IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KENSANDRA SMITH and MARY ELLEN NILLES, *individually and on behalf of all others similarly situated*, Plaintiffs, v. LOYOLA UNIVERSITY MEDICAL CENTER, Defendant.	Case No. 1:23-cv-15828

PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MEMORANDUM IN SUPPORT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE NUMBER(S)**

RULES

OTHER AUTHORITIES

Further to Federal Rule of Civil Procedure Rule 23(e), Plaintiffs Kensandra Smith and Mary Ellen Nilles (collectively, "Plaintiffs"), on behalf of themselves and all others similarly situated, by and through undersigned counsel, respectfully move this Honorable Court for final approval of the proposed settlement of this class action lawsuit (the "Motion"). Defendant, through counsel, does not oppose the relief sought by this Motion.[1]

I. INTRODUCTION.

On May 8, 2025, this Court entered an order preliminarily approving the proposed class action settlement between Plaintiffs, on behalf of themselves and the Settlement Class, and Defendant Loyola University Medical Center ("LUMC" or "Defendant" and collectively with Plaintiffs, the "Parties"). *See* Dkt. No. 76. The Settlement is well within the range of reasonableness and final approval should be granted such that the Settlement can be consummated and claiming class members can receive the benefits procured on their behalf. To be certain, Class Counsel's efforts created distinct monetary benefits for the approximately three hundred and thirty thousand (330,000) Settlement Class Members in the form of a $2,665,264.00 non-reversionary common fund which will be used to pay, subject to Court approval, the following:

a. Pro rata cash payments to all Settlement Class Members who submit a valid claim;

b. The Settlement Administrator's notice and Claims Administration Costs;

c. Settlement Class Representative Service Awards;

d. Class Counsel's Attorneys' Fees and Expenses Award; and

[1] All capitalized terms not otherwise defined herein have the same meanings as set forth in the Settlement Agreement and Release ("Settlement Agreement" or "S.A."), which was filed as Exhibit 1 to the Joint Declaration of Counsel in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement. *See* Dkt. No. 70-1.

e. The distribution of any uncashed funds that remain after the pro rata payment (to be considered Residual Funds) via *cy pres* distribution.

Following preliminary approval, the Settlement Administrator, Verita Global, LLC ("Verita"), with guidance and supervision by Class Counsel, implemented the comprehensive notice program (including its user-friendly claims process). *See* Declaration of Omar Silva of Verita Global, LLC In Connection with Final Approval of Settlement ("Verita Decl.") (attached hereto as **Exhibit 1**). The Court-approved notice program mandated direct notice by email or mail, the creation of a toll-free telephone number and a Settlement Website. Verita Decl. ¶¶ 2-9.

That notice program resulted in direct notice to 98.73% of the identified Settlement Class, and their reaction has been overwhelmingly positive and strongly supports final approval. *Id.* ¶ 7. To date, Verita has received forty-seven thousand seven hundred and one (47,701) timely-filed claim forms. *Id.* ¶ 10 (noting that the postmark deadline for Class Members to file claims in this Litigation was August 5, 2025). Verita expects additional timely-filed claim forms to arrive for a few weeks after the deadline has expired for timely-postmarked claims. *Id.*

As detailed below, the claims rate of approximately 14.48% is commensurate with, and exceeds, the claims rate in other large data privacy settlements which received final approval.

Moreover, not a single Settlement Class Member objected and only three have requested exclusion. *Id.* ¶¶ 12-13 (noting that the deadline to file objections or to request exclusion was August 5, 2025). Considering the valuable benefits conveyed to Settlement Class Members, and the significant risks they would face through continued litigation, the Settlement is fair, reasonable, and adequate and warrants final approval.[2]

[2] In the interest of judicial efficiency, for the factual and procedural background of the proposed Settlement, Plaintiffs respectfully refer the Court to, and hereby incorporate by reference, the case summary and procedural history in Plaintiffs' Unopposed Motion for Preliminary Approval of

II. THE SETTLEMENT TERMS.

A. The Settlement Class.

The Settlement and Preliminary Approval Order provide for a nationwide Settlement Class defined as "all persons who logged into the LUMC MyChart patient portal account at least once from January 1, 2018 through December 31, 2022." Dkt. No. 76 ¶ 1; S.A. ¶ 1.26. The Settlement Class consists of approximately 333,158 members. *Id.* A Settlement Class Member is any Person who falls within the definition of the Settlement Class. S.A. ¶ 1.27. The Settlement Class excludes Defendant, its affiliates, parents, subsidiaries, officers, directors, and the judge(s) presiding over this matter and their clerk(s). Dkt. No. 76 ¶ 1; S.A. ¶ 1.26.

