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12 SUPERIOR COURT OF CALIFORNIA  
13 COUNTY OF SAN MATEO

15 **SELENA SCOLA, ERIN ELDER, GABRIEL**  
16 **RAMOS, APRIL HUTCHINS, KONICA**  
17 **RITCHIE, ALLISON TREBACZ, JESSICA**  
18 **SWARNER, and GREGORY SHULMAN,**  
individually and on behalf of all others similarly  
situated,

19 *Plaintiffs,*

20 v.

21 **FACEBOOK, INC.,**

22 *Defendant.*

Civil Action No. 18CIV05135

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR (1) PRELIMINARY  
APPROVAL OF SETTLEMENT; (2)  
PROVISIONAL CERTIFICATION OF  
SETTLEMENT CLASS; (3)  
APPOINTMENT OF CLASS COUNSEL; (4)  
APPROVAL OF NOTICE PLAN; (5)  
APPROVAL OF SETTLEMENT  
ADMINISTRATOR; and (6) APPROVAL OF  
BELAIRE NOTICE; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

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

Trial Date: None Set  
Complaint Filed: September 21, 2018

28 Civil Action No. 18-CIV-05135

**PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR (1) PRELIMINARY APPROVAL OF SETTLEMENT; (2) PROVISIONAL  
CERTIFICATION OF SETTLEMENT CLASS; (3) APPOINTMENT OF CLASS COUNSEL; (4) APPROVAL OF NOTICE PLAN; (5)  
APPROVAL OF SETTLEMENT ADMINISTRATOR; and (6) APPROVAL OF BELAIRE NOTICE**

**TABLE OF CONTENTS**

	<b>Page(s)</b>
I. INTRODUCTION.....	7
II. LEGAL STANDARD.....	8
III. THE SETTLEMENT MEETS ALL REQUIREMENTS FOR APPROVAL .....	9
A. The Settlement Class.....	9
B. The Settlement Fund for Medical Treatment and Damages Payments.....	11
C. Injunctive Relief.....	12
IV. THE SETTLEMENT IS FAIR AND REASONABLE .....	15
A. The Settlement was reached through informed and non-collusive negotiations.	15
B. Sufficient discovery and investigation have been completed to warrant settlement.....	15
C. The costs, risks, and likely length of trial and appeal favor preliminary approval. ....	16
D. The proposed Notice and Notice Plan adequately inform Class Members of the Settlement terms and their rights.....	17
V. THE PROPOSED BELAIRE NOTICE PROTECTS THE PRIVACY INTEREST OF SETTLEMENT CLASS MEMBERS.....	19
VI. THE PROPOSED FEE AND EXPENSE AWARD IS FAIR AND REASONABLE .....	20
A. Class representatives’ proposed service awards. ....	20
B. Class Counsel’s request for fees and expenses.....	20
VII. SETTING A SCHEDULE FOR FINAL APPROVAL IS APPROPRIATE .....	20
VIII. CONCLUSION .....	21

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

*7-Eleven Owners for Fair Franchising v. Southland Corp* (2000) 85 Cal. App. 4th 1135..... 9, 17

*In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418 (S.D.N.Y. 2001)..... 16

*Belaire-West Landscape, Inc. v. Superior Court* (2007) 149 Cal. App. 4th 554..... 19

*California v. Levi Strauss & Co.* (1986) 41 Cal. 3d 460 ..... 8

*Cellphone Termination Fee Cases*  
(2010) 186 Cal. App. 4th at 1393 ..... 17

*Cellphone Termination Fee Cases*  
(2009) 180 Cal. App. 4th 1110, 1118..... 8

*Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43..... 9, 17

*Cho v Seagate Tech. Holdings Inc.* (2009) 177 Cal. App. 4th 734..... 9

*Clark v. Am. Residential Servs. LLC* (2009) 175 Cal. App. 4th 785 ..... 15

*Classen v. Weller* (1983) 145 Cal. App. 3d 27 ..... 10

*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794..... 9, 15

*Emp’t Dev. Dep’t. v. Superior Court* (1981) 30 Cal. 3d 256..... 10

*Hernandez v. Restoration Hardware, Inc.*, 409 P.3d 281 (2018) ..... 8

*Hicks v. Kaufman & Broad Home Corp* (2001) 89 Cal. App. 4th 908..... 10

*Knapp v. AT & T Wireless Services, Inc.* (2011) 195 Cal. App. 4th 932..... 10

*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116 ..... 9, 15, 16

*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429 ..... 10

*Low v. Trump Univ., LLC* (S.D. Cal. 2017) 246 F. Supp. 3d 1295, *aff’d*, 881 F.3d 1111  
(9th Cir. 2018)..... 9

*McGhee v. Bank of Am* (1976) 60 Cal. App. 3d 442..... 11

*Officers for Justice v. Civil Service Comm’n of City & Cty. of S.F.*, 688 F.2d 615 (9th Cir.  
1982)..... 9

