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6 IN THE CIRCUIT COURT OF THE STATE OF OREGON
7 FOR THE COUNTY OF MULTNOMAH

8 JOHN CAVANAUGH, individually and on)
9 behalf of others similarly situated,)

10 Plaintiff,)

11 vs.)

12 GRIFOLS USA, LLC, a limited liability)
13 company; BIOMAT USA, INC., a corporation)
14 and ALEECE BENTZINGER, an individual,)

15 Defendants.)

Case No.: 24CV34491

**SETTLEMENT AGREEMENT AND
RELEASE**

16 **1. INTRODUCTION**

17 Subject to the preliminary and final approval of the Multnomah County Circuit Court of
18 Oregon (the “Court”), and as set forth below, this Settlement Agreement (the “Agreement”) is
19 made by and between John Cavanaugh, individually and as the Class Representative (“Plaintiff”),
20 on behalf of the settlement class defined below (the “Class”), on the one hand, and defendants
21 Grifols USA, LLC (“Grifols”), Biomat USA, Inc. (“Biomat”), and Aleece Bentzinger (collectively,
22 “Defendants”), on the other hand. Plaintiff and Defendants are collectively referred to in this
23 Agreement as the “Parties.”

24 **2. RECITALS**

25 **2.1** The above-captioned litigation (the “Action”) was commenced on July 17, 2024,
26 with the filing of a Class Action Complaint. On January 17, 2025, Plaintiff filed Plaintiff’s First
Amended Complaint (the “Operative Complaint”).

1 **2.2** The Operative Complaint contained four claims for relief: (1) Sex, Gender
2 Identity, and Sexual Orientation Discrimination against Grifols and Biomat (the “Entity
3 Defendants”) in violation of ORS 659A.403, on behalf of Plaintiff and the proposed Class; (2)
4 Aiding and Abetting Sex, Gender Identity, and Sexual Orientation Discrimination against
5 Bentzinger (the “Individual Defendant”) in violation of ORS 659A.406, on behalf of Plaintiff and
6 the proposed Class; (3) Sex, Gender Identity, and Sexual Orientation Discrimination against the
7 Entity Defendants in violation of ORS 659A.403, on behalf of Plaintiff, individually; and (4) Sex,
8 Gender, and Sexual Orientation Discrimination against the Individual Defendant in violation of
9 ORS 659A.406, on behalf of Plaintiff, individually. On behalf of the proposed Class, Plaintiff
10 sought certification of a proposed class, injunctive and equitable relief, and the award of reasonable
11 attorney’s fees and costs. On behalf of himself individually, Plaintiff sought equitable relief,
12 noneconomic, compensatory and punitive damages, and the award of reasonable attorney’s fees
13 and costs.

14 **2.3** The Parties have engaged in discovery in the Action, including depositions of
15 Plaintiff and Plaintiff’s investigator, production of thousands of pages of documents and responses
16 to requests for admission. The Parties also engaged in discovery motion practice.

17 **2.4** In April 2024, the Entity Defendants changed their eligibility policies. Despite that
18 change, Plaintiff and the proposed Class alleged Defendants’ ongoing discrimination.

19 **2.5** The Entity Defendants maintained that the questions asked were lawful and
20 appropriate and necessary to meet the legitimate and lawful sourcing requirements of certain of its
21 customers. The resolution of this dispute, through this Agreement, requires (among other things)
22 the revision of the questions to which Plaintiff objected, while permitting the Entity Defendants to
23 identify the sources of plasma donation for certain of its customers.

24 **2.6** Starting in October 2025 and continuing through the first part of December 2025,
25 the Parties engaged in multiple mediation sessions, including an all-day, in-person session on
26 October 7, 2025, in Portland, Oregon and multiple videoconferences, telephone calls and dozens

1 of emails. The mediation was overseen by an experienced mediator, the Honorable Henry Kantor,
2 Judge Retired of this Court, who has found the resolution contained in this Agreement to be fair,
3 reasonable, and adequate.

4 **2.7** On November 4, 2025, the Parties reached agreement on only the proposed Class
5 claims, excluding all of Plaintiff's individual claims, Plaintiff's entitlement to a class
6 representative service award, and any Class claim for attorneys' fees or costs. The Parties
7 memorialized that agreement resolving the proposed Class claims in a Term Sheet signed,
8 respectively, by Plaintiff and an authorized representative of the Entity Defendants (the "Term
9 Sheet"). The Term Sheet was, by its terms, independently enforceable should the Parties fail to
10 reach agreement on the remaining areas of dispute between them. On December 5, 2025, the
11 Parties reached agreement on all of the remaining areas of dispute between them and agreed to
12 prepare this Agreement to memorialize all of their agreements, including without limitation the
13 agreements memorialized in the Term Sheet. The Parties' execution of this Agreement supersedes
14 and renders unenforceable the Term Sheet.

15 **2.8** The Parties' entry into this Agreement reflects their respective assessments of the
16 merits of the claims and defenses asserted in the Action and the risks, uncertainty and significant
17 expense of continued litigation. By entering into the Agreement, no Party asserts or confirms the
18 merits or weaknesses of any claim or defense asserted in the Action.

19 3. DEFINITIONS

20 As used in this Agreement, the terms defined in this Section 3 have the following meanings,
21 unless the Agreement expressly provides otherwise.

22 **3.1** **“Action”** means the instant lawsuit entitled *John Cavanaugh v. Grifols USA, LLC*,
23 *et al.*, Multnomah (OR) County Case No. 24CV34491.

24 **3.2** **“Agreement”** means this Settlement Agreement and Release.

25 **3.3 “Attorneys’ Fees and Litigation Expenses”** means the fees and costs paid by
26 Defendants to Class Counsel pursuant to the terms of this Agreement, subject to approval of the

1 Court, as compensation for Class Counsel's reasonable work in the Action and its settlement and
2 as reimbursement for their reasonable out-of-pocket costs.

3 **3.4 "Biomat"** means defendant Biomat USA, Inc.

4 **3.5 "Class Counsel"** means Joshua L. Ross and James E.A. Rehwaldt, Keller
5 Rohrback, LLP; Shenoa Payne, Shenoa Payne Attorney at Law, PC; Talia Guerriero, Beacon
6 Employment Law; and Kelly Simon, ACLU of Oregon, subject to the Court's appointment of
7 Class Counsel.

8 **3.6 "Class Representative"** means Plaintiff John Cavanaugh, subject to the Court's
9 approval of Plaintiff as a suitable representative of the Class.

10 **3.7 "Class Representative Service Award"** means the amount to be paid to the Class
11 Representative in recognition of his time and contribution to promoting the Class's interests and
12 positions taken in this Action, subject to the approval of the Court.

13 **3.8 "Court"** means the Multnomah County Circuit Court of Oregon.

14 **3.9 "Day"** means a calendar day unless otherwise specified. If the day specified for an
15 action falls on a non-business day or a federal or on an Oregon holiday, the deadlines shall be
16 extended to the next calendar day that is a regular business day that is not a holiday.

17 **3.10 "Defendants"** means Grifols USA, LLC, Biomat USA, Inc., and Aleece
18 Bentzinger.

19 **3.11 "DHQ" or "Donor History Questionnaire"** means the Donor History
20 Questionnaire administered to all first-time donors of plasma in any plasma donation center of
21 either of the Entity Defendants located in the State of Oregon.

22 **3.12 "Donor Eligibility Page"** of the Website means
23 <https://www.grifolspasma.com/en/first-donation/are-you-eligible> or any substantially similar
24 Donor Eligibility Page should the Entity Defendants subsequently replace this URL.

25 **3.13 "Donor Video"** means the video provided to all first-time donors of plasma in any
26 Plasma Donation Center of either of the Entity Defendants located in the State of Oregon.

1 **3.14 “Effective Date”** means the Day after the expiration of the deadline for appeal,
2 writs petitions, or motions for rehearing or *certiorari* regarding the Final Approval Order without
3 the initiation of any such proceeding, or if such proceeding has been initiated, the Day after the
4 full and final disposition of any such proceeding *including* any proceedings in remand and/or
5 subsequent appeal and the Court’s order approving the Agreement has been affirmed, or any such
6 appeal is dismissed or withdrawn with no further right to appeal.

7 **3.15 “Eligibility Notice”** means the notice sent pursuant to Section 4.1.5 below that will
8 contain the language set forth in Exhibit F to this Agreement.

9 **3.16 “Entity Defendants”** means defendants Biomat USA, Inc. and Grifols USA, LLC.

10 **3.17 “FAQ Page”** of the Website means
11 <https://www.grifolsplasma.com/en/experienced-donor/faqs> or any substantially similar FAQ Page
12 should the Entity Defendants subsequently replace this URL.

13 **3.18 “Fairness Hearing”** means any hearing to be scheduled by the Court, if necessary,
14 to consider whether to finally approve this Agreement as fair, reasonable, and adequate.

15 **3.19 “Final Approval Order”** means the Court’s order(s) following consideration of
16 the Motion to Approve Settlement and any Fairness Hearing granting final approval to this
17 Agreement and the settlement contemplated by this Agreement, including the agreement to pay
18 Class Counsel’s Attorneys’ Fees and Litigation Expenses.

19 **3.20 The “Find a Plasma Donation Center Page”** of the Website means
20 www.grifolsplasma.com/en/find-a-donation-center or any substantially similar "Find a Plasma
21 Donation Center" Page should the Entity Defendants subsequently change or amend the URL.

22 **3.21 “Grifols”** means defendant Grifols USA, LLC.

23 **3.22 “Individual Defendant”** means defendant Aleece Bentzinger.

24 **3.23 “Joint Press Release”** means a joint press release issued by Class Counsel and the
25 Entity Defendants comprised of the language set forth in Exhibit E to this Agreement.

26 **3.24 “PDC” or “Plasma Donation Center”** means the Entity Defendants’ plasma

1 donation centers (or “centers”) in Oregon that are identified on the “Find a Plasma Donation
2 Center” page of the Website when you conduct a search using the tool on this page, having selected
3 “Oregon” as the “State.”