B. Settlement Class Member Benefits under the Settlement.

If finally approved, the monetary benefits of the Settlement will be available to all Settlement Class Members who submit valid claims. S.A. ¶ 2.1. Specifically, after deducting any Court-approved costs and expenses (such as the costs of notice and administration, incentive awards and/or attorneys' fees and expenses), the remainder of the $2,665,264.00 Settlement Fund will be distributed to the claiming Settlement Class Members on a pro rata basis. The estimated Net Settlement Fund is $1,585,516.66, and assuming no additional Claims are filed and no deficiencies cured, the estimated average settlement payment will be $33.32 for each Settlement Class Member.

Defendant will not receive or recover any money from the Settlement Fund; rather, any Residual Funds will be distributed in *cy pres* to the American Red Cross, a charitable organization jointly recommended by the Parties, to be approved by the Court (or any other charitable

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Class Action Settlement and Memorandum in Support, filed on April 28, 2025, and Motion for Attorneys' Fees, Costs, Expenses, and Class Representative Service Awards and supporting papers filed on July 22, 2025. *See* Dkt. Nos. 70 & 77-79.

organization approved the Court). *Id*. ¶¶ 2.9, 3.8. Because the balance of the Settlement Fund will be "swept out" in direct pro rata cash payments to Settlement Class Members making valid claims, it is anticipated than any cy pres award will be nominal and will only consist of funds associated with uncashed checks or non-redeemed electronic payments.

In addition to monetary benefits, each Class Member and the public will also receive non-monetary relief. *Id*. ¶ 4.5. Specifically, Defendant has agreed to stop the use of tracking technologies on its Website without prominent disclosures through the use of a "cookie banner" or certain technology that sanitizes the information collected via tracking technologies. *Id*.

III. THE NOTICE PROGRAM.

A. Direct Notice by Mail and Email.

The Court appointed Verita to disseminate class notice and to administer the Settlement. Dkt. No. 76 ¶¶ 6-8. In compliance with the Court-approved Notice Plan, Verita, first, received Settlement Class Member information from Defendant (consisting of the names, addresses, email address, and patient ids of approximately 329,383 persons (the "Class List")). *See* Verita Decl. ¶ 1. To prevent Claim Forms from being filed by individuals outside of the Settlement Class and to combat fraud, Settlement Class Members were provided a unique "Class Member ID" on their respective notices as part of the Claims Process. The Class Member ID is required for Settlement Class Members to file a Claim Form online.

Prior to sending notice, Verita undertook several steps to review the Class List for the emailing and mailing of Class Notices. *Id*. Verita formatted the Class List, removed duplicate records, and processed the names and addresses through the National Change of Address Database ("NCOA") to update any addresses on file with the United States Postal Service ("USPS"). *Id*. A total of 33,504 mailing addresses were found and updated via NCOA. *Id*. Further, 378 Settlement

Class Members were found to have an invalid or missing mailing address; of which, 77 Settlement Class Members were found to have an invalid, or missing mailing and email address. *Id.*

On June 6, 2025, Verita caused the Email Notice to be sent to the 292,460 email addresses on file for Settlement Class Members. *Id.* ¶ 5. Of the 292,460 emails attempted for delivery, 17,913 emails were returned/bounced back as undeliverable. *Id.* Pursuant to paragraph 4.3 of the Settlement Agreement, Verita subsequently caused the mailing of 17,897 Postcard Notices via first-class mail to Settlement Class Members whose Email Notice bounced back for whom Verita had a viable mailing address. *Id.* On July 7, 2025, Verita sent an Email Notice to 255,588 Settlement Class Members who had not yet filed a claim that had a valid email address. *Id.* ¶ 6.

