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8  
 9 **UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

11 ALLEN MUNRO, *et al.*,  
 12 *Plaintiffs,*  
 13 v.  
 14 UNIVERSITY OF SOUTHERN  
 CALIFORNIA, *et al.*,  
 15 *Defendants.*

Case No. 2:16-cv-06191-VAP-E

**PLAINTIFFS' MEMORANDUM IN  
 SUPPORT OF MOTION FOR  
 PRELIMINARY APPROVAL OF  
 CLASS SETTLEMENT**

DATE: March 27, 2023  
 TIME: 2:00 p.m.  
 Courtroom: 6A

Hon. Virginia A. Phillips

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1 **I. Introduction.**

2 This Settlement marks the end of over six years of litigation. The Settlement  
3 provides significant benefits to thousands of current and former participants of the  
4 University of Southern California Defined Contribution Retirement Plan and the  
5 University of Southern California Tax-Deferred Annuity Plan (the “Plans”). The  
6 Settlement creates a \$13,050,000 Settlement Fund, providing meaningful monetary  
7 relief to class members.

8 Under the Settlement’s “Plan of Allocation,” the Class will share in the  
9 Settlement based on a fair and equitable methodology that considers the alleged  
10 injury to each Class Member. The actual recovery per Class Member will depend  
11 on the number of Class Members who are eligible for an award and the Class  
12 Member’s average account balances during the Class Period. Current Participants  
13 will automatically receive their distributions directly into their tax-deferred  
14 retirement account(s). Former Participants will be given the option to receive their  
15 distributions in the form of a check made out to them individually or, in most cases,  
16 as a rollover into another tax-deferred account. As a result, most Class Members  
17 will receive their distributions tax-deferred, further enhancing the significant  
18 monetary recovery.

19 Plaintiffs filed this action on August 17, 2016 alleging that Defendants  
20 breached their fiduciary duties and engaged in prohibited transactions in violation  
21 of ERISA. On August 27, 2019, the Court granted in part and denied in part  
22 Defendants’ motion to dismiss the Second Amended Complaint. Plaintiffs’  
23 remaining claims alleged that Defendants violated 29 U.S.C. § 1104(a)(1)(B) by  
24 causing the Plans to pay excessive recordkeeping fees and including imprudent  
25 investment options as Plan investments. Shortly after, the Court certified this action  
26 as a class action, appointed the undersigned attorneys as Class Counsel, and  
27 appointed Plaintiffs Clark, Dickman, Munro, Olson, Singleton, Snyder, Wheeler,  
28

1 and Wohlgemuth as Class Representatives. The parties engaged in multiple  
2 settlement discussions and reached a settlement in principle the morning of trial,  
3 January 24, 2023.

4 The Settlement was the product of extensive arm's-length negotiation.  
5 Ultimately, the parties reached a settlement after two mediation sessions, extensive  
6 correspondence, and only after completing their trial preparations. In light of the  
7 litigation risks further prosecution of this action would inevitably entail, the parties  
8 jointly request that the Court: (1) preliminarily approve the proposed Settlement;  
9 (2) approve the proposed form and method of notice to the Settlement Class; and  
10 (3) schedule a hearing at which the Court will consider final approval of the  
11 Settlement.

## 12 **II. The claims in the case.**

13 Plaintiffs alleged that Defendants violated 29 U.S.C. §§ 1104 and 1106 by  
14 locking the Plans into the CREF Stock Account and TIAA recordkeeping, causing  
15 the Plans to pay unreasonable administrative fees to the Plans' recordkeepers, to  
16 retain underperforming and unreasonably expensive investment options, and to pay  
17 unreasonable investment management fees, unnecessary marketing and distribution  
18 (12b-1) fees and mortality and expense risk fees. Doc.149. Plaintiffs further alleged  
19 that Defendants failed to monitor Plan fiduciaries. *Id.* Following the Court's order  
20 on Defendants' motion to dismiss (Docs. 175), trial was scheduled to begin on  
21 January 24, 2023 against the University of Southern California and the USC  
22 Retirement Plan Oversight Committee concerning allegations that the Defendants  
23 caused the Plans to pay excessive recordkeeping fees and retain imprudent  
24 investment options. Doc. 256.

## 25 **III. Case History.**

### 26 **A. Complex pre-trial procedural history.**

27 After filing their original complaint on August 17, 2016, Plaintiffs filed their  
28



1 first Amended Complaint on November 17, 2016 adding several claims and  
2 additional named plaintiffs. Doc. 40. On December 19, 2016, Defendants moved to  
3 compel arbitration based on an employment agreement to arbitrate claims against  
4 USC. Doc. 47. The Court denied this motion, and Defendants appealed the order to  
5 the Ninth Circuit which considered briefing and oral argument on the matter and  
6 ultimately upheld the Court's denial. Doc. 55; *Munro v. Univ. of S. Cal.*, 896 F.3d  
7 1088, 1094 (9th Cir. 2018). Plaintiffs filed a Second Amended Complaint  
8 (operative complaint) on July 12, 2019 dismissing a named plaintiff and adding  
9 individual members of the USC Retirement Plan Oversight Committee as  
10 defendants. Doc. 149. On Defendants' motion, the Court struck Plaintiffs' demand  
11 for a jury trial. Doc. 175 at 12–13. The Court dismissed the individual Committee  
12 members as defendants because Plaintiffs “alleged no facts demonstrating their  
13 liability,” after USC agreed to take responsibility for any liability of individual  
14 Committee members. *Id.* at 11. The Court also dismissed Plaintiffs' claims of  
15 disloyalty under 29 U.S.C. §1104(a)(1)(A) and claims of prohibited transactions  
16 under 29 U.S.C. §1106(a)(1). *Id.* at 6, 10. Plaintiffs remaining claims alleged that  
17 Defendants violated 29 U.S.C. §1104(a)(1)(B) by causing the Plans to pay  
18 excessive recordkeeping fees and including imprudent investment options as Plan  
19 investments. *Id.* at 6–9, 10–11.

20 On December 20, 2019, the Court certified this action as a class action under  
21 Federal Rule of Civil Procedure 23(b)(1), appointed the undersigned attorneys as  
22 Class Counsel, and appointed the named plaintiffs as Class Representatives. Doc.  
23 202. The Court certified the following class:

24 All participants and beneficiaries of the University of Southern California  
25 Defined Contribution Retirement Plan and the University of Southern  
26 California Tax-Deferred Annuity Plan from August 17, 2010 through the  
27  
28

1 date of judgment, excluding the Defendants.<sup>1</sup>

2 *Id.* at 28. Defendants requested permission to appeal this decision to the Ninth  
3 Circuit, but the Ninth Circuit denied the request. *Munro v. Univ. of S. Cal*, No. 20-  
4 80001, 2020 U.S. App. LEXIS 6245 (9th Cir. Feb. 27, 2020).

5 During the course of over six years of litigation, the Parties engaged in  
6 extensive document and deposition discovery and dispositive motion practice. This  
7 included Plaintiffs reviewing over 1,260,000 pages of documents produced by USC  
8 and various third parties. The parties also took and defended the depositions of each  
9 of the eight named plaintiffs, eight fact witnesses, and eight expert witnesses.

10 On September 19, 2022, Defendants moved to exclude Plaintiffs' expert  
11 witnesses John Hare, Edward O'Neal, and Ty Minnich, and, on October 3, 2022,  
12 Plaintiffs moved to exclude Defendants' expert Steven Gissiner. Doc. 264; Doc.  
13 277. The Court excluded the testimony of Hare and O'Neal on the prudent  
14 alternatives to the Plans' investment options based on a similar streamlined menu  
15 that the Plans employed in 2016, but based on fund data as of 2010, for being based  
16 on hindsight. Doc. 317 at 8–12; Tr. of Status Conference on Dec. 13, 2022 at 10–  
17 11. The Court also excluded Plaintiffs' alternative argument for damages from the  
18 imprudent investment options. Doc. 355. The Court also noted concerns it had  
19 regarding the testimony of Plaintiffs' expert regarding excessive recordkeeping  
20 fees. Doc. 317 at 18–19. The Court denied Plaintiffs motion to exclude the  
21 testimony of, as well as expert testimony reliant on, Brian Rohr as an untimely  
22 disclosed witness and to exclude parol evidence concerning the Plans' fiduciaries'  
23 ability to map assets out of TIAA annuities. Doc. 340.

