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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR SPOKANE COUNTY

GLENDA RAE, a single person, RAYMOND SUMERLIN JR. and MARYANN SUMERLIN, a married couple, and MARTIN WHITNEY and SHERRYL WHITNEY, a married couple, Plaintiffs. vs. MULTICARE HEALTH SYSTEM d/b/a: MULTICARE DEACONESS HOSPITAL and MULTICARE ROCKWOOD CLINIC NEUROSURGERY & SPINE and MULTICARE VALLEY HOSPITAL; and JASON A.DREYER, DO and JANE DOE DREYER, husband and wife and the marital community thereof; and JOHN/JANE DOES 1-5 and any marital communities thereof, Defendants	NO. 23-2-01703-32 PLAINTIFFS' UNOPPOSED MOTIONS FOR ORDERS CONDITIONALLY CERTIFYING CLASS AND GRANTING PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AGREEMENT HEARING SCHEDULED: **APRIL 3, 2026**

Pursuant to Washington Civil Rule 23, Plaintiffs Glenda Rae, a single person; Raymond and Maryann Sumerlin, a married couple; and Martin and Sherryl Whitney, a married couple (collectively "Named Plaintiffs" or "Plaintiffs"), as the Class Representatives of the class of persons defined below on page 4, ¶1 ("Settlement Class"), requests that this Court enter an order which: (i) preliminarily approves the Settlement Agreement ("Agreement") (currently proposed) attached as Exhibit 1, between the Class Representatives and Defendant MultiCare Health System d/b/a MultiCare Deaconess Hospital, MultiCare Valley Hospital, and MultiCare Rockwood Clinic / Rockwood Clinic Neurosurgery & Spine (collectively "MultiCare"); (ii) certifies for settlement purposes only the Settlement Class as defined in Section II of the Agreement; (v) approves the dates for Settlement Class members to opt out of, or object to, the Agreement; (vi) schedules a hearing for final approval of the Agreement; (vii) approves the mailing of notice to Settlement Class members in the approved form (*Gilbert Decl*., ¶2, Exh. C of Exhibit 1); and (viii) finds that the mailing of such notice satisfies the requirements of due process. A copy of the proposed preliminary approval order is provided. MultiCare is aware that this motion is being filed on March 27, 2026, for purposes of presentment of the settlement agreement on April 3, 2026.

I. BACKGROUND

In 2022, Plaintiffs filed a Complaint seeking certification of a proposed class action comprised of surgical patients of MultiCare who had been operated upon by Dr. Dreyer. The Complaint alleged violations of Washington's Criminal Profiteering Act, Consumer Protection Act, corporate negligence, medical malpractice, breach of fiduciary duty, and unjust enrichment laws. The parties have been engaged in extensive discovery over these issues since then, in this and related cases, including with the assistance of the Discovery Master Maryann Moreno, appointed by the Court in 2024. As a result of mediation in 2025, the parties have agreed to settlement terms that they deem reasonable and in the best interests of the parties. The resulting

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Agreement contemplates payment to all class members from a common fund financed by defendant MultiCare and administered by a Claim Administrator. Plaintiffs respectfully move this Court for preliminary approval of the Agreement. *See Gilbert Decl*., ¶2, Exh. A to Exhibit 1.

The Agreement, if it receives this Court's preliminary approval, is intended to resolve this Action subject to the final approval of this Court. Plaintiffs ask that the Court grant that approval so that notices can be issued and the process of seeking final approval can begin.

II. STATEMENT OF FACTS

A. Factual and Procedural Background

This case was filed on June 3, 2022, in Pierce County Superior Court (Case No. 22-2-06780-8) against MultiCare, and Dr. Jason Dryer and his spouse. The action was later transferred to this Court on April 23, 2023, on motion of MultiCare. The Complaint raised claims arising from Defendant MultiCare's recruitment, hiring, incentivization, and supervision of Dr. Dreyer's treatment of surgical patients at MultiCare from 2019 to 2021. The claims included violations of RCW 9A.82.080 and 9A.82.100 (Criminal Profiteering), RCW 19.86 *et seq*. (Unfair Business Practices/Consumer Protection) ("CPA"), RCW 7.70 *et seq*. (medical malpractice), and tort actions, including corporate negligence, breach of fiduciary duty, and unjust enrichment.

In the intervening three-plus years, Plaintiffs, through undersigned counsel, pursued discovery in prosecution of these claims, and undertook to present the proposed class claims at a trial that was initially scheduled for November 30, 2023. This discovery has required multiple orders of the Discovery Master, including orders dated June 17, 2024, July 18, 2024, August 5, 2024, November 8, 2024, February 18, 2025, August 12, 2025, September 22, 2025, October 31, 2025, and December 16, 2025. The current trial date is scheduled for September 8, 2026.