4 **3.25 “Plaintiff”** means John Cavanaugh, individually and as the Settlement Class
5 Representative.

6 **3.26 “Plaintiff’s Notice Counsel”** means Shenoa Payne, Shenoa Payne Attorney at
7 Law, the representative of Class Counsel designated by Class Counsel to receive notice as and
8 where required by Sections 4.1 and 4.2 of this Agreement or, if unavailable, then Joshua L. Ross
9 and James E.A. Rehwaldt, Keller Rohrback LLP.

10 **3.27 “Preliminary Approval Hearing”** means any hearing set by the Court, if
11 necessary, to consider preliminarily whether the Settlement Agreement is fair, reasonable, and
12 adequate, such that setting of a Fairness Hearing is warranted.

13 **3.28 “Preliminary Approval Order”** means any order entered by the Court at or after
14 the Preliminary Approval Hearing, if necessary, that preliminarily approves this Agreement and
15 sets the Fairness Hearing.

16 **3.29 “Released Claims”** means Released Class Claims, Released Defendant Claims,
17 and Released Plaintiff Claims, each as defined below in Sections 3.29.1 through 3.29.3, but does
18 not include any action seeking to enforce the terms of this Agreement:

19 **3.29.1 “Released Class Claims”** means all claims, counterclaims, allegations, rights,
20 covenants, claims for relief, causes of action, duties, obligations, demands,
21 actions, suits, contracts, agreements, promises, and liabilities for injunctive
22 relief relating to the allegations set forth in the First Claim for Relief and the
23 Second Claim for Relief in the Operative Complaint that were or could have
24 been asserted as part of the Action, including all such claims for injunctive relief
25 based on any allegation that Defendants discriminated against Class members
26 on the basis of “sex, sexual orientation, [or] gender identity,” as those terms are

1 used in ORS 659A.403 or in any other provisions of the Oregon Public
2 Accommodations Act, and including all such claims for injunctive relief that
3 any Releasing Class Member ever had, now has, or may later have for, upon or
4 by reason of any matter cause or thing whatsoever as of the Effective Date of
5 this Agreement, whether known or unknown, arising under federal, state, local,
6 statutory, common law, or any other domestic or foreign law, rule or regulation.
7 Released Class Claims do not include any claims for damages or other monetary
8 relief that the Releasing Class Members, other than the Released Plaintiff
9 Persons, may have against Defendants relating to the allegations and causes of
10 action in the Operative Complaint.

11 **3.29.2 “Released Defendant Claims”** means all claims, counterclaims, allegations,
12 rights, covenants, claims for relief, causes of action, duties, obligations,
13 demands, actions, debts, sums of money, suits, contracts, agreements, promises,
14 damages, and liabilities of every nature and description that any of the
15 Releasing Defendant Persons ever had, now has, or may later have for, upon or
16 by reason of any matter cause or thing whatsoever as of the Effective Date of
17 this Agreement, whether known or unknown, arising under federal, state, local,
18 statutory, common law, or any other domestic or foreign law, rule or regulation,
19 that arose, arises or may arise from, relate to, or are in connection with, the
20 prosecution of the Action by Plaintiff, Class Counsel and the proposed Class.
21 The Released Defendant Claims includes claims for abuse of process and
22 malicious prosecution.

23 **3.29.3 “Released Plaintiff Claims”** means all claims, counterclaims, allegations,
24 rights, covenants, claims for relief, causes of action, duties, obligations,
25 demands, actions, debts, sums of money, suits, contracts, agreements, promises,
26 damages, and liabilities of every nature and description that any Releasing

Plaintiff Person ever had, now has, or may later have for, upon or by reason of any matter cause or thing whatsoever as of the Effective Date of this Agreement, whether known or unknown, arising under federal, state, local, statutory, common law, or any other domestic or foreign law, rule or regulation. The Released Plaintiff Claims constitute a general release of all claims the Releasing Plaintiff Persons have, had or may have against the Released Defendant Persons whatsoever as of the date of this Agreement and expressly includes, without limitation, the Released Class Claims, and any claims that arose, arises or may arise from, relate to, or are in connection with, any visit, or attempt by Plaintiff to visit a Plasma Donation Center, or any of the Entity Defendants' donor eligibility rules, or the Released Defendant Persons' treatment of any Releasing Plaintiff Person protected by the Oregon Public Accommodations Act, including without limitation any treatment on account of "sex, sexual orientation, [or] gender identity," as those terms are used in ORS 659A.403 or in any other provisions of the Oregon Public Accommodations Act ("Sex, Sexual Orientation, Or Gender Identity"), or claims of any kind that any of the Released Defendant Persons, or their policies, practices or procedures discriminated or discriminate against any of the Releasing Plaintiff Persons on the basis of Sex, Sexual Orientation, Or Gender Identity.

3.30 "Released Persons" means Released Class Members, Released Defendant Persons, and Released Plaintiff Persons, each as defined below in Section 3.30.1 through 3.30.3:

3.30.1 "Released Class Members" means the Plaintiff and all gay or bisexual men who have ever had sexual contact with another man and who are residents of Oregon, and each of the Plaintiff's and Class Member's past or present agents, attorneys, representatives, insurers, employees, successors, assigns, heirs and legatees, and any of their past or present respective partners, managing

1 directors, employees, agents, directors, or officers, each in their respective
2 capacities as such.

3 **3.30.2 “Released Defendant Persons” means:**

4 **3.30.2.1** The Individual Defendant and each of her past or present agents,
5 attorneys, representatives, insurers, employees, successors, assigns, heirs
6 and legatees, and any of their respective partners, managing directors,
7 employees, agents, representatives, insurers, employees, successors,
8 assigns, heirs and legatees, and any of their past or present respective
9 partners, managing directors, employees, agents, directors, or officers, each
10 in their respective capacities as such; and

11 **3.30.2.2** Each of the Entity Defendants and each of their past or present
12 parents, affiliates, subsidiaries, divisions, assigns, and successors in interest,
13 and each of their past or present owners, shareholders, members, directors,
14 officers, agents, employees, managers, representatives, attorneys, insurers,
15 each in their respective capacities as such.

16 **3.30.3 “Released Plaintiff Persons” means Plaintiff John Cavanaugh, individually,**
17 and each of his past or present agents, attorneys, representatives, insurers,
18 employees, successors, assigns, heirs and legatees, and any of their past or
19 present respective partners, managing directors, employees, agents, directors,
20 or officers, each in their respective capacities as such, but not Class Members.

21 **3.31 “Releasing Persons” means Releasing Class Members, Releasing Defendants, and**
22 Releasing Plaintiff, each as defined in Sections 3.31.1 through 3.31.3 below:

23 **3.31.1 “Releasing Class Members” means Plaintiff and all gay or bisexual men who**
24 have ever had sexual contact with another man and who are residents of Oregon,
25 and each of the Plaintiff’s and Class Member’s agents, attorneys,
26 representatives, insurers, employees, successors, assigns, heirs and legatees,

1 and any of their respective partners, managing directors, employees, agents,
2 directors, or officers, each in their respective capacities as such.

3 **3.31.2 “Releasing Defendants” means:**

4 **3.31.2.1** The Individual Defendant and each of her agents, attorneys,
5 representatives, insurers, employees, successors, assigns, heirs and legatees,
6 and any of their respective partners, managing directors, employees, agents,
7 representatives, insurers, employees, successors, assigns, heirs and legatees,
8 and any of their respective partners, managing directors, employees, agents,
9 directors, or officers, each in their respective capacities as such; and

10 **3.31.2.2** Each of the Entity Defendants and each of their parents, affiliates,
11 subsidiaries, divisions, assigns, and successors in interest, and each of their
12 owners, shareholders, members, directors, officers, agents, employees,
13 managers, representatives, attorneys, insurers, each in their respective
14 capacities as such.

15 **3.31.3 “Releasing Plaintiff”** means Plaintiff John Cavanaugh, individually, and each
16 of his agents, attorneys, representatives, insurers, employees, successors,
17 assigns, heirs and legatees, and any of their respective partners, managing
18 directors, employees, agents, directors, or officers, each in their respective
19 capacities as such, but not Class Members.

20 **3.32 “Settlement”** means the settlement or resolution of the disputes between the Parties
21 provided for in this Agreement.

22 **3.33 “Settlement Agreement” or “Agreement”** means this document in its final,
23 executed form, together with all of its referenced exhibits and appendices, including any
24 subsequent amendments that have been duly executed by the Parties and any exhibits to such
25 amendments.

26 **3.34 “Sex, Sexual Orientation, Or Gender Identity”** means what those terms mean as

1 used in ORS 659A.403 or in any other provision of the Oregon Public Accommodations Act.

2 **3.35 “Term Sheet”** means the preliminary agreement reached by the Parties on certain
3 relief for the Class, as signed by the Parties on November 4, 2025.

4 **3.36 “Website”** means the website found at www.grifolsplasma.com or any
5 substantially similar website operated by the Entity Defendants should they replace this URL.

6 **4. Consideration For Settlement**

7 The Entity Defendants’ consideration for the Settlement, including without limitation the
8 Releases described in this Agreement, consists of the items identified in Section 4.1 below. The
9 consideration for the Settlement between the Individual Defendant, on the one hand, and the Class
10 and Plaintiff, on the other hand, consists of the respective Releases of claims each has made as to
11 the other and the dismissal with prejudice of all claims against the Individual Defendant and Entity
12 Defendants.

13 **4.1 Non-Monetary Consideration.** The Entity Defendants will perform the actions
14 identified in this Section 4.1 within the State of Oregon.

15 **4.1.1 Amendment of Question 53 in the DHQ.** Within ninety (90) days after
16 execution of this Agreement or, if later, within ten (10) Days after the Effective
17 Date, the Entity Defendants will implement the following changes to, and
18 relating to, Question 53 in the DHQ: (1) Cause the language identified in
19 Exhibit A to appear as a “pop up” before a prospective donor is asked to read
20 Question 53; and (2) Amend Question 53 in the DHQ so that it reads as set forth
21 in Exhibit B to this Agreement.