24 The Court reduced the trial length from eight days to six days. Doc. 356 at 2.

25 \_\_\_\_\_  
26 <sup>1</sup> In order to effectuate the Settlement, the parties require an ending date for the  
27 Class  
28 definition. The parties have chosen December 31, 2022 as the close of the Class  
period defining  
those Plan participants and former participants who will be included in the Class.

1 The Parties filed their contentions of fact and law, proposed findings of fact and  
2 conclusions of law, joint exhibit list and objections, witness lists, and deposition  
3 designations and objections with the Court. Doc. 352; Docs. 348–348-09; Docs.  
4 346–346-09; Docs. 345–345-09; Doc. 339-3; Doc. 339-2; Doc. 336; Doc. 335; Doc.  
5 334; Doc. 333; Doc. 332. The Court entered its Final Pretrial Conference Order on  
6 January 18, 2023, setting the case for trial starting on January 24, 2023. Doc. 356.

7 **B. Settlement discussions.**

8 The parties conducted mediations throughout the litigation of this case. They  
9 first conducted a mediation with David Geronemus of JAMS on July 2, 2019.  
10 Doc. 148. They conducted a second mediation with Robert Meyer of JAMS on June  
11 28, 2022. Doc. 263. The parties then engaged in further repeated settlement  
12 negotiations in December through to the day before trial, resulting in this  
13 settlement.

14 **C. Trial.**

15 The parties designated 3117 exhibits for potential use at trial, and over 25  
16 witnesses they intended to call, including 7 experts. Trial was set to commence on  
17 January 24, 2023 at 8:30 a.m. Doc. 356. The night before trial, the parties reached a  
18 settlement in principle.

19 **IV. The terms of the proposed settlement.**

20 In exchange for releases and for the dismissal of this action as provided for in  
21 the Settlement Agreement, Defendants will make available to Class Members the  
22 benefits described below (the “Settlement Benefits”). Class Counsel agrees to take  
23 any necessary enforcement action without additional cost to the Settlement Class.

24 **A. Monetary relief.**

25 Defendants, or an entity acting on their behalf, will deposit \$13,050,000 (the  
26 “Gross Settlement Amount”) in an interest-bearing settlement account (the “Gross  
27 Settlement Fund”). The Gross Settlement Fund will be used to pay amounts to the  
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1 participants as well as Class Counsel’s Attorneys’ Fees and Costs, Administrative  
2 Expenses of the Settlement, and Class Representatives’ Compensation as described  
3 in the Settlement Agreement.

4 **B. Non-monetary relief**

5 In addition to the \$13,050,000 amount, USC has agreed to provide substantial  
6 affirmative relief—adding millions of dollars in value to the settlement. During the  
7 three year Settlement Period, USC will (1) instruct the current Plan recordkeepers  
8 that such recordkeepers shall not use information received as a result of providing  
9 services to the Plans for the purpose of cross-selling non-Plan products and  
10 services; (2) conduct a request for proposal (“RFP”) for recordkeeping and  
11 administrative services to at least three service providers requesting that the  
12 providers respond on the basis of different alternative recordkeeping structures,  
13 including (but not limited to) a single recordkeeper structure, and pricing including  
14 (but not limited to) an expression of fees on a per-participant basis; (3) continue  
15 providing annual trainings to the Plans’ fiduciaries regarding their fiduciary duties;  
16 (4) continue using a qualified investment consultant; and (5) continue holding  
17 Retirement Plan Oversight Committee meetings consistent with the Committee’s  
18 charter dated March 2, 2016. Ex. A at Art. 10 ¶¶ 1–6.

19 Class Counsel will monitor Defendants as necessary to ensure compliance with  
20 the Settlement Agreement. *Id.* at Art. 12 ¶ 7. Any action taken by Class Counsel to  
21 enforce the Settlement Agreement during the Settlement Period will be provided  
22 without an additional fee or expense reimbursement. *Id.* Moreover, Defendants will  
23 provide notice to Class Counsel of its decision resulting from the request for  
24 proposal conducted within the first 180 days of the Settlement Period. *Id.* at Art. 10  
25 ¶ 3. The affirmative relief provided in the Settlement Agreement ensures that Plan  
26 participants will continue to benefit long after the disbursement of the monetary  
27 relief.

28

1           **B. Notice and Class Representatives' compensation.**

2           The notice costs and all costs of administration of the Settlement will come out  
3 of the \$13,050,000 Gross Settlement Amount. Incentive payments to the eight Class  
4 Representatives in an amount to be approved by the Court would also be paid out of  
5 the Gross Settlement Amount. Plaintiffs will seek \$25,000 for each of the Class  
6 Representatives. This amount is well in line with precedent recognizing the value of  
7 individuals stepping forward to represent classes—particularly in a case like this,  
8 where the potential benefit to any individual does not outweigh the cost of  
9 prosecuting the claim and where there are significant risks, including the risk of no  
10 recovery, the risk of alienation from their employers and peers, and the risk of  
11 uncompensated time and energy devoted to a lawsuit with uncertain prospects for  
12 success. *E.g., Marshall v. Northrop Grumman Corp.*, No. 16-6794, 2020 U.S. Dist.  
13 LEXIS 177056, at \*31–32 (C.D. Cal. Sep. 18, 2020) (approving awards of \$25,000  
14 to each of the named plaintiffs); *Grabek v. Northrop Grumman Corp.*, No. 6-6213,  
15 2017 U.S. Dist. LEXIS 223293, at \*24 (C.D. Cal. Oct. 24, 2017) (approving awards  
16 of \$25,000 to each of the named plaintiffs); *Cates v. Trs. of Columbia Univ.*, No.  
17 16-6524, 2021 U.S. Dist. LEXIS 200890, at \*23–24 (S.D.N.Y. Oct. 18, 2021)  
18 (approving awards of \$25,000 to each of the seven named plaintiffs); *Sweda v. Univ*  
19 *of Pa.*, No. 16-4329, 2021 U.S. Dist. LEXIS 239990, at \*24 (E.D. Pa. Dec. 14,  
20 2021) (approving awards of \$25,000 to each of the named plaintiffs); *Pledger v.*  
21 *Reliance Trust Co.*, No. 15-4444, 2021 U.S. Dist. LEXIS 105868, at \*27–28 (N.D.  
22 Ga. Mar. 8, 2021) (approving awards of \$25,000 to each of the named plaintiffs).  
23 The total award requested for the Named Plaintiffs represents just over 1.5% of the  
24 Settlement Fund.

25           **C. Attorneys' fees and costs.**

26           Courts are authorized to use the percentage-of-funds method in awarding  
27 attorneys' fees in class actions. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734,  
28

1 738 (9th Cir. 2016); *see also In re Online DVD-Rental Antitrust Litig.*, 779 F.3d  
2 934, 953 (9th Cir. 2015) (“The district court did not err in calculating the attorneys’  
3 fees award by calculating it as a percentage of the total settlement fund[.]”). “Under  
4 the percentage-of-fund method, the district court may award plaintiffs’ attorneys a  
5 percentage of the common fund, so long as that percentage represents a reasonable  
6 fee.” *Stanger*, 812 F.3d at 738. Included within awards of percentages of common  
7 funds are cases which have authorized a one-third fee. *See, e.g., In re Pacific*  
8 *Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming attorneys’ fees  
9 award of one-third of settlement); *Marshall*, 2020 U.S. Dist. LEXIS 177056, at \*9  
10 (awarding an attorneys’ fee award of one-third of the settlement fund); *Emmons v.*  
11 *Quest Diagnostics Clinical Labs., Inc.*, No. 13-474, 2017 U.S. Dist. LEXIS 27249,  
12 at \*20–23 (E.D. Cal. Feb. 27, 2017) (one-third of settlement fund was a reasonable  
13 fee in light of relief obtained for the class, number of hours worked, risk of non-  
14 payment, and experience of counsel); *Deaver v. Compass Bank*, No. 13-222, 2015  
15 U.S. Dist. LEXIS 166484, at \*33–40 (N.D. Cal. Dec. 11, 2015) (approving fee  
16 equaling one-third of settlement, plus costs and expenses); *Grabek*, 2017 U.S. Dist.  
17 LEXIS 223293, at \*17–19 (same).

