UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

AFRIKA WILLIAMS, on behalf of herself and all others similarly situated, Plaintiff, v. DUKE UNIVERSITY HEALTH SYSTEM, INC., Defendant.	Case No. 1:22-cv-00727-WO-JEP CLASS ACTION

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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Plaintiff Afrika Williams ("Plaintiff"), individually and on behalf of others similarly situated, hereby submits her memorandum of law in support of her Motion for Final Approval of Class Action Settlement.

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 23(e)(2) ("Rule 23") and this Court's March 19, 2026 Amended Order Granting Preliminary Approval of Class Action Settlement (ECF No. 81) ("Preliminary Approval Order"), Plaintiff respectfully seeks final approval of her class action Settlement with Defendant Duke University Health System, Inc. ("DUHS" or "Defendant" and, together with Plaintiff, the "Parties"). The Settlement resolves all claims against Defendant on behalf of a class of persons arising from Defendant's alleged use of an Internet tracking technology supplied by a third party, called a pixel ("Tracking Tool") which Plaintiff claims may have caused the disclosure of certain personal or health-related information to a vendor.

Through extensive arm's-length negotiations, the Parties reached a Settlement that provides for immediate and significant benefits for the Class. *See* Declaration of Kate M. Baxter-Kauf in Support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement, ¶¶ 13, 17 ("Baxter-Kauf Decl.") (ECF No. 76-2). The Settlement is the result of hard-fought negotiations between experienced counsel who had a comprehensive understanding of the strengths and weaknesses of each Party's claims and defenses. *See id.* ¶¶ 13, 17. If approved, the Settlement will provide Class Members with the precise relief this lawsuit was filed to obtain. The Settlement negotiated on behalf of the class allows class members to claim a *pro rata* share of a $3,743,600 non-reversionary Settlement Fund. S.A. ¶¶ 14(nn), 18, 21, 28.[1]

The Settlement delivers tangible, immediate benefits to Settlement Class Members, without protracted and inherently risky litigation. It delivers a fair and adequate resolution for the Class and merits final approval. Accordingly, for the reasons set forth herein, Plaintiff respectfully requests this Court grant her Motion for Final Approval and Motion for Attorneys' Fees.

II. FACTUAL AND PROCEDURAL BACKGROUND

In the interest of judicial efficiency, for the factual and procedural background prior to this Court's preliminary approval of the class settlement, Plaintiff refers this Court to Plaintiff's Memorandum in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Memo"), filed on May 2, 2025, and the accompanying exhibits. ECF No. 76. Plaintiff also refers the Court to Plaintiff's Memorandum in Support of Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award to Class Representative ("Attorneys' Fees Memo"), filed on July 2, 2026, and accompanying exhibits. ECF No. 83.

Plaintiffs filed the Motion for Preliminary Approval on May 2, 2025, and the Court entered the Preliminary Approval Order on March 19, 2026. ECF Nos. 75, 76, 81. The Court appointed Plaintiff Afrika Williams as Class Representative, and Peter H. Burke and James

[1] To calculate the Cash Payment to each Class Member, the Settlement Administrator will first distribute monies from the Settlement Fund as outlined in the Settlement Agreement and then divide the Net Settlement Fund *pro rata* amongst the Class Members who filed valid Claim Forms. No portion of the Settlement Fund will revert back to the Defendant unless there is a Termination of the Settlement. *Id.*, ¶ 21.

R. Harrell of CR Legal Team, LLP, and Karen Hanson Riebel, Kate M. Baxter-Kauf, and Maureen Kane Berg of Lockridge Grindal Nauen PLLP, as Class Counsel. Rule 23(e)(2)(A); Preliminary Approval Order ¶¶ 9-10. The Court appointed Epiq Class Action and Claims Solutions ("Epiq") to act as Settlement Administrator. *Id.*, ¶ 11. The Court further approved the forms of notice—which state the amount of attorneys' fees that would be requested, the fact that costs and expenses would be requested, and the amount of the service award that would be requested—and approved the plan for disseminating notice to the Class. *Id.* ¶¶ 12-14; S.A. Exs. B-C.

