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16 Class Counsel

17 UNITED STATES DISTRICT COURT  
 18 SOUTHERN DISTRICT OF CALIFORNIA

19 SONNY LOW, J.R. EVERETT and  
 20 JOHN BROWN, on Behalf of  
 Themselves and All Others Similarly  
 21 Situated,

22 Plaintiffs,

23 vs.

24 TRUMP UNIVERSITY, LLC, a New  
 York Limited Liability Company and  
 25 DONALD J. TRUMP,

26 Defendants.

No. 3:10-cv-0940-GPC(WVG)

CLASS ACTION

JOINT MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT

CTRM: 2D

JUDGE: Hon. Gonzalo P. Curiel

27 [Caption continued on following page.]

28

1 ART COHEN, Individually and on  
2 Behalf of All Others Similarly Situated,

3 Plaintiff,

4 vs.

5 DONALD J. TRUMP,

6 Defendant.

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) No. 3:13-cv-02519-GPC-WVG  
) CLASS ACTION

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1 **I. INTRODUCTION**

2 After six-and-a-half-years of hard-fought litigation, and on the eve of trial, the  
3 Parties reached a global settlement to resolve not only these Actions, but also the New  
4 York Attorney General (“NYAG”) Action pending in New York state court since  
5 2013. The settlement terms are reflected in the Stipulation of Class Action Settlement  
6 which, along with its exhibits, is referred to as the “Agreement” and attached hereto as  
7 Exhibit 1.<sup>1</sup>

8 Under the Agreement, Trump University will pay \$25 million to settle these  
9 Actions and the NYAG Action without an admission or a finding of wrongdoing,  
10 liability, or fault. The Net Settlement Fund to be distributed to Eligible Class  
11 Members in these Actions is nearly \$21 million, which is expected to yield payments  
12 to Eligible Class Members, estimated to be half of what they paid for TU Live Events,  
13 less any refunds received.<sup>2</sup> And Class Counsel are providing their years of legal  
14 services to Plaintiffs and the Class Members on a *pro bono* basis, further increasing  
15 Class Member recoveries.

16 By any metric, this is a fair, adequate, and reasonable settlement. Both  
17 Plaintiffs and Defendants believe in the merits of their cases and compromised to  
18 reach this result. The outcome of the liability trial in the *Low* Action was uncertain;  
19 even if Plaintiffs prevailed, onerous individual damages proceedings would have  
20 followed for Class Members because damages were decertified. A decertification  
21 motion was pending in *Cohen*, and if Plaintiffs maintained certification, *Cohen* would  
22 require a second jury trial. Lengthy appeals were also likely to follow any judgment.  
23 This Settlement provides immediate relief to Class Members, who will not have to  
24 deal with uncertainty and wait through lengthy trials and appeals.

25 \_\_\_\_\_  
26 <sup>1</sup> Capitalized terms shall have the same meaning as set forth in the Agreement,  
unless otherwise noted.

27 <sup>2</sup> \$4 million will be paid to the NYAG to settle his action pending in New York state  
28 court and provide monetary relief to non-class members covered by that action.

1 The Parties request, therefore, that the Court grant their joint motion for  
2 preliminary approval, order the Class Notices to be sent out, and set a date and time  
3 for a fairness hearing pursuant to Federal Rule of Civil Procedure (“Rule”) 23(e)(2).

## 4 **II. RELEVANT PROCEDURAL BACKGROUND**

5 The procedural history of these Actions is extensive and well-known to the Court.  
6 Therefore, the Parties limit their recitation here to facts relevant to the issues at hand.

7 On April 30, 2010, a putative class action complaint was filed in the *Low*  
8 Action against TU for violations of certain state laws, seeking refunds and other relief.  
9 *See Low* Dkt. 1. Donald J. Trump (“Trump”) was named as an individual defendant  
10 on December 16, 2010. *See Low* Dkt. 41.

11 On August 12, 2011, the Parties in *Low* participated in a mandatory Early  
12 Neutral Evaluation Conference (“ENE”) before Magistrate Judge Gallo. *See Low* Dkt.  
13 79. All the parties, including Trump and the named plaintiffs at the time, attended  
14 along with Class Counsel and Defendants’ former counsel. The Parties exchanged  
15 settlement proposals as part of the ENE, but were unable to make progress toward  
16 settlement. Judge Gallo ordered discovery to commence in *Low*. *See Low* Dkt. 80.

17 On August 24, 2013, the NYAG filed an action in New York state court against  
18 TU, Trump, and other defendants for violations of New York law. *See The People of*  
19 *the State of New York by Eric T. Schneiderman, et al. v. The Trump Entrepreneur*  
20 *Initiative LLC, f/k/a Trump University LLC, et al.*, Dkt. No. 310 (Index No.  
21 451463/13) (N.Y. Sup. Ct. filed Aug. 24, 2013).