18 In this case, Class Counsel will request attorneys’ fees to be paid out of the  
19 Qualified Settlement Fund in an amount not more than one-third of the Gross  
20 Settlement Amount, or \$4,350,000, as well as reimbursement for costs incurred of  
21 no more than \$1,500,000. A one-third fee is consistent with the market rate in  
22 settlements concerning this particularly complex area of law. *Marshall*, 2020 U.S.  
23 Dist. LEXIS 177056, at \*23–24; *Grabek*, 2017 U.S. Dist. LEXIS 223293, at \*5–8;  
24 *see also, e.g., Pledger*, 2021 U.S. Dist. LEXIS 105868, at \*24–25 (N.D. Ga. Mar. 8,  
25 2021); *Cates*, 2021 U.S. Dist. LEXIS 200890, at \*18–19; *Sweda*, 2021 U.S. Dist.  
26 LEXIS 239990, at \*19–20; *Cassell v. Vanderbilt Univ.*, No. 16-2086, 2019 U.S.  
27 Dist. LEXIS 242062 (M.D. Tenn. Oct. 22, 2019); *Tussey v. ABB, Inc.*, No. 06-4305,  
28

1 2019 U.S. Dist. LEXIS 138880 (W.D. Mo. Aug. 16, 2019); *Sims v. BB&T Corp.*,  
2 No. 15-1705, 2019 U.S. Dist. LEXIS 75839, at \*13 (M.D. N.C. May 6, 2019);  
3 *Clark v. Duke*, No. 16-1044, 2019 U.S. Dist. LEXIS 105696, at \*10 (M.D.N.C.  
4 June 24, 2019); *Ramsey v. Philips N.A.*, No. 18-1099, Doc. 27 (S.D. Ill. Oct. 15,  
5 2018); *Gordan v. Mass. Mut. Life Ins. Co.*, No. 13-30184, 2016 U.S. Dist. LEXIS  
6 195935, at \*4–6 (D. Mass. Nov. 3, 2016). Importantly, courts in this district have  
7 previously approved a one-third fee plus costs in similar cases. *Marshall*, 2020 U.S.  
8 Dist. LEXIS 177056, at \*25–27; *Grabek*, 2017 U.S. Dist. LEXIS 223293, at \*17–  
9 19. That is also what the Named Plaintiffs agreed to pay in this case. Schlichter  
10 Decl. ¶ 4.

## 11 **V. Argument.**

12 The first step in approving any proposed settlement in a class action is  
13 preliminary approval. *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal.  
14 2016). At this stage, the Court reviews the proposed settlement to determine  
15 whether it is sufficient to warrant public notice and a hearing. If so, the final  
16 decision on approval is made after a “fairness” hearing. *Tobin v. Ryder Truck*  
17 *Rental*, No. 20-1569, 2021 U.S. Dist. LEXIS 206688, at \*3 (C.D. Cal. Apr. 8, 2021)  
18 (“The settlement need only be *potentially* fair, as the Court will make a final  
19 determination at the hearing on final approval.”) (citations and internal quotation  
20 marks omitted); *see also* Manual for Complex Litigation, Fourth, §13.14, at 172-73  
21 (Fed. Jud. Ctr. 2004). The Court is not required at the preliminary stage to make  
22 any final determinations:

23 The judge must make a preliminary determination on the fairness,  
24 reasonableness, and adequacy of the settlement terms and must direct  
25 the preparation of notice of the certification, proposed settlement, and  
26 date of the final fairness hearing.

27 *Id.* § 21.632, at 321.

28

1 In this case, the Court should preliminarily approve the Settlement because it:  
 2 (1) is the result of arm’s-length negotiations; (2) has no obvious deficiencies; (3)  
 3 does not improperly grant preferential treatment to class representatives or  
 4 segments of the class; and (4) falls within the range of possible approval. *Spann*,  
 5 314 F.R.D. at 319; *see also Stevens v. Britax Child Safety Inc.*, No. 20-7373, 2022  
 6 U.S. Dist. LEXIS 231850, at \*8 (C.D. Cal. Apr. 14, 2022) (same).<sup>2</sup>

7 **A. The Settlement is the product of extensive arm’s length**  
 8 **negotiations.**

9 The extensive and complex history of this case alone should preclude any  
 10 thought that the Settlement is the result of collusion or anything but arm’s-length  
 11 negotiations. The Settlement was reached just prior to the start of trial after over six  
 12 years of litigation, including the partial granting of a motion to dismiss and a  
 13 motion to exclude Plaintiffs’ experts, orders in multiple motions *in limine*, and  
 14 exhaustive pre-trial preparation. *See Evans v. Zions Bancorporation, N.A.*, No. 17-  
 15 1123, 2022 U.S. Dist. LEXIS 136617, at \*18 (E.D. Cal. July 29, 2022) (no  
 16 evidence of collusion where “the parties reached the settlement after 5 years of  
 17 litigation, two-arms-length mediations, and thorough motions practice, including an  
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19 <sup>2</sup> After preliminary approval, Federal Rule of Civil Procedure 23(e) provides that a  
 20 court may grant final approval of a settlement proposal “only after a hearing and  
 21 only on finding that it is fair, reasonable, and adequate[.]” Fed. R. Civ. P. 23(e)(2).  
 22 The Ninth Circuit has delineated certain factors for the court to weigh in making its  
 23 final approval determination: “the strength of the plaintiffs’ case; the risk, expense,  
 24 complexity, and likely duration of further litigation; the risk of maintaining class  
 25 action status throughout the trial; the amount offered in settlement; the extent of  
 26 discovery completed and the stage of the proceedings; the experience and views of  
 27 counsel; the presence of a governmental participant; and the reaction of the class  
 28 members to the proposed settlement.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,  
 1026 (9th Cir. 1998). The factors discussed below weighing in favor of preliminary  
 approval of the Settlement will also support its final approval based on the *Hanlon*  
 factors. The parties agreed to the Settlement on the eve of trial after over six years  
 of litigation, after immense discovery efforts, and after the Court struck one of  
 Plaintiffs’ damages experts. Even if Plaintiffs prevailed at trial, an appeal was  
 nearly certain and would likely have delayed resolution of the litigation by another  
 two or three years. The Settlement amount is within the range of similar cases, and  
 Class Counsel—experts in ERISA litigation—view the Settlement as favorable to  
 the Class.



1 appeal to the Ninth Circuit”); *Curtis v. Irwin Indus.*, No. 15-2480, 2020 U.S. Dist.  
 2 LEXIS 253863, at \*16–17 (C.D. Cal. Dec. 2, 2020) (finding non-collusive, arms-  
 3 length negotiations where [b]oth sides vigorously litigated th[e] matter for five  
 4 years, on appeal to the Ninth Circuit and back”); *Dixon v. Cushman & Wakefield W.*  
 5 *Inc.*, No. 18-5813, 2021 U.S. Dist. LEXIS 164001, at \*28–29 (N.D. Cal. Aug. 30,  
 6 2021) (engaging in extensive discovery and participating in multiple mediations  
 7 suggests non-collusive negotiations). Moreover, settlement was only reached with  
 8 the continued assistance of a mediator, Mr. Meyer, through the evening prior to  
 9 trial, and “[s]ettlements reached with the help of a mediator are likely non-  
 10 collusive.” *La Fleur v. Medical Mgmt. Int’l*, No. 13-398, 2014 U.S. Dist. LEXIS  
 11 90367, at \*12 (C.D. Cal. June 25, 2014).

