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***Settlement Class Counsel***

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16 SUPERIOR COURT OF CALIFORNIA

17 COUNTY OF SAN MATEO

18 **SELENA SCOLA, ERIN ELDER, GABRIEL  
19 RAMOS, APRIL HUTCHINS, KONICA  
20 RITCHIE, ALLISON TREBACZ, JESSICA  
21 SWARNER, and GREGORY SHULMAN,**  
22 individually and on behalf of all others similarly  
23 situated,

24 *Plaintiffs,*

25 v.

26 **FACEBOOK, INC.,**

27 *Defendant.*

Electronically  
**FILED**

by Superior Court of California, County of San Mateo

ON 3/4/2021

By /s/ Crystal Swords  
Deputy Clerk

Civil Action No. 18CIV05135

**PLAINTIFFS' RENEWED NOTICE OF  
MOTION AND MOTION TO APPROVE  
SUPPLEMENTAL NOTICE PROGRAM**

Assigned for All Purposes to  
Hon. V. Raymond Swope, Dept. 23

Date: April 19, 2021 at 3:00 p.m.

Time: 3:00 p.m.

Dept.: 23

Trial Date: None Set

2<sup>nd</sup> Amended Complaint Filed: June 30, 2020

1 **RENEWED NOTICE OF MOTION AND MOTION**

2 TO THE COURT, THE PARTIES, AND ALL COUNSEL OF RECORD:

3 Please take notice that, on April 19, 2021, at 3:00 p.m., in Department 23 of the Superior Court,  
4 County of San Mateo, 400 County Center, Redwood City, CA 94063, Plaintiffs Selena Scola, Erin  
5 Elder, Gabriel Ramos, April Hutchins, Konica Ritchie, Allison Trebacz, Jessica Swarner, and Gregory  
6 Shulman (“Plaintiffs”) will and hereby do move for an order granting approval of the proposed  
7 Supplemental Notice Program.

8  
9 Dated: March 4, 2021

Respectfully Submitted,

10 /s/ Steven N. Williams

11 Joseph R. Saveri (State Bar No. 130064)  
12 Steven N. Williams (State Bar No. 175489)  
13 Kevin Rayhill (State Bar No. 267496)  
14 Katharine L. Malone (State Bar No. 290884)  
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1 **I. INTRODUCTION**

2 After the Notice Plan<sup>1</sup> was implemented, Plaintiffs had filed their motion for final approval, and  
3 the Court held a final approval hearing, some of Facebook’s vendors informed Class Counsel that they  
4 had inadvertently excluded a significant number of Class Members from the data sent to the Settlement  
5 Administrator. Accordingly, these newly identified Class Members did not receive notice during the  
6 implementation of the original Notice Plan.

7 Upon learning of the issue (and informing the Court), Class Counsel worked diligently with  
8 Facebook, Facebook’s vendors, and the Settlement Administrator to ensure that all Class Members  
9 have now been identified. Extensive cross-checks have been completed, and Class Counsel are confident  
10 that the names and contact information of all Class Members have been provided to the Settlement  
11 Administrator.

12 To ensure these newly identified Class Members are afforded the same notice as all other Class  
13 Members, Plaintiffs proposed implementation of a Supplemental Notice Program, which they filed with  
14 the Court on February 9, 2021. The Supplemental Notice Program mirrors the original Notice Plan and  
15 can be implemented effectively and promptly. If approved, the Supplemental Notice Program can be  
16 completed by May 2021. The Supplemental Notice Program will inform the newly identified Class  
17 Members of the Settlement and their rights to privacy and will provide all Class Members an  
18 opportunity to exercise their rights to exclude themselves from, and to object to, the Settlement.

19 On February 18, 2021, the Court held a hearing on its Order to Show Cause. At the hearing, the  
20 Court ordered Class Counsel to submit a Renewed Motion to Approve Supplemental Notice Program  
21 and provide further detail on the fairness and adequacy of the Settlement Agreement considering the  
22 Class size.

