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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

JOHN DOE I, JOHN DOE II, AND JOHN DOE III, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

MARIN HEALTH MEDICAL CENTER

Defendant.

Case No.: CV0002218

[*Case Assigned for All Purposes to the Hon. Stephen P. Freccero in Courtroom A*]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Hearing Information
Date: October 20, 2025
Time: 1.30 p.m.
Location: Courtroom A

Complaint Filed: March 7, 2024
FAC Filed: February 26, 2025

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MEMORANDUM OF POINTS AND AUTHORITIES

Class Representatives John Doe I, John Doe II, and John Doe III ("Class Representatives" or "Plaintiffs"), on behalf of the Settlement Class, hereby move the Court for entry of an order granting final approval of the Settlement Agreement. Defendant Marin Health Medical Center ("Defendant" or "Marin") does not oppose this Motion.[1]

I. INTRODUCTION

This case involves the allegedly unlawful disclosure of protected medical information via tracking technologies on Defendant's web properties. On May 27, 2025, this Court entered the preliminary approval order for a proposed class action settlement between Plaintiffs and Defendant. *See* May 27, 2025, Order Preliminary Approval of Settlement ("Prelim. Approval Order"). The Settlement provides substantial benefits for the approximately 229,000 Class Members, including a $3 million non-reversionary common fund and important injunctive relief: Marin must remove Meta Pixel technology and any other tracking technology from its Websites, and is prohibited from re-installing such technologies, absent notice to and consent from the users. (SA §§ 1.42, 1.45 4.1). Subject to Court approval, the Settlement Fund will be used to pay the following:

a. Pro Rata cash payments to all Class Members who submit a valid Claim Form estimated to be between $86 and $137;

b. The Settlement Administrator's Administration Expenses;

c. Settlement Class Representative Service Payments;

d. Class Counsel's Fee and Expense Award; and

e. The distribution of any uncashed funds that remain after the Pro Rata cash payment (Residual Funds) via *cy pres* distribution.

The Settlement involved a comprehensive Notice Plan and user-friendly claims process that has been and continues to be implemented by the Settlement Administrator, Verita. *See* Declaration

[1] Unless otherwise indicated, capitalized terms have the same meaning as in the Settlement Agreement ("Agreement" or "SA") attached as Exhibit A to the Joint Declaration of Plaintiffs' Counsel Yana Hart, Bryan P. Thompson, and Matthew J. Langley, In Support of Plaintiffs' Motion for Award of Attorneys' Fees and Costs and Plaintiffs' Service Payments ("Joint Decl. Supporting Fees").

of Janeth Antonio RE: Notice Procedures ("Admin Decl."). The Court-approved Notice Plan provided for direct notice by email or mail, the creation of a toll-free telephone number to answer Class Members' questions, and the creation of a Settlement Website. (*Id*. ¶¶ 4-14.)

Through the combined effort of the Settlement Administrator and Class Counsel, Settlement notice has been highly effective. Extensive direct notice, consisting of mail and email, together with media outreach ensured the notice reached a substantial percentage of class members satisfying the requirements of California Rules of Court and due process. The notice fully and clearly explained the key terms of the Settlement and its benefits, the conditional certification of the Settlement class, the terms of the release, and Class Members' rights to request exclusion, object, and/or request to appear at the Final Approval Hearing. Settlement support services ensured Settlement Class Members' questions were answered to their satisfaction.

The reaction from Settlement Class Members has been positive and strongly supports final approval. To date, the claims rate of slightly over 6% is above the claims rate in many other large data privacy settlements that were granted final approval. Moreover, the deadline to file objections or to request exclusion was August 25, 2025, and only four Class Members have requested exclusion and just two objected (though neither intends to appear at the Final Approval Hearing). (*Id*. ¶¶ 20-21.) Both objections should be overruled. The first challenges the reasonableness of fees, but without any specific basis—the type of generalized complaint courts routinely reject. The second was submitted by an incarcerated Class Member simply requesting additional information and seeking to participate in the Settlement. Class Counsel responded by providing the requested information, along with a claim form and a stamped envelope, so the Class Member could submit a claim form and select his preferred method of payment. The Settlement provides valuable benefits to Class Members, eliminates the significant risks they would face through continued litigation in favor of this more immediate and certain relief, and is otherwise fair, reasonable, and adequate. Final approval should therefore be granted.[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