On June 6, 2025, Verita also caused the first round of Postcard notice to be printed and mailed to the 36,846 names and mailing addresses in the Class List who did not have a valid email address. *Id.* ¶ 2. Since mailing the Notice to the Class Members, Verita has received 3,298 Notice Packets returned by the USPS with undeliverable addresses. *Id.* ¶ 3. Through credit bureau and/or other public source databases, Verita performed address searches for these undeliverable Postcard Notices and was able to find updated addresses for 699 Class Members. *Id.* Verita immediately caused the Notice to be re-mailed to the updated addresses. *Id.* Since mailing the Notice to the Class Members, Verita has received 342 Notice Packets returned by the USPS with forwarding addresses. *Id.* Verita immediately caused the Notice to be re-mailed to the forwarding addresses supplied by the USPS. *Id.*

As of August 19, 2025, a total of 325,184 email and postcard notices were successfully delivered to unique, identified Settlement Class Members. *Id.* ¶ 7. According to Verita's calculations, the direct notice efforts reached approximately 98.73% of the identified Settlement Class via email and USPS first-class mail. *Id.* The estimated Notice Reach percentage greatly

exceeds the rates in the Federal Judicial Center's 2010 Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide's which states "[a] high percentage (e.g., between 70–95%) can often reasonably be reached by a notice campaign." *Id.*

B. Settlement Website & Toll-Free Telephone Number.

In addition to direct notice, on or about June 6, 2025, Verita created a dedicated Settlement Website: LUMCPixelSettlement.com. *Id.* ¶ 8. The Settlement Website contains a summary of the Settlement, important dates and deadlines, contact information for the Settlement Administrator, answers to frequently asked questions, downloadable copies of relevant documents, including: the Settlement Agreement; Plaintiffs' Motion for Preliminary Approval; Preliminary Approval Order; Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Award and Memorandum of Law in Support; Long-Form Notice; and Claim Form. *Id.* The Settlement Website also allowed Settlement Class Members the opportunity to file a Claim Form online and, if applicable, upload supporting documentation. *Id.* As of August 12, 2025, the Settlement Website has had 1,275,857 unique users visit the website. *Id.*

Verita also established a toll-free telephone number, 1-855-766-1134, for Settlement Class Members to call and to obtain additional information regarding the Settlement and request a Claim Form. *Id.* ¶ 9. The telephone hotline was operational as of June 6, 2025, and is accessible twenty-four (24) hours a day, seven days a week. *Id.* As of August 12, 2025, Verita had received a total of 1,111 calls to the telephone hotline. *Id.* In sum, the notice plan in this Litigation was robust and satisfied all due process requirements.

C. Class Members' Overwhelmingly Positive Reaction to the Settlement.

The Settlement has been well-received by the Settlement Class, to put it mildly. Settlement Class Members had until August 5, 2025, to submit a claim. *Id.* ¶ 10. As of August 19, 2025, Verita

has received 47,701 timely filed Claim Forms. *Id*. This equates to a very robust claims rate of approximately 14.48%. *Id*. Verita is still in the process of reviewing and validating Claim Forms. *Id.* As of the close of the period for objections and opt-outs, Verita received three timely requests for exclusion and no objections. *Id*. ¶¶ 12-13. The lack of any objections and such a low exclusion rate strongly supports a finding that the Settlement is "fair and reasonable." *See, e.g.*, *In re Mexico Money Transfer Litig.*, 164 F.Supp.2d 1002, 1021 (N.D. Ill. 2000) (granting final approval of settlement with 25 objections & finding the fact that "99.9% of class members have neither opted out nor filed objections to the proposed settlements … is strong circumstantial evidence in favor of the settlements.").