The Parties have engaged in extensive discovery, which included written Interrogatories, document requests, Requests for Admission, and multiple depositions. In December 2023, the

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Honorable Jeremy Schmidt deferred ruling on Plaintiffs' Motion for Class Certification pending the outcome of discovery issues, and appointed Discovery Master Judge Maryann Moreno, *Ret.* to address these issues, which oral rulings were memorialized by orders dated February 8, 2024 and March 4, 2024. (*See* Dkt. Nos. 92 & 108) Since then, the Parties have engaged in motions practice related to these discovery issues which have resulted in multiple orders and rulings by Discovery Master Moreno, as listed above.

In 2025, the parties commenced meditation with Fouad Kurdi of Resolutions, LLC which ultimately led to an agreement to settle the claims of Plaintiffs and the Settlement Class.

Counsel for the Parties have investigated and analyzed the legal and factual issues presented in this action, the risks and expense involved in pursuing the litigation to conclusion, the likelihood of recovering or incurring damages in excess of those obtained through this settlement, the protracted nature of the litigation, and the likelihood, costs and possible outcomes of one or more procedural and substantive appeals. Based upon this review and analysis of counsel, the Parties have proposed entering into the Agreement. *See Gilbert Decl*., ¶2, Exhibit 1.

B. The Settlement Agreement

In the proposed Agreement, the Parties would be agreeing to both the terms of settlement and the appropriateness of settlement of the pending issues on a class wide basis. In summary, these agreements and understandings of the Parties include that:

1. Class members are agreed to be all MultiCare patients who underwent a spine surgery conducted by Dr. Jason Dreyer at any of the MultiCare facilities (*i.e.,* MultiCare Deaconess Hospital and MultiCare Valley Hospital) while under general anesthesia;
2. MultiCare's records indicate that there are 475 members of the class – that is, there were 475 spine surgery patients of Dr. Dreyer at these MultiCare facilities;

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3. MultiCare will transfer $33,000,000.00 into an Escrow Account of Class Counsel's choosing within 30 days of this Court's preliminary approval of the Settlement for purposes of establishing a Common Fund, to be managed by Settlement Administrator, Epiq Global, and overseen by the Court, pursuant to 26 U.S.C. § 468b;
4. There will be three tiers of recovery such that each class member will be entitled to $2,0000 of this as a Tier I member, with the opportunity to qualify for additional sums pro rata as Tier II or Tier III members;
5. Named Plaintiff Representatives will be entitled to their share of the Class recovery plus an additional $25,000.00, subject to the approval of the Court;
6. Class counsel will be paid from the Common Fund for Plaintiffs' reasonable attorney fees not to exceed one third of the Common Fund in an amount to be approved by the Court, as well as their reasonable costs that will also be approved by the Court;
7. Within 30 days of the Preliminary Approval Order (or within a set number of days to be approved by the Court), Plaintiffs' counsel shall, through the Class Administrator, shall cause mailing of the Short Form Notice of the Agreement to Settlement Class Members as proposed. *See Gilbert Decl.,* ¶2, Exh. C to Exhibit 1. The Settlement Administrator shall distribute the Short Form Notice through U.S. mail, postage prepaid, providing a forwarding address. Each notice mailed shall be sent with a request for forwarding addresses. In the event that a notice is returned as undeliverable and a forwarding address is provided, the Settlement Administrator shall cause to be forwarded any such returned notice to the address provided within five (5) days of receipt. The Settlement Administrator shall also set up a website containing settlement information and forms for class member use. In addition, the Settlement Administrator

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shall email the Short Form Notice to any Settlement Class Member with a known email address, and shall place the Long Form Notice on the settlement website.

8. Any Settlement Class member may choose to be excluded from the Agreement by opting out within the time period set by this Court, and within the method set by the Court. Any Settlement Class member who opts out of the Settlement Class and Agreement shall not be bound by any prior Court order or the terms of the Agreement. Settlement Class members may also object to the Agreement, and if they choose to do so, they may also appear and be heard at the reasonableness hearing.
9. Additional proposed agreements between the parties are outlined in the Settlement Agreement, which is attached, and are subject to the preliminary and final approval orders of this Court. *See Gilbert Decl*., ¶2, Exhibit 1, and exhibits therein.
10. Also attached is a copy of a Plan of Allocation, which outlines much of the above process. *See id.,* ¶2, Exh. F to Exhibit 1.
11. Also attached is the proposed notice to be sent. *See id.,* ¶2, Exh. C to Exhibit 1.