II. THE SETTLEMENT TERMS

A. The Settlement Class

The Settlement Class is defined as: Defendant's patients, California citizens, and other members of the public, who visited Defendant's Websites between August 1, 2019, through the date of preliminary approval. (SA § 1.42). The Class size is estimated at 229,000 members, based on Defendant's records, which it provided to the Settlement Administrator. (*Id.*) Excluded from the Settlement Class are: (1) the Judges presiding over the Actions and members of their families; (2) Marin, its subsidiaries, parent companies, successors, predecessors, and any entity in which Marin or its parents, have a controlling interest, and its current or former officers and directors; (3) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded natural person. (*Id.*)

B. The Settlement Consideration

1. Business Practice Changes

The Settlement secures important injunctive relief. It requires the removal of Meta Pixel technology and any other tracking technology from Defendant's Websites, along with commitment not to re-install such technologies, absent notice to and consent from the users. (SA § 4.1). This benefit delivers immediate and tangible benefits to Class Members, ensuring their privacy is properly protected, while also ensuring privacy protection for future patients and visitors to the Marin Websites. This is consistent with a core goal of the litigation: protecting data and medical privacy for current and future patients and promoting the public interest as a whole.

2. Monetary Relief

In addition to injunctive relief, the Settlement provides substantial monetary recovery to Class Members. Under the Settlement, Marin will pay $3 million to establish a non-reversionary, common Settlement Fund that will be used to provide all Class Members who submit a valid claim with a pro rata cash payment. (SA § 1.45). Each Class Member was able to submit a claim either electronically

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summary and procedural history in Plaintiffs' Motion for Preliminary Approval of Class Settlement and Motion for Fees.

through the Settlement Website or by mail. (*Id.* § 4.12). Subject to Court approval, the Settlement Fund will pay the following: (1) Class Members' Approved Claims, (2) the Settlement Administrator's Administrative Expenses, (3) Settlement Class Representative Service Payments; (4) Class Counsel's Fee and Expense Award; and (5) Residual Funds to the *cy pres* recipient. There will be no reversion to Defendant. (*Id.* § 3.7). To date, at least 13,955 Class Members have submitted a valid claim, and the Settlement Administrator has estimated the approximate pro rata cash payment to be $86 to $137 per Approved Claim. (Admin Decl. ¶ 19.)

C. Release by the Class

Plaintiffs' and Settlement Class Members' consideration is in the form of a release of the claims alleged, or that could have been alleged, in the Action with the exclusion of claims for medical malpractice, or other bodily injury claims, or claims relating to the enforcement of the Settlement. (SA § 1.35).

III. THE NOTICE PLAN & CLAIMS ADMINISTRATION

A. Direct Notice Plan

The Court appointed Verita to disseminate class notice and to administer the Settlement. (Prelim. Approval Order ¶ 10.) As one part of the Notice Plan, and in accordance with the Court's directive, Verita employed direct notice. As part of that effort, on June 16, 2025, Verita received from Defendant's counsel Constangy, Brooks, Smith & Prophete, LLP, a list of 147,118 persons identified as the Class List, including their names, mailing addresses, phone numbers, and email addresses where applicable. (Admin Decl. ¶ 2). Of the 147,118 Class Members listed, Verita was able to provide direct notice to a *minimum* of 134,399, or 91%.

To accomplish this, Verita first processed the class list, removed 138 duplicate entries, corrected 446 incomplete/missing addresses, and updated 10,987 addresses through the National Change of Address Database. (*Id.*¶ 3). On June 26, 2025, in accordance with the Preliminary Approval Order, Verita mailed the Postcard Notice to the 49,403 individuals, and re-mailed notices where forwarding addresses or updated addresses were found. (*Id.* ¶¶ 4-6) On the same day, Verita also sent an email notice to 97,131 individuals, of which 89,287 were successfully delivered. (*Id.* ¶¶

7-9.) For nearly all of the remainder (7,838 out of 7,844), Verita successfully sent a postcard notice. (*Id.*) In total, these efforts ensured that over 90% of individuals for whom Defendant maintained an email or mail address received the direct Notice.