With preliminary approval, Epiq—with the help of the Parties—disseminated Notice to the Class and implemented the user-friendly claims process that the Court approved. Individual notice was provided directly to Class Members via email and/or first-class mail beginning on May 13, 2026. Declaration of Cameron R. Azari, Esq. Regarding Implementation and Adequacy of Notice Program attached as Exhibit 2 (Azari Decl.) ¶ 12. The Settlement Administrator opines that Notice reached 99% of the Settlement Class, easily satisfying Rule 23(c)(2)(B) and due process standards. *Id.* ¶ 19; Fed. R. Civ. P. 23(c)(2)(B). The Notice provided each Settlement Class Member with information regarding how to reach the Settlement Website, make a Claim, and how to opt-out or object to the Settlement. Azari Decl. ¶¶13, 15. Settlement Class Members had until July 20, 2026, to submit any requests for exclusions and objections. Preliminary Approval Order ¶¶ 15, 17. Settlement Class Members have until August 16, 2026, to submit claims. Azari Decl. ¶ 25.

Plaintiff filed a Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award to Class Representative ("Motion for Attorneys' Fees") on July 2, 2026—the Court-ordered deadline to do so. ECF No. 82; Preliminary Approval Order at 11.

The reaction from Settlement Class Members to the Settlement is resoundingly positive. Only thirty-seven individuals requested exclusion from the Settlement,[2] and there were *no objections* to the Settlement or the Motion for Attorneys' Fees. *Id.* ¶ 23. As of August 11, 2026, 43,367 individuals have filed claims. *Id.* ¶ 25. As the claim deadline has not passed, these numbers are subject to change. *Id.*

The Court scheduled the Final Approval Hearing for August 27, 2026, at 9:30 a.m., at which time the Court will determine whether: (1) the Settlement is fair, reasonable, and adequate; (2) the Settlement Class should be finally certified; (3) the preliminary appointment of Class Counsel should be made final; (4) the preliminary appointment of the Class Representative should be made final; (5) Class Counsel's Motion for Attorneys' Fees and Litigation Expenses should be granted; (6) the Service Award for Class Representative should be granted; and (7) a final judgment should be entered. Preliminary Approval Order ¶¶ 21-22.

[2] There were 36 timely requests and one late request permitted, for a total of thirty-seven. The Settlement Agreement allowed DUHS, but did not require, "to withdraw from and terminate the Settlement in its entirety in the event that 500 or more of the Settlement Class Members submitted timely and valid Requests for Exclusion by the Opt-Out Date." SA at ¶ 78. The 37 opt-outs only constitute 7.4% of the number necessary to trigger that provision, again indicating that the Settlement Agreement has been warmly embraced by the Settlement Class.

III. THE SETTLEMENT TERMS

A. The Settlement Class

The Settlement Class is defined as all individuals residing in the United States who logged into the Duke MyChart patient portal or MyDuke Health mobile app at least once between February 18, 2019, and June 17, 2022. S.A. ¶ 14(ll). Excluded from the Class are: (i) Defendant, and Defendant's affiliates, parents, subsidiaries, officers, and directors; (ii) any judge, justice, or judicial officer presiding over the Litigation and the members of their immediate families and clerks of said judge(s); and (iii) any individual who timely and validly excludes themselves from the Settlement. *Id.* The Settlement Class consists of approximately 872,634 individuals. *Id.*

B. The Settlement Benefits

Pursuant to the Settlement, Defendant will establish a $3,743,600 non-reversionary Settlement Fund. *Id.* ¶¶ 14(nn), 18, 21. Settlement Class Members currently have an opportunity to submit a claim for a *pro rata* share of the Net Settlement Fund. *Id.* ¶ 28. To submit a claim, a Class Member need only submit a valid Claim Form before the Claim Deadline of August 16, 2026. *Id.*

As of the date of this Motion, the Settlement Administrator has received 42,642 claims. Azari Decl. ¶ 25. To calculate the Cash Payment to each Class Member, the Settlement Administrator will first distribute monies from the Settlement Fund as outlined in the Settlement Agreement and then divide the Net Settlement Fund *pro rata* amongst the Settlement Class Members who file valid Claim Forms. S.A. ¶¶ 14(q), 28. Final calculation of the payment to each Settlement Class Member must wait until the close of the claim period.

In addition to the Class Relief, all costs for administration and notice will be paid from the Settlement Fund. S.A. ¶ 29. Also, Plaintiff has previously moved for an award of attorneys' fees, reimbursement of expenses, and a service award, all to be paid from the Settlement Fund. S.A. ¶¶ 65-66; ECF Nos. 82-83.