22 On October 18, 2013, a putative class action complaint was filed in the *Cohen*  
23 Action against Trump for violation of the Racketeer Influenced and Corrupt  
24 Organizations Act, seeking refunds and other relief. *See Cohen* Dkt. 1.

25 On February 21, 2014, the Court certified a class of TU Live Event purchasers  
26 in California, Florida, and New York in the *Low* Action. *See Low* Dkt. 298. On  
27 October 27, 2014, the Court certified an overlapping class of TU Live Event  
28 purchasers nationwide in the *Cohen* Action. *See Cohen* Dkt. 53.



1 On April 10, 2014, Class Counsel and Defendants' prior counsel participated in  
2 a telephonic ENE before Judge Gallo in *Cohen*. See *Cohen* Dkt. 25. Again, the  
3 Parties exchanged proposals but did not make meaningful progress toward settlement.  
4 Thus, Judge Gallo ordered discovery to commence in *Cohen*. See *Cohen* Dkt. 26.

5 On December 19, 2014, discovery closed in the *Low* Action. See *Low* Dkt. 349.

6 On March 12, 2015, Parties in both Actions attended a mandatory joint  
7 settlement conference before Judge Gallo. See, e.g., *Low* Dkt. 393. The Parties again  
8 exchanged proposals and submitted statements to Judge Gallo prior to the settlement  
9 conference. The Parties were again unable to reach a resolution.

10 In July 2015, discovery closed in the *Cohen* Action, with the exception of  
11 several depositions, including Trump's deposition, which was completed in  
12 January 2016. See *Cohen* Dkt. 58.

13 On September 18, 2015, the Court declined to decertify the Class in the *Low*  
14 Action, but decertified damages, and bifurcated damages issues from liability issues  
15 for purposes of trial. See *Low* Dkt. 418.

16 On September 21, 2015, the Court ordered a joint class notice ("Notice of  
17 Pendency") to be mailed to all potential Class Members in both Actions, providing  
18 them an opportunity to "opt-out" and ordering that "[a]ny Class Member who does not  
19 send a completed, signed request for exclusion to the Notice Administrator post-  
20 marked on or before the Opt-Out Deadline will be deemed to be a Member of the  
21 Class for all purposes and bound by all further orders and judgments of the Court."  
22 *Low* Dkt. 419 at 10-11; *Cohen* Dkt. 130 at 10-11. On November 16, 2015, the Opt-  
23 Out Deadline expired in both Actions. *Low* Dkt. 419 at 11; *Cohen* Dkt. 130 at 10.  
24 Thirteen (13) individuals filed formal opt-out requests, including three (3) late opt  
25 outs that were granted by this Court. See *Cohen* Dkt. 154-1; *Low* Dkt. 430-1.

26 During spring of 2016, the Parties engaged in informal settlement discussions  
27 under the auspices of the Honorable Daniel H. Weinstein (ret.). The Parties also  
28

1 participated in a settlement conference in the *Cohen* Action before Judge Gallo on  
2 March 29, 2016. *See Cohen* Dkt. 175. Again, the Parties failed to reach a resolution.

3 On August 2, 2016, the Court issued an order setting trial in the *Low* Action to  
4 begin on November 28, 2016. *See Low* Dkt. 502.

5 During the November 10, 2016 motions *in limine* hearing in the *Low* Action,  
6 the Court encouraged the Parties to explore a possible resolution with the assistance of  
7 the Honorable Jeffrey T. Miller, who had offered his services. *See* 11/10/16 Tr. at  
8 11:4-12:6. The Parties took up the Court, and Judge Miller, on the offer.

9 On November 16, 2016, Judge Miller oversaw an extended day of settlement  
10 negotiations. Counsel for the Class and for Defendants were present, with a  
11 representative of Defendants present in person and Plaintiffs available by phone.  
12 Representatives of the NYAG's office were also available by phone. At the end of the  
13 lengthy mediation session, the Parties reached an agreement on the basic framework  
14 for a global resolution of these Actions, and the NYAG Action. Thereafter, the  
15 Parties engaged in an intensive negotiation among themselves and with the NYAG's  
16 office, exchanging seven (7) different versions of the term sheet. The Parties' efforts  
17 resulted in a November 18, 2016 Term Sheet, which reflects the principal terms of the  
18 Parties' settlement of these Actions on a classwide basis, and a November 18, 2016  
19 Memorandum of Agreement between the defendants and the NYAG in the NYAG  
20 state action. *See* 11/18/16 Tr. at 2:15-7:2.