The claims rate in this case compares favorably with the claims rate in many other data privacy settlements approved by courts nationwide. *See, e.g.*, *In re Forefront Data Breach Litig.*, 2023 WL 6215366, at *4 (E.D. Wis. Mar. 22, 2023) ("A claims rate of 1.46% is generally in line with the rate experienced in other data breach class actions."); *Fox v. Iowa Health Sys.*, 2021 WL 826741, at *2 (W.D. Wis. March 4, 2021) (claims rate of approximately 1%); *Carter v. Vivendi Ticketing US LLC*, 2023 WL 8153712, at *9 (C.D. Cal. Oct. 30, 2023) (claims rate of 1.56%); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 321 (N.D. Cal. 2018) (finding 1.8% claims rate reflects positive reaction by class); *In re Target Corp. Customer Data Sec. Breach Litig.*, 2017 WL 2178306, at *1–2 (D. Minn. May 17, 2017), *aff'd*, 892 F.3d 968 (8th Cir. 2018) (approving settlement with roughly 0.23% claims rate); *Desue v. 20/20 Eye Care Network, Inc.*, 2023 WL 4420348, at *9 (S.D. Fla. July 8, 2023) (approving claims rate of 0.66%).

Plaintiffs submit that the highly successful notice program negotiated by the Parties, through counsel, and as approved by this Court readily satisfies the requirements of due process and Federal Rule of Civil Procedure 23 and should be finally approved.

IV. DISCUSSION.

The Court having granted Preliminary Approval, and the Notice Program having now been implemented, this Motion requests Final Approval of the Settlement pursuant to Rule 23(e) and the Seventh Circuit factors. *See Isby v. Bayh*, 75 F.3d 1191, 1199 (7th Cir. 1996).

A. Final Class Certification for Settlement Purposes is Appropriate.

On May 8, 2025, this Court provisionally found that the Settlement Class met the requirements of Federal Rule of Civil Procedure ("Rule") 23(a)—numerosity, commonality, typicality, and adequacy and the requirements of Rule 23(b)—predominance and superiority. Dkt. No. 70, ¶ 1.

1. The Rule 23(a) Requirements Remain Satisfied.

Numerosity. Rule 23(a) requires that a class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "A class of forty generally satisfies the numerosity requirement." *Savanna Grp., Inc. v. Trynex, Inc.*, 2013 WL 66181, at *4 (N.D. Ill. 2013); *see also Karpilovsky v. All Web Leads, Inc.*, 2018 WL 3108884, at *6 (N.D. Ill. June 25, 2018) (same). Here, there are approximately three hundred and thirty thousand (330,000) Settlement Class Members. Joinder is therefore impracticable, and the Settlement Class satisfies the numerosity requirement.

Commonality. The Settlement Class also satisfies the commonality requirement, which requires that class members' claims "depend upon a common contention." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Here, as in most data privacy cases, "there are numerous common contentions capable of class wide resolution." *In re TikTok, Inc., Consumer Priv. Litig.*, 617 F. Supp. 3d 904, 922 (N.D. Ill. 2022) (cleaned up). Indeed, common questions include whether and to what extent Defendant disclosed Settlement Class Members' personal data through the

Tracking Tools on its Website and whether Defendant violated common law and statutory law. All Settlement Class Members were also injured by the same course of conduct—the disclosure of their personal data via the use of Tracking Tools on Defendant's Website. That inquiry does not vary from Class Member to Class Member and can be fairly resolved—for settlement purposes—all at once. Thus, the commonality requirement is met.

Typicality. Plaintiffs satisfy the typicality requirement under Rule 23 because their claims based on Defendant's alleged collection and disclosure of their personal data through the Tracking Tools on their Website are coextensive with those of the absent class members. *See* Fed. R. Civ. P. 23(a)(3). Plaintiffs allege that their personal information was compromised and that they were impacted by the use of the same Tracking Tools that Defendant allegedly installed on their Website that harmed the Settlement Class. *See Hinman v. M and M Rental Center*, 545 F. Supp. 2d 802, 806–07 (N.D. Ill. 2008) (explaining that where defendant engages "in a standardized course of conduct vis-a-vis the class members, and plaintiffs' alleged injury arises out of that conduct," typicality is "generally met"). As such, typicality is met.

Adequacy. The adequacy requirement is satisfied where (i) there are no antagonistic interests between the named plaintiffs and their counsel and the absent class members; and (ii) the named plaintiffs and their counsel will vigorously prosecute the action on behalf of the class. Fed. R. Civ. P. 23(a)(4); *In re TikTok, Inc., Consumer Priv. Litig.*, 565 F. Supp. 3d 1076, 1085 (N.D. Ill. 2021). Here, Plaintiffs are members of the Settlement Class who allegedly experienced the same injuries and seek, like other Settlement Class Members, compensation for Defendant's alleged collection and disclosure of their personal data through the Tracking Tools on its Website.