IV. NOTICE AND CLAIMS ADMINISTRATION

A. CAFA Notice

Epiq began its work by providing notice of the proposed Settlement pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715(b) ("the CAFA Notice"). Azari Decl. ¶ 8. On May 12, 2025, Epiq sent the CAFA Notice to the Attorneys General of 47 U.S. states, the District of Columbia, the United States Territories, and the United States. *Id.*

B. Direct Email/Mail Notice

Epiq received the Class List on April 16, 2026. Azari Decl. ¶ 11. The list contained 872,333 records. *Id.* Epiq de-duplicated the data records and determined that 871,350 unique Settlement Class Members existed to which notice should be issued (the "Class Notice List"). *Id.*

Beginning on May 13, 2026, Epiq began sending Email Notices to the 869,732 valid email addresses in the Class Notice List. *Id.* ¶ 12. The Email Notice included an embedded link to the Settlement Website, and by clicking the link, recipients were able to access the Long-Form Notice and other information about the Settlement. *Id.* ¶ 13.

On May 18, 2026, Epiq mailed 1,859 Postcard Notices via First-Class Mail to each Settlement Class Member with a mailing address and for whom a valid email address was not available. *Id.* ¶ 15. On June 16, 2026, Epiq mailed an additional 525 Postcard Notices to Class Members without a valid email address, and 91,188 Postcard Notices to Class Members for whom the Email Notice was returned as undeliverable after multiple attempts. *Id.* For any postcards returned as undeliverable, Epiq relied on United States Postal Service ("USPS") and third-party information to find updated addresses and remail the postcards. *Id.* ¶ 17. As of August 11, 2026, Epiq has remailed 1,142 Postcard Notices. *Id.*

The Postcard Notice included (a) the web address to the Settlement Website, (b) a detachable claim form, (c) the rights and options as a Settlement Class Member and the dates by which to act on those options. *Id.*

Prior to the mailing, all mailing addresses were checked against the National Change of Address (NCOA) database maintained by USPS. *Id.* ¶ 16. In addition, the addresses were certified via the Coding Accuracy Support System (CASS) to ensure the quality of the zip code and verified through Delivery Point Validation (DPV) to verify the accuracy of the addresses. *Id.*

In total, notice reached 870,569 Settlement Class Members, or 99% of the Class. *Id.* ¶ 19.

C. Settlement Post Office Box, Website, Toll-Free Number, and Email Support

On May 4, 2026, Epiq created a dedicated Settlement Website. *Id.* ¶ 20. It contains copies of the Settlement Agreement, Postcard Notice, Long-Form Notice, and other case documents. *Id.* It also includes details of the Settlement, including the benefits, contact information for the Settlement Administrator, how to submit a claim, the procedure for how to opt out of or object to the Settlement, and Frequently Asked Questions. *Id.* The Settlement Website provided Settlement Class Members with the opportunity to file Claim Forms online. *Id.* As of August 11, 2026, the Settlement Website received 97,244 unique visitors. *Id.* The

Settlement Website will remain active until 120 days after the Effective Date of the Settlement. S.A. ¶ 49.

Epiq also established a toll-free help line ("Toll-Free Number") to provide Settlement Class Members with additional information about the settlement, which is available 24 hours per day, seven days per week. *Id.* ¶ 21. Settlement Class Members can call to hear recorded information about the Settlement and FAQs, request a mailed Claim form, or speak with a live agent during business hours. *Id.* As of August 11, 2026, there have been 5,796 calls for a total of 34,578 minutes, of which live agents handled 3,001 calls for 22,100 minutes. *Id.*

Epiq established an email address and postal mailing address where Settlement Class Members can request more information or ask questions. *Id.* ¶ 22.

D. Claims

The timing of the claims process was structured to ensure that all Settlement Class Members had adequate time to review the terms of the Settlement Agreement, make a claim or decide whether they would like to opt-out or object. The deadline to file a claim is August 16, 2026, and as of August 11, 2026, Epiq has received 43,367 claims. *Id.* ¶ 25. This number is subject to change through the remaining claim period and Epiq's quality control review. *Id.*

E. Requests for Exclusion and Objections

Settlement Class Members were provided up to and including July 20, 2026—sixty days after the Notice period began and thirty days after the Notice period completed—to object to or to request exclusion from the Settlement. Preliminary Approval Order ¶ 15, 17; S.A. ¶ 53. Similar to the timing of the Claims Process, the timing with regard to objections and requests for exclusion was structured to give Settlement Class Members sufficient time to access and review the Settlement documents—including Plaintiff's Motion for Attorneys' Fees, which was filed eighteen days prior to the deadline for Settlement Class Members to object or exclude themselves from the Settlement. *Id.*; ECF No. 82. As of August 11, 2026, Epiq has received only thirty-seven (37) exclusion requests and no objections to the Settlement or Motion for Attorneys' Fees. Azari Decl. ¶ 23.

