

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division

KAREN MARTINEZ, et al., individually  
and on behalf of all other similarly situated

Plaintiffs,

v.

CHOOSE YOUR HORIZON, INC.,  
Defendant.

Case No. 24-cv-02798-LB

**ORDER GRANTING PRELIMINARY  
APPROVAL**

Re: ECF No. 61

**INTRODUCTION**

This is a putative class action against Choose Your Horizon, Inc. (CYH), which owns and operates the website chooseketamine.com. The plaintiffs, Karen Martinez and Eli Silva, claim that CYH intercepted their personally identifying information and personal health information and disclosed it to third parties, in violation of California privacy statutes.<sup>1</sup> The parties have settled this case, and the plaintiffs have moved for preliminary approval of the proposed settlement.<sup>2</sup> The court grants the unopposed motion.

<sup>1</sup> First Am. Compl. (FAC) – EFC No. 35 at 2–4 (¶¶ 24, 27–37). Citations refer to material in the Electronic Case File (ECF); pinpoint citations are to the ECF-generated page numbers at the top of documents.

<sup>2</sup> Settlement Agreement, Ex. 1 to Fraietta Decl. – ECF No. 61-1; Mot. – ECF No. 61.

1 **STATEMENT**

2 **1. The Lawsuit**

3 Plaintiff Martinez filed this lawsuit on May 9, 2024, alleging claims for invasion of privacy in  
4 violation of the California Invasion of Privacy Act, Cal. Penal Code § 631, the California  
5 Confidentiality of Medical Information Act, Cal. Civ. Code § 56.10, and the California  
6 Constitution.<sup>3</sup> On September 20, 2024, the court stayed the action to allow the parties to  
7 participate in private mediation, which they did in November 2024 with former Chief Justice of  
8 the U.S. District Court of the Northern District of Illinois, James F. Holderman, but could not  
9 reach settlement.<sup>4</sup>

10 CYH filed motions to dismiss for lack of jurisdiction and to compel arbitration.<sup>5</sup> In January  
11 2025, the plaintiffs filed the first amended complaint, adding plaintiff Silva to the action with the  
12 same three claims.<sup>6</sup> In response, CYH moved to dismiss, compel arbitration, and stay the case.<sup>7</sup> The  
13 court denied the defendant's second motion to dismiss (finding personal jurisdiction over CYH) but  
14 compelled arbitration as to plaintiff Martinez's claims and stayed her case pending arbitration.<sup>8</sup> The  
15 parties continued mediation efforts, resulting in a settlement agreement on October 31, 2025.<sup>9</sup>

16 The plaintiffs now move for preliminary approval of the settlement pursuant to Fed. R. Civ. P.  
17 23.<sup>10</sup> The parties have consented to magistrate-judge jurisdiction.<sup>11</sup>

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22 <sup>3</sup> Compl. – ECF No. 1 at 30–35.

23 <sup>4</sup> Fraietta Decl. – ECF No. 61-1 at 2 (¶ 4).

24 <sup>5</sup> Mot. – ECF No. 30.

25 <sup>6</sup> FAC – ECF No. 35 at 34–39.

26 <sup>7</sup> Mot. – ECF No. 39.

27 <sup>8</sup> Order – ECF No. 56.

28 <sup>9</sup> Fraietta Decl. – ECF No. 61-1 at 2 (¶ 4).

<sup>10</sup> Mot. – ECF No. 61.

<sup>11</sup> Consents – ECF Nos. 6, 29, 63.