12 **B. The Settlement has no obvious deficiencies.**

13 A settlement agreement lacking any obvious deficiencies on its face weighs in  
 14 favor of preliminary approval. *See e.g. Schellhorn v. Timios, Inc.* No. 21-8661,  
 15 2022 U.S. Dist. LEXIS 184949, at \*16 (C.D. Cal. May 10, 2022) There are no  
 16 deficiencies, obvious or otherwise, with the Settlement in this case. The Settlement  
 17 Agreement correctly defines the scope of the Class in this case, specifically  
 18 identifies the parties to be released, fully explains how funds are to be distributed to  
 19 Class Members, and correctly notes that any award of attorneys’ fees or Class  
 20 Representative incentive awards must be approved by the Court. Ex. A at Art. 2 ¶  
 21 38, Art. 6, Art. 7 ¶ 1, Art. 8. The Settlement also makes clear that once fees and  
 22 costs are paid out, *all* funds are distributed to the Class—none of it goes back to  
 23 Defendants. *Id.* at Art. 2 ¶ 29, Art. 6 ¶ 13; *cf. Lith v. iHeartMedia*, No. 16-66, 2017  
 24 U.S. Dist. LEXIS 39871, at \*45 (E.D. Cal. Mar. 20, 2017).

25 **C. The Settlement does not give preferential treatment to the Class**  
 26 **Representatives or any portion of the Class.**

27 The Ninth Circuit “ha[s] repeatedly held that ‘reasonable incentive awards’ to  
 28

1 class representatives ‘are permitted[.]’” *In re Apple Inc. Device Performance Litig.*,  
2 50 F.4th 769, 785 (9th Cir. 2022) (citing *Roes v. SFBSC Mgmt., LLC*, 944 F.3d  
3 1035, 1057 (9th Cir. 2019)). The \$25,000 incentive awards Class Counsel will  
4 request for the Class Representatives do not “rise to the level of unduly preferential  
5 treatment.” *Spann*, 314 F.R.D. at 329. Here, Class Counsel will seek awards for  
6 eight Class Representatives, which is entirely reasonable. *Compare In re Online*  
7 *DVD-Rental Antitrust Litig.*, 779 F.3d at 947–48 (approving incentive awards to 9  
8 class representatives) *with Staton*, 327 F.3d at 977 (rejecting incentive awards for  
9 29 named class representatives that would total nearly \$900,000). Each individual  
10 award is only approximately .19% of the Settlement fund. *See, e.g., In re Online*  
11 *DVD-Rental Antitrust Litig.*, 779 F.3d at 948 (approving incentive awards that  
12 made up “a mere .17% of the total settlement fund”); *Spann*, 314 F.R.D. at 329  
13 (approving settlement where counsel requested incentive award for named plaintiff  
14 “amounting to less than a quarter of one percent” of the settlement fund). Indeed,  
15 courts in this district have approved incentive awards much greater than Class  
16 Counsel will seek here. *See Trujillo v. City of Ontario*, No. 04-1015, 2009 U.S.  
17 Dist. LEXIS 79309, \*12–13 (C.D. Cal. Aug. 24, 2009) (approving \$10,000 awards  
18 to 10 persons named in original complaint plus \$30,000 each to the 6 class  
19 representatives). Moreover, “because the parties agree that the Settlement  
20 Agreement shall remain in force regardless of any service awards, the awards here  
21 are unlikely to create a conflict of interest between the named plaintiffs and absent  
22 class members.” *Spann*, 314 F.R.D. at 328–29.

23 **D. The Settlement is within the range of possible approval.**

24 The \$13,050,000 Settlement represents significant “monetary relief to the class  
25 they might not otherwise obtain.” *Schaffer v. Litton Loan Servicing, LP*, No. 05-  
26 7673, 2012 U.S. Dist. LEXIS 189830, at \*40–41 (C.D. Cal. Nov. 13, 2012). It also  
27 appropriately values Plaintiffs’ claims, as “[e]stimates of what constitutes a fair  
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1 settlement figure are tempered by factors such as the risk of losing at trial, the  
2 expense of litigating the case, and the expected delay in recovery (often measured  
3 in years).” *Id.* at \*39.

4 Although Plaintiffs alleged that the Plans suffered significant losses from  
5 imprudent investment options and excessive recordkeeping fees, the Court’s  
6 decisions regarding Plaintiffs’ experts essentially rejected Plaintiffs’ theory of  
7 damages on imprudent investment options and cast doubt on their method for  
8 calculating recordkeeping damages. Plaintiffs could have succeeded on proving  
9 liability at trial but recovered no, or limited, losses for the Plans. While Plaintiffs  
10 believe that they could have succeeded in reversing the Court’s damages decisions,  
11 that success was not certain and would have required a prolonged appeal process  
12 that could have taken over two years to complete, at the end of which Plaintiffs  
13 would have had to retry at least a portion, if not all, of their case. It is likely that the  
14 results of that trial also would have been appealed. Therefore, although Plaintiffs  
15 may have obtained a larger recovery for the Plans in the future, that recovery was  
16 uncertain and would have resulted in even further prolonging of this litigation.

17 Prevailing at trial itself was far from certain, since “trials of class actions are  
18 inherently risky and unpredictable propositions.” *Cervantez v. Celestica Corp.*, No.  
19 07-729, 2010 U.S. Dist. LEXIS 78342, at \*10 (C.D. Cal. July 6, 2010). Even if  
20 Plaintiffs did prove Defendants’ liability, it was unclear whether they would  
21 actually be able to obtain the full amount of damages they sought. Regardless of  
22 what damages (if any) the Court would have awarded after trial, any actual payment  
23 to Class Members would have had to wait until the conclusion of a lengthy  
24 appellate period, which could have resulted in a reversal of judgment and the need  
25 for another trial.

26 The \$13,050,000 Settlement value appropriately takes these risks into account  
27 and ensures the Class will receive certain relief soon, not uncertain relief years in  
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1 the future (if at all). *See Hung V. Vu. D.D.S. v. I Care Credit, LLC*, No. 17-4609,  
2 2022 U.S. Dist. LEXIS 201639, at \*23 (C.D. Cal. Nov. 4, 2022) (“[U]nless the  
3 settlement is clearly inadequate, its acceptance and approval are preferable to  
4 lengthy and expensive litigation with uncertain results.”) (quoting *Nat’l Rural*  
5 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004))  
6 (alteration in original).

7 In addition to the monetary portion of the proposed settlement, Plaintiffs also  
8 obtained significant other remedies for the Plans. USC streamlined the Plans to  
9 reduce it from 350 investment options to 35 and renegotiated plan recordkeeping  
10 fees in 2016, shortly before Plaintiffs commenced this action. The success of  
11 Plaintiffs’ attorneys in pursuing ERISA fiduciary breach actions against fiduciaries  
12 of corporate 401(k) plans and other university 403(b) plans was a significant factor  
13 cited repeatedly by USC executives in motivating that streamlining.

14 Additionally, participants will obtain millions of dollars of additional benefits in  
15 the years after the settlement because of the affirmative relief agreed to in the  
16 settlement. In addition to monetary relief, USC has agreed to (1) instruct the current  
17 Plan recordkeepers that such recordkeepers shall not use information received as a  
18 result of providing services to the Plans for the purpose of cross-selling non-Plan  
19 products and services; (2) conduct a request for proposal (“RFP”) for recordkeeping  
20 and administrative services to at least three service providers requesting that the  
21 providers respond on the basis of different alternative recordkeeping structures,  
22 including (but not limited to) a single recordkeeper structure, and pricing including  
23 (but not limited to) an expression of fees on a per-participant basis; (3) continue  
24 providing annual trainings to the Plans’ fiduciaries regarding their fiduciary duties;  
25 (4) continue using a qualified investment consultant; and (5) continue holding  
26 Retirement Plan Oversight Committee meetings consistent with the Committee’s  
27 charter dated March 2, 2016. Class Counsel has also committed to monitor and  
28

1 enforce the implementation of this relief for the duration of the Settlement Period.