III. ARGUMENT

A. The Court Should Certify the Class for Settlement Purposes.

Washington courts liberally construe Rule 23 to satisfy its remedial purposes "because the 'rule avoids multiplicity of litigation, 'saves members of the class the cost and trouble of filing individual suits[,]" and prevents the burdens of "identical future litigation." *Chavez v. Our Lady of Lourdes Hospital at Pasco*, 190 Wn. 2d 507, 515, 415 P.3d 224 (2018) (quoting *Smith v. Behr Process Corp.,* 113 Wn. App. 306, 318, 54 P.3d 665 (2002)).

The Court has an independent obligation to protect the interests of the Class. *Deien v. Seattle City Light*, 26 Wn. App. 2d 37, 65, 527 P.3d 102, 107 (2023). Trial courts review proposed class settlements entered into prior to class certification to determine whether the

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action can be maintained as a class action under Rule 23, although the Court is not "'*to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute,* for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.'" *Pickett v. Holland Am. Line-Westours, Inc*., 145 Wash. 2d 178, 190, 35 P.3d 351, 357 (2001) (emphasis in the original) (quoting *Officers for Justice v. Civil Serv. Comm'n,* 688 F.2d 615, 623 (9th Cir.1982)). Proposed class settlements "may be approved by the trial court if it is determined to be 'fair, adequate, and reasonable.'" *Deien*, 26 Wash. App. 2d at 66, 527 P.3d at 108 (2023 (quoting *Pickett*, 145 Wn. 2d at 188).

One of the purposes of requiring preliminary court approval of class settlements is to address the "'inherent structural risks'" of class adjudication, including the risks of collusion, or overreaching by the negotiating parties. *Deien*, 26 Wn.App.2d at 66 (quoting *Pickett,* 145Wn.2d at 187); *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1027 (9th Cir. 1998). Some indicia of these concerns are excessive financial benefits flowing to counsel, including through clear sailing agreements whereby defendants pay counsel excessive amounts to accept unfavorable terms, or agreements for reversion of unapproved legal fees to the defendant and not to the class. *Summers v. Sea Mar Community Health Centers*, 29 Wn. App. 2d 476, 501 (2024); *In re Bluetooth Headset Prod. Liability Litig*., 654 F.3d 935, 947 (9th Cir. 2011). The proposed Agreement does not contain such terms, and it reserves to this Court the task of assessing the reasonableness of all financial terms, including legal fees.

Here, the Parties have a proposed Agreement to (i) the certification, for settlement purposes only, of the Settlement Class as defined above, pursuant to CR 23(a) and (b)(3); (ii) the appointment of Plaintiffs as Class Representatives; and (iii) the appointment of the Gilbert Law Firm and the Law Firm of Lankford and Reed as Class Counsel. Certification of the Settlement

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Class for settlement purposes will further the interests of the Settlement Class members and MultiCare by allowing this Litigation to be settled between Plaintiffs and MultiCare on a class-wide basis. Moreover, as demonstrated below, the relevant requirements of Rule 23 are satisfied. Accordingly, Plaintiffs move the Court to certify a Settlement Class, consisting of all MultiCare patients who underwent a spine surgery conducted by Dr. Jason Dreyer while under general anesthesia at any MultiCare facility, which is understood to be MultiCare Deaconess Hospital and MultiCare Valley Hospital, pursuant to these proposed agreements and as outlined below.

1. Numerosity

The Settlement Class, having 475 patient members, satisfies the numerosity requirement of Rule 23(a)(1). A rebuttable presumption of numerosity exists when the proposed class contains at least forty members. *See Miller v. Farmer Bros. Co.*, 115 Wn. App. 815, 821, 64 P.3d 49 (2003) (citing federal authority). Here, the size of the Settlement Class is well in excess of any minimum requirement imposed by CR 23 and establishes a rebuttable presumption that joinder is impracticable. *Miller, supra*; *see also Campion v. Credit Bureau Servs., Inc.,*206 F.R.D. 663, 675 (E.D. Wash. 2001) (finding 250 individuals sufficient); *Rivera v. Holder*, 307 F.R.D. 539, 550 (W.D. Wash. 2015) (at least forty sufficient); *Bogner v. Masari Investments, LLC*, 257 F.R.D. 529, 532 (D. Ariz. 2009) (200 class members sufficient; *Blare v. Encore Receivable Mgmt. Inc.*, 244 F.R.D. 525, 527 (E.D.Wis.2007) (263 class members sufficient for numerosity).