B. Media Campaign

In further accordance with the Court-approved Notice Plan, Verita also implemented a media campaign consisting of a California statewide press release sent via PR Newswire, a dedicated press release distribution service. The PR Newswire release resulted in 244 pickups by media outlets and a total potential audience of 76,700,700. (*Id.*¶ 10) Given that the significant majority of the class are Marin County residents, Verita also published a Summary Notice in local and regional outlets, including an approximate eighth-page ad unit in both *Santa Rosa Press Democrat* (circulation of 40,000), and *The Petaluma Argus Courier* (circulation of 4,500), and an approximate quarter-page ad unit in the North Bay Business Journal (circulation of 25,000), collectively reaching a circulation of nearly 70,000. (*Id.*)

C. Settlement Website & Toll-Free Telephone Support

The Notice Plan was also supported by a public Settlement Website to provide information to the Class Members and to answer frequently asked questions, which Verita established on or about May 30, 2025, at www.MarinHealthSettlement.com. (*Id.* ¶ 12.) The Settlement Website URL was set forth in the Notice, Email Notice, Claim Form, Long Form Notice, the press release(s), and publications. Visitors of the Settlement Website can download copies of the Notice, Claim Form, and other case-related documents. (*Id.*) Visitors were also able to submit claims electronically. As of September 4, 2025, there have been 55,380 users, 61,261 sessions/hits (active visits to the website) and 74,064 page views of the Settlement Website. (*Id.* ¶ 13.)

Verita established and continues to maintain a toll-free telephone number 1-833-422-2622 for potential Class Members to call and obtain information about the Settlement or request a Notice Packet. (*Id.* ¶ 14.) The telephone hotline became operational on June 25, 2025, and is accessible 24 hours a day, 7 days a week. (*Id.*) The toll-free number appeared in all notices and on the Settlement Website. The toll-free number will remain active through the close of this Notice Plan. As of

September 5, 2025, Verita has received a total of 1,563 calls to the telephone hotline. (*Id.* ¶ 15.) Verita has mailed 96 Notice Packets to individuals who requested via the telephone hotline. (*Id.*) Verita also established an email address, admin@marinhealthsettlement.com, to provide an additional option for Settlement Class Members to address specific questions and requests to the Settlement Administrator for support.[3]

D. Class Member Reaction to the Settlement

The Settlement has been well-received by the Class. Class Members have until September 24, 2025, to submit a claim. *Id*. ¶ 16. As of September 5, 2025, Verita has received a total of 119,623 claims submissions, of which 13,955 claims have been determined to be non-duplicative and from Settlement Class Members; a claims rate of slightly over 6%. *Id* ¶¶ 16-17. As the claims period remains open, Verita will continue to intake and analyze claims postmarked by the claims filing deadline of September 24, 2025. *Id*. Underscoring the effectiveness of the Notice Plan, the claims rate in this case is consistent with, and in many cases exceeds, the claims rate of other data privacy settlements approved by courts in California and nationwide. (*See, e.g.*, *In re: Group Health Plan Litigation* (D. Minn., July 9, 2025, No. 0:23CV00267) ECF No. 159 [granting final approval with claims rate of 8%]; *Doe 1 v. Workit Health, Inc.* (E.D. Mich., Mar. 6, 2025, No. 23-CV-11691) 2025 WL 732730, at *1 (approving claims rate of 5.4%]; *Carter v. Vivendi Ticketing US LLC* (C.D. Cal., Oct. 30, 2023, No. SACV2201981CJCDFMX) 2023 WL 8153712, at *9 [approving claims rate of 1.56%]; *In re Anthem, Inc. Data Breach Litig*, (N.D. Cal. 2018) 327 F.R.D. 299, 321 [finding 1.8% claims rate reflects positive reaction by class]; *In re Forefront Data Breach Litig.* (E.D. Wis., Mar. 22, 2023, No. 21-CV-887) 2023 WL 6215366, at *4 ["A claims rate of 1.46% is generally in line with the rate experienced in other data breach class actions."].) Consistent with the Court's Preliminary Approval Order, Verita and Class Counsel engaged ClaimScore, a vendor utilizing a proprietary AI-based claim validation software, to detect and prevent fraudulent claims and ensure accurate

[3] *Contact Us*, Marin Health Class Settlement, https://marinhealthsettlement.com/contact-us.aspx (last accessed September 8, 2025).

distribution of Settlement funds, safeguarding the integrity of the claims process. [4] (Heller Decl.)