22 **4.1.1.1** The Entity Defendants will maintain Question 53 as revised for a minimum
23 of five (5) years, unless the Entity Defendants are legally compelled to make
24 revisions based on Oregon or federal statutes, rules, or regulations, or any
25 court or agency interpretation of federal or Oregon statutes, rules or
26 regulations—including any changes legally compelled by the federal Food

1 and Drug Administration. If, for any reason, substantive updates or changes
2 are made to Question 53, the Entity Defendants will provide reasonable
3 notice to Plaintiff's Notice Counsel in advance of any change. The Entity
4 Defendants represent and warrant that they are not aware of any current
5 rules, regulations, or laws that would require a change in the revised version
6 of Question 53 for Oregonians.

7 **4.1.2 Website.** Within the later of ten (10) Days after the execution of this Agreement
8 and ten (10) Days after the Effective Date, the Entity Defendants will post to
9 either the FAQ Page or the Donor Eligibility Page of the Website the language
10 contained in Exhibit C to this Agreement.

11 **4.1.2.1** The Entity Defendants will maintain this language on the Website for a
12 minimum of five (5) years after posting unless it becomes necessary to make
13 changes. If, for any reason, in that five-year period, the Entity Defendants
14 determine that it is necessary for them to make any material updates or
15 changes to the above content in a way that would materially impact the
16 terms of this Agreement, the Entity Defendants will provide reasonable
17 notice to Plaintiff's Notice Counsel in advance of any such change.

18 **4.1.3 Donor Video.** Within sixty (60) days after the later of the execution of this
19 Agreement and the Effective Date, Defendants will update the Donor Video to
20 include the Donor Video Language set forth in Exhibit D to this Agreement.

21 **4.1.3.1** Within five years following the later of the Parties' execution of this
22 Agreement and the Court's Final Approval Order, should Defendants make
23 material updates or changes to the Donor Video Language that would
24 materially impact the goal of letting Class Members know that they are
25 eligible to donate plasma at the PDCs or materially impact the terms of this
26 Agreement, the Entity Defendants will provide reasonable notice to

Plaintiff's Notice Counsel in advance of any such change.

4.1.4 Press Release. Within ten (10) Days after the Effective Date, Class Counsel and the Entity Defendants will issue the Joint Press Release attached as Exhibit E to this Agreement.

4.1.5 Notice To Certain Deferred Individuals. Within ten (10) Days after the later of the Parties' execution of this Agreement and the Effective Date, one or more of the Entity Defendants will send the Eligibility Notice (Exhibit F) to those Class Members who, as reflected in the Entity Defendants' records, were permanently deferred from donating plasma at a PDC between May 11, 2023 and April 15, 2024 based on their having engaged in sexual contact with another man.

4.1.5.1 The Entity Defendants will provide notice to Plaintiff's Notice Counsel that they have fulfilled their obligation to send the Eligibility Notices under Section 4.1.5 above, including by providing a report regarding the number of Eligibility Notices sent.

4.1.6 No Admission of Liability. The Entity Defendants have agreed to perform the non-monetary obligations in this Section 4.1 strictly to achieve a settlement of Plaintiff's and the Class's claims for injunctive and equitable relief. Plaintiff and the Class agree that, by undertaking to perform these obligations, neither the Entity Defendants nor the Individual Defendant (who has no power or authority to undertake any of these obligations) admit to any wrongdoing or violations of any law leading up to the filing of the Action and the execution of this Agreement.

4.2 Monetary Consideration. Subject to the Court's entry of a Final Approval Order approving this Agreement, the Entity Defendants will make the following monetary payments on the following terms and conditions.

4.2.1 Payment to Plaintiff (Damages and Service Award). Within twenty (20) Days

after the Effective Date or, if later, twenty (20) days after Plaintiff's provision to Defendants of an IRS Form W-9, and subject to the Court's approval of the Settlement, the Entity Defendants will make a payment to Plaintiff in the amount of

and (2) a Class Representative Service Award in recognition of Plaintiff's service as the Class Representative in the Action (\$15,000), or such amount approved by the Court. The check required by this Section 4.2.1 will be made out to the Plaintiff precisely as he is identified in the IRS Form W-9 he has provided and will be sent to Plaintiff care of Plaintiff's Notice Counsel, payable to: John Cavanaugh. If the Entity Defendants issue a Form 1099 for the amounts paid in this Section 4.2.1, they will issue the Form 1099 to John Cavanaugh only.

4.2.2 Payment of Attorneys' Fees, Costs and Expenses. Within twenty (20) business days after the Court enters the Final Approval Order or, if later, within twenty (20) business days after Plaintiff's and Class Counsel's provision to Defendants of IRS Forms W-9, the Entity Defendants will make payment to Class Notice Counsel in trust (payable to: "Shenoa Payne Attorney at Law PC Trust Account") for Class Counsel in the amount approved by the Court in the Final Approval Order. In no event shall the amount sought by, or paid to, Class Counsel under Section 4.2.2, or under this Agreement, exceed Five Hundred and Twenty Five Thousand Dollars (\$525,000). If the Entity Defendants issue a Form 1099 for the amounts paid in this Section 4.2.2, they will issue the Forms 1099 to Class Counsel only.

4.2.3 Payment of Mediator's Fees. Plaintiff will pay 40% of the Mediator's total fees, up to a maximum of \$10,920. The Entity Defendants will pay the balance

1 of the Mediator's total fees. Nothing in this Section 4.2.3 or in this Agreement
2 shall prevent the Parties, or any of them, from challenging the Mediator's
3 invoiced fees.

4 **4.3 Dismissal With Prejudice.** Within ten (10) Days after the Effective Date, Plaintiff
5 will file in the Action a dismissal with prejudice of the entire Action as to all Defendants.

6 **5. COURT APPROVAL OF AGREEMENT**

7 **5.1** Promptly after the execution of this Agreement, Class Counsel shall submit to the
8 Court the motion papers for approval of this Agreement that Class Counsel drafted and were not
9 opposed by Defendants. The Parties shall cooperate in good faith in the filing of these motion
10 papers seeking the Court's final approval of the Settlement reached in this Agreement. A copy of
11 a proposed form of a Final Approval Order, which Class Counsel shall submit to the Court for its
12 approval in connection with a motion for approval of the Agreement is attached as Exhibit G to
13 this Agreement.

14 **5.2** If the Court declines to grant approval of the Settlement reached in this Agreement,
15 or if the Final Approval Order is entered and reversed on appeal, the Parties shall meet and confer
16 to evaluate in good faith if their Settlement can be modified to address any concerns expressed by
17 the Court in the approval process and then presented to the Court for approval as modified. If the
18 Parties cannot reach agreement on a modified Agreement, or determine not to present a modified
19 Agreement to the Court for approval, or if the Court declines to approve such modified Agreement,
20 this Agreement shall be terminated and rendered null, void and without force and effect, and the
21 Parties shall revert to their status in the Action as of November 3, 2025.

22 **5.3** For a period of four years after the execution of this Agreement, Plaintiff and the
23 Entity Defendants agree that each will not disparage any of the opposing parties by making any
24 comments or statements to Class Members or to any public third party (including any statements
25 in or to social or traditional media), that are in any way inconsistent with statements or allegations
26 contained in the public record of the Action and/or the statements made in the Joint Press Release

1 attached as Exhibit E to this Agreement.

2 **6. RELEASES**

3 Upon the Effective Date, the Parties respectively agree to release such other Parties from
4 all claims described below in Sections 6.1 through 6.3.

5 **6.1 Plaintiff Release.** Releasing Plaintiff Persons release each of the Released
6 Defendant Persons from any and all Released Plaintiff Claims.

7 **6.2 Class Release.** Releasing Class Members release each of the Released Defendant
8 Persons from any and all Released Class Claims.

9 **6.3 Defendants' Release.** Releasing Defendant Persons release each of the Released
10 Plaintiff Persons and Released Class Members from any and all Released Defendant Claims.

11 **6.4 Release Not Applicable to Action to Enforce this Agreement.** Nothing in this
12 Agreement releases, or shall be construed to release, any claim by the Parties to enforce the terms
13 of this Agreement.

14 **7. NO ADMISSION OR WAIVER**

15 **7.1** Nothing in this Agreement shall constitute an admission by any Party with respect
16 to the merit or lack of merit of any claim or defense asserted in the Action, nor shall any Party be
17 deemed by this Agreement to have waived any claim or defense in the event this Agreement is
18 terminated under Sections 5.2 of this Agreement. Defendants explicitly deny any wrongdoing or
19 liability associated with this Action, and further deny that, but for the purposes of settling this
20 Action, any part of this Action is appropriate for class certification. Defendants further explicitly
21 deny all factual allegations of unlawful, improper, or discriminatory conduct, and all alleged
22 claims in any Complaint filed in the Action, the class allegations, and all claims for relief in all of
23 its forms. Nothing contained in this Agreement constitutes, nor should it be construed as, an
24 admission by Defendants of wrongdoing or liability or of the truth of the allegations asserted in
25 the Action, or that the Action was properly brought on a class or representative basis. Defendants
26 expressly deny that any of their actions or omissions were discriminatory on the basis of sexual

1 orientation, gender, or gender identity, or on any other unlawful basis. All parts of the Settlement
2 of this Action, including this Agreement and all negotiations and agreements that are part of this
3 Agreement, were made strictly for the purpose of settlement and to avoid the expense and
4 uncertainty of litigation. Without regard to whether this Agreement is approved by the Court, or
5 whether the performance of the Agreement is consummated, the facts and terms of this Agreement,
6 including exhibits, all negotiations, discussions, drafts and proceedings in connection with the
7 Agreement:

8 **7.1.1** Shall not be offered or received against any of the Released Persons as
9 evidence of, or construed as, or deemed to be a presumption, concession,
10 admission, or otherwise evidence, of any fact alleged by Plaintiff or the
11 validity of any claim that was or could have been asserted against any of the
12 Released Persons in this Action or in any litigation, in this Court or any other
13 court, administrative agency, arbitration forum, or other tribunal, or of any
14 liability, negligence, fault or other wrongdoing of any kind, of any liability,
15 negligence, fault or other wrongdoing of any kind of any of the Released
16 Persons to Plaintiffs, the Class, or anyone else;

17 **7.1.2** Shall not be offered or received against any of the Released Persons as
18 evidence of, or construed as, or deemed to be presumption, concession,
19 admission or otherwise evidence of, any fault, misrepresentation, or
20 omission with respect to any statement or written document approved or
21 made by any of the Released Persons, or against the Released Persons, as
22 evidence of any infirmity in the claims or defenses that have been or could
23 have been asserted in the Action; and

24 **7.1.3** Shall not be offered or received against any of the Released Persons as
25 evidence of, or construed as, or deemed to be a presumption, concession,
26 admission, or otherwise evidence, of a presumption, concession, or
admission with respect to any liability, negligence, fault or wrongdoing of

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any kind, or in any way referred to for any other reason or purpose as against any of the Released Persons, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; PROVIDED, however, that if this Agreement is approved by the Court, any Released Person may file this Agreement, the Final Approval Order, or any Judgment in any action or proceeding in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release and discharge, good faith settlement, judgment bar or reduction of any other theory of claim preclusion, issue preclusion, claim mitigation, or similar defense or counterclaim.