2. Commonality

Satisfaction of the commonality requirement under Rule 23(a)(2) requires that plaintiffs demonstrate their claims "depend upon a common contention," the resolution of which "will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). The commonality element of CR 23(a)(2) requires only that "there are questions of law or fact common to the class." Commonality is a "low threshold

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test" that is "qualitative rather than quantitative, that is, there need be only a single issue common to all members of the class." *Smith v. Behr Process Corp*., 113 Wn. App. 306, 320, 54 P.3d 665 (2002); *Johnson v. City of Grants Pass*, 72 F.4th 868, 888 (9th Cir. 2023). Commonality is met if the "course of conduct" that gives rise to the cause of action affects all the class members. *Pellino v. Brink's Inc.*, 164 Wn. App. 668, 682, 267 P.3d 383 (2011) (commonality satisfied when alleged facts indicate defendant was engaged in common course of conduct in relation to all potential class members). The shared questions of law or fact need not be identical. *Pellino,* 164 Wn. App. at 683.

The commonality requirement is satisfied as to any one of the numerous legal and factual issues identified in ¶¶ 6.7 & 6.14 of the Second Amended Complaint as well as those issues listed in Exhibit 1 of that Complaint. *See* Dkt. No. 273, pp. 54-61, 64-66, & 93-102 (incorporated herein). Furthermore, Defendants jointly participated in common components of health care claims, including the filer's required certifications of medical necessity for the billed services and of the accuracy of the supporting medical records. *United States v. MultiCare Health Systems,* 2025 WL WL 924027, *3 (E.D. Wash. Mar. 26, 2025).

3. Typicality

"'Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought.'" *Dunakin v. Quigley,* 99 F. Supp. 3d 1297, 1329 (W.D. Wash. 2015) (quoting *Hanon v. Dataproducts Corp.,* 976 F.2d 497, 508 (9th Cir.1992)). "[C]ourts consider 'whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'" *Id.* (quoting *Hanon*, 976 F.2d at 508). "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Id*. (quoting *Parsons v. Ryan,* 754 F.3d 657, 685 (9th Cir. 2014). *See also Pellino*, 164

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Wn.App. at 684 ("Typicality is satisfied if the claim arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory").

Here, the Plaintiffs are members of the Settlement Class, they have the same interest in the resolution of the common issues as all other proposed Settlement Class members, and their claims are typical of all such members, having also had spine surgeries by Dr. Dreyer, including under the same incentivized compensation system. The named Plaintiffs' claims are typical of the facts and claims of the other members of the proposed settlement class.

4. Adequacy of Representation

Adequate representation is present when the class representatives lack a conflict with class members, will prosecute the action vigorously on behalf of the class, and the class attorneys be qualified, experienced and able to conduct the litigation. *See Marquardt v. Fein*, 25 Wn. App. 651, 656, 612 P.2d 378 (1980); *Dunakin*, 99 F. Supp. 3d at 1331. Plaintiffs' counsel are experienced in medical malpractice, civil RICO, and class action litigation. The Plaintiffs have no interests adverse to the claims of the proposed Settlement Class members and have already demonstrated that they will vigorously prosecute this action on behalf of the class. Class Counsel likewise have demonstrated their ability and commitment to pursue this case and have provided declarations in the past that demonstrate their experience and qualifications to conduct this litigation. *See* Dkt. Nos. 37-40. Therefore, named Plaintiffs and their Class Counsel satisfy the adequacy of representation requirement of Rule 23(a)(4).

5. Predominance and Superiority

Under Rule 23(b)(3), certification is appropriate when questions of law and fact common to the members of the class predominate over individual questions, and class treatment is superior to other available means of adjudication. CR 23(b)(3). "The predominance requirement is not a

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rigid test, but rather contemplates a review of many factors, the central question being whether adjudication of the common issues in the particular suit has important and desirable advantages of judicial economy compared to all other issues, or when viewed by themselves." *Sitton v. State Farm Mut. Auto. Ins. Co.,* 116 Wn. App. 245, 254, 63 P.3d 198 (2003). Predominance is met where there is a "common nucleus of operative facts." *Smith v. Behr Process Corp.,* 113 Wn. App. 306, 323, 54 P.3d 665 (2002). The mere presence of individual issues will not defeat predominance, as courts have a number of tools available for dealing with individual issues in class litigation. *Sitton*, 116 Wn. App. at 254.

As for superiority: CR 23(b)(3) ensures that a class action is superior to other available methods of fairly and efficiently adjudicating the controversy. The matters pertinent to a finding of superiority are set forth in Rule 23(b)(3)(A)-(D) and include: (A) class member interests in controlling the prosecution of their claims; (B) the related litigation already begun; (C) the desirability of concentrating litigation in this forum; and (D) class management difficulties. "In deciding whether to certify a settlement class, the [trial court] need not inquire whether the case, if tried, would present difficult management problems under Rule 23(b)(3)(D)." *In re Motor Fuel Temperature Sales Practices Litig*., 271 F.R.D. 263, 269 (D. Kan. 2010).