1	<i>Reed v. United Teachers L.A.</i> (2012) 208 Cal. App. 4th 322 .....	15
2	<i>Richmond v. Dart Indus., Inc.</i> (1981) 29 Cal. 3d 462 ( <i>en banc</i> ) .....	10
3	<i>Sykes v. Harris</i> , No. 09 Civ. 8486 (DC), 2016 WL 3030156 (S.D.N.Y. 2016) .....	16
4	<i>In re Tableware Antitrust Litig.</i> , 484 F. Supp. 2d 1078 (N.D. Cal. 2007) .....	9
5	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal. App. 4th 224 .....	8, 15, 17
6	<b>Statutes</b>	
7	Cal. Civ. Code § 1781 .....	17
8	California Code of Civil Procedure § 472 .....	7
9	<b>Other Authorities</b>	
10	C.R.C. 3.769 .....	17
11	C.R.C. 3.769(c)-(f) .....	8
12		
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1 NOTICE OF MOTION AND MOTION

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

3 Please take notice that, on [ ] at [ ], or as soon thereafter as the parties may be  
4 heard, in Department 23 of the Superior Court, County of San Mateo, 400 County Center, Redwood  
5 City, CA 94063, Plaintiffs Selena Scola, Erin Elder, Gabriel Ramos, April Hutchins, Konica Ritchie,  
6 Allison Trebacz, Jessica Swarner, and Gregory Shulman (“Plaintiffs”) will and hereby do move for an  
7 order granting preliminary approval of the settlement of this class action lawsuit against Defendant  
8 Facebook, Inc. (“Facebook”). By this motion, Plaintiffs request that the Court enter an Order:

- 9 (1) Granting preliminary approval of the Settlement Agreement;  
10 (2) Provisionally certifying the Settlement Class;  
11 (3) Appointing Plaintiffs’ counsel as Class Counsel;  
12 (4) Approving the proposed Notice Plan;  
13 (5) Approving the Settlement Administrator;  
14 (6) Approving the proposed Belaire Notice; and  
15 (7) Scheduling a hearing for final approval of the settlement, the application for an award of  
16 attorneys’ fees and expenses, service awards for Plaintiffs, and entry of final judgment.

17 This motion is based on California Rule of Court 3.769(c), the following memorandum of points  
18 and authorities, the declarations of Steven N. Williams, Daniel Charest, Sonya Norman, Ph.D., Patricia  
19 Watson, Ph.D., and the Hon. Rebecca Westerfield (Ret.) submitted herewith, the argument and  
20 evidence the Court may permit at the hearing, and the complete files and record in this action.

21  
22 Dated: May 8, 2020

Respectfully Submitted,

*Steven N. Williams*

23 Joseph R. Saveri (SBN 130064)  
24 Steven N. Williams (SBN 175489)  
25 Gwendolyn Giblin (SBN 181973)  
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Civil Action No. 18-CIV-05135

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*Attorneys for Plaintiffs and the Proposed Class*

1 I. INTRODUCTION

2 Plaintiffs Selena Scola, Erin Elder, Gabriel Ramos, April Hutchins, Konica Ritchie, Allison  
3 Trebacz, Jessica Swarner, and Gregory Shulman (“Plaintiffs”) request that the Court preliminarily  
4 approve the settlement<sup>1</sup> of this class action lawsuit against Defendant Facebook, Inc. (“Facebook”).  
5 The settlement encompasses all claims Plaintiffs have asserted in their Second Amended Consolidated  
6 Complaint<sup>2</sup> on behalf of themselves and the proposed settlement class, which consists of all persons  
7 who performed content moderation work for Facebook in California, Arizona, Texas, or Florida as an  
8 employee or subcontractor of one or more of Facebook’s vendors at any time from September 15, 2015  
9 to the date of preliminary approval of the proposed class settlement (the “Class”).

10 The settlement reflects an outstanding and unprecedented recovery for the Class Members. It  
11 provides for payment of \$52 million by Facebook, from which each Class Member may receive a  
12 payment of \$1,000 for medical screening for their exposure to graphic or disturbing material in the  
13 course of his or her work as a content moderator. In addition, each Class Member with a Qualifying  
14 Diagnosis may seek additional payments for treatment and Other Damages. Facebook also will  
15 implement significant reforms addressing the practices alleged in this action including: (1) on-site  
16 coaching and standardized resiliency measures for all U.S. content moderators and (2) tooling  
17 enhancements to provide reviewers with more control over how imagery is displayed and designed to  
18 mitigate the effects of exposure to graphic or disturbing material.

19 The settlement was reached through extensive arms’-length negotiations between competent  
20 counsel that was facilitated by the Hon. Rebecca Westerfield (Ret.). Plaintiffs retained two highly

21 \_\_\_\_\_  
22 <sup>1</sup> The parties’ Settlement Agreement is attached as Exhibit 1 to the Declaration of Steven N. Williams in  
23 Support of Plaintiffs’ Motion for (1) Preliminary Approval of Settlement; (2) Provisional Certification of  
24 Settlement Class; (3) Appointment of Class Counsel; (4) Approval of Notice Plan; (5) Approval of  
Settlement Administrator; and (6) Approval of *Belaire* Notice (“Williams Decl.”). Unless otherwise  
indicated, capitalized terms herein refer to the definitions used in the Settlement Agreement.

25 <sup>2</sup> On April 9, 2020—two weeks after the Superior Court of California, San Mateo County closed due to  
26 the COVID-19 crises—Plaintiffs e-filed the Second Amended Complaint (“SAC”), attaching a joint  
27 Stipulation and [Proposed] Order Granting Plaintiffs Leave to File the Second Amended Complaint  
28 (“Joint Stipulation”) pursuant to California Code of Civil Procedure § 472. The SAC adds April  
Hutchins, Konica Ritchie, Allison Trebacz, Jessica Swarner, and Gregory Shulman, who worked in  
Arizona, Texas, and Florida, as class representatives. Plaintiffs also filed the SAC and Joint Stipulation  
with the Clerk’s Office on April 16, 2020.

