the adequacy of representation  
11 requirement of Rule 23(a) (4) is satisfied: “(1) Do the representative plaintiffs and  
12 their counsel have any conflicts of interest with other class members, and (2) will the  
13 representative plaintiffs and their counsel prosecute the action vigorously on behalf of  
14 the class?” *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). Here, the answer  
15 to each of those questions is “yes.”

16 **a. Plaintiffs Have No Conflicts of Interest and Have Diligently**  
17 **Pursued the Action on Behalf of the Class.**

18 Plaintiffs have agreed to serve in a representative capacity, communicated  
19 diligently with Interim Class Counsel, shared their stories, reviewed the complaint,  
20 and consulted with counsel on settlement. Plaintiffs will continue to act in the best  
21 interests of the class members, all of whom have an interest in proving that Tyndall  
22 unlawfully harmed the women he saw for treatment at the student health center, and  
23 that USC failed to adequately protect women from Tyndall. Various Plaintiffs,  
24 moreover, visited Tyndall at the clinic at different times within the class period. There  
25 are no conflicts between Plaintiffs and the Class.

26 **b. Interim Class Counsel Are Qualified to Serve as Class Counsel.**

27 Interim Class Counsel are qualified to serve as Class Counsel. Collectively, they  
28 have decades of experience successfully representing plaintiffs and aggrieved classes

1 in complex class action litigation, including in sexual misconduct cases. *See* [Dkt. 34.]

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

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

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

10 The predominance inquiry “asks whether the common, aggregation-enabling,  
11 issues in the case are more prevalent or important than the non-common, aggregation-  
12 defeating, individual issues.” *Tyson Foods, Inc. v. Bouaphakeo*, 136 S.Ct. 1036, 1045  
13 (2016). “When one or more of the central issues in the action are common to the class  
14 and can be said to predominate, the action may be considered proper under Rule 23(b)  
15 (3) even though other important matters will have to be tried separately, such as  
16 damages or some affirmative defenses peculiar to some individual Class members.”  
17 *Id.* “[T]he office of a Rule 23(b)(3) certification ruling . . . is to select the method best  
18 suited to adjudication of the controversy fairly and efficiently.” *Amgen Inc. v. Conn.*  
19 *Ret. Plans & Tr. Funds*, 568 U.S. 455, 460 (2013). Thus, “[w]hen common questions  
20 present a significant aspect of the case and they can be resolved for all members of the  
21 class in a single adjudication, there is clear justification for handling the dispute on a  
22 representative rather than on an individual basis.” *Hanlon*, 150 F.3d at 1022.

23 Common questions of law and fact predominate here. As noted above, there are  
24 dozens of common legal and factual issues that lay “at the core of each Class  
25 member’s case—they would ‘prevail or fail in unison.’” *Ambriz*, 2015 WL 12683823,  
26 at \*4. All Class members have Title IX claims that USC’s failure to discipline Tyndall  
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1 amounts to unlawful discrimination.<sup>27</sup> Because of this shared federal claim, a choice-  
2 of-law analysis would be superfluous and unnecessary.<sup>28</sup> Moreover, all of the claims  
3 center on Tyndall’s misconduct and that of USC, which conduct is common to all  
4 Class members: whether and when USC had notice of Tyndall’s abusive conduct and  
5 statements; whether and when USC should have taken corrective action; why it failed  
6 to do so; whether Tyndall’s conduct was medically justified; and whether his conduct  
7 can be vicariously imputed to USC. *See Johns Hopkins*, 2014 WL 5040602, at \*2  
8 (common questions included vicarious liability and when university knew of doctor’s  
9 behavior). Much of the same evidence would be necessary to establish liability in each  
10 victim’s case, if brought individually.

11 In contrast to these numerous common issues, the individual questions are few,  
12 and generally only concern issues of individual damage calculation. Indeed,  
13 differences that “go primarily to damages . . . cannot destroy predominance.” *Ambriz*,  
14 2015 WL 12683823, at \*4. The predominance test is satisfied here. Of course, should  
15 any Class member decide to opt out and pursue her claim individually, Rule 23(b)(3)  
16 and this Settlement allow for that as well.

## 17 **2. Class Treatment Is Superior in This Case.**

18 Rule 23(b) (3) also requires a class action to be “superior to other available  
19 methods for fairly and efficiently adjudicating the controversy.”

20 The Settlement allows all of Tyndall’s victims to receive compensation  
21 efficiently, instead of limiting recovery to women willing to step forward as a plaintiff.  
22 Collective action is plainly superior in cases involving traumatic injuries, as victims of  
23 assault or abuse often do not wish to subject themselves to litigation, whether to avoid

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25 <sup>27</sup> *See* Tr. of Aug. 13, 2018 Hr’g at 6 (“[T]he court makes this observation: It does  
26 seem established, although it isn’t necessarily intuitive, that the Title IX does apply to  
27 this type of complaint”).

28 <sup>28</sup> Additionally, because the conduct at issue occurred in California, all Class members  
could assert colorable claims under California law. *See Ehret v. Uber Techs, 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 making their experience public, having to testify about it, or having to confront their  
2 abuser in court. *See, e.g., Doe v. Roman Catholic Diocese of Covington*, No. 03-CI-  
3 00181, 2006 WL 250694, at \*5 (Ky. Cir. Ct. Jan. 31, 2016) (“The class action  
4 procedure has encouraged a large number of people to come forward who would  
5 otherwise never have done so had they been left to their individual devices.”);  
6 *Bradley*, 64 A.3d at 385 (certified sexual abuse settlement class where the victims  
7 “would have been emotionally traumatized by separate litigation and trials” and “a  
8 class action ensures consistent and transparent resolution of all claims”). Thus, the  
9 class action serves as a valuable, vastly superior mechanism in cases like these, where  
10 those individuals who choose to come forward and speak up may obtain justice for  
11 those who cannot.