Both predominance and superiority are satisfied here, where there is a common nucleus of operative fact involving the practices of MultiCare in recruiting, hiring, incentivizing, and supervising the surgeries of Dr. Dreyer, and the related health care claims, including whether these practices represent a pattern or practice. Determination of these issues on a class wide basis is superior to multiple individual trials and enables the efficient resolution of the claims of many individuals in a single action. *Califano v. Yamaski*, 442 U.S. 682, 700-01 (1979). Further, because this case has been litigated in this Court, concentrating the litigation in this forum is desirable. There are no anticipated difficulties in managing this case as a class action for settlement purposes

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only. Moreover, it is understood that MultiCare agrees that the Settlement Class should be certified for settlement purposes. The conditions of both predominance and superiority are met.

B. The Court Should Grant Preliminary Approval of the Proposed Settlement.

Rule 23 requires judicial approval of all class-action settlements. CR 23(e). When parties reach a settlement in a class action, they present the proposed settlement to the presiding court for preliminary approval. 4 William B. Rubenstein, *Newberg and Rubenstein on Class Actions* § 13:1 (6th ed. June 2025 update). If the court grants preliminary approval, notice of the settlement is sent to class members. *Id.* If the class is certified under CR 23(b)(3), the notice informs class members of their opportunity to "opt out" of the settlement—*i.e.,* to exclude themselves from any binding classwide judgment. *See* CR 23(c)(2)–(3); *see also* 4 Rubenstein, *supra*, § 13:1.

After class members have an opportunity to opt out of, or comment on or object to, the settlement, the parties move for final approval. After that process, the court then decides whether to grant final approval under CR 23(e) and to enter final judgment. 4 Rubenstein, *supra*, § 13:1; *see also Summers v. Sea Mar Cmty. Health Ctrs.,* 29 Wn. App. 2d 476, 486, 541 P.3d 381 (discussing how these procedures were followed by trial court), *rev. denied*, 3 Wn.3d 1002 (2024); *Deien v. Seattle City Light,* 26 Wn. App. 2d 57, 61–63, 527 P.3d 102 (2023) (same).

In deciding whether to approve a proposed class-action settlement, a court determines whether the settlement is "fair, adequate, and reasonable." *Pickett,* 145 Wn.2d at188, 35 P.3d 351 (2001) (quotation and citation omitted). This is a "largely unintrusive inquiry." *Id*. at 189. Courts may not modify the settlement terms, but may suggest modifications to the parties. *Deien*, 26 Wn.App.2d at 65. As noted above, the Court's role is "limited" to ensuring that "'the agreement is not the product of fraud or overreaching by, or of collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.'" *Id*. at 67,

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(quoting *Pickett*, 145 Wn.2d at 169) (quoting *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982)). These issues do not exist here.

When assessing whether a settlement is "fair, adequate, and reasonable," Washington courts generally consider the following factors: (1) "the likelihood of success by plaintiffs"; (2) "the amount of discovery or evidence" produced thus far in the litigation; (3) "the settlement terms and conditions"; (4) the "recommendations and experience of counsel"; (5) the "future expense and likely duration of litigation"; (6) the "recommendation of neutral parties, if any"; (7) the number of objectors and nature of objectors; and (8) the presence of good faith and the absence of collusion." *Id*. at 188–89. This list is "not exhaustive," and "[t]he relative degree of importance to be attached to any particular factor will depend upon . . . the unique facts and circumstances presented by each individual case." *Id*. at 189 (quotation and citation omitted). At the preliminary approval stage, factor number 7—the number and nature of objectors—cannot yet be considered, since no one has had an opportunity to receive notice of the settlement and object. *See id*. ("Nor will each factor be relevant in every case"). Nonetheless, the protracted history of this litigation, including discovery disputes, coupled with the number of trials that would be needed absent a class settlement, indicates that the economies of a class settlement would be substantial.

A court reviewing a proposed settlement should also "not … overlook[] that voluntary conciliation and settlement are the preferred means of dispute resolution." *Id.* at 190 (citation and quotation omitted); *see also City of Seattle v. Blume,* 134 Wn.2d 243, 258, 947 P.2d 223 (1997) ("[T]he express public policy of this state . . . strongly encourages settlement."). Class actions are inherently complex, costly, and long-running, so the public policy favoring settlements has special force here. *See, e.g.*, *In re Syncor ERISA Litig*., 516 F.3d 1095, 1101 (9th Cir. 2008) ("[T]here is a strong judicial policy that favors settlements, particularly where complex class action litigation is concerned").