1 credentialed experts and worked closely with them to develop a keen understanding of the issues related  
2 to the diagnosis and treatment of trauma-related injuries and the safeguards necessary to mitigate future  
3 harm. The settlement is reasonable when the strength of the claims and defenses is measured against  
4 the cost and risks of further litigation. It satisfies all criteria for preliminary approval.

5 Accordingly, Plaintiffs respectfully request that the Court enter an order:

- 6 (1) Granting preliminary approval of the Settlement;
- 7 (2) Provisionally certifying the Settlement Class;
- 8 (3) Appointing Plaintiffs' counsel as Class Counsel;
- 9 (4) Approving the proposed Notice Plan;
- 10 (5) Approving the Settlement Administrator;
- 11 (6) Approving the proposed Belaire Notice; and
- 12 (7) Scheduling a hearing for final approval of the Settlement, the application for an award of  
13 attorneys' fees and expenses, service awards for Plaintiffs, and entry of final judgment.

14 A proposed form of Order is submitted herewith.

## 15 II. LEGAL STANDARD

16 At the preliminary approval stage, the Court has broad powers to determine if the proposed  
17 settlement is fair under the circumstances of the case. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.  
18 App. 4<sup>th</sup> 224, 234–35, *disapproved on other grounds by Hernandez v. Restoration Hardware, Inc.*, 409 P.3d  
19 281 (2018). California Rule of Court 3.769 establishes a two-step process for obtaining court approval.  
20 First, “the court preliminarily approves the settlement and the class members are notified as directed  
21 by the court.” *Cellphone Termination Fee Cases* (2009) 180 Cal. App. 4th 1110, 1118 (citing C.R.C.  
22 3.769(c)–(f)). Then, “the court conducts a final approval hearing to inquire into the fairness of the  
23 proposed settlement.” *Id.* (citing C.R.C. 3.769(g)).

24 At the first step, the court reviews the proposed settlement and makes a preliminary  
25 determination that the settlement is within the range of reasonableness such that notice should be  
26 provided to class members and a fairness hearing be scheduled. *Wershba*, 91 Cal. App. 4<sup>th</sup> at 234–36.  
27 Preliminary approval is “nothing more than [a determination] that ‘there is, in effect, probable cause to  
28 submit the proposal to members of the class and to hold a full-scale hearing on its fairness.’” *California*



1 *v. Levi Strauss & Co.* (1986) 41 Cal. 3d 460, 485 (Bird, C.J., concurring) (quoting Manual for Complex  
2 Litigation § 1.46 (2d ed. 1982)).

3 Preliminary approval is warranted where, as here, “the proposed settlement appears to be the  
4 product of serious, informed, noncollusive negotiations” and “falls within the range of possible  
5 approval.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (internal  
6 citation and quotation marks omitted); accord *Cho v Seagate Tech. Holdings Inc.* (2009) 177 Cal. App. 4<sup>th</sup>  
7 734, 743 (observing that a court must “reach a reasoned judgment that the agreement is not the product  
8 of fraud or overreaching by, or collusion between, the negotiating parties”).<sup>3</sup>

9 This Court’s assessment of a proposed settlement is to be informed by two general principles.  
10 First, “voluntary conciliation and settlement are the preferred means of dispute resolution.” *7-Eleven*  
11 *Owners for Fair Franchising v. Southland Corp* (2000) 85 Cal. App. 4<sup>th</sup> 1135, 1151 (quoting *Officers for*  
12 *Justice v. Civil Service Comm’n of City & Cty. of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982)). “This is  
13 especially true in complex class action litigation.” *Id.* (quoting *Officers for Justice*, 688 F.2d at 625).  
14 Second, “[d]ue regard . . . should be given to what is otherwise a private consensual agreement between  
15 the parties.” *Id.* at 1145 (quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4<sup>th</sup> 1794, 1801); see also *Low*  
16 *v. Trump Univ., LLC*, (S.D. Cal. 2017) 246 F. Supp. 3d 1295, 1302 (“Where both Parties are  
17 represented by experienced counsel, the recommendation of experienced counsel to adopt the terms of  
18 the proposed settlement is entitled to great deal of weight.” (internal citation and quotation marks  
19 omitted)), *aff’d*, 881 F.3d 1111 (9th Cir. 2018).

### 20 **III. THE SETTLEMENT MEETS ALL REQUIREMENTS FOR APPROVAL**

#### 21 **A. The Settlement Class**

22 The Settlement Class is defined as:

23 All individuals who performed content moderation work for  
24 Facebook in California, Arizona, Texas, or Florida as an employee or  
25 subcontractor of one or more of Facebook’s vendors from

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26 <sup>3</sup> Ultimately, final approval involves a determination that the settlement is “fair and reasonable in  
27 relation to the range of possible results further litigation might have produced, including . . . zero or  
28 minimal recovery of damages by class members.” *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4<sup>th</sup> 43, 55.  
Final approval is appropriate where “the class settlement is within the ‘ballpark’ of reasonableness.”  
*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4<sup>th</sup> 116, 133.