1 **2. The Proposed Settlement**

2 For the purpose of this order, the court adopts all defined terms as set forth in the settlement  
3 agreement.

4 **2.1. Settlement Class**

5 The Settlement Class is defined as follows:

6 [A]ll California residents who, from May 9, 2023, to and through July 11, 2024, had  
7 their personally identifiable information or protected health information disclosed  
to third-party entities, as a result of using the Websites while located in California.<sup>12</sup>

8 Excluded from the Settlement Class are:

- 9 (1) any Judge or Magistrate presiding over this Action and members of their families;
- 10 (2) the Defendant, Defendant’s subsidiaries, parent companies, successors,
- 11 predecessors, and any entity in which the defendant or its parents have a controlling
- 12 interest and their current or former officers, directors, agents, attorneys, and
- employees; (3) persons who properly execute and file a timely request for exclusion
- 13 from the class; and (4) the legal representatives, successors or assigns of any such
- 14 excluded persons.<sup>13</sup>

15 There are approximately 761 people in the Settlement Class.<sup>14</sup>

16 **2.2. Settlement Amount and Allocation**

17 The gross Settlement Fund is \$400,000.00 and is fully non-reversionary.<sup>15</sup> It will be used to  
18 pay all Settlement Class Members, Notice and Settlement Administration Costs, taxes owed by the  
19 Settlement Fund, any court-approved service award to the plaintiffs, and any court-approved  
20 attorney’s fees and awards.<sup>16</sup> The Settlement Amount reverts to CYH only if the Settlement  
21 Agreement is voided, cancelled, or terminated.<sup>17</sup>

22 Class Members will not be required to submit claim forms to participate in the Settlement.  
23 Instead, the Net Settlement Fund will automatically be distributed to Class Members on a pro rata

24 <sup>12</sup> Settlement Agreement, Ex. 1 to Fraietta Decl. – ECF No. 61-1 at 19 (§ 1.30).

25 <sup>13</sup> *Id.*

26 <sup>14</sup> *Id.*

27 <sup>15</sup> *Id.* at 19–20 (§ 1.32).

28 <sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 38–40 (§ 9).

1 basis.<sup>18</sup> Proposed Class Counsel estimates the payments will be \$337 per Class Member.<sup>19</sup> Any  
 2 funds remaining after the 180-day deadline for negotiating Claim Payment checks will be  
 3 redistributed pro rata to Authorized Claimants that cashed their initial distribution check or  
 4 received an electronic payment, so long as the reallocated pro rata share to each eligible  
 5 Authorized Claimant is at least \$5.00.<sup>20</sup> Any funds still remaining after 180 days from distribution  
 6 will be distributed *cy pres* to the California Access to Justice Commission or another non-  
 7 sectarian, not-for-profit organization recommended by Class Counsel and approved by the  
 8 Court.<sup>21</sup>

### 9 2.3. Release

10 “The obligations incurred pursuant to this Settlement Agreement shall be a full and final  
 11 disposition of the Action and any and all Released Claims, as against all Released Parties.”<sup>22</sup>

12 “Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and  
 13 by operation of the Final Judgment shall have, fully, finally and forever released, relinquished, and  
 14 discharged all Released Claims against the Released Parties, and each of them.”<sup>23</sup>

### 15 2.4. Administration

16 Simpluris, Inc. is the proposed Settlement Administrator.<sup>24</sup> The plaintiffs selected Simpluris —  
 17 having distributed over \$7 billion in funds over fifteen years of administering class action  
 18 settlements — following a competitive selection process.<sup>25</sup> Simpluris will also administer the  
 19 Notice, handle the payments to Class Members, maintain the settlement monies for disbursement,  
 20 establish a settlement website, and prepare tax forms required with disbursement of the funds.<sup>26</sup>

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 22 <sup>18</sup> *Id.* at 22 (§ 2.1.(b)).

23 <sup>19</sup> Fraietta Decl. – ECF No. 61-1 at 4 (¶ 10).

24 <sup>20</sup> Settlement Agreement, Ex. 1 to *id.* – ECF No. 61-1 at 24 (§ 2.1(g)).

25 <sup>21</sup> *Id.*

26 <sup>22</sup> *Id.* at 25 (§ 3.1).

27 <sup>23</sup> *Id.* (§ 3.2).

28 <sup>24</sup> *Id.* at 18 (§ 1.29).

<sup>25</sup> Fraietta Decl. – ECF No. 61-1 at 7 (¶ 20); Nelson Decl. – ECF No. 61-2 at 2 (¶ 3).