8. TAXES

Plaintiff acknowledges, agrees and understands that he alone is responsible for any tax consequences resulted from monetary awards or payments that he may receive under the terms of this Agreement, and that neither the Defendants nor Class Counsel have any responsibility for such tax consequences, or have any obligation to provide advice as to the tax consequences of any monetary awards or payments made to Plaintiff under the terms of this Agreement.

9. MISCELLANEOUS

10.1 Authority. Each of the signatories to this Agreement represents and warrants that each has the authority to bind the respective Parties to this Agreement.

10.2 Authority to Release Released Claims. Each of the Releasing Persons represents and warrants that each has full right, title and interest in the Released Claims that each is releasing under this Agreement and has not sold, assigned or otherwise transferred or conveyed any interest in any of the Released Claims that each is releasing under this Agreement.

10.3 Counterparts Permissible. This Agreement may be executed in counterparts, each of which shall be deemed an original against the party whose signature is provided, and all of which shall be considered an original and together shall constitute one agreement binding on

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

1 all Parties. Electronic signature, PDF signature, or DocuSign signatures shall be deemed to be as
2 valid and enforceable as original ink signature.

3 **10.4 Notices.** All letters, notices, requests, demands and other communication required
4 or permitted to be given to the Parties pursuant to this Agreement shall be in writing, provided by
5 electronic mail and/or next-Day express delivery service and addressed as follows:

6 For Plaintiff and Class:

7 Shenoa Payne, Attorney at Law
8 Crown Plaza Building
9 1500 SW First Ave, Suite 1000
Portland, Oregon 97201

10 Or if unavailable, then to:

11 Joshua L. Ross, Esq.
12 James E.A. Rehwaldt
13 Keller Rohrback LLP
601 SW Second Avenue, Suite 1900
Portland, Oregon 97204
Email: jross@kellerrohrback.com; jrehwaldt@kellerrohrback.com

14 For Defendants:

15
16 David Raizman, Esq.
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
17 400 South Hope Street, Twelfth Floor
Los Angeles, California 90071
18 Email: david.raizman@ogletree.com

19
20 **10.5 Governing Law and Venue.** This Agreement shall be governed by the laws of the
21 state of Oregon without regard to conflicts or choice of law rules or principles. The Parties agree
22 that any action to enforce of this Agreement shall be heard in the Circuit Court of Multnomah
23 County.

24 **10.6 Breach.**

25 10.6.1 The Parties agree that they have an obligation to meet and confer in
26 good faith prior to seeking enforcement of this Agreement by injunction or any other proceeding.

10.6.2 The Parties agree that a material breach of terms of this Agreement

1 could cause irreparable injury for which monetary damages would be inadequate and that therefore
2 any Party may obtain an injunction as a remedy for any such breach of such terms to prevent
3 further or ongoing violations of this Agreement.

4 **10.7 Waiver.** If a Party, by its actions or omissions, waives or is adjudged to have
5 waived any breach of this Agreement, any such waiver shall not operate as a waiver of any other
6 subsequent breach of this Agreement.

7 **10.8 Successor and Assigns.** This Agreement is binding upon and shall inure to
8 the benefit of the Parties to this Agreement and their respective heirs, executors, administrators,
9 personal or legal representatives, successors and/or assigns.

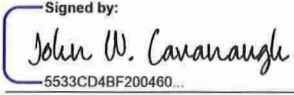
10 **10.9 Construction of Agreement.** The Parties waive all applicable rules of construction
11 to the extent that any provision of this Agreement should or could be construed against its drafter.
12 The Parties further agree that all provisions of this Agreement shall be construed as a whole,
13 according to the fair meaning of the language used.

14 **10.10 Severability.** If any provision of this Agreement is or shall be declared invalid or
15 unenforceable by a court of competent jurisdiction, the remaining provisions shall not be affected
16 thereby and shall remain in full force and effect.

17 **10.11 Integration and Modification.** This Agreement contains all of the
18 representations, promises, and understandings of the Parties. There are no other agreements or
19 understanding, including the Term Sheet, except as set forth in this Agreement. Among other
20 things, this provision renders the Term Sheet null, void and of no further force and effect.

21 **10.12 Advice of Counsel.** Each of the Parties to this Agreement represents and
22 warrants the he or it is voluntarily entering into this Agreement with a full understanding of the
23 contents of this Agreement and with the opportunity to seek the advice of counsel regarding the
24 wisdom and propriety of entering into this Agreement.

1 IT IS SO AGREED, BY:
2 **JOHN CAVANAUGH, INDIVIDUALLY**

3 Signed by:
4 
5 John Cavanaugh
6 DATED: May 12, 2026

7 **JOHN CAVANAUGH, ON BEHALF OF THE PROPOSED CLASS**

8 Signed by:
9 
10 John Cavanaugh
11 DATED: May 12, 2026

12 **GRIFOLS USA, LLC**

13 **BY:** _____
14 _____
15 Its Managing Member

16 DATED: _____

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BIOMAT USA, INC.

Its [title]

DATED: _____

ALEECE BENTZINGER

Aleece Bentzinger

DATED: _____

1 IT IS SO AGREED, BY:

2 **JOHN CAVANAUGH, INDIVIDUALLY**

3

4

John Cavanaugh

5

DATED: _____

6

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JOHN CAVANAUGH, ON BEHALF OF THE PROPOSED CLASS

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John Cavanaugh

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DATED: _____

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12 **GRIFOLS USA, LLC**

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BY: _____

DocuSigned by:

Christopher Healey

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Christopher Healey

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Its Managing Member Grifols Shared Services North America, Inc's presidnet

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DATED: 5/13/2026 | 18:52:23 PDT

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BIOMAT USA, INC.

Signed by:
Bone, Donald Shane
F18F33A95193446

Its [title] VP of US Operations-Biomat

DATED: 5/13/2026 | 13:06:01 PDT

ALEECE BENTZINGER

Aleece Bentzinger

DATED:



1
2 **BIOMAT USA, INC.**

3
4
5 _____
6 Its [title]

7 DATED: _____

8 **ALEECE BENTZINGER**

9 **Bentzinger,**
10 **Aleece**

Digitally signed by
Bentzinger, Aleece
Date: 2026.05.13 11:49:23
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11 _____
12 Aleece Bentzinger

13 DATED: _____
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EXHIBIT A

**Sexual Contact means any of the following (whether or not a
condom or barrier device was used):**

- Vaginal sex (contact between penis and vagina)
- Oral sex (mouth or tongue on someone's vagina, penis, or anus)
- Anal sex (contact between penis and anus)

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The KOIN Center
222 SW Columbia Street, Suite 1500 | Portland, OR 97201
Phone: 503-552-2140 | Fax: 503-224-4518

EXHIBIT B

Have you ever had sexual contact with (select all that apply):

☐ A male

☐ A female

☐ A non-binary person

☐ Never had sexual contact with another person

EXHIBIT C

If you have been deferred under a former Grifols' policy regarding certain sexual activities, Grifols has made changes that may allow you to donate, provided you meet all other eligibility criteria. Grifols does not discriminate on the basis of sexual orientation or on past sexual activity between men.

EXHIBIT D

Welcome. Grifols does not discriminate on the basis of race, sex, sexual orientation, age, national origin, ethnicity, disability or any other protected status. Federal law, however, requires Grifols to screen prospective donors to determine if they are in good health and to identify risk factors or evidence of potential transfusion-transmitted infections. As a result, this donor eligibility screening process will ask you questions you may find to be personal in nature.

EXHIBIT E

FOR IMMEDIATE RELEASE

[City, State] — [Date] — Grifols USA, LLC, Biomat USA, LLC (“Biomat”) and ACLU of Oregon, Shenoa Payne Attorney at Law, PC, Beacon Employment Law, and Keller Rohrback, LLP (“Class Counsel”) announced today that the Multnomah County Circuit Court has granted final approval for a class action settlement voluntarily reached related to previously filed litigation, *Cavanaugh v. Grifols USA et al*, Multnomah County Case Number 24CV34491 (the “Lawsuit”). The class claimed a violation of their rights under the Oregon Public Accommodations Act.

The attorneys for the Class and the Class Representative have expressed their satisfaction that the resolution is “fair and reasonable” and addresses the class’s concerns raised in the Lawsuit and the claims asserted therein.

Defendants Grifols and Biomat do not admit any wrongdoing. Grifols and Biomat’s are concerned first and foremost with the safety and well-being of its donors, its products, and their patients, and do not discriminate on the basis of sexual orientation.

EXHIBIT F

Dear Mr. [Surname]

We write to inform you that our rules for donating plasma have changed since you attempted to donate plasma and that you may now be eligible to donate plasma at one of our Plasma Donation Centers, provided you meet all of the eligibility criteria in place at the time of your donation, which are listed at <https://www.grifolsplasma.com/en/first-donation/are-you-eligible>.

Effective April 16, 2024, Biomat and Grifols accept plasma from donors without regard to their sexual orientation or a history of past sexual activity between men. As a result, those would not be reasons to make you ineligible to donate plasma.