1                   September 15, 2015 to the date of preliminary approval of the  
2                   proposed class settlement.

3                   The Settlement Class fulfills the community of interest requirement for certification of a class  
4                   for settlement purposes. *See Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4<sup>th</sup> 429, 435. “The community of  
5                   interest requirement involves three factors: (1) predominant common questions of law or fact; (2) class  
6                   representatives with claims or defenses typical of the class; and (3) class representatives who can  
7                   adequately represent the class.” *Id.* (quoting *Richmond v. Dart Indus., Inc.* (1981) 29 Cal. 3d 462, 470 (*en*  
8                   *banc*)). All three requirements are satisfied here. Although Facebook denies Plaintiffs’ allegations and  
9                   denies that its conduct violates California law, Facebook has stipulated to the provisional certification  
10                  of a class for settlement purposes.

11                  First, common questions of law and fact predominate. “As a general rule if the defendant’s  
12                  liability can be determined by facts common to all members of the class, a class will be certified even if  
13                  the members must individually prove their damages.” *Hicks v. Kaufman & Broad Home Corp* (2001) 89  
14                  Cal. App. 4<sup>th</sup> 908, 916 (citing *Emp’t Dev. Dep’t. v. Superior Court* (1981) 30 Cal. 3d 256, 266); *accord*,  
15                  *Knapp v. AT & T Wireless Services, Inc.* (2011) 195 Cal. App. 4<sup>th</sup> 932, 941. Here, questions of law and fact  
16                  common to proposed settlement class members predominate over any individualized questions. These  
17                  common questions include whether Facebook failed to provide Class Members with a safe review  
18                  platform and a safe working environment, and whether that failure subjected Class Members to an  
19                  elevated risk of injury including psychological trauma. The Class Members were employed by third-  
20                  party vendors to review content on behalf of Facebook, using a review platform provided by Facebook.  
21                  Thus, the fundamental factual question before the Court is whether Facebook’s conduct, to which all  
22                  Class Members were subjected, increased their risk of injury such that the need for medical treatment  
23                  was a reasonably necessary consequence of that conduct.

24                  Second, Plaintiffs’ claims are typical of the Class because they arise from the same event,  
25                  practice, or course of conduct giving rise to the claims of the other Class members and are based on the  
26                  same legal theories. *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46–47. Here, Plaintiffs—like all Class  
27                  Members—allege that Facebook unlawfully failed to provide them with a safe workplace. Plaintiffs—  
28

1 like all Class Members—seek relief that includes treatment for injuries caused by Facebook’s conduct  
2 and an injunction requiring business practice enhancements going forward.

3 Third, Plaintiffs are adequate class representatives. Adequacy of representation is established  
4 where plaintiffs are represented by qualified counsel and “plaintiffs’ interests are not antagonistic” to  
5 those of the class. *McGhee v. Bank of Am* (1976) 60 Cal. App. 3d 442, 450–51. Here, Plaintiffs know of no  
6 conflicts among themselves and the Class. Plaintiffs’ counsel are experienced in class action litigation  
7 and have litigated this matter in the best interests of the class. *See Williams Decl.* ¶¶ 3-8; *Charest Decl.*  
8 ¶¶ 3-7.

9 For these reasons, an order certifying a provisional settlement class pursuant to C.R.C. 3.769(d)  
10 is appropriate.

11 **B. The Settlement Fund for Medical Treatment and Damages Payments**

12 As detailed more fully in the Settlement Agreement, Facebook has agreed to deposit a non-  
13 reversionary payment of \$52 million into a settlement fund as compensation for the release of the Class  
14 Members’ claims. *See Settlement Agreement* § 3.1. That payment, which will be made within fifteen  
15 days after the Effective Date of the Settlement, will also cover any award for attorneys’ fees and  
16 expenses, service awards to the class representatives, and settlement administration costs. *Id.* §§ 3.1,  
17 11.1 & app. A, § 1.

18 The parties have agreed that every Class Member will receive a single payment of \$1,000 that  
19 the Class Member may use for medical diagnostic screenings. *Id.* app. A, § 2. A Class Member  
20 diagnosed with a Qualifying Diagnosis, such as PTSD, will receive a Medical Treatment Payment. *Id.*  
21 app. A, § 5. A Class Member diagnosed with a Qualifying Diagnosis will also have the option of  
22 submitting a claim for an Other Damages Payment (*i.e.*, further payment for consequential and other  
23 damages the Class Member contends were caused by content moderation work for Facebook). *Id.* app.  
24 A, § 6. In exchange for an Other Damages Payment, these Class Members will give Facebook a full  
25 release of all claims arising from or relating to the conduct alleged in this action. *Id.* § 6.7 & app. A, § 6.  
26 The Other Damages Payments will be tiered to reflect the amount of damages allegedly suffered, the  
27 strength of the alleged causal connection to Facebook’s conduct, and the strength of any supporting  
28 documentation a Class Member submits; the highest-tier Other Damages Payment is capped at

1 \$50,000. *Id.* app. A, § 6.1. Class Members who do not submit claims for Other Damages Payments will  
2 retain their right to assert individual Other Damages Claims in a streamlined arbitration but will waive  
3 the ability to assert those claims on a class or aggregated basis or in court. *Id.* §§ 6.5, 6.6. The allocation  
4 plan proposed by Plaintiffs is designed with the goal that no funds remain following disbursements to  
5 Class Members, but if any funds do remain, the plan provides that they will be redistributed to all Class  
6 Members if sufficient funds remain or donated to a *cy près* recipient to be approved by this Court if  
7 funds are not sufficient to justify the added expense of redistribution. *Id.* app. A, §§ 7, 8. Any Class  
8 Member who accepts such a residual distribution also will give Facebook a full release of all claims  
9 arising from or relating to the conduct alleged in this action.