21 In the intervening weeks, the Parties have drafted, revised, and negotiated the  
22 Agreement and its six (6) exhibits. The exhibits to the Agreement include the two  
23 Class Notices, the Claim Form, the Preliminary Approval Order ("PAO"), Final  
24 Approval Order, and a Final Judgment. The Parties exchanged multiple drafts of the  
25 Agreement and all of its exhibits, and held many phone calls among themselves and  
26 with the NYAG and BBB before executing the Agreement on December 19, 2016.

27  
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1 **III. OVERVIEW OF THE SETTLEMENT**

2 The classwide Settlement of these Actions is straightforward and provides the  
 3 opportunity for Class Members to submit a simple Claim Form to receive an Award  
 4 for a significant portion of the price paid for TU Live Events. The Class Members  
 5 who are eligible for Awards under the Settlement fall within the definitions of the  
 6 overlapping Classes certified by this Court in the Actions. *Compare* Ex. 1 at ¶¶II.7,<sup>3</sup>  
 7 *with Low Dkt. 298 at 35, and Cohen Dkt. 53 at 22-23.* Accordingly, no additional  
 8 class certification is required for settlement purposes.

9 On or before January 18, 2017, TU will pay \$25 million into an Escrow  
 10 Account to fund the Settlement. ¶IV.A.1. As part of the Agreement, Trump is  
 11 personally guaranteeing that the full Settlement Amount will be paid by the Due Date.  
 12 ¶¶II.21, IV.A.4. In the Settlement, Defendants do not admit and there is no finding of  
 13 wrongdoing, liability, or fault whatsoever. ¶IX.2-3. Of the Settlement Amount,  
 14 \$21 million (less Service Awards and Taxes and Tax Expenses for the Escrow  
 15 Account) will be distributed to Eligible Class Members on a *pro rata* basis. ¶¶II.26,  
 16 III.1. Class Counsel will not seek any legal fees or costs, as they are providing their  
 17 legal services *pro bono*. ¶IX.1. Plaintiffs will seek Service Awards of up to \$15,000  
 18 for each Court-appointed class representative in the Actions. ¶IX.2. \$4 million will  
 19 be paid to the NYAG to settle his action pending in New York state court and provide  
 20 monetary relief to non-class members covered by that action, cover all the Notice and  
 21 Administration Expenses incurred for these Actions and the NYAG Action, and pay  
 22 any civil penalties and/or costs.<sup>4</sup> ¶IV.3.

23 Based on the total purchases by Class Members in the United States, and  
 24 depending on the claims rate, Eligible Class Members will receive Awards estimated  
 25 to be 50% of what they paid for the TU Live Events, less any refunds received. The

26 <sup>3</sup> All “¶\_\_\_\_” references are to the Stipulation.

27 <sup>4</sup> Any remainder will revert to the Net Settlement Fund for an additional distribution  
 28 to Eligible Class Members in these Actions.

1 Settlement provides that, within fifteen (15) days of this Court’s entry of the PAO, the  
2 Settlement Administrator will mail and email the Long-form Notice and Claim Form  
3 to all known Class Members based on the most current contact information available  
4 to the Parties, Epiq Systems (the “Notice Administrator”), the NYAG, and the  
5 Settlement Administrator. ¶¶II.8, 9, 23. The Settlement Administrator will also  
6 publish the Summary Notice within fifteen (15) days of the PAO in the national  
7 edition of USA Today. ¶II.48. The Class Notices will direct Class Members to the  
8 Settlement Website, where the Long-form Notice, the Agreement, the PAO, and other  
9 documents and information will be posted. ¶V.5. In addition, the Class Notices will  
10 advise Class Members of their rights and options, including the deadlines to submit a  
11 Claim Form, object, and/or notice their intent to appear at the Final Approval Hearing.  
12 ¶II.8. As the definition of the Class Members for purposes of the Settlement is the  
13 same as the overlapping Classes previously certified by this Court in the Actions, and  
14 as the Court previously ordered the dissemination of individual Notices of Pendency  
15 to all Class Members with ample opportunity to “opt out,” Class Members will not be  
16 given a second opportunity to do so. ¶VII.1.