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It is clear that, on preliminary approval, the Court cannot make a final assessment of whether the action is fair, reasonable, and adequate, since "notice of the proposed dismissal or compromise" has not yet been sent to class members. CR 23(e). Rather, preliminary approval determinations typically ask whether it is *likely* that the Court will give final approval to the settlement when the time comes. *See* 4 Rubenstein, § 13:15 (noting the level of judicial scrutiny is generally lower at the preliminary-approval stage). Here, the Agreement is likely to receive final approval because the factors that this Court will consider at final approval illustrate the fairness, adequacy and reasonableness of the proposed Agreement.

(1) *The likelihood of success*: Plaintiffs strongly advocated for their claims and believe in their merits. Nonetheless, with every trial come risks. By agreeing to settle the case rather than litigate, both MultiCare and Plaintiffs acknowledged those trial risks, including that: there are issues involved in any trial where medical negligence is an issue, both positive and negative for both parties; the claims of unlawful profiteering require inspection and evaluation of significant financial and claim records, including though expert analysis, requiring a lengthy trial for jurors and the Court; and the other issues involved, including the intricacies of the relationship between Dr. Dreyer and his employer MultiCare, and MultiCare's employees, would require jury credibility determinations that cannot be predicted prior to the trial itself. Both Parties have acknowledged that the risks associated with trial were such that this settlement was the preferred course of action.

(2) *The amount of discovery or evidence*: As this Court well knows, the issues involved in this case have been vigorously litigated. The case has been litigious with a steady stream of motion practice; engagement of a Discovery Master to manage discovery disputes – which were many; and appeals of the Discovery Master's decisions. Discovery has been expansive. Terabytes of data have been exchanged and processed; and numerous depositions have been conducted. The

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Parties had an extensive record from which to evaluate their chances of success should litigation continue. This factor also supports preliminary approval of the Agreement.

(3) *Settlement terms and conditions*: The Parties have worked to create settlement terms and conditions that will provide financial relief to the Settlement Class members. Further, the scope of release, including releases for nonparties, is standard in these kinds of cases. *See Summers*, 29 Wash. App 2d at 504–05 (citing *Hesse v. Sprint Corp*., 598 F.3d 581, 590 (9th Cir. 2010)); *In re Fin. Servs. Grp., Inc.*, 440 F. Supp. 2d 421, 439 (W.D. Pa. 2006). The three tiers in the Agreement work to ensure that harm is compensated according to specific criteria with the assistance and input of medical experts and oversight from the Settlement Master. The proposed Agreement's terms and conditions provide Settlement Class members with relief and treat them equitably. These key terms and conditions support preliminary approval.

(4) *Recommendations of experienced class counsel*: "When experienced and skilled class counsel support a settlement, their views are given great weight." *Pickett*, 145 Wn.2d at 200 (citing *Reed v. Gen. Motors Corp*., 703 F.2d 170, 175 (5th Cir. 1983)).[1] Here, Class Counsel have carefully evaluated the risks of moving forward through trial, and have considered the risks the Settlement Classes might face on further appeal of any favorable judgment. *Gilbert Decl*., ¶3. They have concluded that the Agreement is fair, reasonable, and adequate in the best interest of the class. *Id.* In addition, the Plaintiffs support the Agreement. *Id*. Class Counsel have decades of experience litigating cases, both trial and appellate, with particular expertise in medical malpractice cases, class action cases, and/or unlawful profiteering cases, or all of the above, as outlined in their 2023 declarations that supported the Motion to Certify (*see* Dkt. Nos. 37-40). Their varied backgrounds

[1] *Strano v. Kiplinger Washington Eds., Inc.,* 649 F. Supp. 3d 546, 559 (E.D. Mich. 2023) ("The endorsement of the parties' counsel is entitled to significant weight, and supports the fairness of the class settlement.").

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result in a highly skilled team to handle the claims made under the unique facts of this case, and so they are eminently qualified to make these evaluations and recommendations.

(5) *Future expense and likely duration of litigation*: Settlement was reached within a few months of the Court having to continue the trial date due to ongoing discovery disputes and motions practice, all of which was still being litigated before the Discovery Master at the time the parties entered into the Agreement. In addition, MultiCare has filed a Discretionary Review notice with regard to an important discovery issue, which may have caused ongoing delays since the issues at hand would need to be resolved before a trial could be had. Further, because this is a case involving medical surgeries and complex financial issues, the need for medical and financial experts necessarily created additional costs to proceed to trial and be able to educate the jury on the issues involved. It is further anticipated that the case would be continued at the appellate level, which would result in further expense and delay, including years of an appellate process, all of which would have to occur before Settlement Class members would receive any financial relief. These considerations regarding expense and delay favor preliminary approval.