Plaintiffs have no conflicts of interest with other Settlement Class Members, are subject to no unique defenses, and they and their counsel have, and continue to, vigorously prosecute this

Litigation on behalf of the Settlement Class. Under the terms of the Settlement Agreement, Plaintiffs and Settlement Class Members will all be eligible for equivalent pro rata cash payments from the Net Settlement Fund to help remedy the alleged harms they have experienced as a result of Defendant's actions. *See* SA¶¶ 2.2, 2.8. Further, Defendant has agreed to stop the use of tracking technologies without prominent disclosures through the use of a "cookie banner" or certain technology that sanitizes the information collected from Settlement Class Members via tracking technologies. *See* SA ¶ 4.5. Lastly, Class Counsel have decades of combined experience as class action litigators and are well suited to advocate on behalf of the Settlement Class. *See* Dkt. No. 70-1, ¶¶ 26-29. Accordingly, the adequacy requirement is satisfied.

2. The Rule 23(b)(3) Requirements Remain Satisfied.

Plaintiffs also seek to certify the Settlement Class, for settlement purposes only, under Rule 23(b)(3) which has two components: (i) predominance and (ii) superiority. Fed. R. Civ. P. 23(b)(3). Pursuant to Rule 23(b)(3), the Court must find that common questions of law or fact predominate over individual questions and that a class action is a superior method for the fair and efficient resolution of the matter. *Id.*

Predominance. The predominance requirement "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997). As discussed above, common questions predominate over any questions affecting only individual members. In this Litigation, the key, predominant issues are whether Defendant was required to disclose to Settlement Class Members that it used Tracking Tools on its Website and the alleged harm that arose when the personal information belonging to Settlement Class Members was allegedly shared, without their consent, with companies like Meta and Google. These questions can be resolved, for settlement purposes, using the same evidence for all

Settlement Class Members, making class-wide settlement appropriate. *See, e.g.*, *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) ("When one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3)") (cleaned up); *In re TikTok, Inc., Consumer Priv. Litig.*, 617 F. Supp. 3d at 926 (finding predominance in data privacy case).

Superiority. Class-wide resolution is the superior method of addressing the alleged violations in this Litigation. While the total economic harm caused by Defendant's alleged use of Tracking Tools on its Website is significant, each individual claim is small compared to the costs of litigating them separately. There are approximately three hundred and thirty thousand (330,000) Settlement Class Members with modest individual claims, most of whom likely lack the resources necessary to seek individual legal redress. *See, e.g.*, *Day v. Check Brokerage Corp.*, 240 F.R.D. 414, 419 (N.D. Ill. 2007) ("Where, as here, a group of consumers typically will be unable to pursue their claims on an individual basis because the cost of doing so exceeds any recovery they might secure, class actions are superior to individual litigation."). Because the claims are being certified for purposes of settlement, there are no issues with manageability and resolution of thousands of claims in one action is superior to individual lawsuits and promotes consistency and efficiency of adjudication. *See Amchem*, 521 U.S. at 620. ("Confronted with a request for settlement-only certification, a district court need not inquire whether the case, if tried, would present intractable management problems").

In sum, the proposed Settlement Class's claims satisfy Rule 23(b)(3)'s requirements and should be certified. Adjudicating individual actions here is impracticable—the amount in dispute for each Class Member is small, the technical issues involved are too complex, and the required expenses costly. Thus, the Court should continue to certify the Class for settlement.

B. The Settlement Agreement Warrants Final Approval.

A class action settlement may only be approved after a hearing and a finding that the settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(1)(C). To determine whether a settlement is fair, adequate, and reasonable the Court considers the following factors:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> > (i) the costs, risks, and delay of trial and appeal;
> >
> > (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> >
> > (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> >
> > (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

These considerations overlap with the factors articulated by the Seventh Circuit prior to the amendment of Rule 23 in 2018 which include: (i) the strength of plaintiffs' case compared to the terms of the settlement; (ii) the complexity, length, and expense of continued litigation; (iii) the amount of opposition to the settlement; (iv) the presence of collusion in gaining a settlement; and (v) the stage of proceedings and amount of discovery completed. *See In re Broiler Chicken Antitrust Litig.*, 2025 WL 2201610, at *3 (N.D. Ill. June 30, 2025) (quoting *Isby*, 75 F.3d at 1199). Under these factors, final approval of the Settlement is warranted.