### 10 C. Injunctive Relief

11 Although Facebook denies Plaintiffs' allegations and denies that its conduct violates California  
12 law, the parties have agreed to additional non-monetary considerations in the form of business practice  
13 enhancements to address Plaintiffs' concerns. These remedies were evaluated by Plaintiffs' counsel in  
14 conjunction with retained experts in the treatment of individuals exposed to trauma to track best  
15 industry practices. The safeguards plan developed with these experts' input consists of: (1) tooling  
16 enhancements designed to provide Content Moderators with more control over how they view content  
17 to help mitigate the potential effects of viewing graphic or disturbing content; (2) training and support  
18 designed to help Content Moderators build resilience and learn to cope with the stress of viewing  
19 graphic or disturbing content; and (3) providing coaching and other support by licensed mental health  
20 counselors for those Content Moderators who need it. Among other things, Facebook has agreed to  
21 require that Facebook Vendors in the United States implement the following business practice  
22 enhancements within 60 days after the Effective Date of the Settlement:

- 23 • Retain clinicians who are licensed, certified, and experienced in the area of mental  
24 health counseling in a number sufficient to ensure coverage during all shift hours for  
25 Content Moderator review projects involving regular exposure to graphic and  
26 objectionable content, Settlement Agreement § 5.1.1(i);
- 27 • Conduct resiliency pre-screening and assessments as part of Content Moderators'  
28 recruitment and hiring processes, *id.* § 5.1.1(ii);

- 1           • Make individual one-on-one coaching sessions available to Content Moderators within  
2           the first month of onboarding and throughout employment and prioritize scheduling  
3           those sessions within one week or less, *id.* § 5.1.1(iii).
- 4           • Make group wellness sessions available to Content Moderators on a monthly basis, *id.* §  
5           5.1.1(iv);
- 6           • Make available weekly one-on-one coaching or wellness sessions for Content  
7           Moderators on projects involving regular exposure to graphic and objectionable content,  
8           each session lasting a minimum of thirty minutes, *id.* § 5.1.1(v);
- 9           • Ensure that Content Moderators on projects involving regular exposure to graphic and  
10          objectionable content who request to speak with a clinician on an expedited basis can do  
11          so within the next working day, *id.*;
- 12          • Provide Content Moderators with clear guidelines for how and when they may remove  
13          themselves from a specific type of content, *id.* § 5.1.1(vi);
- 14          • Provide information regarding these psychological support measures and resources to  
15          Content Moderators during onboarding and during ongoing resiliency training, *id.* §  
16          5.1.1(vii);
- 17          • Post information regarding these psychological support measures at every Content  
18          Moderator’s workstation, *id.* § 5.1.1.(viii); and
- 19          • Provide information for reporting Vendor violations of these business practice  
20          enhancements, *id.* § 5.1.3.

21           In addition, Facebook has agreed to implement standardized resiliency requirements across all  
22   U.S. Facebook Vendors, *id.* § 5.1.2(i), to require that U.S. Facebook Vendors submit to both formal  
23   audits and unannounced on-site compliance reviews, *id.* § 5.1.2(ii), and to allow Content Moderators to  
24   use Facebook’s whistleblower hotline to report Vendor’s failure to implement these business practice  
25   enhancements, *id.* § 5.1.3.

26           Facebook also will continue to roll out a suite of Well-Being Preference tools on the Single  
27   Review Tool platform used by Content Moderators. *Id.* §§ 5.1.5–.7. This will allow Content Reviewers  
28   to change default settings according to their preferences to mitigate any exposure to graphic or

1 disturbing material, including:

- 2 • Viewing images in black and white, *id.* § 5.1.5(i);
- 3 • Blurring images, *id.* § 5.1.5(ii);
- 4 • Blocking faces within images posted to Facebook, *id.* § 5.1.5(iii);
- 5 • Blurring video previews, *id.* § 5.1.5(iv);
- 6 • Auto-muting videos on start, *id.* § 5.1.5(v);

7 Facebook also will continue to roll out other tooling enhancements, including:

- 8 • The ability to preview videos using thumbnail images when technically feasible, *id.* §  
9 5.1.6(i); and
- 10 • Default settings preventing automatic video playback, *id.* § 5.1.6(ii).