V. LEGAL STANDARD

Plaintiffs bring this motion pursuant to Federal Rule of Civil Procedure 23(e), under which a class action may not be settled without approval of the Court. Fed. R. Civ. P. 23(e). The Court must determine whether the settlement terms are fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2). If so, the Court should grant final approval to the settlement. *In re Red Hat, Inc. Sec. Litig.*, 5:04-CV-473-BR(3), 2010 WL 2710517, at *1 (E.D.N.C. June 11, 2010) (citations omitted)[3]; *see also In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158-59 (4th Cir. 1991) ("*Jiffy Lube*")).

The primary concern for a court in reviewing a proposed class settlement is to ensure that the rights of class members have received sufficient consideration in settlement negotiations. *Jiffy Lube*, 927 F.2d at 158-59. "Approval of a class action settlement is committed to the sound discretion of the district courts to appraise the reasonableness of particular class-action settlements on a case-by-case basis, in light of the relevant circumstances." *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 663 (E.D. Va. 2001) (citation omitted). Moreover, as the Fourth Circuit has recognized, courts strongly favor

[3] Memorandum and Recommendation adopted, 5:04-CV-473-BR, 2010 WL 2710446 (E.D.N.C. July 8, 2010).

and encourage settlements. *See, e.g., United States v. Manning Coal Corp.*, 977 F.2d 117, 120 (4th Cir. 1992) ("It has long been clear that the law favors settlement."). "This is particularly true in class actions" and other complex matters, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See, e.g., Six v. LoanCare, LLC*, No. 5:21-cv-00451, 2022 WL 16747291, at *3 (S.D. W. Va. Nov. 7, 2022) (slip copy) (quoting *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 311 (3d Cir. 2011) and citing *In re PaineWebber Ltd. P'ships Litig.*, 147 F.3d 132, 138 (2d Cir. 1998) (noting the "strong judicial policy in favor of settlements, particularly in the class action context")).

Plaintiff now asks this Court to grant final approval of the proposed Settlement as fair, adequate, and reasonable so that Plaintiff and Settlement Class Members may begin to appreciate the benefits of the Settlement.

VI. ARGUMENT

A. The Notice Satisfies Federal Rule of Civil Procedure 23 and Due Process

To satisfy due process, notice to class members must be the best practicable and reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them a reasonable opportunity to present their objections. Fed. R. Civ. P. 23(e); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Individual notice should be provided where class members can be located and identified through reasonable effort. The notice may be provided by U.S. Mail, electronic, or other appropriate means. Fed. R. Civ. P. 23(c)(2)(B).

> The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Id.

Here, the direct email and mail Notice of Proposed Settlement (in Postcard format) is consistent with Notice programs approved by the Fourth Circuit. *See, e.g., McAdams v. Robinson*, 26 F.4th 149, 158-59 (4th Cir. 2022) (notice by email, postcard, and longform deemed adequate); *Johnson v. Goodwin*, No. 1:18CV467, 2024 WL 1097753, at *5 (M.D.N.C. Mar. 6, 2024) (email notice coupled with publication plan deemed adequate). As in *McAdams*, the notices all contained the URL of or hyperlinked to the settlement website, which contains the full Settlement Agreement, the Long-Form notice, the Short-Form notice, and FAQs. 26 F.4th at 158-59. The Notice adequately informed Settlement Class Members of the nature of the action, the definition of the class, the claims at issue, the ability of a Settlement Class Member to object or exclude themselves, and/or enter an appearance through an attorney, that the Court will exclude any class member who requests exclusion, and the binding effect of final approval and a class judgment. *See* S.A. Exs. B-C. The Notice utilized clear and concise language that is easy to understand, and the Notice was organized in a way that allowed Settlement Class Members to easily find any section that they may be looking for. Thus, it was substantively adequate.