As of the close of the period for objections and opt-outs, on August 25, 2025, Verita received only four timely requests for exclusion and two objections. (Admin Decl. ¶¶ 20-21.) The small number of opt-outs in comparison to the overall class size weighs in favor of approval of the Settlement. (*See, e.g.*, *Chavez v. Netflix, Inc*. (2008) 162 Cal.App.4th 43, 53 [finding settlement fair and reasonable where 1,234 members, or 0.2 percent of the class, opted out]; *7-Eleven Owners for Fair Franchising v. Southland Corp*. (2000) 85 Cal.App.4th 1135, 1152-53 [approving settlement and stating that response of absent class members was "overwhelmingly positive" where only 1.5 percent elected to opt out].) The reaction of the Class indicates an endorsement of the Settlement and supports final approval.

IV. ARGUMENT

A. Legal Standards for Final Approval

Rule 3.769 of the California Rules of Court sets forth the procedures for settlement of class actions in California. (*Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.) At final approval, the trial court confirms its preliminary determination "whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper." (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 234-35; *see also In re Microsoft I–V Cases* (2006) 135 Cal.App.4th 706, 723; *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1802).

In exercising its discretion, "[d]ue regard . . . should be given to what is otherwise a private consensual agreement between the parties." (*7-Eleven Owners*, 85 Cal.App.4th at 1145 (quotation omitted)). California courts favor settlement, particularly in class actions and other complex cases in which substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. (*See, e.g.*, *id.* at 1151 [noting that "voluntary conciliation and settlement are the preferred means of dispute resolution"]; *In re Microsoft*, 135 Cal.App.4th at 723 n. 14 ["Public policy generally

[4] ClaimScore is presently completing additional fraud review of a subset of claims submitted by individuals who did not provide a claim ID or PIN. Class Counsel anticipates submitting an updated declaration from ClaimScore prior to the final approval hearing.

favors the compromise of complex class action litigation."]; *Stambaugh v. Sup. Ct.* (1976) 62 Cal.App.3d 231, 236 ["Settlement agreements are highly favored as productive of peace and goodwill in the community, and reducing the expense and persistency of litigation."] (internal quotes omitted); 2 Newberg on Class Actions, Settlement of Class Actions § 11.41 [citing cases].)

In reviewing a class action settlement, the trial court need not "reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." (*7-Eleven Owners*, 85 Cal.App.4th at 1145 (cleaned up).) As such, "the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits" of Plaintiffs' claims. *Id.*; *see also Wershba*, 91 Cal.App.4th at 246. The focus is on whether the proposed settlement is fair, reasonable, and adequate under the circumstances. (*See, e.g.*, *In re Microsoft*, 135 Cal.App.4th at 723; *Dunk*, 48 Cal.App.4th at 1801.)

B. The Proposed Settlement is Fair, Adequate, and Reasonable

This Court has already determined, preliminarily, that the Settlement is fair, reasonable and adequate, free of collusion or other indicia of unfairness, and falls within the range of possible final judicial approval. The inquiry now remains essentially the same—the Court's final responsibility in reviewing a proposed class action settlement is to ensure that the settlement if fair, adequate and reasonable. If so, it should be approved. (*7-Eleven Owners v. Southland Corp.* (200) 85 Cal.App.4th 1135, 1145 ["Ultimately, the [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross approximations and rough justice.'"] (quotation omitted).) "Strong judicial policy . . . favors settlements, particularly where complex class litigation is concerned," so long as there is no indicia of collusion or unfairness among the negotiating parties. (*Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276 *cert den.,* (1992) 506 U.S. 953. As explained below, all relevant factors support final approval here.