23 Accordingly, Plaintiffs Selena Scola, Erin Elder, Gabriel Ramos, April Hutchins, Konica Ritchie,  
24 Allison Trebacz, Jessica Swarner, and Gregory Shulman respectfully request that the Court grant their

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25  
26 <sup>1</sup> See Plaintiffs’ Notice of Motion and Motion for (1) Preliminary Approval of Settlement; (2)  
27 Provisional Certification of Settlement Class; (3) Appointment of Class Counsel; (4) Approval of  
28 Notice Plan; (5) Approval of Settlement Administrator; and (6) Approval of Belaire Notice;  
Memorandum of Points and Authorities in Support thereof (“Motion for Preliminary Approval”).  
Unless otherwise indicated, capitalized terms herein refer to the definitions used in the Motion for  
Preliminary Approval.

1 Renewed Motion to Approve Supplemental Notice Program, which includes a revised declaration from  
2 Steven Williams and a declaration from the Parties' Mediator Hon. Rebecca Westerfield (Ret.) further  
3 substantiating the fairness and reasonableness of the Settlement Agreement. Plaintiffs further request  
4 that the Court approve this Motion without holding the hearing on preliminary approval scheduled for  
5 April 19, 2021 at 3:00 p.m.

## 6 **II. FACTUAL BACKGROUND**

7 On May 8, 2020, Plaintiffs filed the Motion for Preliminary Approval. In the motion, Plaintiffs  
8 described a robust notice program and procedure for disseminating *Belaire* notice and requested that  
9 Epiq be confirmed as the Settlement Administrator. The Court granted the Motion for Preliminary  
10 Approval on August 14, 2020 ("Preliminary Approval Order"), and conditionally certified the following  
11 Settlement Class:

12 All Content Moderators who performed work for Facebook in California,  
13 Arizona, Texas, or Florida as an employee or subcontractor of one or more  
14 of the Facebook Vendors from September 15, 2015 to the date of Preliminary  
15 Approval of the Settlement.

16 After the Preliminary Approval Order was entered, the Notice Plan began in earnest. The first  
17 step was for the Settlement Administrator to obtain contact information for the Class Members from  
18 Facebook's vendors. (*See* Declaration of Elizabeth Enlund in Support of Plaintiffs' Renewed Motion to  
19 Approve Supplemental Notice Program ["Enlund Decl."] at ¶ 2; *see also* Declaration of Steven N.  
20 Williams in Support of Plaintiffs' Renewed Motion to Approve Supplemental Notice Program,  
21 ["Williams Decl."], at ¶ 11, Ex. A [hereinafter "Settlement Agreement"] at § 7.2) The Settlement  
22 Administrator received this contact information in the form of data files sent directly by Facebook's  
23 vendors: Genpact, TaskUs, PRO Unlimited, Cognizant, and Accenture. (Enlund Decl. at ¶ 2.) Between  
24 August 27, 2020 and September 8, 2020, the Settlement Administrator received eight data files from  
25 Facebook's vendors containing the records and contact information for 12,224 Class Members. (*Id.*)  
26 After de-duplicating the records, the Settlement Administrator determined that it had received the  
27 records for 9,403 unique Class Members. (*Id.*) At the time, the Settlement Administrator understood  
28 that those records reflected the total Class. (*Id.*)

1           Once it obtained the Class Member records, consistent with this Court’s prior orders, the  
2 Settlement Administrator implemented the Notice Plan with the goal of maximizing the likelihood of  
3 reaching potential Class Members. The program consisted of e-mail and postcard notice sent to all  
4 identified Class Members, the Settlement Website, and a telephone line with access to service agents  
5 during normal business hours. (*See generally* Plaintiffs’ Motion for Final Approval at 13-17.) All forms of  
6 notice articulated Class Members’ rights to opt out and to object to the Settlement Agreement and  
7 clearly identified the requirements for doing so. (*Id.* at 17.) The Settlement Administrator also sent  
8 Class Members the *Belair* Notice approved by the Court. (*Id.*) In short, the Notice Plan provided then-  
9 identified Class Members with the best notice practicable and was consistent with the Court’s direction.