Moreover, the Settlement Administrator—with the assistance of the Parties—has taken all necessary measures to ensure notice reached as many of the Settlement Class Members as possible. Direct notice was delivered to 99% of the Settlement Class Members. Azari Decl. ¶ 19. Such notice complies with the program approved by this Court in its Preliminary Approval Order, is consistent with (and better than) notice programs approved in the Fourth Circuit and across the United States, is considered a "high percentage," and is within the "norm." *See* Barbara J. Rothstein & Thomas E. Willging, Fed. Jud. Ctr., "Managing Class Action Litigation: A Pocket Guide or Judges", 27 (3d Ed. 2010); *Smith v. Res-Care, Inc.*, No. CV 3:13-5211, 2015 WL 6479658, at *4 (S.D.W. Va. Oct. 27, 2015) (approving a "92.13% effective delivery rate to identified Class Members" as an "acceptable, and even exceptional, rate"); *In re Serzone Prods. Liab. Litig.*, 231 F.R.D. 221, 236 (S.D. W. Va. 2005) (approving publication notice rate of approximately 80% of the U.S. population where Settlement Class Members were exposed to notice an average of 2.6 times throughout notice program).

B. The Settlement Class Should be Finally Certified for Settlement Purposes

As the Court determined in its Preliminary Approval Order, the proposed Settlement Class satisfies all requirements of Rule 23. *See* Fed. R. Civ. P. 23(a), (b)(3). Nothing has occurred that would change this determination. Specifically, the action still meets the requirements of numerosity, commonality, typicality, adequacy of representation, predominance, and superiority under Rule 23(a) and (b)(3). *Id.* Furthermore, the Settlement Class meets the implied requirement of "ascertainability," in that Defendant identified "all individuals who logged into the Duke MyChart patient portal or MyDuke Health mobile app at least once between February 18, 2019, and June 17, 2022" by sending Epiq "one data file with 872,333 identified Settlement Class Member records, which included full names, email addresses, and mailing addresses, to the extent known ("Class List")." S.A. ¶ 14(ll); Azari

Decl. ¶ 11. Thus, the Court should finally certify the Settlement Class for settlement purposes.

C. The Settlement is Fair, Reasonable, and Adequate and Should Be Approved

To determine final approval, the Fourth Circuit "adopted a bifurcated analysis, separating factors relating to the 'fairness' of the settlement from those relating to its 'adequacy'" referred to as the *Jiffy Lube* Test. *Jiffy Lube*, 927 F.2d at 158-59; *Horton v. Merrill Lynch, Pierce, Fenner & Smith*, 855 F. Supp. 825, 828 (E.D.N.C. 1994). Reviewing courts begin with a "strong initial presumption that the compromise is fair and reasonable." *S.C. Nat. Bank v. Stone*, 139 F.R.D. 335, 339 (D.S.C. 1991). The proposed settlement is "not to be judged against a hypothetical or speculative measure of what might have been achieved by negotiators" in the best of all possible deals. *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (affirming district court's final approval of class settlement).

a. The Settlement Terms Meet the *Jiffy Lube* Adequacy Requirement

"Adequacy" is determined by examining "(1) the relative strength of the plaintiffs' case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement." *Jiffy Lube*, 927 F.2d at 158-59; *Horton*, 855 F. Supp. at 828.

By their very nature, because of the many uncertainties of outcome, difficulties of proof, and lengthy duration, class actions readily lend themselves to compromise. *See S.C. Nat'l Bank v. Stone*, 749 F. Supp. 1419, 1423 (D.S.C. 1990) (noting that settlement spares litigants the uncertainty, delay, and expense of a trial and appeals while simultaneously reducing the burden on judicial resources). Here, the first three *Jiffy Lube* adequacy factors are closely related, and weigh in favor of final approval of the proposed settlement.