2 Finally, it is Class Counsel’s opinion that the Settlement is fair and reasonable.  
3 Schlichter Decl. ¶ 2. The endorsement of a settlement as “fair, reasonable, and  
4 adequate” by experienced counsel “weighs in favor of preliminarily approving the  
5 Settlement Agreement.” *Eddings v. Health Net, Inc.*, No. 10-1744, 2013 U.S. Dist.  
6 LEXIS 9185, at \*20 (C.D. Cal. Jan. 16, 2013). Class Counsel is very experienced in  
7 class action litigation generally, and actually pioneered ERISA excessive fee class  
8 actions in particular. Class Counsel is intimately familiar with this unique and  
9 complex area of law, as noted by this Court and other courts considering cases  
10 alleging ERISA breaches of fiduciary duty with respect to fees and investments in  
11 401(k) plans. *Marshall*, 2020 U.S. Dist. LEXIS 177056, at \*11–12 (“The Court  
12 finds that Schlichter, Bogard & Denton is exceptionally skilled having achieved  
13 unparalleled success in pioneering complex ERISA 401(k) excessive fee  
14 litigation[.]”); *Grabek*, 2017 U.S. Dist. LEXIS 223293, at \*10–11 (“The Court  
15 finds that SBD is highly experienced in representing plaintiffs in class action  
16 litigation, particularly ERISA class actions); *Cates*, 2021 U.S. Dist. LEXIS 200890,  
17 at \*13–14 (“Class Counsel is the ‘preeminent firm’ in excessive fee litigation[.]”)  
18 (quoting *Nolte v. Cigna Corp.*, No. 07-2046, 2013 U.S. Dist. LEXIS 184622, at \*5–  
19 6 (C.D. Ill. Oct. 15, 2013)); *Pledger*, 2021 U.S. Dist. LEXIS 105868, at \*21 (“Class  
20 Counsel are highly experienced and recognized experts in ERISA litigation.”);  
21 *Tussey v. ABB, Inc.*, No. 06-4305, 2012 U.S. Dist. LEXIS 157428, at \*10 (W.D.  
22 Mo. Nov. 2, 2012) (“Plaintiffs’ attorneys are clearly experts in ERISA litigation”);  
23 *Beesley v. Int’l Paper Co.*, No. 06-703, 2014 U.S. Dist. LEXIS 12037, at \*4–5  
24 (S.D. Ill. Jan. 31, 2014) (“The Court remains impressed with Class Counsel’s  
25 navigation of the challenging legal issues involved in this trailblazing litigation and  
26 Class Counsel’s commitment and perseverance in bringing this case to this  
27 resolution.”); *Will v. General Dynamics Corp.*, No. 06-698, 2010 U.S. Dist. LEXIS  
28

1 123349, at \*9–10 (S.D. Ill. Nov. 22, 2010) (“Counsel’s actions have led to dramatic  
2 changes in the 401(k) industry, including heightened disclosure and protection of  
3 employees’ and retirees’ retirement assets.”).

4 Each of the class representatives has approved the settlement without any  
5 dissent.

6 As set forth above, the Settlement provides substantial monetary relief in the  
7 amount of \$13,050,000. Finally, independent of Class Counsel’s opinion as to the  
8 reasonableness of the Settlement, the parties also will submit the settlement terms  
9 to an Independent Fiduciary, which will provide an opinion on the Settlement’s  
10 fairness before the final approval hearing.

11 **E. This fair, reasonable, and adequate settlement warrants sending**  
12 **notice to the Class.**

13 Under Rule 23(c)(2)(A) and (e)(1)(B), class notice for certification or  
14 settlement of a class certified under Rule 23(b)(1) needs to be “appropriate” or “in a  
15 reasonable manner.” Due process and Rule 23(e) do not require that each Class  
16 Member receive notice, but they do require that the class notice be “reasonably  
17 calculated, under all the circumstances, to apprise interested parties of the pendency  
18 of the action and afford them an opportunity to present their objections.” *Mullane v.*  
19 *Central Hanover Bank and Trust Co.*, 339 U.S. 306, 314 (1950). “Individual notice  
20 must be provided to those class members who are identifiable through reasonable  
21 effort.” *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 175 (1974). Here, the parties  
22 propose that the Settlement Administrator will serve notice via email, or, if there is  
23 no email address on file or if the email is returned as undeliverable, via first class  
24 mail. Ex. A. at Art. 3 ¶¶ 2.2, 4.1. Even under the more stringent requirements of  
25 Rule 23(c)(2)(B) for classes certified under Rule 23(b)(3), notice by email can be  
26 the “best notice that is practicable.” Fed R. Civ. P 23(c)(2)(B) (“The notice may be  
27 by one or more of the following: . . . electronic means . . . .”); *see also*, e.g.,  
28

1 *Browning v. Yahoo! Inc.*, No. 4-1463, 2007 U.S. Dist. LEXIS 86266, at \*21–22  
2 (N.D. Cal. Nov. 16, 2007) (rejecting objections to email notice). Courts in the Ninth  
3 Circuit routinely recognize that email notice is reasonable and often more effective  
4 than traditional mail. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 941  
5 (finding that a plan of notice predominantly using email satisfied Rule 23(e) and the  
6 Constitution). *Baird v. Blackrock Inst. Trust Co., N.A.*, No. 17-1892, 2021 U.S.  
7 Dist. LEXIS 244487, at \*20–21 (N.D. Cal. July 12, 2021) (reasoning that email  
8 notice was “the best practicable form of notice under the circumstances”); *Bostick*  
9 *v. Herbalife Int’l of Am.*, No. 13-2488, 2015 U.S. Dist. LEXIS 192676, at \*19–20  
10 (C.D. Cal. Aug. 18, 2015) (approving email notice).

11 The proposed form and method of notice satisfies all due process  
12 considerations and meets the requirements of Rule 23(e)(1) because it is reasonably  
13 calculated to effect actual notice to the Settlement Class. The parties’ proposed  
14 notice to current and former participants is attached as Exhibits 3 and 4,  
15 respectively, to the Settlement Agreement. The notice will fully apprise Class  
16 Members of the existence of the lawsuit, the proposed settlement, and the  
17 information they need to make informed decisions about their rights, including: (i)  
18 the terms and operation of the settlement; (ii) the nature and extent of the release;  
19 (iii) the maximum attorneys’ fees and costs that will be sought; (iv) the procedure  
20 and timing for objecting to the settlement and the right of parties to seek limited  
21 discovery from objectors; (v) the date and place of the fairness hearing; and (vi) the  
22 website with the full settlement documents. Any notice will be sent by electronic  
23 email to all class members who have an email address known to the University of  
24 Southern California and/or the Plans’ recordkeeper(s) and by first-class mail to the  
25 current or last known address of all class members for whom there is no email  
26 address on file or for whom emails bounced back to the Settlement Administrator  
27 shortly after entry of the order preliminarily approving the Settlement. In addition  
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1 to the notice, the Settlement Administrator will develop a dedicated website solely  
2 for the settlement, and a link to that website will appear on Class Counsel’s website  
3 [www.uselaws.com]. The form of notice and proposed procedures for notice satisfy  
4 the requirements of due process and the Court should approve the notice plan as  
5 adequate.