17 Due to the passage of time and other factors, Trump University may not have  
18 100% complete purchase and refund data. Accordingly, the Settlement provides a  
19 simple, straightforward claims process by which Class Members may obtain an Award  
20 from the Settlement. The process for submitting a Claim Form is designed to be as  
21 easy as possible: the Claim Form is a one-page, simple questionnaire that Class  
22 Members may submit by mail, fax, email, or via the Settlement Website. ¶III.2 & Ex.  
23 A3. If there is documentation of purchase available in the Parties’ records, no further  
24 documentation will be required from the claimant. ¶III.6. If there is no  
25 documentation available that verifies purchase, the Settlement Administrator will  
26 contact the claimant to request documentation and remedy any deficiencies in the  
27 Claim Form. *Id.* This claims process imposes the least amount of burden, while  
28 ensuring that Awards only go to Eligible Class Members. In addition, the Settlement

1 Administrator will undertake best efforts to follow up with Eligible Class Members  
2 and ensure that their Award checks are cashed. If any money remains in the Net  
3 Settlement Fund after the initial distribution (due to uncashed checks past the stale  
4 date), the Settlement Administrator will make additional *pro rata* distributions to  
5 those Eligible Class Members who have cashed their Award checks, until the Net  
6 Settlement Fund is exhausted. ¶III.8.

7 To provide timely relief to Class Members, the Parties' proposed PAO provides  
8 that the Court will schedule the Final Approval Hearing one hundred (100) days from  
9 entry of the PAO, at its convenience.

#### 10 **IV. APPLICABLE LEGAL STANDARDS**

11 "The Ninth Circuit maintains a 'strong judicial policy' that favors the settlement  
12 of class actions." *Hart v. Colvin*, No. 15-cv-00623-JST, 2016 U.S. Dist. LEXIS  
13 155799, at \*13 (N.D. Cal. Nov. 9, 2016) (quoting *Class Plaintiffs v. Seattle*, 955 F.2d  
14 1268, 1276 (9th Cir. 1992)). First, though, the Court must "determine whether a  
15 proposed settlement is 'fundamentally fair, adequate and reasonable'" pursuant to  
16 Rule 23(e). *Dalton v. Lee Publ'ns, Inc.*, No. 08-CV-1072-GPC-NLS, 2014 U.S. Dist.  
17 LEXIS 148240, at \*3 (S.D. Cal. Oct. 17, 2014) (Curiel, J., presiding) (quoting *Staton*  
18 *v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003)). "The initial decision to approve or  
19 reject a settlement proposal is committed to the sound discretion of the trial judge."  
20 *Hart*, 2016 U.S. Dist. LEXIS 155799, at \*13 (quoting *Seattle*, 955 F.2d at 1276).

21 The *Manual for Complex Litigation* describes a three-step process for approving  
22 a class action settlement: (1) preliminary approval of the proposed settlement;  
23 (2) dissemination of notice of the settlement to class members; and (3) a final approval  
24 hearing. See *Manual for Complex Litigation* §21.63 (4th ed. 2004). "The Court's task  
25 at the preliminary approval stage is to determine whether the settlement falls 'within  
26 the range of possible approval.'" *Hart*, 2016 U.S. Dist. LEXIS 155799, at \*14  
27 (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal.  
28 2007)). "The proposed settlement must be 'taken as a whole, rather than the

1 individual component parts’ in the examination for overall fairness.” *Hart*, 2016 U.S.  
 2 Dist. LEXIS 155799, at \*15 (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026  
 3 (9th Cir. 1998)). “Courts do not have the ability to ‘delete, modify, or substitute  
 4 certain provisions’; the settlement ‘must stand or fall in its entirety.’” *Id.* (citing  
 5 *Hanlon*, 150 F.3d at 1026).

6 The Parties request that the Court take the first and second steps in the  
 7 settlement approval process by granting preliminary approval and ordering the  
 8 dissemination of the Class Notices to Class Members.

9 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE**  
 10 **SETTLEMENT**

11 **A. The Settlement Provides a Fair, Adequate, and Reasonable**  
 12 **Result for Class Members**

13 “Preliminary approval of a settlement is appropriate if ‘the proposed settlement  
 14 appears to be the product of serious, informed, non-collusive negotiations, has no  
 15 obvious deficiencies, does not improperly grant preferential treatment to class  
 16 representatives or segments of the class, and falls within the range of possible  
 17 approval.’” *Hart*, 2016 U.S. Dist. LEXIS 155799, at \*14 (quoting *Tableware*, 484 F.  
 18 Supp. 2d at 1079). “The proposed settlement need not be ideal, but it must be fair and  
 19 free of collusion, consistent with counsel’s fiduciary obligations to the class.” *See id.*  
 20 at \*14-\*15 (citing *Hanlon*, 150 F.3d at 1027). The Court considers:

21 (1) the strength of the plaintiffs’ case; (2) the risk, expense, complexity,  
 22 and likely duration of further litigation; (3) the risk of maintaining class  
 23 action status throughout the trial; (4) the amount offered in settlement;  
 24 (5) the extent of discovery completed and the stage of the proceedings;  
 25 (6) the experience and views of counsel; (7) the presence of a  
 26 governmental participant; and (8) the reaction of the class members to  
 27 the proposed settlement.