The value achieved through the Settlement Agreement is guaranteed, whereas the chances of prevailing on the merits are uncertain. While Plaintiff believes her case is strong, there would be substantial risk in litigating the case. Cases such as this, involving alleged violations of privacy based on tracking technology, are incredibly novel, complex, risky, and expensive. *See, e.g.*, *In re Novant Health, Inc.*, 2024 WL3028443, at *10 (M.D.N.C. June 17, 2024) (granting final approval of settlement in tracking pixel case and noting that: "Unauthorized data disclosures and data tracking lawsuits present questions of law that are novel and injuries that are challenging to quantify"); *In re Google LLC St. View Elec. Commc'ns Litig.*, 611 F. Supp. 3d 872, 879, 888 (N.D. Cal. 2020), *aff'd sub nom. In re Google Inc. St. View Elec. Commc'ns Litig.*, 21 F.4th 1102 (9th Cir. 2021) (describing as "a risky case" a class action against Google for violations of the Electronic Communications Privacy Act of 1986 ("ECPA") for "us[ing] its Street View vehicles to intentionally intercept and store electronic communications transmitted by class members over unencrypted wireless internet connections" and approving a settlement which provided for injunctive relief and a $13 million settlement fund used to fund *cy pres* awards); *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1112, 1115 (9th Cir. 2020) (affirming approval of settlement in class action alleging Facebook violated the ECPA by capturing, reading, and using website links included in private messages sent or received by class members and which the District Court described as "very risky for the class.")

These same issues exist in data breach privacy actions, which are closely related to this one. *See, e.g., In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800, 2020 WL 256132, at *32-33 (N.D. Ga. Mar. 17, 2020) (recognizing the complexity and novelty of issues in data breach class actions); *Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) ("Data breach cases . . . are particularly risky, expensive, and complex."). This case involves approximately 872,634 class members, complicated and technical facts, a well-funded and motivated defendant, and a novel theory of damages on behalf of Plaintiff. There are numerous substantial hurdles Plaintiff would have to overcome before the Court might find a trial appropriate, including Plaintiff's motion for class certification and motions for summary judgment. Like any complex class action, tracking pixel cases are challenging and time consuming to litigate. This is particularly true here, where Defendant disputes Plaintiff's allegations and denies that Plaintiff has even been harmed let alone that it is liable for any harm Plaintiff suffered. Defendant has indicated it will vigorously defend the case. While Plaintiff believes her claims are strong, success is not guaranteed. Thus, despite Plaintiff's confidence in the strength of this case, numerous legal issues and factual disputes exist that undermine the certainty of a more favorable outcome for the Settlement Class.

Rather than face this risk and uncertainty, the Settlement allows for Settlement Class Members to obtain benefits within the near future—as opposed to potentially waiting for years—and eliminates the possibility of receiving no benefits whatsoever. *See In re CertainTeed Fiber Cement Siding Litig.*, 303 F.R.D. 199, 216 (E.D. Pa. 2014) ([I]f the parties were to continue to litigate this case, further proceedings would be complex, expensive and lengthy, with contested issues of law and fact . . .. That a settlement would eliminate delay and expenses and provide immediate benefit to the class militates in favor of approval.").

Litigating this case to a favorable conclusion will require a considerable amount of time and resources and weighs in favor of accepting the Settlement now. *See In re AT & T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 347 (N.D. Ill. 2010) (Even if Plaintiffs were to succeed on the merits at some future date, a future victory is not as valuable as a present victory. Continued litigation carries with it a decrease in the time value of money, for '[t]o most people, a dollar today is worth a great deal more than a dollar ten years from now.'") (internal citation omitted)).

Here, the monetary relief of a *pro rata* share of the $3,743,600 non-reversionary common fund (minus the costs of settlement administration and any award of attorneys' fees, expenses, and a service award) provided for in the Settlement represents a significant and excellent result for the Settlement Class. This sizeable recovery for the Settlement Class represents real, meaningful benefits for Settlement Class Members. It provides benefits to all Settlement Class Members who make a claim, compensating them for the alleged privacy violations related to Defendant's use of the Tracking Tools. Accordingly, the Settlement easily weighs in favor of final approval.

Next, there is no evidence that Defendant is in danger of becoming insolvent. Thus, this factor is neutral in the analysis and does not preclude the Court from granting final approval.