1. Fed. R. Civ. P. 23(e)(2)(A): Class Representatives & Class Counsel have Adequately Represented the Settlement Class Members.

Class Counsel have ample experience litigating data privacy and pixel-tracking class actions and are well-versed in the legal claims and risks of this Litigation. As explained in Class Counsels' Joint Declaration submitted with Plaintiffs' Unopposed Motion for Preliminary Approval, Class Counsel worked diligently to advance Plaintiffs' and Settlement Class Members' interests. *See* Dkt. No. 70-1. Prior to reaching the Settlement, Class Counsel investigated Defendant's Website and its use of Tracking Tools, including thoroughly examining the Website source code, researching and drafting an initial complaint, scheduling and participating in meet and confers with Defendant's Counsel, filing an amended complaint, successfully opposing Defendant's motion to dismiss, reviewing formal and informal discovery, and participating in a mediation. *Id.*; *see also T.K. Through Leshore v. Bytedance Tech. Co.*, 2022 WL 888943, at *11 (N.D. Ill. Mar. 25, 2022) (granting final approval where "[t]he parties engaged in substantial informal discovery and information sharing over a five-month period"); Manual for Complex Litigation (Fourth) § 13.12 (2004) (recognizing that the benefits of settlement are diminished if it is postponed until discovery is completed and approving of targeting early discovery at information needed for settlement negotiations). The procedural history of this Litigation supports finding that Plaintiffs and the Settlement Class Members were adequately represented.

Plaintiffs are also adequate representatives of the Settlement Class. Plaintiffs' interests are coextensive with the interests of the Settlement Class. Here, as discussed *supra*, Plaintiffs' claims are aligned with the claims of the other Settlement Class Members. Accordingly, they have every incentive to vigorously pursue the claims of the Settlement Class as they have done to date by remaining actively involved in this Litigation since its inception, participating in the investigation of the case, reviewing pleadings, remaining available for consultation throughout settlement

negotiations, and reviewing the Settlement Agreement. *See* Dkt. 80, ¶ 28. This factor favors final approval.

2. Fed. R. Civ. P. 23(e)(2)(B): The Settlement was Negotiated at Arm's Length.

"A settlement reached after a supervised mediation receives a presumption of reasonableness and the absence of collusion." 2 McLaughlin on Class Actions § 6:7 (8th ed. 2011); *see also Steele v. GE Money Bank*, 2011 WL 13266350, at *4 (N.D. Ill. May 17, 2011), *report and recommendation adopted*, 2011 WL 13266498 (N.D. Ill. June 1, 2011). This presumption is applicable here because the Settlement resulted from good faith, arm's-length negotiations including a mediation with an experienced data privacy class action mediator, Hon. Morton Denlow (ret.), and numerous conferences between experienced counsel with a comprehensive understanding of the strengths and weaknesses of each party's claims and defenses. This Settlement was reached only after formal and informal discovery and meticulous investigation of Defendant's alleged use of Tracking Tools on its Website. This factor supports final approval of the Settlement.

3. Fed. R. Civ. P. 23(e)(2)(C): The Settlement Provides Substantial Relief.

Rule 23(e)(2)(c) requires examination of the relief provided by the Settlement. The benefits available to Class Members as a result of the Settlement are significant in comparison to the significant risk of obtaining no recovery or reduced recovery after protracted litigation. This Settlement ensures that Settlement Class Members will be compensated for the harms they have allegedly suffered as a result of the alleged use of the Tracking Tools.