28 *Churchill Vill., L.L.C. v. GE*, 361 F.3d 566, 575-76 (9th Cir. 2004).

“Because some of these factors cannot be fully assessed until the Court  
 conducts a final fairness hearing, a full fairness analysis is unnecessary at this stage.”<sup>5</sup>

<sup>5</sup> Internal quotation marks, citations, and footnotes are omitted, and emphasis is  
 supplied, unless otherwise noted.

1 *Dalton*, 2014 U.S. Dist. LEXIS 148240, at \*4-\*5. “At the preliminary approval stage,  
2 a court need only review the parties’ proposed settlement to determine whether it is  
3 within the permissible ‘range of possible approval’ and thus, whether the notice to the  
4 class and the scheduling of a formal fairness hearing is appropriate.” *Id.* Moreover,  
5 because the Class Notices and CAFA Notice have not yet been sent out, the Class  
6 Members’ reactions and governmental participation are not yet known and, therefore,  
7 will be addressed by the Parties in the final approval papers.

### 8 **1. Amount Offered in Settlement**

9 The Settlement Amount represents a fair, adequate, and reasonable result for  
10 Class Members. “As explained by the Supreme Court, ‘[n]aturally, the agreement  
11 reached normally embodies a compromise; in exchange for the saving of cost and  
12 elimination of risk, the parties each give up something they might have won had they  
13 proceeded with litigation.’” *Capps v. Law Offices of Peter W. Singer*, No. 15-cv-  
14 02410-BAS(NLS), 2016 U.S. Dist. LEXIS 161137 (S.D. Cal. Nov. 21, 2016) (quoting  
15 *United States v. Armour & Co.*, 402 U.S. 673, 681 (1971)). Courts routinely approve  
16 settlements that provide a far lower rate of recovery than the Settlement does here.  
17 *See, e.g., Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 256 (N.D. Cal. 2015)  
18 (approving class settlement of 11%-27% recovery); *In re Toyota Motor Corp.*  
19 *Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 8:10ML  
20 02151 JVS (FMOx), 2013 U.S. Dist. LEXIS 123298, at \*300 (C.D. Cal. July 24,  
21 2013) (finding consumer settlement with 42% recovery an “exceptional result”);  
22 *Castillo v. ADT LLC*, No. 2:15-383 WBS DAD, 2016 U.S. Dist. LEXIS 151423, at  
23 \*22 (E.D. Cal. Nov. 1, 2016) (33% recovery “well within a reasonable range”).

24 Here, based on the total purchases of Class Members in the United States, and  
25 depending on the claims rate, Eligible Class Members will receive payments estimated  
26 to be half of what they spent on the TU Live Events, less any refunds received.  
27 Nearly 6,000 Class Members (net of refunds) purchased the \$1,495 3-day Fulfillment  
28 seminar, and approximately 1,000 Class Members (net of refunds) purchased an Elite

1 package, including an in-person mentorship, ranging from \$9,995 to \$34,995. *Low*  
2 Dkt. 139, Ex. 6, ¶6.d; *Cohen* Dkt. 39-2, Ex. 40, ¶6.d. With a nearly \$21 million Net  
3 Settlement Fund, this translates into significant payments to Eligible Class Members  
4 whether they purchased the \$1,495 3-day Fulfillment, the \$34,995 Gold Elite, both, or  
5 something in between. By any metric, this recovery is fair, reasonable, and adequate.

6 **2. The Strength of Plaintiffs' Case and the Risk,**  
7 **Expense, and Delay of Further Litigation, and Risk of**  
8 **Decertification**

8 While Plaintiffs are confident in the strength of their class claims, Defendants  
9 were confident in their defenses. Plaintiffs acknowledge the risk that they would be  
10 unable to obtain a jury verdict against Defendants, and TU's financial condition meant  
11 collecting any judgment against it would be difficult. Further, Plaintiffs faced the risk  
12 that, even if they won on liability in the *Low* Action, they may not persuade the jury  
13 that they were entitled to damages. Even if they prevailed, Class Members faced the  
14 risk, expense, and delay of having to litigate their damages individually, which could  
15 have taken years. Even then, Plaintiffs faced the risk of lengthy appeals after the  
16 damages proceedings were completed, holding up any recovery for Class Members for  
17 several more years. Finally, there was a possibility that the *Cohen* Action could be  
18 stayed during Trump's presidency (or some portion thereof); that the Court would  
19 decide to decertify *Cohen* in whole or part, presenting further risks and delays; and  
20 that Plaintiffs could not obtain a jury verdict in their favor in *Cohen*.