1. The Settlement is Entitled to a Presumption of Fairness

A class action settlement is presumed to be fair where, as here, "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of

objectors is small." (*Chavez v. Netflix, Inc*. (2008) 162 Cal.App.4th 43, 52-53; *see also Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.)

a. The Settlement is the Product of Arm's-Length Negotiations by Informed Counsel.

First, the Settlement Agreement was the result of arm's-length bargaining overseen by well-respected third-party mediator Hon. Wayne R. Andersen (ret.) of JAMS. *See* Joint Decl. Supporting Fees ¶¶ 12-13. The negotiation was contentious, adversarial, and at all times, arms-length. By this time, the Parties had also engaged in sufficient litigation to enable each side to evaluate the risks and value of the claims. *Id.* ¶¶ 7-17. Counsel for both Parties have weighed the strengths and weaknesses of the case, examined all of the issues and, as a result, endorse the proposed Settlement. Thus, the evidence demonstrates that the proposed Settlement is the product of serious, informed negotiations reached through extensive, arms-length bargaining.

b. Counsel is Experienced in Similar Litigation.

Second, as set forth in the Joint Declaration of Plaintiffs' Counsel, Class Counsel is competent and experienced in the representation of consumers in class action litigation, including specifically in data privacy cases. *See* Joint Decl. Supporting Fees ¶¶ 27-28; *see also* Ex. K (Clarkson's firm resume); Ex. L (ALG's firm resume). Class Counsel is particularly experienced in litigation involving the use of Pixel tracking technology and disclosure of personally identifiable information and protected health information. *Id*. Accordingly, Class Counsel's assessment is entitled to great weight, and strongly supports final approval of the Settlement. (*See, e.g.*, *Dunk*, 48 Cal.App.4th at 1802; *Kullar*, 168 Cal.App.4th at 129.)

c. There is Almost No Opposition to the Settlement.

Where there are few opt-outs and/or objectors, courts typically find settlements fair and adequate. (*See, e.g.*, *Chavez*, 162 Cal.App.4th at 53 [affirming final approval over objection]; *7-Eleven Owners*, 85 Cal.App.4th at 1152-53 [granting final approval with 8 out of 5,454 class members objecting].) Here, after implementation of the Notice Plan, there are only four opt-outs and two objections. (*See* Admin Decl. ¶¶ 20-21.) As discussed above, the Settlement Class Members are receiving fair compensation for their claims, and the overwhelming majority of claimants have no

objection to the Settlement. Indeed, the claim rate of over 6% indicates that Class Members were motivated by the adequacy of the Settlement to submit claims. Moreover, the business practice changes that Marin has agreed to secure important injunctive relief for the class and public at large .

Additionally, for the reasons discussed in Plaintiffs' Motion for Fees, the objection concerning fees is without merit and should be rejected. *See* Motion for Fees at 14-15. The objector does not articulate any specific basis for challenging the reasonableness of the fees, offering instead a generalized complaint. Such objections are routinely overruled. (*See, e.g.*, *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 506 [overruling objection concerning attorneys' fee request]; *Officers for Justice v. Civil Service Com'n of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 628 ["It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair."].) The second objection does not articulate any grounds for objection at all. Instead, the objector seeks additional information about the Settlement to file a claim form because he is incarcerated and was unable to obtain additional information about the Settlement. Class Counsel responded to the Class Member, provided him with the Claim Form, a stamped envelope, and a Long Form Notice containing detailed information about the Settlement, enabling him to file a claim, and resolving any purported basis for his objection. *See* Admin Decl. (Exh. G) ["Therefore, I firmly object to the settlement until such time I contact an attorney and/or file a claim."]

As explained in further detail below, the Settlement is fair, adequate, and reasonable, and the overwhelming majority of the Class has no objection. As such, this factor weighs in favor of settlement approval, and the Court should find that the "presumption of fairness" applies in this case.

2. The Settlement is Fair, Adequate, and Reasonable

In assessing the fairness of a settlement, the court may consider several factors, including "the strength of the plaintiffs' case, the risk, expense, complexity and duration of further litigation as a class action, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of class members to the proposed settlement." (*In re Microsoft*, 135 Cal.App.4th at 723.) The list of factors is not exclusive, and the court is free to engage in balancing and weighing factors

depending on the circumstances of the case. (*See Dunk*, 48 Cal.App.4th at 1801.)

a. The Strength of Plaintiffs' Case and the Risk, Expense, Complexity and Likely Duration of Further Litigation.