11 These business practice and tooling enhancements are designed to mitigate the effects of  
12 exposure to graphic or objectionable material. These measures were evaluated by Plaintiffs' counsel  
13 with significant input from two nationally recognized experts in posttraumatic stress. Sonya Norman,  
14 Ph.D., is the Director of the PTSD Consultation Program at the VA National Center for PTSD and has  
15 authored more than 100 publications related to PTSD and associated problems. Patricia Watson, Ph.D.,  
16 is a Senior Educational Specialist for the VA National Center for PTSD, where she has specialized in  
17 early intervention and resilience since 1998 and has co-authored several field guides for handling  
18 trauma-induced stress, developing resilience, and recovering from traumatic events; these guides have  
19 been used by combat soldiers, firefighters, emergency services personnel, law enforcement  
20 professionals, and nurses. For over a year, Drs. Norman and Watson advised Plaintiffs' counsel  
21 regarding the types of business practice enhancements and resiliency measures that would appropriately  
22 address the wrongdoing alleged by Plaintiffs. <sup>4</sup>

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24 <sup>4</sup> See Declaration of Sonya Norman, Ph.D. in Support of Plaintiffs' Motion for (1) Preliminary Approval  
25 of Settlement; (2) Provisional Certification of Settlement Class; (3) Appointment of Class Counsel; (4)  
26 Approval of Notice Plan; (5) Approval of Settlement Administrator; and (6) Approval of Belaire Notice,  
27 ¶ 2 ("Norman Decl."); Declaration of Patricia Watson, Ph.D. in Support of Plaintiffs' Motion for (1)  
28 Preliminary Approval of Settlement; (2) Provisional Certification of Settlement Class; (3) Appointment  
of Class Counsel; (4) Approval of Notice Plan; (5) Approval of Settlement Administrator; and (6)  
Approval of Belaire Notice, ¶ 2 ("Watson Decl.").

1 **IV. THE SETTLEMENT IS FAIR AND REASONABLE**

2 To evaluate the fairness of a class action settlement, California courts consider “the strength of  
3 plaintiffs’ case; the risk, expense, complexity[,] and likely duration of further litigation; the risk of  
4 maintaining class action status through trial; the amount offered in settlement; the extent of discovery  
5 completed and the stage of the proceedings; the experience and views of counsel; the presence of a  
6 governmental participant; and the reaction of the class members to the proposed settlement.” *Reed v.*  
7 *United Teachers L.A.*, (2012) 208 Cal. App. 4<sup>th</sup> 322, 336. While an agreement reached under these  
8 circumstances presumably will be fair to all concerned, particularly when few of the affected class  
9 members express objections, in the final analysis it is the court that bears the responsibility to ensure  
10 that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the  
11 claims being released, discounted by the risks and expenses of attempting to establish and collect on  
12 those claims by pursuing the litigation. *Kullar*, 168 Cal. App. 4<sup>th</sup> at 129.

13 **A. The Settlement was reached through informed and non-collusive negotiations.**

14 “[A] presumption of fairness exists where . . . [a] settlement is reached through arm’s-length  
15 bargaining.” *Wershba*, 91 Cal. App. 4<sup>th</sup> at 245 (quoting *Dunk*, 48 Cal. App. 4<sup>th</sup> at 1802; *see also Clark v.*  
16 *Am. Residential Servs. LLC* (2009) 175 Cal. App. 4<sup>th</sup> 785, 799 (quoting *Dunk*, 48 Cal. App. 4<sup>th</sup> at 1802).  
17 Here, the settlement was achieved after nearly two years of hotly contested litigation and after three  
18 daylong mediation sessions overseen by the Hon. Rebecca Westerfield (Ret.), a JAMS mediator with  
19 significant experience resolving complex cases. *See Williams Decl.* ¶ 7-8; *Charest Decl.* ¶ 6-7; *see also*  
20 *Declaration of Hon. Rebecca Westerfield (Ret.)*. These negotiations were informed by the opinions and  
21 views of Drs. Norman and Watson with whom Plaintiffs consulted throughout the process to ensure that  
22 the relief agreed to was adequate to address the Class Members’ health needs. *See Norman Decl.* ¶ 3;  
23 *Watson Decl.* ¶ 3.

24 **B. Sufficient discovery and investigation have been completed to warrant settlement.**

25 A court must “receive and consider enough information about the nature and magnitude of the  
26 claims being settled, as well as the impediments to recovery, to make an independent assessment of the  
27 reasonableness of the terms to which the parties have agreed.” *Kullar*, 168 Cal. App. 4<sup>th</sup> at 133. Here,  
28

1 the parties have engaged in substantial discovery regarding certification, merits, and how Facebook’s  
2 (and its Vendor’s) practices impacted Class Members.

3 The extensive discovery in this matter included Plaintiffs’ responses to Facebook’s  
4 interrogatories and production of documents. Williams Decl. ¶ 6; Charest Decl. ¶ 5. In addition,  
5 Plaintiffs Elder and Ramos were deposed by Facebook. Charest Decl. ¶ 5. Class Counsel fought  
6 aggressively to obtain relevant discovery from Facebook, meeting and conferring with Facebook’s  
7 counsel on numerous occasions, including two sessions at counsel’s office in Palo Alto in which Class  
8 Counsel spoke directly with Facebook’s IT personnel in an attempt to come to a proper understanding  
9 of Facebook’s data management systems and how they bear on the issues at stake in this litigation.  
10 Williams Decl. ¶ 6. As a result, Plaintiffs obtained extensive discovery from Facebook, permitting them  
11 to thoroughly evaluate the strength of the case and the risks associated with continued litigation. *Id.*;  
12 Charest Decl. ¶ 5. In response to document requests served by Plaintiffs, Facebook produced—and  
13 Plaintiffs have thoroughly reviewed—approximately 55,000 documents. Williams Decl. ¶ 6. Plaintiffs  
14 also deposed the vice president of operations at Facebook. *Id.*

15 **C. The costs, risks, and likely length of trial and appeal favor preliminary approval.**

16 In assessing the settlement, any possible recovery should be “discounted by the risks and  
17 expenses of attempting to establish and collect on those claims by pursuing the litigation.” *Kullar*, 168  
18 Cal. App. 4<sup>th</sup> at 129. Consideration of the costs, risks, and length of ongoing discovery, motions practice,  
19 a trial, post-trial proceedings, and subsequent appeal further confirm that the settlement is well within  
20 the range of possible approval.