<sup>26</sup> Settlement Agreement, Ex. 1 to Fraietta Decl. – ECF No. 61-1 at 30–34 (§ 5).

1 Other administrative procedures — including for notice, exclusions, and objections — are set forth  
2 in the Settlement Agreement.<sup>27</sup>

### 3 ANALYSIS

#### 4 1. Jurisdiction

5 The court has diversity jurisdiction under the Class Action Fairness Act (CAFA). 28 U.S.C.  
6 § 1332(d)(2).

#### 8 2. Certification of Settlement Class

9 The court reviews the propriety of class certification under Fed. R. Civ. P. 23(a) and (b). When  
10 parties enter a settlement before the court certifies a class, the court “must pay ‘undiluted, even  
11 heightened, attention’ to class certification requirements” because the court will not have the  
12 opportunity to adjust the class based on information revealed at trial. *Staton v. Boeing Co.*, 327  
13 F.3d 938, 952–53 (9th Cir. 2003) (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620  
14 (1997)); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998), *overruled on other*  
15 *grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011).

16 Class certification requires the following: (1) the class is so numerous that joinder of all  
17 members individually is “impracticable”; (2) there are questions of law or fact common to the  
18 class; (3) the claims or defenses of the class representatives are typical of the claims or defenses of  
19 the class; and (4) the person representing the class will fairly and adequately protect the interests  
20 of all class members. Fed. R. Civ. P. 23(a); *Staton*, 327 F.3d at 953. Also, the common questions  
21 of law or fact must predominate over any questions affecting only individual class members, and  
22 the class action must be superior to other available methods for fairly and efficiently adjudicating  
23 the controversy. Fed. R. Civ. P. 23(b)(3).

24 The court finds (for settlement purposes only) that the proposed settlement class meets the  
25 Rule 23(a) prerequisites of numerosity, commonality, typicality, and adequacy. Also, under Rule  
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28 <sup>27</sup> *Id.* at 25–30 (§ 4).

1 23(b)(3) (and for settlement purposes only), common questions predominate over any questions  
2 affecting only individual members, and a class action is superior to other available methods.

3 First, with 761 members, the class is numerous.<sup>28</sup>

4 Second, there are questions of law and fact common to the class, including (1) whether the  
5 defendant violated the settlement class members' privacy rights, (2) whether the defendant's  
6 conduct constituted an invasion of privacy at common law, (3) whether the defendant violated the  
7 California Invasion of Privacy Act by aiding, agreeing, employing, and conspiring with third parties  
8 to intercept and use Settlement Class Members' communications, and (4) whether defendant  
9 violated the California Confidentiality of Medical Information Act by disclosing health information  
10 to third parties through their tracking software.<sup>29</sup> Thus, the claims depend on common contentions,  
11 the determination of which "will resolve an issue that is central to the validity of each one of the  
12 claims in one stroke." *Wal-Mart Stores*, 564 U.S. at 350; *Betorina v. Randstad US, L.P.*, No. 15-cv-  
13 03646-EMC, 2017 WL 1278758, at \*4 (N.D. Cal. Apr. 6, 2017). Furthermore, these common  
14 questions predominate over any questions affecting only individual members.

15 Third, the claims of the representative parties are typical of the claims of the class. The  
16 representative parties and all class members allege the same violations based on similar facts. All  
17 representatives possessed the same interest and suffered the same injury as the rest of the class.  
18 *See Betorina*, 2017 WL 1278758, at \*4.

19 Fourth, the representative parties will fairly and adequately protect the interests of the class.  
20 Two factors are relevant to the adequacy determination: (1) whether the named plaintiffs and their  
21 counsel have potential conflicts with the other class members; and (2) whether counsel chosen by  
22 the representative party is qualified, experienced, and able to vigorously conduct the litigation.  
23 *Hanlon*, 150 F.3d at 1020. Here, the named plaintiffs have shared claims and interests with the  
24 class (and no conflicts of interest), and they retained qualified and competent counsel with  
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28 <sup>28</sup> Fraietta Decl. – ECF No. 61-1 at 3 (¶ 6).