We hope you will once again consider donating plasma at one of our plasma donation centers.

Biomat and Grifols do not discriminate on the basis of sexual orientation or on the basis of any history of past sexual activity between men.

Very truly yours,

BIOMAT/GRIFOLS

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EXHIBIT G

[INSERT PRELIMINARY APPROVAL MOTION]

4915-2720-7081, v. 1

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

JOHN CAVANAUGH, individually and on
behalf of all others similarly situated,,

Plaintiff,

v.

GRIFOLS USA, LLC, a limited liability
company; BIOMAT USA, INC., a corporation;
and ALEECE BENTZINGER, an individual,

Defendants.

Case No. 24CV34491

**UNOPPOSED MOTION FOR
CERTIFICATION OF INJUNCTIVE
SETTLEMENT CLASS AND
APPROVAL OF CLASS
SETTLEMENT (ORCP 32 D)**

CONFERRAL

Pursuant to the Parties' Settlement Agreement, Defendants Grifols USA, LLC and
Biomat USA, Inc. (together, the "Entity Defendants") and Defendant Aleece Bentzinger (with
the Entity Defendants, the "Defendants") do not oppose the relief sought in this Motion.¹
(Plaintiff and Defendants are referred to collectively in this Motion as the "Parties.")

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¹ While the Defendants do not oppose the relief sought by Plaintiff in this Motion, they do not
share in all of Plaintiff's characterizations of the history of this litigation, or the changes the
Entity Defendants have agreed to make as part of this Motion.

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UNOPPOSED MOTION TO APPROVE CLASS SETTLEMENT

1

MOTION

Plaintiff and putative Class Counsel are pleased to request the Court's Final Approval of a settlement agreement resolving the two class claims asserted in this case (the "Settlement Agreement").

As described in more detail below, Plaintiff moves the Court, pursuant to ORCP 32, for an Order (a) certifying, for settlement purposes only, an injunctive relief class defined as: "All gay or bisexual men who have ever had sexual contact with another man and who are residents of Oregon;" (b) appointing Plaintiff John Cavanaugh as Class Representative; and (c) appointing Shenoa Payne (Shenoa Payne Attorney at Law), Talia Guerriero (Beacon Employment Law), Joshua L. Ross and James E.A. Rehwaldt (Keller Rohrback LLP), and Kelly Simon (ACLU of Oregon) as Class Counsel.

Plaintiff further moves for approval of the class portions of the Parties' Settlement Agreement, which provides class-wide injunctive relief, including material modifications to the Entity Defendants' Donor History Questionnaire ("DHQ") at issue in this case; stipulates to payment by the Entity Defendants of a \$15,000 class representative service award to the class representative; and stipulates to payment of \$525,000 in attorney fees and costs to Class Counsel. Notice of the Settlement Agreement to class members is not required or appropriate. Therefore, the Court should GRANT this Motion and issue final approval of the Settlement Agreement. A proposed form of Order is submitted with this Motion.

This motion is based on the accompanying memorandum, declarations, exhibits, the Settlement Agreement, and the record before the Court.

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UNOPPOSED MOTION TO APPROVE CLASS SETTLEMENT

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

A. Abbreviated History of the Litigation

Plaintiff originally filed this action on July 17, 2024. In the Complaint, Plaintiff alleged that on January 21, 2024, he visited the Entity Defendants' Eugene, Oregon plasma donation center. During the visit, Plaintiff filled out the Entity Defendants' DHQ, which asked Plaintiff, among other questions, whether he had EVER had sexual contact with another man. Plaintiff answered in the affirmative. As a result, Plaintiff was denied the ability to donate plasma and informed, at the time, that he was "forever banned" from donating plasma at any of the Entity Defendants' facilities. Based on further investigation, Plaintiff alleged that Defendants maintained a policy prohibiting men who have had sex with men, or "MSM," from accessing the Entity Defendants' donation centers and services.

In the Complaint, Plaintiff asserted that Defendants' conduct was inconsistent with well-established medical standards and applicable federal guidance and, moreover, that Defendants' conduct violated Oregon law. The Complaint asserted a class claim (first claim for relief) against Defendants Grifols USA, LLC and Biomat USA, Inc. for a direct violation of Oregon's Public Accommodations Act, ORS 659A.403 and 659A.406. The Complaint also asserted a class claim (second claim for relief) against the Entity Defendants' regional manager, Aleece Bentzinger, for aiding and abetting violations of those statutes.

Sometime after filing the action, Defendants informed Plaintiff that, in April 2024, the Entity Defendants had changed their policy to permit donations by men who had had sex with other men. Defendants further informed Plaintiff that, in connection with that change, the the Entity Defendants had updated their DHQ, to which Plaintiff had continuing objections.

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UNOPPOSED MOTION TO APPROVE CLASS SETTLEMENT

Following that disclosure, the Parties engaged in a prolonged effort of direct negotiation to resolve the litigation, but they were unsuccessful.

Plaintiff filed his First Amended Complaint (“FAC”) on January 17, 2025. There, Plaintiff alleged, among other things, that Defendants continued to discriminate against putative class members by requiring prospective donors to answer invasive and unnecessary questions about their sexual orientation. Those questions, the FAC alleges, effectively deter class members from donating plasma and act to exclude class members from equal and open access to public accommodations. Specifically, the FAC alleges that the Entity Defendants’ DHQ required prospective donors to answer, “whether a potential donor has ever had sex with members of the same sex or gender and, if the answer is yes, it asks those donors whether they have ever engaged in anal sex.” FAC ¶ 41.

Plaintiff alleged that Defendants continued to treat one group of potential donors in a manner that was different from other potential donors based on sexual orientation and, therefore, that the Entity Defendants’ policies denied Plaintiff and members of the class full and equal access to the Entity Defendants’ public accommodations. On March 21, 2025, Defendants filed their Amended Answer to the FAC, largely denying the allegations and denying any and all liability.

Beginning in April 2025, discovery began in earnest. The Parties undertook relatively lengthy negotiations to set a discovery and trial schedule and submitted a proposed case management order to the Court. The Parties issued voluminous Requests for Admission; Requests for Production; and noticed depositions of the Parties, including lengthy ORCP 39 C(6) deposition topics for Defendants’ corporate representative(s), over which the Parties extensively conferred. The Parties also responded with objections to the discovery requests. Despite the remaining, unresolved discovery disputes, in all, Plaintiff produced over 200 pages of records to

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UNOPPOSED MOTION TO APPROVE CLASS SETTLEMENT

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Defendants, and Defendants produced well over 5,000 pages of discovery to Plaintiff. Defendants took Mr. Cavanaugh's deposition over two separate dates. In addition, Defendants took the deposition of Plaintiff's private investigator. As the Court may recall, the Parties also filed competing discovery Motions, which were heard in mid-October, 2025.

B. Summary of Mediation, Negotiations, and Settlement Terms

On October 7, 2025, the Parties opened mediation with Hon. Henry Kantor serving as mediator. The Parties intentionally negotiated settlement in a sequential manner: starting first with negotiation and binding resolution of the class claims and then, separately, negotiation and resolution of the class representative service award, attorneys' fees and costs, and Plaintiff's individual claims.²

The Parties negotiated for a full day and into the evening of October 7, without reaching agreement. Over the following several weeks, Judge Kantor continued working with the Parties and, after many rounds of negotiations, on November 4, 2025, the Parties signed a binding Term Sheet resolving the injunctive class claims.³

The class agreements reached in the Term Sheet have now been incorporated as a final, written Settlement Agreement addressing both class and individual issues. *See* Declaration of Joshua L. Ross, Exh A (agreement) *and see* Declaration of Talia Y. Guerriero, ¶ 12

² The Parties are pleased to report that they have also resolved Mr. Cavanaugh's individual claims. This Motion only seeks approval of the class-related settlement terms. For that reason, the terms relating solely to Mr. Cavanaugh's individual claims have been redacted from the version of the Settlement Agreement submitted with this Motion.

³ The binding Term Sheet—through which the Parties agreed to material relief on behalf of the class—contains the following provision:

"This Agreement on class injunctive relief will be final and binding on the parties without regard to the parties' ability to reach agreement on any other part of the action. This Agreement is reached completely independently of and prior to resolution of all other portions of the case, including Plaintiff's claim for damages and Plaintiff's and the class's claim for attorney's fees and costs."

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UNOPPOSED MOTION TO APPROVE CLASS SETTLEMENT

(summarizing terms). As stated there, Plaintiff has negotiated substantial relief for the class, including changes to the Entity Defendants' DHQ that addresses the language that Plaintiff had alleged was discriminatory. In addition, the Entity Defendants have agreed to updates on their website, in a donor video, and to provide direct information regarding these changes to potential donors who, like Plaintiff, were permanently deferred from donations after changes in federal guidance in May 2023. The specific terms are contained in the Settlement Agreement. Ross Decl, Exh A.

With the assistance of the mediator, the Parties intentionally negotiated the settlement in phases so that resolution of the class claims was resolved before negotiation and resolution of the attorney fees, class representative service award, and Plaintiff's individual damages—a strategy intended to focus the discussion, first, on the class and relief for the class. Once the Parties agreed to binding terms resolving the class claims, the Parties turned to negotiating resolution of all remaining issues, including attorney fees and costs, a class representative service award, and Plaintiff's individual claims. Those negotiations, too, were prolonged and difficult. However, on December 5, 2025, the Parties reached agreement in principle on the following additional terms: (1) the Entity Defendants' have agreed to pay \$525,000 to Class Counsel to resolve the class claim for recovery of attorney fees and costs; (2) the Entity Defendants have agreed not to object to Plaintiff's request for a class representative service award of \$15,000, payable by the Entity Defendants; and (3) the Parties resolved Mr. Cavanaugh's individual claims.

Plaintiff now seeks the Court's certification of a settlement class and final approval of the class settlement.