21 Accordingly, "Plaintiffs' strong claims are balanced by the risk, expense, and  
22 complexity of their case, as well as the likely duration of further litigation." *In re*  
23 *Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, MDL No.  
24 2672 CRB (JSC), 2016 U.S. Dist. LEXIS 148374, at \*748 (N.D. Cal. Oct. 25, 2016).  
25 "Settlement is favored in cases [such as this one] that are complex, expensive, and  
26 lengthy to try." *Id.* (citing *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 966 (9th Cir.  
27 2009)). Thus, these risk and delay factors support approval of the Settlement.

28



1                   **3. The Extent of Discovery Completed, and the Stage of**  
2                   **the Proceedings**

3                   Where, as here, extensive discovery was taken, the parties thoroughly litigated  
4 the various issues, and trial is near “weigh[] in favor of the proposed settlement.”  
5 *Cervantez v. Celestica Corp.*, No. EDCV 07-729-VAP (OPx), 2010 U.S. Dist. LEXIS  
6 78342, at \*13 (C.D. Cal. July 6, 2010). The Parties took extensive discovery for four  
7 years, and the Court ruled on multiple motions for class certification and summary  
8 judgment in the Actions. *Low* Dkts. 298, 423; *Cohen* Dkts. 53, 268. The Parties were  
9 days from delivering their opening statements at the liability phase of trial in *Low*.  
10 Thus, as in *Cervantez*, this factor weighs strongly in favor of approving the proposed  
11 Settlement. *See* 2010 U.S. Dist. LEXIS 78342, at \*13.

12                   **4. The Experience and Views of Counsel**

13                   “The recommendation of experienced counsel in favor of settlement carries a  
14 ‘great deal of weight’ in a court’s determination of the reasonableness of a  
15 settlement.” *Riker v. Gibbons*, No. 3:08-cv-00115-LRH-VPC, 2010 U.S. Dist. LEXIS  
16 120841, at \*14-\*16 (D. Nev. Oct. 28, 2010) (citing *In re Immune Response Sec. Litig.*,  
17 497 F. Supp. 2d 1166, 1174 (S.D. Cal. 2007)). ““The weight accorded to the  
18 recommendation of counsel is dependent on a variety of factors; namely, length of  
19 involvement in litigation, competence, experience in the particular type of litigation,  
20 and the amount of discovery completed.”” *Id.* (quoting 4 Alba Conte & Herbert B.  
21 Newberg, *Newberg on Class Actions* §11:47 (4th ed. 2002)).

22                   Plaintiffs and Class Members are represented by Robbins Geller Rudman &  
23 Dowd LLP (“RGRD”), a leading class action firm which has achieved landmark  
24 results in large, complex class actions. *See, e.g.*, [www.rgrdlaw.com/firm.html](http://www.rgrdlaw.com/firm.html) (last  
25 visited on Dec. 16, 2016); *Riker*, 2010 U.S. Dist. LEXIS 120841, at \*15 (finding  
26 plaintiffs’ counsel had distinguished record in practice area). Zeldes Haeggquist &  
27 Eck (“ZHE”) is an experienced plaintiffs’ class action firm in San Diego. *See*  
28 <http://zhlaw.com/about> (last visited on Dec. 16, 2016). Class Counsel believe that the

1 Settlement provides a fair, adequate, and reasonable recovery for Class Members. As  
2 Class Counsel are experienced attorneys in this field, their opinion that the Settlement  
3 is fair, adequate, and reasonable for Class Members also weighs in favor of approval  
4 of the Settlement. *Riker*, 2010 U.S. Dist. LEXIS 120841, at \*16.

5 **B. Class Counsel Are Providing Their Years of Services *Pro***  
6 ***Bono***

7 Class Counsel are providing their years of legal services to Plaintiffs and the  
8 Class on a *pro bono* basis. Class Counsel will not apply for any attorneys' fees or  
9 litigation expenses from the common fund. *See, e.g., Stetson v. Grissom*, 821 F.3d  
10 1157, 1165 (9th Cir. 2016) ("In the absence of a contractual or statutory basis for  
11 awarding fees, the district court may award reasonable fees as a matter of federal  
12 common law when class counsel has recovered a common fund."). Instead, Class  
13 Counsel will forego payment in order to maximize the recoveries for former TU  
14 students. Similarly, Class Counsel will forego payment of their litigation expenses,  
15 including the costs of sixty-five depositions, experts, legal research, and much more.  
16 The fact that Class Counsel are not receiving any attorneys' fees or expenses from  
17 these Actions is further evidence that there was no collusion, and that Class Counsel  
18 are representing the best interests of Class Members in this Settlement.