<sup>29</sup> Mot. – ECF No. 61 at 26.

1 significant experience litigating class actions.<sup>30</sup> *Loc. Joint Exec. Bd. of Culinary/Bartender Tr.*  
2 *Fund v. L.V. Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001); *Hanlon*, 150 F.3d at 1021–22.

3 Finally, a class action is superior to other available methods for fairly and effectively  
4 adjudicating the controversy, especially given the relatively small amount of alleged damages for  
5 each individual consumer. Fed. R. Civ. P. 23(b)(3).

6 In sum, the prerequisites of Rule 23(a) and (b)(3) are met. The court certifies the class under  
7 Rule 23(b)(3) for settlement purposes only.

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9 **3. Preliminary Approval of Settlement**

10 A court may approve a proposed class-action settlement only “after a hearing and only on  
11 finding that it is fair, reasonable, and adequate after considering whether”:

- 12 (A) The class representatives and class counsel have adequately represented the  
13 class;
- 14 (B) The proposal was negotiated at arm’s length;
- 15 (C) The relief provided for the class is adequate, taking into account:
  - 16 (i) The costs, risks, and delay of trial and appeal;
  - 17 (ii) The effectiveness of any proposed method of distributing relief to the  
18 class, including the method of processing class-member claims;
  - 19 (iii) The terms of any proposed award of attorney’s fees, including timing  
20 of payment; and
  - (iv) Any agreement required to be identified under Rule 23(e)(3); and
- (D) The proposal treats class members equitably relative to each other.

21 Fed. R. Civ. P 23(e)(2). These factors “are substantially similar to those articulated” in *Hanlon*,  
22 150 F. 3d at 1027. *Student A v. Berkeley Unified Sch. Dist.*, No. 17-cv-02510-JST, 2021 WL  
23 6332353, at \*2 n.2 (N.D. Cal July 8, 2021).

24 In *Hanlon*, the Ninth Circuit identified factors relevant to assessing a settlement proposal: (1)  
25 the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further  
26 litigation; (3) the risk of maintaining class-action status throughout trial; (4) the amount offered in

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28 <sup>30</sup> Fraietta Decl. – ECF No. 61-1 at 6 (¶ 17).

1 settlement; (5) the extent of discovery completed and the stage of the proceeding; (6) the  
 2 experience and views of counsel; (7) the presence of a government participant; and (8) the reaction  
 3 of class members to the proposed settlement. 150 F.3d at 1026.

4 When parties “negotiate a settlement agreement before the class has been certified, settlement  
 5 approval requires a higher standard of fairness and a more probing inquiry than may normally be  
 6 required under Rule 23(e).” *Roes, 1–2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048 (9th Cir. 2019)  
 7 (cleaned up). “Specifically, such settlement agreements must withstand an even higher level of  
 8 scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under  
 9 Rule 23(e) before securing the court’s approval as fair.” *Id.* at 1048–49 (cleaned up).

10 The court has evaluated the proposed settlement agreement for overall fairness under the  
 11 *Hanlon* factors and concludes that preliminary approval is appropriate. Overall, the settlement  
 12 appears fair. The settlement agreement was the result of an adversarial, non-collusive, and arms-  
 13 length negotiation process.<sup>31</sup> See Fed. R. Civ. P. 23(e)(2)(B) advisory committee’s note (2018)  
 14 (“[T]he involvement of a neutral . . . in negotiations may bear on whether they were conducted in  
 15 a manner that would protect and further the class interests.”); *Villegas v. J.P. Morgan Chase &*  
 16 *Co.*, No. CV 09-00261 SBA (EMC), 2012 WL 5878390, at \*6 (N.D. Cal. Nov. 21, 2012) (private  
 17 mediation “tends to support the conclusion that the settlement process was not collusive”). The  
 18 settlement amount per class member is in line with other actions involving similar claims with  
 19 statutory damages.<sup>32</sup> The court will address attorney’s fees at the final fairness hearing. *Hanlon*,  
 20 150 F.3d at 1029 (twenty-five percent is a benchmark in common-fund cases); cf. *Vizcaino v.*  
 21 *Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002) (twenty-five-percent benchmark, though a  
 22 starting point for analysis, may be inappropriate in some cases; fees must be supported by  
 23 findings).