To assess the adequacy of a class action settlement, the Court should weigh the risks inherent in continued litigation against the immediacy and certainty of substantial settlement proceeds. (*See, e.g.*, *Dunk*, 48 Cal.App.4th at 1801-02; *Wershba*, 91 Cal.App.4th at 250-51.)

Although Plaintiffs believe their case is strong, that confidence must be tempered by the fact that the Settlement is beneficial—providing a significant, immediate return—and that there were significant risks of little or no recovery, particularly in a complex case such as this one. Pixel tracking cases raise novel and unresolved legal issues that may have resulted in dismissal of part, or all, of Plaintiffs' claims, as well as factual issues such as the type of information the tracking technologies disclosed, and few pixel cases have been certified.

Class Counsel is convinced that the Settlement is in the best interests of the Class based on detailed knowledge of the issues presented during negotiations. (SA § 2.8, 2.9). In negotiating the Settlement, Class Counsel carefully considered the injunctive relief obtained through Marin's agreement to change its Pixel business practices and direct monetary relief to Class Members; specifically, Class Counsel balanced the Settlement against the possible outcomes of a trial on the merits. *Id*. The risks of trial and the normal "perils" of litigation were all weighed in reaching the Settlement. Litigating the case to trial would have required extensive resources (including the use of experts), involved substantial risk, and would not have resolved the dispute for years. Even if Plaintiffs were able to overcome an inherently uncertain battle of the experts and other challenges to prevail at trial, the Class would face additional risks if Defendant appealed or moved for a new trial. (*See In re Apple Computer Securities Litigation* (N.D. Cal., Sept. 6, 1991, No. C-84-20148(A)-JW) 1991 WL 238298, at *1 [jury verdict for Plaintiffs exceeding $100 million; the court overturned the verdict and ordered a new trial].) Moreover, a trial would not commence until sometime in mid-2026 or later. In contrast, the Settlement provides significant and certain relief now while eliminating the risk of non-recovery in the future.

Further, complex class actions can be expensive and time-consuming to prosecute. Indeed,

the Parties' expert costs would quickly accumulate as a result of, for example, expert depositions, rebuttal reports, oppositions to expert challenges, testimony, and travel expenses, which could quickly lead to a scenario in which settlement might not be economically feasible for either party. The alternative to a class settlement—i.e., individual litigation—fares no better, as it would tax private and judicial resources for years to come.

Accordingly, the Settlement is consistent with the "overriding public interest in settling and quieting litigation" that is "particularly true in class action suits." (*Van Bronkhorst v. Safeco Corp*. (9th Cir. 1976) 529 F.2d 943, 950). Because the Settlement provides immediate and significant relief, without the attendant risks of continued litigation, the Court should approve the Settlement as fair, reasonable, and adequate.

b. The Amount Offered in Settlement.

The amount offered in settlement strongly favors approval. The amount of the cash payment (approximately $86-$137 per Class Member) is more than a fair compromise to the Class. (Admin Decl. ¶ 19.) It is well-established that "[t]he proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had Plaintiffs prevailed at trial." (*Wershba*, 91 Cal.App.4th at 246.) Indeed, "even if 'the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,' this is no bar to a class action settlement because 'the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.'" (*Id.* at 250 (citations omitted).)

The relief obtained here, approximately $13 *per capita*,[5] is also consistent with, and in many cases exceeds, the per capita recoveries approved in other recent pixel class settlements. (*See Koskosky et al. v DaVita Inc.,* (Cir. Ct. Broward Cnty., Fla.) No. CACE24009252 [granting final approval of $3.8 million settlement for 605,436 class members, approx. $6.28 per capita]; *In re Advocate Aurora Health Pixel Litig.,* (E.D. Wis.) No. 2:22-cv-1253-JPS [granting final approval of

[5] This figure refers to the amount each class member would receive if every class member of the estimated 229,000 submitted a valid claim, based on the total common fund amount (3M) before any court-approved payments for settlement administration, attorney fees, and other costs (i.e., $3,000,000/229,000 = $13.1).

approx. $12.2 million settlement for 2.5 million class members, approx. $4.89 per capita]; *Turner v. Johns Hopkins Health Sys. Corp.,* (Cir. Ct. Baltimore City, Md.) Case No. 24-C-23-002983 [granting final approval of $2.9 million settlement for 321,890 class members, with per capita of $9]).