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UNOPPOSED MOTION TO APPROVE CLASS SETTLEMENT

**II. THE COURT SHOULD CERTIFY AN INJUNCTIVE SETTLEMENT CLASS;
APPOINT PLAINTIFF AS CLASS REPRESENTATIVE; AND APPOINT COUNSEL AS
CLASS COUNSEL.**

The proposed injunctive class satisfies ORCP 32A—numerosity, commonality, typicality, and adequacy—and certification is also proper under ORCP 32B(2) because, as alleged in the FAC, Plaintiff’s class claims asserted that Defendants acted or refused to act on grounds generally applicable to the putative class. For that reason, certification of the injunctive class for settlement purposes only is appropriate.

A. Legal Standards

A class may be certified if: (a) the class is so numerous that joinder is impracticable (numerosity); (b) questions of law or fact common to the class exist (commonality); (c) the claims or defenses of the representative parties are typical of the class (typicality); and (d) the representative parties will fairly and adequately protect the interests of the class (adequacy). ORCP 32A(1)-A(4). A class should be certified when those requirements are met and, as applicable here, the “the relief sought would take the form of injunctive relief or corresponding declaratory relief with respect to the class as a whole.” ORCP 32B(2).

Trial courts are granted “wide latitude” in determining whether a “proceeding shall be conducted as a class action,” because that decision is “largely a matter of judicial administration.” *Froeber v. Liberty Mut. Ins. Co.*, 222 Or App 266, 275 (2008) (internal quotations omitted). Oregon courts have broad authority to issue rulings “tailored to the practical needs of individual cases and to a variety of circumstances.” *Green v. Salomon Smith Barney, Inc.*, 228 Or App 379, 386, *rev den*, 347 Or 348 (2009). Absent controlling Oregon case law, Oregon courts evaluating certification decisions consider federal interpretations of analogous provisions of FRCP 23 as highly persuasive authority. *Froeber*, 222 Or App at 277 n9

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UNOPPOSED MOTION TO APPROVE CLASS SETTLEMENT

(ORCP 32 is “modeled after the federal rules[.]” and “decisions by federal courts on class action settlements are persuasive.”).

Here, in light of the nature of the class relief sought and achieved in the proposed Settlement, certification of the settlement class is appropriate.

B. Numerosity

There is no universal rule regarding numerosity. The touchstone of the inquiry is that “joinder of all members is impracticable.” ORCP 32A(1). “Several factors determine practicability. The number of parties is the most persuasive factor when the numbers are large.” *See Newman v. Tualatin Development Co., Inc.*, 287 Or 47, 49-50 (1979) (125 townhouse owners satisfied numerosity). However, even a class “in the 25 to 30 range should have a reasonable chance of success on the basis of number alone.” *Id.* at 50.

Federal authorities are consistent. *See Johnson v. City of Grants Pass*, 72 F4th 868, 886 (9th Cir. 2023), *rev’d on other grounds*, 603 U.S. 520 (2024) (citing *Harik v. Cal. Teachers Ass’n*, 326 F.3d 1042, 1051-52 (9th Cir. 2003)) (“proposed classes of less than fifteen are too small while classes of more than sixty are sufficiently large.”). Other authorities, however, endorse even smaller classes. *See William B. Rubenstein*, 1 *Newberg and Rubenstein on Class Actions* § 3:12 (6th ed. 2025 Supp.) (“Newberg on Class Actions”) (class of 20 to 40 members sufficient; impracticability is presumed at 40 members). When the number of class members is on the smaller side, other factors lend additional weight in the court’s analysis, such as judicial economy in avoiding multiple lawsuits, the geographic diversity of the class members, and the claimants’ ability to institute individual actions. *Id.*

The nature of the case also impacts the numerosity requirement. “Where plaintiffs seek only injunctive and declaratory relief, the numerosity requirement is relaxed” and “plaintiffs may rely on reasonable inferences” from the facts to establish “that the number of *unknown* and future

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UNOPPOSED MOTION TO APPROVE CLASS SETTLEMENT

members is sufficient to make joinder impracticable.” *See Blake v. City of Grants Pass*, 2019 WL 3717800, at *3 (D Or Aug 7, 2019), *aff’d sub nom. Johnson v. City of Grants Pass*, 50 F 4th 787 (9th Cir. 2022), amended and superseded on denial of rehearing en banc, 72 F 4th 868 (9th Cir. 2023), *rev’d on other grounds*, 603 US 520 (2024) (relying on “point in time” count of homelessness data indicating the existence of a class of at least 600 involuntarily unhoused individuals to conclude that numerosity was satisfied) (*italics added; internal quotation omitted*).

Here, the Parties agree that the proposed injunctive class is sufficiently numerous. The proposed class is defined as “[a]ll gay or bisexual men who have ever had sexual contact with another man and are residents of Oregon.” FAC ¶ 54. Common sense dictates that the joinder of all Oregonians who are members of the proposed class would be impractical. Reasonable inferences, including publicly available statistics, support that conclusion. For example, a 2019 report from the UCLA School of Law Williams Institute of LGBT Data & Demographics found that 5.6% of the population of the state identify as lesbian, gay, bisexual, or transgender. Of those, 38% identified as male.⁴ In 2023, the Oregonian reported updated numbers from the Williams Institute, noting that “[t]he state’s 253,300 LGBTQ+ residents account for 7.8% of its overall population.”⁵

While, of course, not every LGBTQ+ individual fits into the class definition, the Court can certainly conclude from generally available data that the proposed class (numbering, at least, in the tens of thousands) meets the minimal numerosity requirement, particularly given the injunctive nature of the relief sought. The relief obtained for the class in the Settlement

⁴ The data used in the analysis was collected for the Gallup Daily Tracking survey. More information and a summary of the survey’s findings is available here: <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=41&characteristic=male#demographic> (last visited Dec. 9, 2025).

⁵ <https://www.oregonlive.com/living/2023/12/oregon-has-more-lgbtq-residents-per-capita-than-any-other-state-in-the-us-report.html> (last visited Dec. 9, 2025)

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Agreement will benefit not only the current class members but also all future class members in the state.

Similar to homelessness (as in *Blake*), the size of the proposed class in this case cannot be known with precision but, critically, the class also undoubtedly includes a growing number of people within the overall population of the state. *See Newberg on Class Actions* § 3:15 (6th ed., 2025 Supp.) (existence of unknown future class members supports impracticability of joinder). In other words, the class size is constantly growing.

That is so because, in addition to current members of the class, the number of gay or bisexual men in Oregon who have ever had sexual contact with another man is not fixed. Sexual orientation may be resolved over the course of a person's life; gender identity plays a role, as transgender men become class members; and even among cisgender men who are firmly gay or bisexual, some have not acted on their attraction to men, for any number of reasons. The inherent fluidity of the class, and the existence of future class members, further supports the conclusion that numerosity is satisfied in this case.

C. Commonality and Typicality:

These elements, though distinct under the rule, can involve overlapping inquiries. Commonality asks, "only if there are questions of law or fact common to the class." *Pearson v. Phillip Morris, Inc.*, 358 Or 88, 110 (2015) (emphasis omitted). Here, common questions of law and fact predominate over any individual issues because the class claims challenge the Entity Defendants' uniform DHQ. The common questions of law and fact are detailed in paragraph 55 of the FAC. The Entity Defendants do not dispute that the DHQ applies in the same manner to all prospective donors, including all class members, nor do they oppose certification of the settlement class.

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There can be no question that the same legal theory—violation of Oregon’s Public Accommodations Statute—applied, here, in exactly the same manner to all class members. The FAC alleges that the Entity Defendants’ DHQ acts to discriminate in precisely the same manner against all members of the class and, importantly, the changes negotiated in the Settlement will address the alleged discrimination across the board, as to all current and future potential donors. Simply put, the commonality element is satisfied.

The typicality element is met where the plaintiff’s claim “arises from the same event or practice or course of conduct that gives rise to the claims of members and his or her claims are based on the same legal theory.” *Newman*, 287 Or at 50 (internal quotation omitted). Here, Plaintiff’s claims are typical of the class because they arise from the same course of conduct—as detailed throughout the FAC and, in particular, at paragraph 56. Again, the Entity Defendants’ uniform practices are alleged to apply in the same manner as to all members of the class and Plaintiff asserts a single, common legal theory to remedy that conduct. The Settlement will address that conduct as to all members of the class in the same manner. The typicality element is met.

D. Adequacy

The representative parties in a class action case must “fairly and adequately protect the interests of the class.” ORCP 32A(4). The class members’ interests are adequately protected if “there are no disabling conflicts of interest between the class representatives and the class[.]” *See Alsea Veneer, Inc. v. State*, 117 Or App 42, 53 (1992), *rev’d in part on other grounds*, 318 Or 33 (1993). Disabling conflicts are not found on the fringes of a case; “[o]nly conflicts that are fundamental to the suit and that go to the heart of the litigation prevent a plaintiff from meeting the * * * adequacy requirement.” *In re Online DVD–Rental Antitrust Litig.*, 779 F3d 934, 942 (9th Cir. 2015) (quoting *Newberg on Class Actions* § 3.58 (5th ed. 2011)).

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In discrimination cases, the interests of the representative party and the class members do not conflict, because the remedy sought is the elimination of the discriminatory policy or practice at issue. *See Penk v. Oregon State Bd. of Higher Ed.*, 93 FRD 45, 50 (D Or 1981) (“The injury claimed by all is sex discrimination. The interest shared by all is elimination of sex discrimination from the state system of higher education.”).

Here, the same principle holds true. The class claims seek to eliminate discriminatory policies that are generally applicable to the class. The Entity Defendants do not dispute that its DHQ applies to all potential donors in the same manner. The changes to that DHQ as a result of the Settlement will apply to the benefit of all members of the class.

Mr. Cavanaugh is a suitable representative of the class. The fact that Plaintiff has personally suffered discrimination (as described in the FAC) only enhances “the energy with which [he has] prosecut[ed] this action” on behalf of the class. *Penk*, 93 FRD at 51. Indeed, Plaintiff’s willingness to step up and serve as the class representative—to file a class action lawsuit under his name (despite a tense political climate) and his active participation in the case through discovery, depositions, and prolonged, intensive settlement negotiations—resulted in a highly favorable settlement for the class. *See Declaration of John Cavanaugh in Support of Motion ¶¶ 2-3.*

Mr. Cavanaugh has no conflicts with other class members and should be approved to serve as the settlement class representative. Further, as described in the attached declarations of Joshua L. Ross, Talia Guerriero, Shenoa Payne, and Kelly Simon, class counsel are experienced in class action litigation, public accommodation suits, civil rights and discrimination cases, and have vigorously prosecuted the case to a successful settlement. For that reason, counsel should be appointed as Class Counsel for the settlement class. The adequacy element is met.