10           Plaintiffs filed their Motion for Final Approval of the Settlement Agreement on November 6,  
11 2020. A handful of Class Members timely submitted valid opt out requests. There were no objections.  
12 The Court held a final fairness hearing on November 20, 2020. On November 24, 2020, Plaintiffs filed  
13 corrected and amended documents as directed by the Court.<sup>2</sup> At the time of submission, Plaintiffs  
14 understood that they had satisfied the notice requirement for the entire Class, consistent with the  
15 Court’s instructions, and further had addressed the issues identified by the Court in the final fairness  
16 hearing.

17           The next day, on November 25, 2020, the Settlement Administrator informed Class Counsel of  
18 the possibility that certain Class Members had not received notice of the Settlement Agreement.  
19 (Williams Decl.” at ¶ 2; Enlund Decl. at ¶ 3.) Specifically, the Settlement Administrator explained to  
20 Class Counsel that it had received a new data file from Genpact, one of Facebook’s vendors, containing  
21 the records for Class Members who had not been previously identified. (Enlund Decl. at ¶ 3.) The  
22 Settlement Administrator further explained that the new Genpact data file contained the names of  
23 approximately 2,803 Class Members. (*Id.*)

---

24  
25 <sup>2</sup>Specifically, Plaintiffs filed the following documents: a Corrected [Proposed] Order Granting Plaintiffs’  
26 Motion for Final Approval of Settlement, an Amended [Proposed] Order Granting Plaintiffs’ Motion  
27 for Attorneys’ Fees, Reimbursement of Costs, and Service Awards, a Supplemental Declaration of  
28 Steven N. Williams in Support of Final Approval, a Supplemental Declaration of Elizabeth Enlund in  
Support of Motion for Final Approval, and several corrected declarations made by out-of-state  
declarants.

1 Class Counsel promptly notified the Court of this development through e-mail on November 30,  
2 2020 and undertook an extensive investigation. (Williams Decl. at ¶ 3.) Since then, Class Counsel have  
3 corresponded regularly with the Settlement Administrator and Facebook to ensure that all Class  
4 Members are identified. (*Id.* at ¶ 4.) That investigation revealed another set of Class Members,  
5 associated with Facebook vendor PRO Unlimited, that had not been previously identified. In addition,  
6 another, smaller set of individuals, associated with Facebook vendor Accenture, were confirmed as  
7 Class Members. (*Id.* ¶ 5.) As a result of this investigation, Class Counsel have identified 5,310<sup>3</sup> Class  
8 Members who had been omitted from the data files that Facebook’s vendors had provided to the  
9 Settlement Administrator during implementation of the Notice Plan. (*Id.* at ¶ 6.) Because of their  
10 omission, these Class Members did not receive notice of the Settlement Agreement.

11 On February 9, 2021, Class Counsel filed the Motion to Approve Supplemental Notice program,  
12 declarations from Steven N. Williams and Elizabeth Enlund in support of the motion, and a Joint Case  
13 Management Statement. On February 18, 2021, the Court held a hearing on its Order to Show Cause.  
14 At the hearing, the Court ordered Class Counsel to submit its Renewed Motion to Approve  
15 Supplemental Notice Program and provide further detail on the fairness and adequacy of the Settlement  
16 Agreement considering the Class size.

### 17 **III. LEGAL STANDARD**

18 Class notice should “give class members sufficient information to decide whether they should  
19 accept the benefits offered, opt out and pursue their own remedies, or object to the settlement.”  
20 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 252 *disapproved of on other grounds by*  
21 *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.) To achieve this goal, the Court has  
22 authority to specify the manner of class notice. (*See* C.R.C. 3.766(a).) Indeed, “in determining its  
23 particulars, the trial court has virtually complete discretion as to the manner of giving notice to class  
24 members.” (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1164  
25 (internal citation omitted); *see also Hernandez v. Children’s Creative Learning Centers* (N.D. Cal., Dec.

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26  
27 <sup>3</sup> Plaintiffs previously identified 5,337 Class Members who did not receive notice of the Settlement  
28 through the original Notice Plan in their Motion to Approve Supplemental Notice Program, The number  
is smaller than originally reported because the Settlement Administrator subsequently identified  
duplicate entries for certain Class Members across the lists provided by Facebook’s vendors.