The expenses to continue to prosecute this case would have been substantial in light of the need for expert testimony from multiple disciplines, including tracking technology functionality, economics, marketing, and damages. The additional accumulation of such costs could quickly lead to a scenario in which settlement might not be economically feasible for either party. This is especially true for Plaintiffs to present a robust case for class certification, summary judgment, and trial. Although Plaintiffs believe in the merits of their claims, success is not guaranteed. Should litigation continue, Plaintiffs face significant risks. Data privacy and tracking technology cases present relatively novel issues and evolving laws posing hurdles for dispositive motions and at class certification. (*See, e.g.*, *Frasco v. Flo Health, Inc*., (N.D. Cal. Sept. 23, 2024) 2024 WL 4280933 [granting summary judgment in part in pixel tracking case].) Considering these risks, the non-reversionary common fund of $3 million, along with substantial equitable relief, is meaningful relief for the Settlement Class. The Settlement benefits are, therefore, fair, adequate, and reasonable compared to the range of possible recovery.

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

The Settlement came after several months of pre-suit investigation, negotiations, and litigation, including success on a motion to dismiss. Joint Decl. Supporting Fees ¶¶ 7-10. "'[F]ormal discovery is not a necessary ticket to the bargaining table' where the parties have sufficient information to make an informed decision about settlement." (*Linney v. Cellular Alaska P'ship* (9th Cir. 1998) 151 F.3d 1234, 1239 (quoting *In re Chicken Antitrust Litig. Am. Poultry* (5th Cir. 1982) 669 F.2d 228, 241)).

Here, Plaintiffs had a thorough understanding of the strengths and weaknesses of the case sufficient to support the reasonableness of the Settlement and its terms. *Id.* The Parties initiated discovery, laying the groundwork for the factual record necessary to support the class's claims and ultimately secure meaningful relief. *Id*. ¶10. Class Counsel also conducted significant factual investigation into the use of third-party tracking software on certain web properties through extensive

internal investigation and the exchange of information with Defendant. *Id*. ¶¶ 7-8. Accordingly, Class Counsel acted efficiently in obtaining adequate information to determine that the Settlement is fair and reasonable. Under California law, this assessment is entitled to great weight and further supports final approval of the Settlement. (*See Dunk*, 48 Cal.App.4th at 180.)

d. The Experience and Views of Class Counsel.

Counsel for the Parties are experienced and respected class action attorneys and believe the settlement is fair, adequate, and reasonable. Class Counsel's endorsement is entitled to great weight following arms-length settlement negotiations. (*See Nat'l Rural Tele. Coop. v. DIRECTV*, *Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528 ["'Great weight' is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation."] (citation omitted).) Indeed, counsel "are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation." (*Id.* (quoting *In re Pacific Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378).) Absent a finding of fraud or collusion, settlement agreements negotiated and endorsed by experienced counsel are presumptively fair and reasonable. (*See Dunk*, 48 Cal.App.4th at 1802.)

In this case, the Parties favor the Settlement, as evidenced by the many months of negotiation leading up to the Settlement. Class Counsel is capable and experienced in class action and consumer litigation and, in particular, litigation involving the use of tracking technologies in disclosing the information of individuals. *See* Joint Decl. Supporting Fees ¶¶ 27-28; *see also* Ex. K (Clarkson's firm resume); Ex. L (ALG's firm resume). By virtue of their investigation, Class Counsel was able to thoroughly evaluate the respective strengths and weaknesses of the Parties' positions and the extent of available recovery. Class Counsel worked diligently to secure the best possible result for the Class through vigorous, arms-length negotiations. Class Counsel's views and recommendations concerning the Settlement are the product of experience as well as thorough analysis and consideration of the issues and risks of continued litigation. Class Counsel believes that Settlement results are fair, adequate, and reasonable. Accordingly, this factor favors final approval.

e. The Reaction of Class Members to the Proposed Settlement.