6 **VI. Conclusion.**

7 For these reasons, the Joint Motion for Preliminary Approval of Class  
8 Settlement should be granted.

9

10 DATED: February 23, 2023

Respectfully submitted,

11

By: /s/ Jerome J. Schlichter  
Jerome J. Schlichter (SBN 054513)  
Michael A. Wolff (admitted *pro hac vice*)  
Joel D. Rohlff (admitted *pro hac vice*)  
Victoria C. St. Jean (admitted *pro hac vice*)  
SCHLICHTER BOGARD & DENTON, LLP

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*Class Counsel for All Plaintiffs*

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1 In JEROME J. SCHLICHTER (SBN 054513)  
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 6 St. Louis, MO 63102  
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 7 Facsimile: (314) 621-5934  
*Class Counsel for Plaintiffs*

8  
 9 **UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

11 ALLEN MUNRO *et al.*,  
 12 *Plaintiffs,*  
 13 v.  
 14 UNIVERSITY OF SOUTHERN  
 CALIFORNIA, *et al.*,  
 15 *Defendants.*

Case No. 2:16-cv-06191-VAP-E

**DECLARATION OF JEROME J.  
 SCHLICHTER IN SUPPORT OF  
 JOINT MOTION FOR  
 PRELIMINARY APPROVAL OF  
 CLASS SETTLEMENT**

DATE: March 27, 2023  
 TIME: 2:00 p.m.  
 Courtroom 6A

Hon. Virginia A. Phillips

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1 I, Jerome J. Schlichter, hereby declare as follows:

2 1. I am the founding partner of the law firm Schlichter Bogard & Denton,  
3 LLP, class counsel for the Plaintiffs. This declaration is submitted in support of  
4 Plaintiffs' Memorandum in Support of the Joint Motion for Preliminary Approval  
5 of Class Settlement. I am familiar with the facts set forth below and able to testify  
6 to them.

7 2. There has been no collusion or complicity of any kind in connection  
8 with the negotiations for, or the agreement to, settle this class action. As illustrated  
9 in Plaintiffs' Memorandum in Support of the Joint Motion for Preliminary  
10 Approval of Class Settlement, all settlement negotiations in this case were  
11 conducted at arm's-length by adverse, represented parties. The negotiations were  
12 extensive and adversarial, and the parties engaged with a highly experienced  
13 mediator for in-person and telephonic mediation sessions over the course of the  
14 litigation. It is my opinion that the proposed settlement is not only "within the range  
15 of reasonableness," but also is fair, reasonable, adequate, and in the best interests of  
16 the University of Southern California Defined Contribution Retirement Plan, the  
17 University of Southern California Tax-Deferred Annuity Plan, and their participants  
18 in light of the procedural and substantive risks Plaintiffs would face if litigation  
19 were to continue.

20 3. Attached to the Joint Motion for Preliminary Approval of Class  
21 Settlement as Exhibit A is a true and accurate copy of the Settlement Agreement  
22 between Plaintiffs and Defendants.

23 4. Each of the eight class representatives in the above-referenced matter  
24 have a contract with this firm agreeing to a one-third fee to Schlichter Bogard &  
25 Denton, LLP in the event of any recovery.

26 5. Plaintiffs and Defendants engaged in multiple negotiations throughout  
27 litigation with the assistance of a neutral mediator through JAMS Mediation,  
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1 Arbitration and ADR Services. The first formal mediation occurred in July 2019  
2 and the second in June 2022. Following the Court’s rulings on Defendants’ *Daubert*  
3 motions, Plaintiffs and Defendants began further negotiations through a neutral  
4 mediator up until the parties reached a tentative settlement agreement on January  
5 24, 2023.

6 I declare under penalty of perjury that the foregoing is true and correct.  
7 Executed on February 23, 2023.

8  
9 /s/ Jerome J. Schlichter  
Jerome J. Schlichter

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

ALLEN MUNRO *et al.*,  
*Plaintiffs,*  
v.  
UNIVERSITY OF SOUTHERN  
CALIFORNIA *et al.*,  
*Defendants.*

CASE NO. 2:16-cv-06191-VAP-E

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

1 This litigation arises out of a class action alleging breaches of fiduciary duty  
2 and prohibited transactions against the University of Southern California and the  
3 USC Retirement Plan Oversight Committee (“Defendants”) under the Employee  
4 Retirement Income Security Act of 1974 (ERISA), as amended, 29 U.S.C. § 1001,  
5 *et seq.*, with respect to their management, operation, and administration of the  
6 University of Southern California Defined Contribution Retirement Plan and the  
7 University of Southern California Tax-Deferred Annuity Plan (collectively the  
8 “Plans”). Defendants deny the allegations, claims, and contentions of the Class  
9 Representatives, deny that they are liable at all to the Settlement Class, and deny  
10 that the Settlement Class or the Plans have suffered any harm or damage for which  
11 Defendants could be held liable.

12 In their Joint Motion for Preliminary Approval of Class Settlement, the  
13 Parties seek preliminary approval of a settlement of the claims asserted. The terms  
14 of the Settlement are set out in a Class Action Settlement Agreement dated  
15 February 23, 2023, executed by the Settling Parties and their counsel.

16 The Court has considered the proposed Settlement under the standards of  
17 Federal Rule of Civil Procedure 23(e). For purposes of this Order, if not defined  
18 herein, capitalized terms have the definitions in the Settlement Agreement, which  
19 is incorporated herein by reference. Having reviewed the Settlement Agreement  
20 and the accompanying and supporting papers, it is **ORDERED** as follows:

21 **1. Preliminary Findings Regarding Proposed Settlement:**

22 The Court preliminarily finds that:

23 A. The proposed settlement resulted from extensive arm’s-length  
24 negotiations;

25 B. The Settlement Agreement was executed only after Class Counsel had  
26 conducted extensive pre-settlement motion practice and discovery, and after  
27 negotiations, including in-person mediation sessions and numerous teleconference  
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1 mediation sessions and extensive telephonic and email communications with a  
2 skilled mediator, and on the eve of trial;

3 C. Class Counsel has concluded that the Settlement Agreement is fair,  
4 reasonable and adequate; and

5 D. The Settlement is sufficiently fair, reasonable, and adequate to  
6 warrant sending notice of the Settlement to the Class.

7 **2. Fairness Hearing:**

8 A hearing is scheduled at the United States District Court for the Central  
9 District of California, Judge Virginia A. Phillips presiding, at \_\_\_\_\_ on  
10 \_\_\_\_\_, 2023, (the “Fairness Hearing”) (at least 120  
11 days after entry of the preliminary approval order) to determine, among other  
12 issues:

13 A. Whether the Settlement Agreement should be approved as fair,  
14 reasonable, and adequate;

15 B. Whether the notice and notice methodology were performed as  
16 directed by this Court;

17 C. Whether the motion for attorneys’ fees and costs to be filed by  
18 Class Counsel should be approved;

19 D. Whether the motion for compensation to Class Representatives  
20 should be approved; and

21 E. Whether the Administrative Expenses specified in the  
22 Settlement Agreement and requested by the parties should be approved for  
23 payment from the Settlement Fund.

24 The Motion for Final Approval of Class Settlement shall be due ten (10)  
25 business days before the Fairness Hearing, modifying the twenty-eight (28) day  
26 deadline for the filing of a noticed motion set forth in Local Rule 6-1.  
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1           **3. Establishment of Qualified Settlement Fund:**

2           A common fund is agreed to by the parties in the Settlement Agreement and  
3 is hereby established and shall be known as the *Munro, et al. v. University of*  
4 *Southern California* Settlement Fund (the “Settlement Fund”). The Settlement  
5 Fund shall be a “qualified settlement fund” within the meaning of Treasury  
6 Regulations §1.468-1(a) promulgated under Section 468B of the Internal Revenue  
7 Code. The Settlement Fund shall consist of \$13,050,000 and any interest earned  
8 thereon. The Settlement Fund shall be administered as follows:

9           A. The Settlement Fund is established exclusively for the purposes of: (i)  
10 making distributions to Class Representatives and the Settlement Class specified in  
11 the Settlement Agreement; (ii) making payments for all settlement administration  
12 costs and costs of notice, including payments of all Administrative Expenses  
13 specified in the Settlement Agreement; (iii) making payments of all Attorneys’  
14 Fees and Costs to Class Counsel as awarded by the Court; and (iv) paying  
15 employment, withholding, income, and other applicable taxes, all in accordance  
16 with the terms of the Settlement Agreement and this Order. Other than the payment  
17 of Administrative Expenses or as otherwise expressly provided in the Settlement  
18 Agreement, no distribution shall be made from the Settlement Fund until after the  
19 Settlement Effective Date.