11, 2014, No. CV 13-02246 LHK) 2014 WL 12918438, at \*2 (finding that supplemental notice directed to newly identified class members constituted best practicable notice under the circumstances).) Decisions regarding the manner of giving notice will not be disturbed absent an abuse of discretion. (*See Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1390.)

Before a settlement in a class action can be finally approved, the court must make an initial determination that there is “probable cause to submit the proposal to members of the class and to hold a full-scale hearing on its fairness.” (*California v. Levi Strauss & Co.* (1986) 41 Cal. 3d 460, 485 (Bird, C.J., concurring) (quoting Manual for Complex Litigation § 1.46 (2d ed. 1982)).) Preliminary approval is warranted where “the proposed settlement appears to be the product of serious, informed, noncollusive negotiations” and “falls within the range of possible approval.” (*In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (internal citation and quotation marks omitted); *accord Cho v Seagate Tech. Holdings Inc.* (2009) 177 Cal. App. 4th 734, 743 (observing that a court must “reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties”).)

#### IV. DISCUSSION

Plaintiffs respectfully request that the Court approve the Supplemental Notice Program to ensure the newly identified Class Members are provided the same notice and rights as the Class Members who were part of the Notice Plan. The Supplemental Notice Program will not prejudice any of the Class Members who already received notice through the Notice Plan. The Supplemental Notice Program can be implemented efficiently without undue delay and can be completed in May 2021. Plaintiffs believe that the Settlement Agreement remains fair and reasonable considering the class size, and that after the Supplemental Notice Program is complete, the Court should conduct a final fairness hearing. If the Court is satisfied that the Supplemental Notice Program is adequate and that there is probable cause to submit the Settlement Agreement to members of the class and to hold a hearing on its fairness, Plaintiffs further request that the Court approve this Motion without holding the hearing on preliminary approval scheduled for April 19, 2021 at 3:00 p.m.

##### A. The Proposed Supplemental Notice Program.

In keeping with the Notice Plan, Plaintiffs propose that the Supplemental Notice Program

1 consist of the following:

2 ***E-mail and Postcard Notice.*** Plaintiffs propose that the Settlement Administrator provide all  
3 Class Members (including those who originally received notice) with e-mail and postcard notice  
4 consistent with that which was provided through the Notice Plan. E-mail notice will be provided to  
5 Class Members for whom Facebook’s vendors have an e-mail address. Postcard notice will be provided  
6 to Class Members using the last known mailing address reflected in the vendors’ systems as updated  
7 through the National Change of Address (“NCOA”) database. The e-mail and postcard notices will  
8 provide a link to or the address of the Settlement Website and will provide the telephone number to call  
9 for more information about the Settlement Agreement.

10 ***Settlement Website.*** The Settlement Website (www.ContentModeratorSettlement.com) will  
11 remain active and the Settlement Administrator will continue to maintain and update it throughout  
12 implementation of the Supplemental Notice Program and beyond.<sup>4</sup> The information and documents  
13 that are already on the Settlement website will remain available and easily accessible. Class Members  
14 will be able to update their contact information and payment election preferences on the Payment  
15 Election page of the Settlement Website using a Unique ID and PIN, assigned by the Settlement  
16 Administrator and provided in each Class Member’s Short Form Notice. The Settlement Website  
17 address will be prominently displayed in all printed notice documents. Additionally, the dedicated e-  
18 mail address, info@ContentModeratorSettlement.com, will remain active to allow Class Members to  
19 contact the Settlement Administrator by e-mail with any requests or questions.

20 ***Phone Line.*** The Settlement Administrator will continue to maintain the telephone line that all  
21 Class Members can call to ask questions and receive answers about the Settlement Agreement. The  
22 telephone line is accessible through a dedicated toll-free telephone number to allow callers to listen to  
23 recorded answers to frequently asked questions and to receive directions to the Settlement Website.  
24 The automated phone system will remain available 24 hours per day, 7 days per week. Callers will also  
25 continue to have an option to speak to a service agent during normal business hours, Monday through

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26  
27 <sup>4</sup> The Settlement Website will remain active until thirty (30) days after the later of (a) the expiration  
28 date of any checks for Residual Distributions; and (b) the expiration date of any checks for Other  
Damages Payments or, if no such checks are mailed, 120 days after any electronic transfers of Other  
Damages Payments. *See* Plaintiffs’ Motion for Final Approval, at pp. 14-15.