12 The Settlement is also specifically designed so that members do not have to  
13 wholly surrender control of their claims: the Settlement contemplates individualized  
14 consideration of particular claims through the Special Master’s administration of the  
15 three-tiered settlement structure. This focus on claimant choice is a creative way to  
16 maximize payments and simplicity, while allowing for fuller inquiry and greater  
17 payment for those who want it. This proposed process incorporates the efficiency of  
18 the class mechanism with the particular needs of Class members in this case. The  
19 result: an efficient claims process that provides fair compensation to all victims.

20 Because the class action device provides the superior means to effectively and  
21 efficiently resolve this controversy, and as the other requirements of Rule 23 are each  
22 satisfied, certification of the Class under Rule 23(b)(3) is appropriate.

## 23 **VII. THE PROPOSED NOTICE PROGRAM PROVIDES THE BEST** 24 **PRACTICABLE NOTICE.**

25 Once a court has determined that giving notice of a proposed settlement is  
26 justified (by preliminarily approving settlement and determining the court will be able  
27 to certify the class at final hearing), the Court must direct notice to the Class pursuant  
28 to Rule 23(e)(1) and 23(c)(2)(B). The proposed Notice and notice program conform to

1 the mandates of Rule 23 and due process. *See* Fed. R. Civ. P. 23(c) (2) (requiring “the  
2 best notice that is practicable under the circumstances, including individual notice to  
3 all members who can be identified through reasonable effort.”); *see also* Adv. Cmte.  
4 Note R. 23(c)(2) (endorsing simultaneous notice of settlement and class action).<sup>29</sup>  
5 “The ultimate goal of giving notice is to enable Class members to make informed  
6 decisions about whether to opt out or, in instances where a proposed settlement is  
7 involved, to object or make claims.” *Id.* In some cases, the court and counsel “may  
8 wish to consider the use of class notice experts or professional claims administrators.”  
9 *Id.* In opt-out actions, the proposed method “should be as convenient as possible,  
10 while protecting against unauthorized opt-out notices.” *Id.*

11 The Notice here was designed by an experienced and well-qualified notice  
12 provider, JND, selected by Interim Class Counsel after a competitive bidding process.  
13 Joint Decl. ¶ 30; Keough Decl. ¶ 3. It includes all the information required under Rule  
14 23(c) (2)(B): the nature of the action, the class definition, a summary of the class  
15 claims, that a Class member may enter an appearance through an attorney, that the  
16 Court will grant timely exclusion requests, the time and manner for requesting  
17 exclusion, and the binding effect of final approval. Keough Decl. Exs. B-1 and B-2  
18 (Long-Form Notices). The Notice includes all information necessary for Class  
19 members to make informed decisions about making a claim.

20 While mailed notice is not required, *see Briseno v. ConAgra Foods, Inc.*, 844  
21 F.3d 1121, 1129 (9th Cir. 2017), here it is the best notice practicable. To ensure that  
22 all women who may have seen Tyndall learn about the Settlement and their rights,  
23 notice will be mailed to *all* women who were USC students during the class period  
24 and whose contact information is in USC’s records. Keough Decl. ¶ 13. Additionally,  
25 the notice will be published in media likely to be viewed by Class members, such as

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<sup>29</sup> “It is common to send notice to the class simultaneously under both Rule 23(e)(1) and Rule 23(c)(2)(B), including a provision for class members to decide by a certain date whether to opt out. This amendment recognizes the propriety of this combined notice practice.” *Id.*



1 the *Daily Trojan* and USC’s alumni magazine, and as part of an online notice  
2 campaign. *Id.*

3 The Notice should be approved and directed to the Class.

4 **VIII. THE PROPOSED FINAL APPROVAL HEARING SCHEDULE.**

5 The last step in the approval process is the final approval hearing, at which the  
6 Court may hear any evidence and argument necessary to evaluate the Settlement. At  
7 that hearing, proponents of the Settlement may explain and describe its terms and  
8 conditions and offer argument in support of settlement approval, and Class members,  
9 or their counsel, may be heard in support of or in opposition to the Proposed  
10 Settlement. Plaintiffs’ respectfully request the Court enter the proposed schedule  
11 attached as Attachment A.

12 **IX. CONCLUSION**

13 The story of George Tyndall’s tenure at USC is a story of abuse and  
14 victimization and an institution that, for too long, looked the other way. This  
15 Settlement brings a fitting end to that story, achieving this litigation’s central goal of  
16 accountability. It provides real, immediate, and certain compensation for thousands of  
17 women—no less than \$2500 and up to \$250,000 each, net of attorneys’ fees and  
18 costs—while allowing *them* to choose whether and how much to tell of their stories.  
19 And it ensures lasting institutional change at USC to prevent anything like this from  
20 ever happening again. In these ways, it is more than just fair, reasonable, and  
21 adequate—it is an outstanding result for the Class.

22 For all these reasons, Plaintiffs respectfully request that the Court (1) grant  
23 preliminary approval, (2) direct notice to the Class, and (3) schedule a fairness  
24 hearing.

1 DATED: February 12, 2019.

Respectfully submitted,

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