Finally, the reaction of the Settlement Class to the proposed Settlement has been undeniably positive. As of August 11, 2026, out of the 870,569 Settlement Class Members who were sent notice, Epiq received only thirty-seven (37) exclusion requests. Azari Decl. ¶¶ 19, 23. Moreover, as of August 11, 2026, Epiq received *no objections* to the Settlement. *Id*. This is a *de minimis* number of requests for exclusion and zero objections, which supports the conclusion that the Settlement satisfies the adequacy requirement. *See Skochin v. Genworth Financial, Inc.*, 3:19-cv-49, 2020 WL 6697418, at *4 (proposed settlement satisfied adequacy requirement with 191 opt-outs and 32 objections out of a class of 207,000). "'It is well established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members.'" *West v. Continental Automotive, Inc.*, No. 3:16-cv-00502-FDW-DSC, 2018 WL 1146642, at *6 (W.D.N.C. Feb. 5, 2018)) (quoting *National Rural Telecom. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (collecting cases)). The presumption in favor of final approval applies here, with no objection to the Settlement and a negligible number of opt-outs.

b. The Settlement Terms Meet the *Jiffy Lube* Fairness Requirement

"Fairness" is determined by examining "(1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel in the area of . . . class action litigation." *Jiffy Lube*, 927 F.2d at 158-59; *Horton*, 855 F. Supp. at 828. "A proposed class action settlement is considered presumptively fair where there is no evidence of collusion and the parties, through capable counsel, have engaged in arms' length negotiations." *Harris v. McCrackin*, Nos. 2:03-3845-23, 2:03-3943-23, 2:04-2314-23, 2006 WL 1897038, at *5 (D.S.C. July 10, 2006); *see also ADESSO Homeowners' Ass'n v. Holder Properties, Inc.*, No. 3:16-cv-710-JFA, 2017 WL 11272589, at *8 (D.S.C. May 23, 2017) ("[A] proposed class action settlement is considered presumptively fair where there is no evidence of collusion and the parties, through capable counsel, have engaged in arms' length negotiations."). This presumption applies here.

This case settled after the Court's decision on Defendant's motion to dismiss and as the parties were beginning to engage in fact and expert discovery. This was a propitious time for settlement, as the Parties could direct their resources towards a possible resolution, as opposed to lengthy and expensive formal discovery and protracted litigation. The Settlement is the result of protracted and intense, arm's-length negotiations between highly experienced attorneys who are familiar with class action litigation—and privacy class actions in particular—and with the legal and factual issues in these cases. *See* Baxter-Kauf Decl. ¶¶ 3-6, 11-13, 16-17 & Exs. A-B.

Before discussing potential settlement, the Parties completed an extensive investigation and moved through a motion to dismiss—both of which helped them to understand the strengths and weaknesses of their claims and defenses and the risks of continued litigation. Baxter-Kauf Decl. ¶¶ 7-8. The Parties then participated in one full day mediation with Jill Sperber, negotiating at arm's-length and communicating their positions through her. *Id.* ¶¶ 13, 17. This session with Mediator Sperber did not result in an agreement to the principal terms of the Settlement. *Id.* Following their mediation session, the Parties continued negotiating back and forth for weeks before participating in a second mediation with Mediator Sperber, reaching a settlement in principle and then for many weeks more negotiating the particular terms of the Settlement Agreement and associated exhibits. *Id.*

Throughout all negotiations, Class Counsel and counsel for Defendant fought hard for the interests of their respective clients, as evidenced by the motion practice in this case. Negotiations were at arm's-length, and there is no evidence of collusion.

Accordingly, the Settlement satisfies the *Jiffy Lube* test for fairness and adequacy, and the Settlement should therefore be finally approved by the Court.

VII. CONCLUSION

Plaintiff has negotiated a fair, adequate, and reasonable settlement that guarantees Settlement Class Members substantial, immediate relief in the form of a *pro rata* payment from a non-reversionary $3,743,600 common fund. For all the reasons stated above, Plaintiff respectfully requests this Court grant her Motion for Final Approval of the Class Action Settlement, finally certify the Settlement Class, determine that the Notice met the requirements of Rule 23(c)(2)(B) and due process, and grant her Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award.[4]

[4] A [Proposed] Final Approval Order and Judgment is attached as Exhibit 1.

Date: August 13, 2026

Respectfully submitted,

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***Special Appearances Entered*

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LOCAL RULE 7.3(d)(1) WORD COUNT CERTIFICATION

I hereby certify on August 13, 2026, that this Brief complies with Local Rule 7.3(d)(1) in that it does not exceed 6,500 words in length, including the body of the brief, heading, and footnotes.

/s/ James Harrell
James Harrell

CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2026, I served a copy of the foregoing via electronic filing in the ECF System for the USDC Middle District of North Carolina.

/s/ James Harrell
James Harrell