1 Friday from 6 a.m. to 6 p.m. PST, except holidays.

2 **Belair Notice.** The Settlement Administrator will issue *Belair* notices to the newly identified  
3 Class Members in the same manner as it did during the Notice Plan. Specifically, the Settlement  
4 Administrator will send *Belair* e-mail notices to all newly identified Class Members for whom the  
5 Settlement Administrator has received a facially valid e-mail address. The Settlement Administrator will  
6 send the *Belair* Notice via USPS first class mail to all newly identified Class Members for whom the  
7 Settlement Administrator does not have a valid e-mail address. The *Belair* Notice and *Belair* E-mail  
8 Notice sent to the newly identified Class Members will contain the same information as the *Belair*  
9 Notice and *Belair* E-mail Notices sent during the original notice program.

10 **B. Class Members Who Have Already Received Notice Will Not Be Prejudiced.**

11 Class Members who received notice through the Notice Plan will be unaffected by the operation  
12 of the proposed Supplemental Notice Program. These Class Members have already received notice  
13 through a protocol that was even more robust than the one approved by the Court in its Preliminary  
14 Approval Order. They have already had the opportunity to exercise their *Belair* rights, exclude  
15 themselves from the Settlement Agreement, or object to the terms of the Settlement Agreement. Thus,  
16 the Supplemental Notice Program does not prejudice them. Nevertheless, Plaintiffs propose that the  
17 objection/exclusion period be reopened for those Class Members who already received notice and the  
18 opportunity to exercise their rights. By allowing all Class Members an opportunity to fully evaluate the  
19 Settlement Agreement in light of the implementation of the Supplemental Notice Program, all Class  
20 Members will be treated equally.

21 **C. The Proposed Supplemental Notice Program Can Be Completed By May 2021.**

22 Because the Settlement Administrator already has the data files with the contact information for  
23 all newly identified Class Members, implementation of the Supplemental Notice Program can begin  
24 immediately. As such, Plaintiffs propose the following schedule:

- 25 1. The Settlement Administrator will send postcard notices, e-mail notices, and  
26 *Belair* notices to all recently identified Class Members by **March 19, 2021, or 10**  
27 **business days after entry of an Order Approving Supplemental Notice**  
28 **Program, whichever is later.**

- 1                   2.       The last day for the Class Members to object to and/or request exclusion from  
2                   the Class will be **April 19, 2021, or thirty days after the Settlement**  
3                   **Administrator sends postcard and e-mail notices to all Class Members,**  
4                   **whichever is later.**
- 5                   3.       The last day for Plaintiffs to file a response to any objections lodged by the Class  
6                   Members will be **May 3, 2021, or ten business days after the last day for the**  
7                   **Class Members to object to and/or request exclusion from the Class,**  
8                   **whichever is later.**

9       These periods correspond to those provided to the originally identified Class Members during the  
10       Notice Plan.

11                   **D.       The Settlement Agreement is Within the Range of Reasonableness.**

12                   The Court has already preliminarily approved of the Settlement Agreement, finding that the  
13       terms are within the range of reasonableness. Class Counsel believes that the Settlement Agreement  
14       remains fair, reasonable, and adequate considering the Class size. (Williams Decl. at ¶¶ 15, 22-25; *see*  
15       Declaration of Rebecca Westerfield in Support of Renewed Motion to Approve Supplemental Notice  
16       Program, [“Westerfield Decl.”], at ¶¶ 5-7 ). During mediation, the parties’ best available estimate of the  
17       Class size was 13,000, and the parties anticipated that this number would increase to include individuals  
18       who became content moderators up through the date of preliminary approval. (Westerfield Decl. at ¶ 5).  
19       At the time the Settlement Agreement was executed, Class Counsel believed that the Settlement  
20       Agreement would have residual funds. (Williams Decl. at ¶ 15; *see also* Settlement Agreement, § 8  
21       (Remaining Funds).)