(6) *Presence of good faith, use of a neutral mediator, and absence of collusion*: In this case, all three of these considerations are met. There is no evidence of collusion or of bad faith in entering this settlement. In addition, the Parties engaged a neutral mediator and experienced litigator, Fouad Kurdi, with Resolutions, L.L.C. who is a partner in the firm that handles high-stakes case, complex disputes at the national level and specializes in mass tort and class action cases.[2] "One may take a settlement amount as good evidence of the maximum available if one can assume that parties of equal knowledge and negotiating skill agreed upon the figure through arms-

[2] Mr. Kurdi is expected to continue in the settlement as the Settlement Master, where he will be facilitating and structuring communications and deadlines, and having final oversight on implementation of the Plan of Allocation. *See proposed Settlement Agreement*, ¶¶46, 83.

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length bargaining…." *Ortiz v. Fibreboard Corp*., 527 U.S. 815, 852 (1999); *see also* Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendment ("[T]he involvement of a neutral or court-affiliated mediator or facilitator in negotiations may bear on whether they were conducted in a manner that would protect and further the class interests"). The fact that the parties engaged in mediation over the summer, reached impasse, and then re-engaged with the same mediator at the end of 2025 shows a trustworthy, arms-length process. *See Deien*, 26 Wn. App. 2d at 69 (noting that arm's-length negotiations conducted in good-faith by experienced attorneys familiar with legal and factual issues of the case support approval of settlements).

The terms of the Agreement themselves are evidence of arm's-length negotiations and lack of collusion. Each spine surgery patient of Dr. Dreyer will receive some relief, and a panel of experts will work to determine relief for two other tiers of relief for Settlement Class member surgery patients. Further, Class Counsel are not seeking a disproportionate amount of the settlement, but are seeking no more than one third plus reasonable expenses, a fee that is significantly lower than the standard fee for a typical medical malpractice case in Washington, and across the Country, and is a reasonable fee under the circumstances present. This means that the Class will receive the bulk of the settlement fund. In fact, the settlement is designed so that any unclaimed funds revert back to the settlement to be distributed to Settlement Class members, which again works to ensure that the class receives the bulk of the settlement fund. These circumstances also support preliminary approval of the Settlement.

C. The Court Should Grant Preliminary Approval to Use of the Proposed Notices.

CR 23(e) requires that notice of a class-action settlement "be given to all members of the class in such manner as the court directs." CR 23(e). For class actions maintained under CR 23(b)(3), "the court shall direct to the members of the class the best notice practicable under the circumstances." CR 23(c)(2). The notice must tell class members how they may opt out of the

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settlement, and that if they do not, they will be bound by the settlement. *See id.* The notice must also explain how class members may voice their objections to the settlement, if any, and that if they do, they may appear through their own counsel. *See* CR 23(c)(2)(C); *Pickett*, 145 Wn. 2d at 188.

1. Proposed Plan of Notice

"[T]he best notice practicable under the circumstances," CR 23(c)(2), means "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Summers*, 29 Wn. App. 2d at 491 (quotation and citation omitted). Put differently, parties must adopt means of distributing notice that "one might reasonably adopt when desirous of actually informing the absentee" class members. *Id*. (quotation and citation omitted). This standard is context-sensitive and asks what "means or combination of means" of notice is "most likely to be effective" in the particular case. *Id.* at 492 (quotation and citation omitted).

In this case, Settlement Class Members likely have some preexisting knowledge of the Action due to, among other reasons, notices approved by this Court being sent in the fall of 2024 and the spring of 2025 regarding the need for access to their patient medical records.

At this time, the notice will involve three principles methods: individually-mailed Short Form Notices (found at Exhibit C of the Settlement Agreement); Email Notice to all Settlement Class Members whose email addresses are known (by emailing the Short Term Notice that is also being mailed); and a Long Form Notice on the settlement website. *See e.g., Gilbert Decl*., ¶2, Exh. B of Exhibit 1 (Declaration of Mr. Azari, Settlement Administrator from Epiq, regarding the notice plan) ("Azari Decl.").

The Short Form Notice will be mailed to all Settlement Class Members with mailing addresses available. *Azari Decl.,* ¶¶21-23. Recent efforts from the 2024/2025 mailings will ensure

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that Eqiq has the most up to date addresses from that time. Mailings that are returned as undeliverable will be re-mailed, if returned with a forwarding address, or skip traced to locate the current address and re-mailed. *Id*.

The Settlement Administrator will also disseminate an Email Notice, using the contents of the Short Form Notice that is being delivered by direct mail. *Id.* ¶¶24-26. Although there is not an email address available for all Settlement Class Members, the many Settlement Class Members who do have a known email address will receive, in addition to mailed Short Form Notice, an Email Notice with the Short Form Notice contents that will inform them of the Settlement Agreement. *See id.*

As a centralized source for information on the Agreement, the Settlement Administrator will create a Settlement Website that will include the Long-Form Notice, providing Settlement Class Members with detailed information. *Id.* ¶¶21, 29. Both the mailed and emailed Short Form Notice will include links to the Settlement Website. *Id.* The Settlement Administrator will also establish a toll-free 24-hour support line that Settlement Class Members may call to get answers to their questions and will create a dedicated email address through which Settlement Class Members can contact the Settlement Administrator with questions. *Id.* ¶¶29-31.