The Settlement benefits here are comparable to results reached in other data privacy cases concerning the use of the Tracking Tools on Websites. *See, e.g.*, *In re Grp. Health Plan Litig.*, Case No. 23-cv-267, Dkt. No. 159 (D. Minn. 2023) (final approval granted July 9, 2025 for non-

reversionary common fund settlement of $6,000,000 for approximately 900,000 people); *Doe v. Partners Healthcare Sys., Inc.*, Case No. 1984CV01651-BLS1 (Suffolk Super. Ct.) (final approval granted for non-reversionary common fund settlement of $18.4 million for a class of approximately 3 million patients); *John v. Froedtert Health, Inc.*, Case No. 2023CV001935 (Cir. Court Milwaukee County, Wisc.) (final approval granted for non-reversionary common fund settlement of $2 million for a class of approximately 459,000 patients); *In re Advocate Aurora Health Pixel Litigation*, Case No. 22CV01253 (E.D. Wisc.) (final approval granted for non-reversionary common fund settlement of $2.5 million for a class of approximately 12.25 million class members); *In re Novant Health, Inc.*, Case No. 22CV00697 (M.D. N.C) (final approval granted for non-reversionary common fund settlement of $6.66 million for a class of approximately 1,362,165 million class members).

Further, in addition to the monetary relief provided by the Settlement, Defendant has agreed to stop the use of tracking technologies without prominent disclosures through the use of a "cookie banner" or certain technology that sanitizes the information collected via tracking technologies. Accordingly, as the relief provided through the Settlement is well within the range of possible approval when considered in light of the Rule 23(e)(2)(c)(i)-(iv) factors, final approval should be granted.

a. Fed. R. Civ. P. 23(e)(2)(C)(i): The Costs, Risk, and Delay of Trial and Appeal Favor Final Approval.

The Settlement is even more significant when considered against the substantial costs, risks, and delays of continued litigation. *See* Fed. R. Civ. P. 23(e)(2)(C)(i). The most important settlement-approval factor is "the strength of plaintiff's case on the merits balanced against the amount offered in the settlement." *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006) (citations omitted). Nevertheless, "[b]ecause the essence of settlement is

compromise, courts should not reject a settlement solely because it does not provide a complete victory to plaintiffs." *In re AT & T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 347 (N.D. Ill. 2010).

The Settlement provides for substantial monetary relief that is concrete, guaranteed, and immediate. All Settlement Class Members are eligible to receive a pro rata share of the amounts remaining in the Settlement Fund after all costs and expenses are paid. Based on Veritas's calculations of the estimated Net Settlement Fund of $1,585,516.66, and assuming no additional Claims are filed and no deficiencies cured, the estimated average settlement payment will be $33.32 for each Settlement Class Member. *See* Verita Decl. ¶ 11. The value achieved through the Settlement is guaranteed, whereas the chances of prevailing on the merits are uncertain.

Although Plaintiffs believe in the merits of their claims, success is not guaranteed. Should litigation continue, Plaintiffs face significant risks. Data privacy and Tracking Tool cases are complex, with novel issues and evolving laws posing hurdles even at the pleading stage, at class certification, and at summary judgment. *See, e.g.*, *Frasco v. Flo Health, Inc.*, 2024 WL 4280933 (N.D. Cal. Sept. 23, 2024) (granting summary judgment in part in pixel-tracking case). Further, if litigation were to continue, Defendant would continue to vigorously defend the case and the litigation could potentially span for years. Considering all of this, Plaintiffs' likelihood of success at trial, and through appeals, is not certain. Considering these risks, the $2,665,264.00 non-reversionary Settlement Fund is a substantial recovery for the Settlement Class. The Settlement benefits are, therefore, fair, adequate, and reasonable compared to the range of possible recovery.

b. Fed. R. Civ. P. 23(e)(2)(C)(ii): The Method of Providing Relief is Effective.

Under Rule 23(e), "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims," is also a relevant factor in

determining the adequacy of relief. Fed. R. Civ. P. 23(e)(2)(C)(ii). Here, the Notice program and Claim Form were designed to encourage the filing of valid claims by Settlement Class Members. To file a claim, Settlement Class Members needed only to complete a simple Claim Form to opt into a pro rata cash payment.