The Settlement Class Members have indicated an overwhelmingly positive response to the

proposed Settlement. There have been 13,955 valid claims submitted, representing a valid claims rate of over 6%. Admin Decl. ¶¶ 16-17; (*see also Duran v. Obesity Research Institute, LLC* (2016) 1 Cal. App. 5th 635, 642-644 [approving class settlement where 895 claims forms were submitted after notice was sent to 237,334 class members, representing a claims rate of less than 1%]; *Bayat v. Bank of the West* (N.D. Cal., Apr. 15, 2015, No. C-13-2376 EMC) 2015 WL 1744342, at *1 [approving settlement with claims rate of 1.9%]; *Abante Rooter and Plumbing, Inc. v. Pivotal Payments Inc.* (N.D. Cal., Oct. 15, 2018, No. 3:16-CV-05486-JCS) 2018 WL 8949777, at *4 [holding that a 2% claims rate is not a reason to deny approval of a settlement when the direct notice reached over 95% of class members]; *Kutzman v. Derrel's Mini Storage, Inc* (E.D. Cal., Oct. 6, 2020, No. 118CV00755AWIJLT) 2020 WL 5909151, at *10 [stating that in determining the fairness of a class action settlement, an absence of a large number of objections to the settlement or the claims rate creates a strong presumption that the terms are favorable to the class].)

Additionally, the small number of opt-outs and objections in comparison to the overall class size weighs in favor of approval of the Settlement. Here, out of over two hundred thousand Settlement Class Members, only four Class Members opted-out and only two objected. (Admin Decl. ¶¶ 20-21); (*see also 7-Eleven Owners*, 85 Cal.App.4th 1152-53 [approving settlement and stating that response of absent class members was "overwhelmingly positive" where 80 class member opted out and there were 9 objectors of a class of 5,500]; *Chavez*, 162 Cal.App.4th at 53 [finding settlement fair and reasonable where 1,234 members, or 0.2 percent of the class, opted out]). The reaction of the Class indicates an endorsement of the Settlement and supports final approval.

C. Notice to the Class Was Adequate and Fulfilled Due Process.

In assessing notice in a class action settlement, "[t]he standard is whether the notice has a 'reasonable chance of reaching a substantial percentage of the class members.'" (*Wershba*, 91 Cal.App.4th at 251 (quotation omitted).) However, it is not necessary to show that notice reached each member of a nationwide class. *Id*.

Here, the Class consists of an estimated 229,000 individuals. For those Class Members with available contact information (roughly 147,000), Verita was able to directly provide notice via email and/or mail, reaching at least 91% of individuals, after extensive efforts of removing duplicate

addresses, updating the mailing addresses through the National Change of Address Database, and remailing the notices where forwarding addresses were available. The Notice Plan was also executed to reach Class Members through a media campaign, including specific targeting of regional and local publications covering Marin County, where Defendant is based and its locations accept patients, as well as statewide distribution via PR Newswire, with a total potential audience of over 76 million. (Admin. Decl. ¶ 10) Taken together, the completed Notice program of direct and media/publication notice was the best practicable under the circumstances and fully consistent with the requirement of due process, as the Court determined at preliminary approval. This factor weighs in favor of final approval.

D. The Court Should Confirm Certification of the Settlement Class

In connection with preliminary approval of the Settlement, the Court certified, for settlement purposes, the Settlement Class, concluding that the proposed Settlement Class met all the requirements of California Code of Civil Procedure Section 382. (*See* Prelim. Approval Order ¶ 6). The same is true now, and there are no new or changed circumstances that would require revisiting this issue. Plaintiffs therefore request that the Court confirm certification of the Class.

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V. CONCLUSION

For all of these reasons, Plaintiffs respectfully submit that the proposed Settlement is fair, adequate, and reasonable. Settlement Class Members have indicated overwhelming positive support for it, and experienced counsel reaffirms that the Settlement is in the best interest of the Settlement Class in light of the risks in continued litigation. Accordingly, Plaintiffs request that the Court issue an order granting final approval of the Settlement.

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Respectfully submitted,

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