19 **C. The Settlement Provides the Best Class Notice Practicable**

20 The second step of the approval process is to disseminate notice about the  
21 settlement to the class. *See Manual for Complex Litigation, supra*, at §21.63. Class  
22 members must receive the best notice practicable about the settlement, *see* Fed. R.  
23 Civ. P. 23(c)(2), which means notice that is "reasonably calculated, under all the  
24 circumstances, to apprise interested parties of the pendency of the action and afford  
25 them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank &*  
26 *Tr. Co.*, 339 U.S. 306, 314 (1950). "[T]he mechanics of the notice process are left to  
27 the discretion of the court subject only to the broad 'reasonableness' standards  
28

1 imposed by due process.” *Capps*, 2016 U.S. Dist. LEXIS 161137, at \*26 (quoting  
2 *Grunin v. Int’l House of Pancakes*, 513 F.2d 114, 120 (8th Cir. 1975)).

3 Here, Class Counsel will provide the Settlement Administrator with the most  
4 current list of names, email addresses, and physical addresses of Class Members based  
5 on Defendants’ records, student inquiries, the Notice Administrator’s updated records  
6 from the Notice of Pendency, and inquiries made to the NYAG. The Settlement  
7 Administrator will then mail and email the Long-form Notice and Claim Form to all  
8 known Class Members. ¶¶II.8, 9, 23. The Long-form Notice directs Class Members  
9 to the Settlement Website, where they can find Settlement-related documents,  
10 including the Agreement, Long-form Notice, Claim Form, the PAO, and other  
11 documents. ¶V.5. The Settlement Administrator will also publish the Summary  
12 Notice in the national edition of USA Today. ¶II.48. Finally, Class Counsel will post  
13 the Long-form Notice and Claim Form on their websites. ¶VII.2.

14 The Class Notice plan described in the Agreement and PAO is consistent with  
15 what this Court previously found to satisfy Due Process for purposes of the Notice of  
16 Pendency. *See Low* Dkt. 419 at 9-11; *Cohen* Dkt. 130 at 9-11. In fact, the Class  
17 Notices here are superior because the Settlement Administrator will mail and email  
18 (where possible) all known Class Members the full, detailed Long-form Notice; Class  
19 Counsel and the Notice Administrator have updated the contact information for  
20 hundreds of Class Members; and national press attention has increased awareness by  
21 Class Members about the status of these Actions and the Settlement relief available.

22 Further, the proposed Class Notices are plain and easily understood, consistent  
23 with the guidelines set forth by the Federal Judicial Center. *See* <http://www.fjc.gov/>  
24 (last visited on Dec. 12, 2016). The Class Notices provide neutral, objective, and  
25 accurate information about the nature of the Actions and the Settlement. *See id.* The  
26 Class Notices describe the claims, the Class Members, the relief provided under the  
27 Settlement, and Class Member’s rights and options, including the deadlines and means  
28

1 of submitting a Claim Form, objecting, and/or appearing at the Final Approval  
2 Hearing personally or through counsel. *See id.*

3 The Parties submit that the Class Notices provide the best notice practicable  
4 under the circumstances and will be highly effective in reaching the Class Members.

5 **D. Class Members Already Had an Opportunity to Opt Out**

6 As described above, Class Members will have an opportunity to submit a Claim  
7 Form or to object to the Settlement. However, there will not be a second opportunity  
8 to opt out because the Court previously ordered the dissemination of individual notice  
9 to reasonably-identifiable Class Members and ample opportunity to opt out.

10 In the Ninth Circuit, members of a Rule 23(b)(3) class need not be given a  
11 second chance to opt out at the settlement stage. *See Officers for Justice v. Civil Serv.*  
12 *Comm'n*, 688 F.2d 615, 623 (9th Cir. 1982); *cf. Ridgeway v. Wal-Mart Stores, Inc.*,  
13 No. 08-cv-05221-SI, 2016 U.S. Dist. LEXIS 116748, at \*12 (N.D. Cal. Aug. 30,  
14 2016) (distinguishing *Officers for Justice* as holding that class members need not be  
15 given a second opportunity to opt out after the opt-out deadline to avoid a settlement  
16 agreement); *see also* Fed. R. Civ. P. 23(e)(4) (courts have discretion whether to  
17 approve a settlement without a second opportunity to opt out).