Here, the Settlement provides relief to Settlement Class Members through a straightforward claims process designed to be as convenient as possible. Settlement Class Members were able to submit claims online or through the mail. Verita Decl. ¶¶ 2, 8. The Settlement Administrator, Verita, is an experienced and nationally recognized class action administration firm. *See* Dkt. No. 70-1 (Declaration of Snow Wallace Regarding Settlement Notice Plan) (attached as Exhibit 4 to the Joint Declaration). The Notice procedure used is claimant-friendly, efficient, cost-effective, and appropriate for this case. The effectiveness of this Notice procedure is evidenced by the number of claims received by Verita. As of August 19, 2025, Verita received 47,701 claim forms from Settlement Class Members, which equates to a claims rate of 14.48% percent. Verita Decl. ¶ 10. This compares favorably with claims rates observed in other data privacy and pixel-tracking class action settlements. *See* § III(C), *supra* (compiling cases). Accordingly, the methods of distributing relief to Settlement Class Members further support that the Settlement is fair, reasonable, and adequate.

c. Fed. R. Civ. P. 23(e)(2)(C)(iii): The Proposed Award of Attorneys' Fees is Fair and Reasonable.

Rule 23(e)(2)(C)(ii) requires consideration of "the terms of any proposed award of attorneys' fees, including timing of payment." Here, the Settlement Fund is funded in the amount of $2,665,264.00 which, in addition to paying benefits to Settlement Class Members, will also be used to pay the Notice and Settlement Administration Costs (capped at $250,000.00), $21,326.01 in litigation costs incurred by Class Counsel, and $5,000.00 in Service Awards to the Settlement

Class Representatives, if approved by the Court. *See* Dkt. Nos. 77, 79 (Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards).

Plaintiffs request attorney's fees in the amount of $803,421.33—equivalent to one-third of the Settlement Fund *after* deducting Notice and Settlement Administration Costs, litigation costs, and the proposed Service Awards—as well as reimbursement of $21,326.01 in litigation costs incurred by Class Counsel. *Id*. This fee and expense request falls in line with other awards in data privacy cases as discussed in Plaintiffs' Motion for Attorneys' Fees, Expenses, and Class Representative Service Awards. *Id.*

Plaintiffs also seek a Service Award of $2,500.00 each. These requested awards are well within the range that Courts within the Seventh Circuit routinely approve. *See, e.g.*, *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 503 (N.D. Ill. 2015) (finding "a $5,000 reward is justified based on Kolinek's role working with class counsel, approving the settlement agreement and fee application, and volunteering to play an active role if the parties continued litigating through trial"); *Am. Int'l Grp., Inc. v. ACE INA Holdings, Inc.*, 2012 WL 651727, at * 16 (N.D. Ill. Feb. 28, 2012) (approving $25,000 service awards).

d. Fed. R. Civ. P. 23(e)(2)(C)(iv): There are no Additional Agreements.

Rule 23(e)(2)(C)(iv) requires the Court to consider any side agreements that must be disclosed under Rule 23(e)(3). As no additional agreements requiring identification exist, this factor does not weigh in favor of or against final approval here.

4. Fed. R. Civ. P. 23(e)(2)(D): the Settlement Agreement treats Settlement Class Members Equitably.

Finally, Rule 23(e) requires that the settlement "treat[] class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). The Settlement here treats all Settlement Class Members fairly and equitably. Settlement Class Members who submit a valid Claim Form will receive a pro

rata share of the Settlement Fund after deduction of Notice and Settlement Administration Costs, attorneys' fees and costs awarded by the Court to Class Counsel, and Service Awards awarded by the Court. Accordingly, the Settlement treats Settlement Class Members equitably because it entitles Settlement Class Members to the same monetary payment as every other member Settlement Class. *See, e.g.*, *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 855 (1999) (where class members are similarly situated with similar claims, equitable treatment is "assured by straightforward pro rata distribution" of the settlement fund).

V. CONCLUSION.

Because the proposed Settlement is fair, reasonable, and adequate, Plaintiffs respectfully request that the Court grant final approval of the class action settlement and enter the proposed Order (attached hereto as **Exhibit 2**).

Dated: September 3, 2025

Respectfully Submitted,

/s/ David S. Almeida

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CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2025, I caused the foregoing to be electronically filed with the Clerk of the Court, using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ David S. Almeida
David S. Almeida