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E. Superiority

ORCP 32B provides that, where the requirements of ORCP 32A are satisfied, the court must determine whether “a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” This “superiority” requirement takes a holistic view, affording trial courts “considerable discretion in weighing all of the factors that apply in a given case and determining if a class action will be superior means of litigating the class claims.” *Migis v. Autozone, Inc.*, 282 Or App 774, 782 (2016) (internal quotation omitted). While all of the ORCP 32B factors generally apply, none of those eight factors are dispositive. *Pearson* 358 Or at 106 (“Neither the ‘predominance’ factor nor any of the other seven[factors] is controlling.”). In this case, ORCP 32B(2) is the most relevant factor, and should guide the Court’s analysis.

ORCP 32B(2) closely resembles its federal counterpart, FRCP 23(b)(2). Federal courts’ treatment of FRCP 23(b)(2) class certification exemplifies the importance of the ORCP 32B(2) factor in cases, such as this one, where “the party opposing the class has acted or refused to act on grounds that apply generally to the class” such that “the relief sought would take the form of injunctive relief * * * with respect to the class as a whole.” FRCP 23(b)(2); ORCP 32B(2).

“When a class seeks an indivisible injunction benefiting all its members at once, there is no reason to undertake a case-specific inquiry into whether class issues predominate or whether class action is a superior method of adjudicating the dispute. Predominance and superiority are self-evident.” *Wal-Mart Stores, Inc. v. Dukes*, 564 US 338, 362-63 (2011). Accordingly, the requirements for class certification are “unquestionably satisfied when members of a putative class seek uniform injunctive or declaratory relief from policies or practices that are generally applicable to the class as a whole.” *Parsons v. Ryan*, 754 F3d 657, 688 (9th Cir. 2014) (certification appropriate for state prisoners seeking injunctive relief; Rule 23(b)(2) inquiry is

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only “whether the party opposing the class has acted or refused to act on grounds that apply generally to the class”) (internal quotation omitted).

Focusing the inquiry on ORCP 32 B(2) is particularly appropriate in discrimination and civil rights cases. *See Wright & Miller, Federal Practice and Procedure* § 1776 (3d ed., 2025 Supp.) (Rule 23(b)(2) was added in 1966 in part to make clear that “civil-rights suits for injunctive or declaratory relief can be brought as class actions” and explaining that class actions are “uniquely appropriate procedure in civil-rights cases” that “involve an allegation of discrimination against a group as well as the violation of rights of particular individuals”).

This is such a case. Plaintiff, on behalf of the class, challenged the Entity Defendants’ policies and practices that denied him and other similarly situated class members equal accommodations by deterring gay and bisexual men from donating plasma and otherwise accessing the Entity Defendants’ services by screening potential donors based on their sexual orientation. Therefore, the conduct of the parties opposing the class is generally applicable to the class as a whole, and, notably, the class seeks only injunctive relief.

F. Class Notice is Not Required or Appropriate in an Injunctive Case

The Parties agree that, because the Settlement releases only the rights of class members to seek injunctive relief and requires no release of any monetary remedies by class members (other than Plaintiff’s individual claim, which is settled), notice of the settlement is unnecessary and would be unduly expensive and impractical.

Under the federal rule, notice is discretionary in injunctive class actions. *See Wal-Mart*, 564 US at 362 (explaining that Rule 23 “provides no opportunity for * * *(b)(2) class members to opt out, and does not even oblige the District Court to afford them notice of the action”). The Oregon rule similarly vests trial courts with authority to “direct that notice be given to some or all members of the class under subsection E(2)” determining “when and how this notice should

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be given” and even “*whether*, when, how, and under what conditions putative members may elect to be excluded from the class.” ORCP 32 F(1) (emphasis added); 32(E)(2) (requiring that “notice be given in such manner as the court may direct to some or all class members”). When class members have no right or ability to opt out, notice of a class settlement is unnecessary.

ORCP 32 F(1) includes a nonexclusive list of factors. Here, several of those factors weigh heavily against notice. Critically, “the nature of the controversy and the relief sought” weighs against notice. The class claims involve only injunctive relief. No class member will release any right to damages and class members do not have a right to opt out of injunctive claims. Further, the costs of providing notices and the administrative difficulties of ascertaining the identities and contact information of class members is not justified when, as here, class members only stand to *benefit* from the changes in policy without releasing any individual claim for damages.⁶

For the same reason, no class member will suffer prejudice if the settlement is approved: every class member will have the ongoing ability to donate plasma at the Entity Defendants’ facilities but will do so with the benefit of the favorable changes implemented as a result of the Settlement. *See, e.g., Lilly v. Jamba Juice Co.*, 2015 WL1248027, at *8-9 (ND Cal Mar. 3,

⁶ In evaluating the need for class notice, Courts may consider an “ascertainability” requirement, focused on the practical ability to ascertain the identity and contact information of class members. In a damages action, those practical requirements make sense—both for purposes of affording class members a right to opt out and preserve their individual rights of action, and for delivering any amounts received in a judgment or settlement to individual class members. An injunctive class action has no need for those same requirements; to the contrary, because injunctive relief is mandatory, class members’ interests are adequately protected through the court’s evaluation of the settlement as fair, adequate, and reasonable. *See The Civil Rights Education and Enforcement Center v. RLJ Lodging Trust*, 2016 WL 314400, at *5 (ND Cal Jan. 25, 2016) (with respect to injunctive class actions, “relief obtained on behalf of the class * * * does not require distribution to the class. Because defendants are legally obligated to comply [with any relief the court orders] * * * it is usually unnecessary to define with precision the persons entitled to enforce compliance”) (citations omitted).

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2015) (approving preliminary settlement without notice); *J.S. v. Attica Central Schools*, 2012 WL 3062804, at *4-5 (WDNY July 26, 2012) (granting final approval of settlement without notice); *Jerymn v. Best Buy Stores, L.P.*, 2012 WL 2505644, at *12-13 (SDNY June 27, 2012) (same); *Green v. American Exp. Co.*, 200 FRD 211, 213 (2011) (SDNY 2001) (same); *Selby v. Principal Mut. Life Ins. Co.*, 2003 WL 22772330, at *3-5 (SDNY 2003) (granting final approval without notice); Wright & Miller, *Federal Practice and Procedure* § 1797.6 (3d ed., 2025 Supp.) (“Since the purpose of Rule 23(e) is to ensure that any person whose rights would be affected by a dismissal or compromise has the opportunity to contest the proposed action, these decisions effectively find that that opportunity is not necessary given the lack of prejudice to absent class members.”). Collectively, those courts which have found that notice is not required in circumstances like those presented here have applied a “functional approach” to the rule. See *Jermyn*, 2012 WL 2505644 *12; *Lily*, 2012 WL 1248027 at *3 (emphasizing that the outcome of a settlement providing injunctive relief does not “truly bind class members”).

In short, the federal decisions apply a common analytical approach: (b)(2) class members cannot opt-out, and as long as the injunctive class settlement is fair, there is no need for notice. Where, as here, the class is mandatory because it seeks injunctive relief only, a settlement that provides for the injunctive relief sought does not “truly bind class members” such that notice is necessary. See *Jermyn*, 2012 WL 2505644 *12; *Lily*, 2012 WL 1248027 at *3.

For the above reasons, each requirement of ORCP 32 is met and the Court should certify the settlement class (without notice), appoint Plaintiff as the Class Representative, and name counsel as Class Counsel.

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IV. THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT AGREEMENT

The Settlement contemplates Court-approved, class wide injunctive relief. The Settlement is attached as Exhibit A to the Ross Declaration. Again, the Court is afforded “wide latitude” in determining whether to approve a class settlement. *Froeber*, 222 Or App at 275. The “universally applied” standard for approving class settlements is “whether the settlement is fundamentally fair, adequate, and reasonable.” *Id.* (internal quotations omitted). That inquiry consists of several factors: “(1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and view of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members of the proposed settlement.” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir 2015) (internal quotation omitted). The decision to approve a class settlement is “committed to the sound discretion of the trial judge.” *Froeber*, 222 Or App at 275 (internal quotation omitted).

In this case, the Settlement is fundamentally fair, adequate, and reasonable, and the Court should issue final approval.

A. The Strength of the Plaintiff’s Case

Plaintiff deeply believes that his case was just, important, and winnable. While substantial litigation remained, Plaintiff and counsel are highly confident in the likelihood of success and committed to pursuing the litigation to judgment, if necessary.

That said, Defendants are represented by highly experienced counsel and, of course, have a different view. Defendants denied all allegations of wrongdoing and made clear they intended to fight every aspect of the case—including, initially, whether or not they are a public accommodation, whether questions about past sexual history were asked for a legitimate, non-

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discriminatory reason, whether the DHQ merely asked questions about conduct and not sexual orientation, whether Plaintiff and the class were or could be deterred the DHQ such that any viable claim exists, and many other issues.

Although each of the Parties was confident that the litigation would have reached a favorable conclusion, that only underlines the point that risks always exist in pursuing litigation and, importantly, the relief obtained through settlement represents substantial, meaningful relief that will benefit the class in immeasurable ways.

B. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

While Plaintiff and counsel remain highly optimistic that they would prevail in litigation, risks always exist. This case is no exception. As the Court knows, the Parties already engaged in complicated discovery disputes. Future disputes remained likely, including the framing of exhaustive topics for Rule 39C(6) depositions. Given the timing and length of the mediation and settlement efforts (over two months), there is virtually no possibility the Parties would remain on track for the current discovery and trial deadlines. The issues, as evidenced by the case record, are highly complex. Expert testimony would almost certainly be retained for trial and for consultation. In reality, the case would likely remain pending for a year or more. Settlement at this juncture provides tremendous benefit and efficiencies to the Parties, the Court, and the class.