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 26 <sup>31</sup> *Id.*

27 <sup>32</sup> Mot. – ECF No. 61 at 19 (citing *In re Advocate Aurora Health Pixel Litig.*, No. 22-cv-1253 (E.D.  
 28 Wis.) (\$11.64 per class member in an action alleging wiretapping claims); *Vela v. AMC Networks, Inc.*,  
 No. 1:23-cv-02524-ALC (S.D.N.Y.) (\$9.00 per class member in an action alleging violations of the  
 Video Privacy Protections Act)).

1 **4. Appointment of Class Representatives, Class Counsel, and Claims Administrator**

2 The court provisionally appoints the plaintiffs Karen Martinez and Eli Silva to represent the  
 3 Settlement Class.<sup>33</sup> The plaintiffs are adequate representatives of the other members of the class  
 4 and have claims that are typical of the other members' claims. The court provisionally appoints  
 5 Philip L. Fraietta of Bursor & Fisher, P.A., and Scott R. Drury of Drury Legal, LLC, as counsel  
 6 for settlement purposes only.<sup>34</sup> See Fed. R. Civ. P. 23(a), (g)(1). They have the requisite  
 7 qualifications, experience, and expertise in prosecuting class actions. The court approves the  
 8 retention of Simpluris as the settlement administrator.<sup>35</sup> It will administer the settlement in  
 9 accordance with the terms in the settlement agreement.

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 11 **5. Class Notice**

12 The court approves the Settlement Notice and plan. The court finds that the notice provided the  
 13 best notice practicable, satisfies the notice requirements of Rule 23, adequately advises class  
 14 members of their rights under the settlement agreement, and meets the requirements of due  
 15 process. Cf. *In re Hyundai and Kia Fuel Econ. Litig.*, 926 F.3d 539, 567 (9th Cir. 2019) (“Notice  
 16 is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those  
 17 with adverse viewpoints to investigate and to come forward and be heard.” (cleaned up)).

18 The forms of notice fairly, plainly, accurately, and reasonably provide class members with all  
 19 required information, including (among other things): (1) a summary of the lawsuit and claims  
 20 asserted; (2) a clear definition of the class; (3) a description of the material terms of the settlement,  
 21 including the estimated payment; (4) a disclosure of the release of the claims; (5) the date, time,  
 22 and location of the final fairness hearing; and (6) the identity of class counsel and the provisions  
 23 for attorney's fees, costs, and class-representative service awards.<sup>36</sup> Fed. R. Civ. P. 23(c)(2)(B).

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 26 <sup>33</sup> Settlement Agreement, Ex. 1 to Fraietta Decl. – ECF No. 61-1 at 14 (§ 1.8).

27 <sup>34</sup> *Id.* (§ 1.6).

28 <sup>35</sup> *Id.* at 18–19 (§ 1.29).

<sup>36</sup> Settlement Agreement & Notices, Exs. 1, A–C to Fraietta Decl. – ECF No. 61-1 at 29 (§ 4.1(b)), 49–63.

1 **6. Service Award**

2 District courts must evaluate proposed awards individually, using relevant factors that include  
3 “the actions the plaintiff has taken to protect the interests of the class, the degree to which the class  
4 has benefitted from those actions, . . . [and] the amount of time and effort the plaintiff expended in  
5 pursuing the litigation.” *Staton*, 327 F.3d at 977 (cleaned up). “Such awards are discretionary . . .  
6 and are intended to compensate class representatives for work done on behalf of the class, to make  
7 up for financial or reputational risk undertaken in bringing the action, and, sometimes, to  
8 recognize their willingness to act as a private attorney general.” *Rodriguez v. W. Publ’g Corp.*, 563  
9 F.3d 948, 958–59 (9th Cir. 2009) (citation omitted). The Ninth Circuit has “noted that in some  
10 cases incentive awards may be proper but [has] cautioned that awarding them should not become  
11 routine practice.” *Radcliffe v. Experian Info. Sols. Inc.*, 715 F.3d 1157, 1163 (9th Cir. 2013)  
12 (discussing *Staton*, 327 F.3d at 975–78). District courts “must be vigilant in scrutinizing all  
13 incentive awards to determine whether they destroy the adequacy of the class representatives.” *Id.*  
14 at 1164. In this district, a \$5,000 incentive award is presumptively reasonable. *Bellinghausen v.*  
15 *Tractor Supply Co.*, 306 F.R.D. 245, 266 (N.D. Cal. 2015) (collecting cases).