18 Though class members must be given an opportunity to object to a class action  
19 settlement, they need not be given a second opportunity to opt out of the class:

20 All named plaintiffs and class members were given the opportunity to  
21 exclude themselves from the class. Byrd did not. His argument amounts  
22 to a request to now exercise that option once passed over, and after being  
23 fully informed of the terms of the settlement. Although some class  
24 action settlements have provided such an opt-out feature, they are  
25 unusual and probably result from the bargaining strength of the class  
26 negotiators. Nevertheless, ***we have found no authority of any kind***  
27 ***suggesting that due process requires that members of a Rule 23(b)(3)***  
***class be given a second chance to opt out. We think it does not.*** Byrd's  
rights are protected by the mechanism provided in the rule: approval by  
the district court after notice to the class and a fairness hearing at which  
dissenters can voice their objections, and the availability of review on  
appeal. Moreover, to hold that due process requires a second opportunity  
to opt out after the terms of the settlement have been disclosed to the  
class would impede the settlement process so favored in the law.

28 *Officers for Justice*, 688 F.2d at 634-35.

1           On September 21, 2015, the Court ordered a joint Notice of Pendency to be  
2 disseminated to all Class Members in these Actions—the same Class Members  
3 included in the Settlement, providing them with an opportunity to “opt-out.” *Low*  
4 Dkt. 419 at 10-11; *Cohen* Dkt. 130 at 10-11. In its order, the Court explicitly ordered  
5 that “[a]ny Class Member who does not send a completed, signed request for  
6 exclusion to the Notice Administrator post-marked on or before the Opt-Out Deadline  
7 will be deemed to be a Member of the Class *for all purposes and bound by all further*  
8 *orders and judgments of the Court.*” *Low* Dkt. 419 at 10-11; *Cohen* Dkt. 130 at 10-  
9 11. On November 16, 2015, the Opt-Out Deadline expired in both Actions in  
10 accordance with the Court’s September 21, 2015 order. *See Low* Dkt. 419 at 11;  
11 *Cohen* Dkt. 130 at 10. Ten (10) former students submitted timely opt-out requests,  
12 and three (3) others submitted late opt-out requests, which were granted by the Court  
13 as recently as September 21, 2016. *See, e.g., Cohen* Dkt. 278.

14           The Court has provided Class Members with individual notice of these Actions,  
15 ample opportunity to opt out, and an explicit warning that failure to opt out would  
16 mean that they would be deemed a Class Member for all purposes and that all future  
17 orders and judgments would be binding on them. Thus, as in *Officers of Justice*, Class  
18 Members need not be given a second opportunity to opt out at the settlement stage.

## 19 **VI. THE PARTIES’ PROPOSED SCHEDULE OF EVENTS**

20           The last step in the settlement approval process is to hold a Final Approval  
21 Hearing at which the Court will hear argument and make a final decision about  
22 whether to approve the Settlement pursuant to Rule 23(e)(3). *See Manual for*  
23 *Complex Litigation, supra*, at §21.63.

24           The Parties have submitted a proposed PAO concurrently with this joint  
25 motion, pursuant to Local Civil Rule 7.2(c), setting forth the proposed schedule of  
26 events from here through final approval. The Parties believe that the Court may enter  
27 the PAO without the need for a hearing, unless the Court has questions, given that the  
28 Court will hold a Final Approval Hearing once Class Members weigh in.

1 Specifically, the Parties propose the following schedule:

2 Settlement Amount Due Date	January 18, 2017
3 Deadline for commencing the mailing of the Long-form Notice and Claim Form and publishing the Summary Notice	15 calendar days after entry of the PAO
4 Deadline for filing a final approval motion and application for Service Awards	60 calendar days after entry of the PAO
5 Deadline for submitting Claim Forms	75 calendar days after entry of the PAO
6 Deadline for objecting to the Settlement	
7 Deadline for filing a reply in support of final approval and Service Awards; deadline for Settlement Administrator declaration	7 calendar days before Final Approval Hearing
8 Final Approval Hearing	Approximately 100 calendar days after entry of the PAO, at the Court's convenience

9 The Parties respectfully submit that this proposed schedule complies with Rule  
10 23 and CAFA, while securing the recoveries for Class Members in a timely fashion.

## 11 **VII. CONCLUSION**

12 The Parties respectfully request that the Court grant their motion for  
13 preliminary approval and enter an order substantially in the form of their proposed  
14 PAO, which is Exhibit A to the Agreement.

15 DATED: December 19, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

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I hereby certify that on December 19, 2016, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 19, 2016.

s/ Rachel L. Jensen  
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## Mailing Information for a Case 3:10-cv-00940-GPC-WVG Low v. Trump University, LLC et al

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- (No manual recipients)