There also is a publication notice planned in The Spokesman-Review. *Id*., ¶27.

Together, these methods of notice are sufficient to provide the best notice practicable under the circumstances. *See Summers*, 29 Wn. App. 2d at 494 n.7 (noting the lack of authority requiring both email and first-class mail to be sent, even where both email and physical addresses are known).

2. Content of the Notices

The Short Form Notice that will be both mailed and emailed to Settlement Class members provides the essential information that Settlement Class Members need: who is included in the

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Settlement Agreement, the amount of the Settlement Fund and how it will be distributed, how to receive payment, the fact that Settlement Class Members must opt out if they do not want to be bound, their ability to voice objections, the deadlines for opting out and objecting, the basics on how to opt out or object, the tier system and how it works, the amount of fees that Class Counsel may seek, and the date of the Final Approval Hearing. *See Gilbert Decl.,* ¶2, Exh. C to Exhibit 1. It directs Settlement Class Members to the settlement website if they want more details. *Id*. This content is sufficient to provide the required notice. *See* 3 Rubenstein, supra § 8:28 & n.10.

The Long Form Notice on the Settlement Website contains all the information in the mailed (and emailed) Short Form Notice, and much more. Its ten pages, structured as questions and answers, provide detailed information about the settlement and detailed instructions for opting out or objecting. *See Gilbert Decl*., ¶2, Exh. D to Exhibit 1.

The language of the Notices is written to be colloquial and easily understood, provides neutral and objective information about the settlement, and includes clear instructions for opting out or objecting to the Settlement Agreement as well as the three tiers and Settlement Class treatment and how to qualify for each tier, as well as the cost associated with review of medical records; the use of a panel of neurosurgery experts; and the cap on recovery for patients who qualify for the highest tier (Tier 3). Both the form and substance of the Notice satisfy Washington law and due process.

In addition, the settlement website will contain not only the Long Form Notice but also the Settlement Agreement, the Complaint, and other important court documents. The Settlement Website will also include relevant dates, answers to frequently asked questions, instructions for how Class Members may opt-out (request exclusion) from – or object to – the Settlement, contact information for the Settlement Administrator, and how to obtain other case-related information. *See Azari Decl*., ¶¶29-31.

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The Court should approve the Notice Plan and the Notice because they satisfy the requirements of both CR 23 and due process. *See* CR 23(c)(2); *Summers*, 29 Wn. App. 2d at 491; *Nobl Park, L.L.C. of Vancouver v. Shell Oil Co.*, 122 Wn. App. 838, 845, 95 P.3d 1265 (2004).

D. Appointment of Epiq Global as Claims and Settlement Administrator and Fouad Kurdi as Settlement Master.

To accomplish the processing of requests for exclusion and the distribution of the Settlement Fund in accordance with a Court-approved plan of allocation and distribution, Plaintiffs respectfully requests the Court to appoint Epiq Global as the Settlement Administrator. Further, given his level of expertise and familiarity with this case, and the need to use a panel of experts for determining the outlier Class members for Tier III, mediator Fouad Kurdi is also requested for appointment as Settlement Master. Thus, Plaintiffs asks the Court to appoint Epiq Global as Claims and Settlement Administrator, and Fouad Kurdi as Settlement Master.

IV. CONCLUSION

Plaintiffs respectfully request that the Court (a) certify the class for settlement purposes only and (b) grant preliminary approval of the proposed settlement. Per this request, Plaintiffs ask that the Court enter the proposed order which will (1) certify the Settlement Class for settlement purposes; (2) preliminarily approve the Settlement; (3) appoint Plaintiffs as Class Representatives of the Settlement Class; (4) appoint the Gilbert Law Firm and the Lankford and Reed Law Firm as Class Counsel for the Settlement Class; (5) approve the form and manner of the proposed Notice; (6) appoint Epiq Global as Class Administrator and Fouad Kurdi as Settlement Master; and (7) set a hearing date for final approval of the proposed Settlement and application or an award of Attorneys' Fees, Litigation Expenses, and Case Contribution Awards to Plaintiffs.

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March 27, 2026

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CERTIFICATE OF SERVICE

I do hereby certify under penalty of perjury under the laws of the State of Washington that on the 27th day of March 2026, I caused to be served a true and correct copy of the foregoing document on the following persons delivered in the manner indicated below:

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