21 The settlement is significant on its own terms, but even more so when measured against the  
22 costs, risks, and length of trial and appeal. It provides value by securing immediate relief that otherwise  
23 would not have been available for years. *Sykes v. Harris*, No. 09 Civ. 8486 (DC), 2016 WL 3030156, at  
24 \*14 (S.D.N.Y. 2016) (“[M]uch of the value of a settlement lies in the ability to make funds available  
25 promptly.” (internal citation and quotation marks omitted)); *In re Am. Bank Note Holographics, Inc.*, 127  
26 F. Supp. 2d 418, 425 (S.D.N.Y. 2001) (“Settlement also confers an immediate benefit. . . . Add on time  
27 for a trial and appeals, and the class would have seen no recovery for years. Class counsel properly  
28 considered this factor as well.”). The relative speed of the proposed relief, as compared to the estimated



1 time to take this case to trial and through appeal, is especially important in a case involving mental  
2 health and well-being.

3 **D. The proposed Notice and Notice Plan adequately inform Class Members of the**  
4 **Settlement terms and their rights.**

5 Courts have broad discretion in fashioning an appropriate notice program so long as it satisfies  
6 all due process requirements. Cal. Civ. Code § 1781; *Wershba*, 91 Cal. App. 4<sup>th</sup> at 235; C.R.C. 3.769. The  
7 actual form and contents of the notice are within the Court’s discretion. *Wershba*, 91 Cal. App. 4<sup>th</sup> at  
8 251. Notice “must contain an explanation of the proposed settlement and procedures for class members  
9 to follow in filing written objections to it and in arranging to appear at the settlement hearing and state  
10 any objections to the proposed settlement.” Cal. Rule of Court 3.769(f). The notice must “fairly apprise  
11 the . . . members of the class of the terms of the proposed settlement and of the options that are open to  
12 them in connection with [the] proceedings.” *Cellphone Termination Fee Cases*, 186 Cal. App. 4<sup>th</sup> at 1393  
13 (quoting *7-Eleven*, 85 Cal. App. 4<sup>th</sup> at 1164).

14 The proposed Notice<sup>5</sup> satisfies these requirements. It states in plain language: (1) the nature of  
15 the action; (2) the definition of the Class; (3) the claims; (4) the basic terms of the agreement; (5) the  
16 ability to enter an appearance through counsel if a Class Member so desires; (6) how to object to the  
17 settlement; (7) the time and manner for objecting; (8) the binding effect of a Class judgment and the  
18 terms of release; (9) the claim filing process and a description of the allocation plan; and (10) the  
19 maximum requests for an award of attorneys’ fees, reimbursement of costs, and a service award to the  
20 named Plaintiffs for their work on behalf of the Class. The Notice directs Class Members to a  
21 settlement website and provides contact information for the settlement administrator. The notice thus  
22 “provide[s] all of the detail required by statute or court rule, in a highly accessible form” and is  
23 consistent with notices that have been approved in other cases. *See Chavez*, 162 Cal. App. 4<sup>th</sup> at 57–58  
24 (approving notice and holding that directing class members to a website “was a perfectly acceptable  
25 manner of giving notice”).<sup>6</sup>

26 \_\_\_\_\_  
27 <sup>5</sup> The proposed Long-Form Notice, Short-Form Notice, and Claim Form are attached as Exhibits 2 to 4.

28 <sup>6</sup> *See also Cellphone Termination Fee Cases*, 186 Cal. App. 4<sup>th</sup> at 1393 (approving notice where the long-  
form notice explained that payments would be made on a pro rata basis and explained “the total amount  
of the common fund recovery, the nature of the costs and fees to be deducted from the common

1 Plaintiffs propose the following plan for providing Notice to Class members within 30 days after  
2 entry of an Order granting preliminary approval of the Settlement:

3 ***E-mail and Postcard Notice.*** Plaintiffs propose that the Settlement Administrator provide Notice  
4 though a combination of e-mail and postcard notice substantially in the form attached as Exhibit 3. E-  
5 mail notice will be provided to Class Members for whom Facebook’s Vendors have an e-mail address.  
6 Postcard notice will be provided to Class Members for whom Facebook’s Vendors do not have an e-mail  
7 address; for those Class Members, postcards will be sent to the last known mailing address reflected in  
8 the Vendors’ systems as updated through the National Change of Address (“NCOA”) database. The e-  
9 mail and postcard notices will provide a link to, or the website address of, the Settlement Website and  
10 will provide a telephone number that Class Members can call for information about the Settlement.