20           B. Within the time period set forth in the Settlement Agreement,  
21 Defendants or their insurer(s) shall cause \$13,050,000 to be deposited into the  
22 Settlement Fund.

23           C. The Court directs the Settlement Administrator to provide the  
24 Settlement Notice, implement the Plan of Allocation, and otherwise assist in  
25 administration of the Settlement as set forth in the Settlement Agreement.

26           D. Defendants shall timely furnish a statement to the Settlement  
27 Administrator that complies with Treasury Regulation § 1.468B-3(e)(2), which  
28 may be a combined statement under Treasury Regulation § 1.468B-3(e)(2)(ii) and

1 shall attach a copy of the statement to their federal income tax returns filed for the  
2 taxable year in which Defendants make a transfer to the Settlement Fund.

3 E. Defendants shall have no withholding, reporting, or tax reporting  
4 responsibilities with regard to the Settlement Fund or its distribution, except as  
5 otherwise specifically identified herein. Moreover, Defendants shall have no  
6 liability, obligation, or responsibility for administration of the Settlement Fund or  
7 the disbursement of any monies from the Settlement Fund except for: (1) their  
8 obligation to cause the Gross Settlement Amount to be paid; and (2) their  
9 agreement to cooperate in providing information that is necessary for settlement  
10 administration set forth in the Settlement Agreement.

11 F. The oversight of the Settlement Fund is the responsibility of the  
12 Settlement Administrator. The status and powers of the Settlement Administrator  
13 are as defined by this Order and as approved in the Settlement Agreement.

14 G. The Gross Settlement Amount caused to be paid by the Defendants  
15 and/or their insurer(s) into the Settlement Fund in accordance with the Settlement  
16 Agreement, and all income generated by that amount, shall be *in custodia legis* and  
17 immune from attachment, execution, assignment, hypothecation, transfer, or  
18 similar process by any person. Once the Settlement Fund vests, it is irrevocable  
19 during its term and Defendants have divested themselves of all right, title, or  
20 interest, whether legal or equitable, in the Settlement Fund, if any; provided,  
21 however, in the event the Settlement Agreement is not approved by the Court or  
22 the Settlement set forth in the Settlement Agreement is terminated or fails to  
23 become effective in accordance with its terms (or, if following approval by this  
24 Court, such approval is reversed or modified), the parties shall be restored to their  
25 respective positions in this case as of the day prior to the Settlement Agreement  
26 Execution Date; the terms and provisions of the Settlement Agreement and this  
27 Order shall be void and have no force and effect and shall not be used in this case  
28 or in any proceeding for any purpose; and the Settlement Fund and income earned



1 thereon shall immediately be returned to the entity(ies) that funded the Settlement  
2 Fund.

3 H. The Settlement Administrator may make disbursements out of the  
4 Settlement Fund only in accordance with this Order or any additional Orders  
5 issued by the Court.

6 I. The Settlement Fund shall expire after the Settlement Administrator  
7 distributes all of the assets of the Settlement Fund in accordance with Article 6 of  
8 the Settlement Agreement, provided, however, that the Settlement Fund shall not  
9 terminate until its liability for any and all government fees, fines, taxes, charges,  
10 and excises of any kind, including income taxes, and any interest, penalties, or  
11 additions to such amounts, are, in the Settlement Administrator's sole discretion,  
12 finally determined and all such amounts have been paid by the Settlement Fund.

13 J. The Settlement Fund shall be used to make payments to Class  
14 Members under the Plan of Allocation set forth in the Settlement Agreement.  
15 Individual payments to Class Members will be subject to tax withholding as  
16 required by law and as described in the Class Notice and its attachments. In  
17 addition, all Class Representatives' Compensation, Administrative Expenses, and  
18 all Attorneys' Fees and Costs of Class Counsel shall be paid from the Settlement  
19 Fund.

20 K. The Court and the Settlement Administrator recognize that there will  
21 be tax payments, withholding, and reporting requirements in connection with the  
22 administration of the Settlement Fund. The Settlement Administrator shall, in  
23 accordance with the Settlement Agreement, determine, withhold, and pay over to  
24 the appropriate taxing authorities any taxes due with respect to any distribution  
25 from the Settlement Fund, and shall make and file with the appropriate taxing  
26 authorities any reports or returns due with respect to any distributions from the  
27 Settlement Fund. The Settlement Administrator also shall determine and pay any  
28 income taxes owing with respect to the income earned by the Settlement Fund.

1 Additionally, the Settlement Administrator shall file returns and reports with the  
2 appropriate taxing authorities with respect to the payment and withholding of  
3 taxes.

4 L. The Settlement Administrator, in its discretion, may request expedited  
5 review and decision by the IRS or the applicable state or local taxing authorities  
6 with regard to the correctness of the returns filed for the Settlement Fund, and it  
7 shall establish reserves to assure the availability of sufficient funds to meet the  
8 obligations of the Settlement Fund itself and the Settlement Administrator as  
9 fiduciaries of the Settlement Fund. Reserves may be established for taxes on the  
10 Settlement Fund income or on distributions.

11 M. The Settlement Administrator shall have all the necessary powers, and  
12 take all necessary ministerial steps, to effectuate the terms of the Settlement  
13 Agreement, including the payment of all distributions. Such powers include  
14 receiving and processing information from Former Participants pertaining to their  
15 claims and investing, allocating and distributing the Settlement Fund, and in  
16 general supervising the administration of the Settlement Agreement in accordance  
17 with its terms and this Order.

18 N. The Settlement Administrator shall keep detailed and accurate  
19 accounts of all investments, receipts, disbursements and other transactions of the  
20 Settlement Fund. All accounts, books, and records relating to the Settlement Fund  
21 shall be open for reasonable inspection by such persons or entities as the Court  
22 orders. Included in the Settlement Administrator's records shall be complete  
23 information regarding actions taken with respect to the award of any payments to  
24 any person, the nature and status of any payment from the Settlement Fund, and  
25 other information which the Settlement Administrator considers relevant to  
26 showing that the Settlement Fund is being administered, and awards are being  
27 made, in accordance with the purposes of the Settlement Agreement, this Order,  
28 and any future orders that the Court may find it necessary to issue.

1 O. The Settlement Administrator may establish protective conditions  
2 concerning the disclosure of information maintained by the Settlement  
3 Administrator if publication of such information would violate any law, including  
4 rights to privacy. Any person entitled to such information who is denied access to  
5 the Settlement Fund's records may submit a request to the Court for such  
6 information. However, the Settlement Administrator shall supply such information  
7 to any claimant as may be reasonably necessary to allow him or her to accurately  
8 determine his or her federal, state, and local tax liabilities. Such information shall  
9 be supplied in the form and manner prescribed by relevant law.

10 P. This Order will bind any successor Settlement Administrator. The  
11 successor Settlement Administrator(s) shall have, without further act on the part of  
12 anyone, all the duties, powers, functions, immunities, and discretion granted to the  
13 original Settlement Administrator. Any Settlement Administrator(s) who is  
14 replaced (by reason other than death) shall execute all instruments, and do all acts,  
15 that may be necessary or that may be ordered or requested in writing by the Court  
16 or by any successor Settlement Administrator(s), to transfer administrative powers  
17 over the Settlement Fund to the successor Settlement Administrator(s). The  
18 appointment of a successor Settlement Administrator(s), if any, shall not under any  
19 circumstances require Defendants to make any further payment of any nature into  
20 the Settlement Fund or otherwise.

21 **4. Class Notice:**

22 The Settling Parties have presented to the Court proposed forms of Class  
23 Notice for current and former participants, which are appended hereto as Exhibit 3  
24 and Exhibit 4, respectively.

25 A. The Court finds that the proposed forms and the website referenced in  
26 the Class Notice fairly and adequately:

- 27 i. Describe the terms and effect of the Settlement Agreement and of the  
28 Settlement;

- 1 ii. Notify the Class concerning the proposed Plan of Allocation;
- 2 iii. Notify the Class that Class Counsel will seek compensation from the
- 3 Settlement Fund for the Class Representatives, Attorneys' Fees and
- 4 Costs;
- 5 iv. Notify the Class that Administrative Expenses related to the
- 6 implementation of the Settlement will be paid from the Settlement
- 7 Fund;
- 8 v. Notify the Class of the time and place of the Fairness Hearing; and
- 9 vi. Describe how the recipients of the Class Notice may object to any of
- 10 the relief requested and the rights of the parties to discovery
- 11 concerning such objections.