C. The Risk of Maintaining Class Action Status Throughout the Trial

The class has not been certified. Plaintiff is highly confident that an injunctive class would have been certified and that there was minimal risk of losing that class status prior to trial.

D. The Amount Offered in Settlement

Here, no monetary relief was sought on behalf of the class nor is there any monetary settlement for the class. However, the changes to the Entity Defendants' DHQ and the other relief negotiated in the Settlement represent significant, meaningful relief for the class.

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E. The Extent of Discovery Completed and the Stage of the Proceedings

As described above, the case has been pending for well over a year after prolonged prelitigation negotiations. While discovery was substantially underway, Plaintiff anticipates that additional discovery disputes were imminent and unavoidable. Further, the extent and cost of corporate depositions, pretrial motion practice, and preparing and presenting a trial cannot be overstated. In short, the case has advanced substantially but, by resolving the dispute at this stage, the Parties stand to avoid the substantial financial and non-financial burdens of litigation. For that reason as well, the Settlement is a tremendous accomplishment.

F. The Experience and View of Counsel

As noted in the declarations of counsel, proposed Class Counsel is experienced in class action, public accommodation, discrimination, and civil rights cases. *See* Declarations of Joshua L. Ross; Talia Y. Guerriero; Shenoa Payne; and Kelly Simon. Class Counsel enthusiastically supports the settlement. The Entity Defendants have agreed to change their DHQ in a manner that Class Counsel and the Class Representative believe will avoid the type of discrimination that, in their view, led to the lawsuit. Further, the Entity Defendants have agreed to updates on their website and to notifications that will provide important additional information to potential donors, further remedying the conduct that resulted in the lawsuit. Defendants' counsel, too, do not oppose the relief sought in this Motion and agree the Court should certify the settlement class and approve the settlement.

G. The Presence of a Governmental Participant

This factor is inapplicable in this case.

H. The Reaction of the Class Members of the Proposed Settlement

This element is largely inapplicable because the class has not yet been certified and, for the reasons described above, class members are not entitled to notice. Counsel is unaware of any

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reactions by class members to date, other than Mr. Cavanaugh who is enthusiastic about and proud of the settlement reached and who encourages the Court to approve the Settlement.

Declaration of John Cavanaugh ¶ 4.

I. The Resolution of Class Counsel's Attorney's Fees and Costs in the Settlement is Also Fair and Reasonable

As a component of the negotiated settlement of the class claims, Defendants have agreed to pay a certain sum for attorneys' fees and costs to Class Counsel. "Attorney fees for representing a class are subject to control of the court." ORCP 32M(1)(a). Because there is no monetary compensation paid to the Class, Class Counsel could not be compensated as a percentage of a common fund and only sought attorney fees and costs payable directly by the Entity Defendants. FAC ¶¶ 66;72 (seeking award of fees and costs under ORS 20.107 and ORS 659A.885).

Where attorney fees are not awarded from a common fund created for the class, and the fee award does not reduce the class's recovery, "the danger of conflicts of interest between attorneys and class members is diminished" and the "Court's fiduciary role in overseeing the award is greatly reduced." *Jermyn*, 2012 WL 2505644, at *9 (internal quotation omitted). Here, settlement of the attorneys' fees does not impact any relief benefitting the class and has no impact on the Class. The Entity Defendants have agreed to pay the attorneys' fees and costs separately to counsel, and no class member is responsible for any payment to counsel. Counsel, with assistance from a highly respected and experienced mediator, carefully negotiated the Settlement in stages so that resolution of the attorney fee award did not interfere with or create potential conflicts with resolution of the class claims. For those reasons alone, the Court should approve the settlement.

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In addition, however, the negotiated fee is also fair, reasonable, and adequate because it compensates class counsel at a level that is *materially below* Class Counsel’s actual investment in the case, or its “lodestar.” *See* Declarations of Joshua L. Ross; Talia Y. Guerriero; Shenoa Payne; and Kelly Simon. In considering an attorney fee award, the Court considers the factors set forth in ORCP 32 M(1)(e). Those considerations are met here as outlined in detail in the accompanying declarations of counsel. Because the amount the Entity Defendants have agreed to pay in settlement is in line with Class Counsel’s lodestar, the resolution of the attorney fees and costs is fair, reasonable, and adequate and the Court should approve the settlement.

J. The Class Representative Service Award is Also Reasonable and Justified

Class Counsel negotiated for payment of \$15,000 to Class Representative, John Cavanaugh, as a Class Representative Service Award. Defendants do not object to this amount.

Those types of awards reward named plaintiffs for work done on behalf of the Class and in an attempt to account for financial or reputational risks associated with litigation, and promote the public policy of encouraging individual plaintiffs to undertake the responsibility of representative lawsuits—a particularly important consideration in addressing alleged discrimination in public accommodations. *See Rodriguez v. West Publ’g Corp.*, 563 F3d 948, 958-959 (9th Cir 2009); (“Incentive awards are fairly typical in class action cases.”); *Ridgeway v. Wal-Mart Stores, Inc.*, 269 F Supp 3d 975, 1002-03 (ND Cal 2017) (same; awarding \$15,000 service award).

Although discretionary, courts regularly approve service awards. *5 Newberg on Class Actions* § 17:7 (6th ed. 2025 Supp.). In reviewing whether a service award is appropriate, the court should take into account “the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions... [and] the amount of time and effort the plaintiff expended in pursuing the litigation.” *Jones v. Agilysys, Inc.*, 2014 WL

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2090034, *3 (ND Cal May 19, 2014) (internal quotation omitted); *see also Van Vranken v. Atlantic Richfield Co.*, 901 F Supp 294, 299 (ND Cal 1995) (describing factors: “1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation”).

The chief concern with service awards is the “danger of individuals bringing cases as class actions principally to increase their own leverage to attain a remunerative settlement for themselves and then trading on that leverage in the course of negotiations.” *Rodriguez*, 563 F3d at 960 (internal quotation omitted). *See In re Online DVD-Rental*, 779 F3d at 943 (critical inquiry on incentive payments is “whether the plaintiffs maintain a sufficient interest in, and nexus with, the class so as to ensure vigorous representation”) (internal quotation omitted).

The negotiated service award here is appropriate. First, the class claims were settled separate from and prior to any discussion of the individual Plaintiff’s claims and all claims were negotiated at arms-length with an experienced judge and mediator.

Second, this case was contentiously litigated for well over a year. Class Representative, John Cavanaugh, remained involved and determined and represented the class’s interests throughout. For example, Mr. Cavanaugh expended substantial time and effort discussing the underlying issues and theories of the case, assisted in reviewing pleadings, and coordinated with counsel in evaluating the Entity Defendants’ DHQ after revelation of the Entity Defendants’ updated policies. *See* Ross Decl. ¶ 18; Cavanaugh Decl. ¶¶ 2, 3. Mr. Cavanaugh also produced voluminous information to counsel for review and assisted in the identification of discoverable information which was produced to Defendants. Mr. Cavanaugh also spent many hours preparing for discovery and depositions, and he sat for deposition over two separate sessions,

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1 spending well over 12 hours during deposition dates. Mr. Cavanaugh also travelled several times
 2 to and from Eugene for purposes of the litigation. Mr. Cavanaugh met regularly with counsel,
 3 reviewed pleadings and key filings, and was intimately involved in all aspects of the case
 4 including through mediation and settlement of the class claim. *Id.* The personal investment of
 5 Mr. Cavanaugh in advancing this important case on behalf of the class cannot be overstated.
 6 Cavanaugh Decl. ¶ 4. The requested \$15,000 award is reasonable under the circumstances.

7 I. No Hearing Requested; Parties' Stipulation and Availability for Further Inquiry

8 Because this Motion is not contested, the Parties agree that the Court may consider the
 9 Motion without argument. The Parties are prepared to appear to address any concerns the Court
 10 may have or to submit additional authorities as/if needed. Plaintiff's counsel has prepared a
 11 proposed Order for the Court's consideration.

12 **V. CONCLUSION**

13 For all of the reasons above, the Court should GRANT this Motion in its entirety and
 14 issue an Order: (1) certifying, for settlement purposes only, an injunctive relief class defined as:
 15 "All gay or bisexual men who have ever had sexual contact with another man and who are
 16 residents of Oregon;" (b) appointing Plaintiff John Cavanaugh as Class Representative; (c)
 17 appointing Shenoa Payne (Shenoa Payne Attorney at Law), Talia Guerriero (Beacon
 18 Employment Law), Joshua L. Ross and James E.A. Rehwaldt (Keller Rohrback LLP), and Kelly
 19 Simon (ACLU of Oregon) as Class Counsel; (d) finding that the Settlement Agreement is
 20 fundamentally fair, adequate, and reasonable and finally approving the Settlement Agreement
 21 without notice to class members; (e) awarding Plaintiff John Cavanaugh a class representative
 22 service award, payable by the Entity Defendants, of \$15,000; and (f) awarding Class Counsel an
 23 award of fees and costs, payable by the Entity Defendants, of \$525,000.

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DATED this ____ day of May, 2026.

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By s/Joshua L. Ross

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CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a correct copy of the foregoing **UNOPPOSED MOTION FOR CERTIFICATION OF INJUNCTIVE CLASS AND APPROVAL OF CLASS SETTLEMENT (ORCP 32 D)** on the following named person(s) on the date and manner indicated below, addressed to said person(s) at the address of each shown below per UTCR 21.100 as follows:

Elizabeth Falcone, OSB No. 111694
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☐ By Hand Delivery
☐ By Overnight Delivery
☐ By Facsimile Pursuant to ORCP 9 F
☒ By U.S. Mail with postage prepaid
☒ By E-Mail Pursuant to ORCP 9 G
☒ If registered, electronically by OJD
E-File & Serve at the party's email address
as recorded on the date of service in the
eFiling system pursuant to UTCR 21.100.

David Raizman, *admitted pro hac vice*
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Attorneys for Defendants

DATED this ____ day of May, 2026.

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CERTIFICATE OF SERVICE
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