22                   Plaintiffs believe that the modest increase to the anticipated Class size does not significantly  
23       dilute the Settlement Fund considering the parties’ disagreement over estimated prevalence of  
24       Qualifying Diagnoses during mediation. (*See generally* Williams Decl., at ¶¶ 9, 13, 22-24, Exhs. 2-4).

25                   However, the Settlement Fund should not be evaluated by dividing the remaining amount in the  
26       Settlement Fund by the estimated Class Members eligible for a Medical Treatment Payment and Other  
27       Damages Payment. First, the Medical Treatment Payment and Other Damages Payment were designed  
28       to compensate Class Members using a sliding scale of payment. (*See generally* Settlement Agreement,

1 Exhibit A (Distribution Plan).) By design, some Class Members will receive more, and some will receive  
2 less, depending on their diagnoses and claims. Second, the size of the Settlement Fund available to  
3 Class Members that qualify for the Medical Treatment Payment depends on the take-rate of the Initial  
4 Payment. (*See* Distribution Plan at ¶¶ 3, 5.) Similarly, the size of the Settlement Fund available to Class  
5 Members that qualify for the Other Damages Payment depends on the take-rate of the Initial Payment  
6 and Medical Treatment Payment. (*Id.* at ¶ 6.)

7 Plaintiffs ran three models with various prevalence rates for qualifying diagnoses and take rates  
8 to test the amount that Class Members could potentially recover from the Settlement Fund using the  
9 current Class size. Under each scenario, all Class Members would receive Initial Payments, Class  
10 Members claiming Medical Treatment Payments would receive the maximum amount of Medical  
11 Treatment Payments provided under the Settlement Agreement, and there will still be a multi-million  
12 dollar residual for Other Damages Payments. (Williams Decl. at ¶¶ 22-24, Exhs. 2-4.)

13 If a Class Member is concerned that the Settlement Fund will not be sufficient to compensate  
14 them for their other damages, or they believe they have suffered greater than \$50,000 in other damages  
15 (the maximum value of any Other Damages Payment), they can choose not to participate in the Other  
16 Damages Payment and instead bring their claim against Facebook through streamlined arbitration,  
17 where their award for other damages will be determined by an arbitrator. (*See* Settlement Agreement at  
18 §§ 6.4-6.8.) Class Members retain their right to bring such Other Damages claims unless and until they  
19 accept an Other Damages Payment “by cashing a check containing the Other Damages Payment or by  
20 retaining the electronic transfer of an Other Damages Payment” (*see* Settlement Agreement § 6.7),  
21 which means that Class Members will know what Other Damages Payment they are being offered before  
22 they must decide whether to accept the payment and release their right to bring claims for Other  
23 Damages in streamlined arbitration.

24 Finally, the Settlement Agreement offers more than just monetary compensation. It provides  
25 significant injunctive relief designed to make content moderation safer in the future. (*See* Settlement  
26 Agreement at ¶5.) Plaintiffs’ Expert estimated the value of this injunctive relief to be \$34,200,000.  
27 (Corrected Declaration of Patricia Watson, Ph.D., in Support of Plaintiffs’ Motion for Attorneys’ Fees,  
28 Reimbursements of Costs, and Service Awards [“Watson Decl.”] at ¶ 17.) Given the monetary and non-

1 monetary relief to the Class, Plaintiffs believe that the Settlement Agreement remains fair and  
2 reasonable in light of the Class size.

3 **V. CONCLUSION**

4 For the foregoing reasons, Plaintiffs respectfully request that the Court approve the  
5 Supplemental Notice Program. If the Court is satisfied with Plaintiffs' Renewed Motion to Approve  
6 Supplement Notice Program, Plaintiffs request the Court vacate the April 19, 2021 preliminary approval  
7 hearing, allowing Plaintiffs to begin the Supplemental Notice Program. After Class Members are  
8 notified of the Settlement Agreement and are provided an opportunity to object or exclude themselves  
9 from the Settlement Agreement, the Court can determine whether the Settlement Agreement is fair and  
10 reasonable at the Final Fairness Hearing.

11  
12 Dated: March 4, 2021

Respectfully Submitted,

13 /s/ Steven N. Williams

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15 Steven N. Williams (State Bar No. 175489)  
16 Kevin Rayhill (State Bar No. 267496)  
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