11 ***Settlement Website.*** The Settlement Administrator will publish a traditional “long form” notice  
12 substantially in the form attached hereto as Exhibit 2 through the creation of a Settlement Website,  
13 which will be maintained by the Settlement Administrator in the period beginning three (3) business  
14 days before Notice is first disseminated and ending thirty (30) days after the later of (a) the expiration  
15 date of any checks for Residual Distributions; and (b) the expiration date of any checks for Other  
16 Damages Payments or, if no such checks are mailed, 120 days after any electronic transfers of Other  
17 Damages Payments. The Settlement Website will (a) notify Class Members of their rights to object to  
18 this Agreement or to opt out of the Settlement Class; (b) notify Class Members that no further notice  
19 will be provided to them that the Settlement has been approved; (c) inform Class Members that they  
20 should monitor the Settlement Website for further developments; (d) inform Class Members of their  
21 right to attend the Fairness Hearing conducted by the Court; (e) include any required notice of any  
22 motion(s) made by Class Counsel for any Attorneys’ Fees Award and/or any Class Representative  
23 Service Award; (f) include a copy of the Settlement Agreement, the Class Notice, and any other  
24 information or materials required by a Class Member to object to the Settlement Agreement or to opt  
25 out of the Settlement Class; (g) include copies of the material documents that are filed with the Court in

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fund,” and “[t]he settlement Web site included the “‘Plan of Allocation,’” detailing how payments  
would be made to class members”).

1 connection with the Settlement; and (h) include any other information or materials that may be required  
2 by the Court.

3 **Phone Line.** The Settlement Administrator will establish a phone line that Class Members can  
4 call for answers to questions about the Settlement. The telephone line will be maintained by the  
5 Settlement Administrator in the period beginning three (3) business days before Notice is first  
6 disseminated until one year after the Effective Date of the Settlement.

7 **Settlement Administrator.** Class Counsel request that Epiq Class Action & Claims Solutions,  
8 Inc. (“Epiq”) be appointed as the Settlement Administrator to administer the Settlement, *i.e.*, providing  
9 notice to the Class and administering the Initial Payment, the Medical Treatment Payments, the  
10 Residual Distributions (if any), and the distribution (if any) to the *cy près* recipient. Epiq is an  
11 experienced and well-regarded settlement administrator who has administered numerous settlements  
12 involving complex and sensitive claims.

13 The proposed form of notice adequately explains the settlement terms and options available to  
14 class members.

15 **V. THE PROPOSED BELAIRE NOTICE PROTECTS THE PRIVACY INTEREST OF**  
16 **SETTLEMENT CLASS MEMBERS**

17 Plaintiffs, on behalf of themselves and the proposed Settlement Class, request that the Court  
18 grant the [Proposed] Order Regarding *Belaire* Notice to Proposed Settlement Class Members, which  
19 creates a procedure to disseminate the [Proposed] *Belaire* Notice to Settlement Class Members. The  
20 [Proposed] *Belaire* Notice gives Class Members the option of objecting to the disclosure of their names  
21 and contact information to Class Counsel and Defense Counsel, thereby protecting Class Members’  
22 right to privacy. *See Belaire-West Landscape, Inc. v. Superior Court* (2007) 149 Cal. App. 4th 554, 556.  
23 This notice and opportunity to object shall be disseminated in connection with the notice of the  
24 Settlement itself and may be incorporated into the form(s) of notice approved for distribution by the  
25 Court in its Preliminary Approval Order.  
26  
27  
28

1           **VI. THE PROPOSED FEE AND EXPENSE AWARD IS FAIR AND REASONABLE**

2           **A. Class representatives' proposed service awards.**

3           The settlement agreement provides for a class representative service awards to Plaintiffs, subject  
4 to the Court's approval, in recognition of their efforts and work in prosecuting the class action. If  
5 preliminary approval is granted, Plaintiffs will submit declarations explaining the time and input  
6 Plaintiffs contributed to the case as well as the risks they faced in doing so.

7           **B. Class Counsel's request for fees and expenses.**

8           Class Counsel has thoroughly investigated and litigated this action and will file a motion for  
9 expenses and attorneys' fees to be approved by the Court. Class Counsel will seek no more than \$17  
10 million in fees and expenses; this is equivalent to 32.7% of the recovery for the Class. This amount is  
11 reasonable in light of the experience of Class Counsel, the contingent risk they undertook, the novelty of  
12 the claims pursued (and the attendant uncertainty of success), and the overwhelmingly positive results  
13 obtained for the Class Members, including medical screening and treatment, monetary relief, and  
14 injunctive relief.

15           **VII. SETTING A SCHEDULE FOR FINAL APPROVAL IS APPROPRIATE**

16           Upon granting preliminary approval to a class settlement, a court's order must include the time,  
17 date, and place of the final approval hearing and any other matters deemed necessary for the proper  
18 conduct of a settlement hearing. C.R.C. 3.769(e). The parties respectfully propose the following  
19 schedule for the final approval hearing:  
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Event	Proposed Deadline
Notice campaign to begin, including website, mailing and digital notice	(30 days from date of entry of preliminary approval)
Last day to file motion for attorneys' fees, costs, reimbursement of expenses, and service awards	(14 days before the objection deadline)
Last day for Class members to object to and/or request exclusion from the Class	(30 days from Notice)
Last day for Plaintiffs to file motion in support of final approval of the Settlement and to respond to objections	(14 days after objection deadline)
Fairness hearing	_____, at _____ a.m.

### VIII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant the instant motion in its entirety and preliminarily approve the Settlement Agreement.

Dated: May 8, 2020

Respectfully Submitted,

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