16 The court defers consideration of the service awards until the final approval hearing.  
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18 **7. Compliance with CAFA**

19 The Settlement Agreement provides for compliance with CAFA: within ten days of the final-  
20 approval hearing, Simpluris is responsible for providing notice of the Settlement to the appropriate  
21 state and federal officials under 28 U.S.C. § 1715.<sup>37</sup> Any final settlement approval will be more  
22 than ninety days after service, as required by the Act.  
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28 <sup>37</sup> Settlement Agreement, Ex. 1 to Fraietta Decl. – ECF No. 61-1 at 27–28 (§ 4.1(e)).

1 **8. Procedures for Final Approval Hearing**

2 **8.1 Deadlines**

3 The court approves the plaintiffs’ proposed schedule set forth in paragraph 28 of the proposed  
4 order.<sup>38</sup> The Fairness Hearing will be on April 23, 2026.

5 **8.2 Fairness Hearing**

6 At the hearing, the court will consider whether to (1) finally approve the settlement agreement  
7 and the releases in it, (2) finally approve the service awards, and (3) award attorney’s fees and  
8 costs to Settlement Class Counsel. The court may, for good cause, extend any of the deadlines or  
9 continue the Fairness Hearing without further notice to the Settlement Class Members.

10 **8.3 Objections to or Exclusions from the Settlement**

11 The objections and exclusion procedures will be those in the Settlement Agreement.<sup>39</sup>

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13 **9. Ancillary Items**

14 If the Settlement does not occur for any reason, certification of the Settlement Class and any  
15 Settlement Class Representative or Settlement Class Counsel appointment, including this order,  
16 will be deemed void and vacated. The parties preserve all rights and defenses as they existed prior  
17 to the execution of the Settlement Agreement and this order in the event the Settlement Agreement  
18 is not finally approved by the court or otherwise does not take effect.<sup>40</sup>

19 The court retains jurisdiction over this Action to consider all further matters arising out of or  
20 connected with the Settlement, including enforcement of the Release provided for in the  
21 Settlement Agreement.<sup>41</sup>

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26 <sup>38</sup> Proposed Order – ECF No. 61-3 at 10 (¶ 28).

27 <sup>39</sup> Settlement Agreement, Ex. 1 to Fraietta Decl. – ECF No. 61-1 at 16, 28 (§§ 1.20, 4.3–4.5).

28 <sup>40</sup> *Id.* at 39 (§ 9.3); Proposed Order – ECF No. 61-3 at 3 (¶ 4).

<sup>41</sup> Proposed Order – ECF No. 61-3 at 9 (¶ 26).

1 **CONCLUSION**

2 The court (1) preliminarily approves the settlement and authorizes the notices as set forth in  
3 this order, (2) approves the notice plan, (3) provisionally appoints the class representatives and  
4 class counsel, (4) appoints Simpluris as the settlement administrator, (5) orders the procedures in  
5 this order, and (6) orders the parties and Simpluris to carry out their obligations pursuant to the  
6 Settlement Agreement. The schedule for all events is summarized in the chart in the proposed  
7 order, filed simultaneously with this order. The final-approval hearing will be on April 23, 2026.

8 This resolves ECF No. 61.

9 **IT IS SO ORDERED.**

10 Dated: January 29, 2025



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12 LAUREL BEELER  
13 United States Magistrate Judge  
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United States District Court  
Northern District of California