12 B. The Settling Parties have proposed the following manner of  
13 communicating the notice to members of the Class, and the Court finds that such  
14 proposed manner is reasonable under the circumstances, and directs that the  
15 Settlement Administrator shall by no later than sixty (60) days before the Fairness  
16 Hearing, cause the Class Notice, with such non-substantive modifications thereto  
17 as may be agreed upon by the Settling Parties, to be sent by electronic mail to all  
18 Class Members for whom the Settlement Administrator is provided a current email  
19 address and mailed, by first-class mail, postage prepaid, to the last known address  
20 of all Class Members for whom there is no current email address and for whom can  
21 be identified through commercially reasonable means. Defendants shall cooperate  
22 with the Settlement Administrator by providing, in electronic format, the names,  
23 addresses, email addresses (to the extent available), and social security numbers of  
24 members of the Class. The names, addresses, email addresses (to the extent  
25 available), and Social Security numbers or other unique identifiers obtained in  
26 accordance with this Order shall be used solely for the purpose of providing notice  
27 of this Settlement and as required for purposes of tax withholding and reporting,  
28 and for no other purpose.

1 C. For any Class Notice returned as undeliverable, the Settlement  
2 Administrator shall utilize the provided Social Security number to attempt to  
3 determine the current address of the Class Member and shall mail notice to that  
4 address.

5 D. At or before the Fairness Hearing, Class Counsel or the Settlement  
6 Administrator shall file with the Court a proof of timely compliance with the  
7 foregoing requirements.

8 E. The Court directs Class Counsel, no later than sixty (60) days before  
9 the Fairness Hearing, to cause the Class Notice to be published on the website  
10 identified in the Class Notice.

11 **5. Objections to Settlement:**

12 Any member of the Class who wishes to object to the fairness,  
13 reasonableness or adequacy of the Settlement, to the Plan of Allocation, to any  
14 term of the Settlement Agreement, to the proposed award of attorneys' fees and  
15 costs, or to any request for compensation for the Class Representatives must file an  
16 Objection in the manner set out in this Order.

17 A. A Class Member wishing to raise an objection to the Plan of  
18 Allocation, to any term of the Settlement Agreement, to the proposed award of  
19 attorneys' fees and costs, or to any request for compensation for the Class  
20 Representatives must do the following: (A) file with the Court a statement of his,  
21 her, or its objection(s), specifying the reason(s), if any, for each such objection  
22 made, including any legal support or evidence that such objector wishes to bring to  
23 the Court's attention or introduce in support of such objection; and (B) serve  
24 copies of the objection and all supporting authorities or evidence to Class Counsel  
25 and Defense Counsel. The addresses for filing objections with the Court and for  
26 service of such objections on counsel for the parties to this matter are as follows:  
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Clerk of the Court  
United States District Court for the Central District of California  
First Street Courthouse, 6th Floor, 350 West 1st Street, Los Angeles, CA 90012

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Fax: (213) 229-7520

B. The objector, or his, her, or its counsel (if any), must serve copies of the objection(s) on the attorneys listed above and file it with the Court by no later than thirty (30) days before the date of the Fairness Hearing.

C. If an objector hires an attorney to represent him, her, or it for the purposes of making such objection pursuant to this paragraph, the attorney must

1 serve a notice of appearance on the attorneys listed above and file it with the Court  
2 by no later than thirty (30) days before the date of the Fairness Hearing.

3 D. Failure to serve objections(s) on either the Court or counsel for the  
4 parties shall constitute a waiver of the objection(s). Any Class Member or other  
5 person who does not timely file and serve a written objection complying with the  
6 terms of this Order shall be deemed to have waived, and shall be foreclosed from  
7 raising, any objection to the Settlement, and any untimely objection shall be  
8 barred.

9 E. Any party wishing to obtain discovery from any objector may, but is  
10 not required to, serve discovery requests, including requests for documents and  
11 notice of deposition not to exceed two (2) hours in length, on any objector within  
12 ten (10) days of receipt of the objection, and any responses to discovery or  
13 depositions must be completed within ten (10) days of the request being served on  
14 the objector.

15 F. Any party wishing to file a response to an objection must do so and  
16 serve the response on all parties no later than five (5) days before the Fairness  
17 Hearing.

18 **6. Appearance at Fairness Hearing:**

19 Any objector who files and serves a timely, written objection in accordance  
20 with the terms of this Order as set out in Paragraph 5 above may also appear at the  
21 Fairness Hearing either in person or through counsel retained at the objector's  
22 expense. Objectors or their attorneys intending to speak at the Fairness Hearing  
23 must serve a notice of intention to speak setting forth, among other things, the  
24 name, address, and telephone number of the objector (and, if applicable, the name,  
25 address, and telephone number of the objector's attorney) on Class Counsel and  
26 Defense Counsel (at the addresses set out above) and file it with the Court by no  
27 later than thirty (30) days before the date of the Fairness Hearing. Any objector (or  
28 objector's attorney) who does not timely file and serve a notice of intention to

1 appear in accordance with this paragraph shall not be permitted to speak at the  
2 Fairness Hearing.

3 **7. Claim Form Deadline:**

4 All valid claim forms must be received by the Settlement Administrator with  
5 a postmark date or submitted online no later than \_\_\_\_\_ (10 days  
6 prior to the Final Fairness Hearing).

7 **8. Service of Papers:**

8 Defense Counsel and Class Counsel shall promptly furnish each other with  
9 copies of all objections that come into their possession.

10 **9. Effect of Termination of Settlement on this Order:**

11 If the Settlement is terminated in accordance with the Settlement Agreement,  
12 this Order shall become null and void, and shall be without prejudice to the rights  
13 of the Settling Parties, all of whom shall be restored to their respective positions  
14 existing the day before the Settlement Agreement Execution Date.

15 **10. Use of Order:**

16 This Order shall not be construed or used as an admission, concession, or  
17 declaration by or against Defendants of any fault, wrongdoing, breach, or liability,  
18 or a waiver of any claims or defenses, including but not limited to those as to the  
19 propriety of any amended pleadings or the propriety and scope of class  
20 certification. This Order shall not be construed or used as an admission,  
21 concession, or declaration by or against any named plaintiff, Class Representatives,  
22 or the Settlement Class that their claims lack merit, or that the relief requested by  
23 Plaintiffs is inappropriate, improper, or unavailable. This Order shall not be  
24 construed or used as a waiver by any party of any arguments, defenses, or claims  
25 he, she, or it may have, including but not limited to any objections by Defendants  
26 to class certification in the event that the Settlement Agreement is terminated.

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**11. Parallel Proceedings:**

Pending final determination of whether the Settlement Agreement should be approved, the Class Representatives, every Class Member, and the Plans are prohibited and enjoined from directly, through representatives, or in any other capacity, commencing any action or proceeding in any court or tribunal asserting any of the Released Claims against the Released Parties, including Defendants.

**12. Class Action Fairness Act Notice:**

The form of notice under the Class Action Fairness Act of 2005 ("CAFA") submitted as Exhibit 6 to the Settlement Agreement complies with the requirements of CAFA and will, upon mailing, discharge Defendants' obligations pursuant to CAFA.

**13. Continuance of Hearing:**

The Court may continue the Fairness Hearing in its discretion without direct notice to the Settlement Class, other than by notice to Class Counsel and Defense Counsel, and any Class Member wishing to appear should check the Court's docket or call the Clerk's office before the scheduled date of the Fairness Hearing.

SO ORDERED:

DATED: \_\_\_\_\_, 2023

\_\_\_\_\_  
HON. VIRGINIA A. PHILLIPS  
UNITED STATES DISTRICT JUDGE