IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

AFRIKA WILLIAMS, on behalf of herself and all others similarly situated, Plaintiff, v. DUKE UNIVERSITY HEALTH SYSTEM, INC., Defendant.	)	1:22-cv-727

FINAL APPROVAL ORDER AND JUDGMENT

This matter is before the Court on Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement ("Final Approval Motion") and Plaintiff's Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award to Class Representative ("Fees Motion"). Last year, the parties agreed to resolve this data privacy class action by settlement. [1] On March 19, 2026, the Court preliminarily approved the proposed Settlement Agreement, ordered settlement notices to be sent to the putative class members, and set a date for a final settlement

[1] The terms of the settlement ("Settlement") are set forth in a settlement agreement and Release, dated May 2, 2025 ("Settlement Agreement" or "S.A.") with accompanying exhibits attached as Exhibit 1 to Plaintiff's Memorandum in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement, filed on May 2, 2025. (Doc. 76-1.)

fairness hearing. Amended Order Granting Plaintiff's Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), (Doc. 81).

A Final Approval Hearing was held on August 27, 2026. Prior to the Final Approval Hearing, on July 2, 2026, Plaintiff filed the Fees Motion, and on August 13, 2026, Plaintiff filed the Final Approval Motion. Counsel for the parties appeared in person and presented arguments in support of final approval of the Settlement. No one appeared to voice an objection and, according to the Plaintiff, [no objections].

Having heard the presentations of Class Counsel and Defendant's counsel, having reviewed the submissions presented with the Final Approval Motion; having considered the Fees Motion and having reviewed the materials in support thereof; for the reasons stated on the record during the Final Approval Hearing and for good cause appearing, the Court finds that the proposed Settlement meets the requirements of Rule 23 and that the requested attorneys' fees, expenses, and service award are fair and reasonable.

I. Background

A. Procedural History and Surviving Claims

On September 1, 2022, Plaintiffs Kim Naugle and Afrika Williams filed a class action complaint in the United States

District Court for the Middle District of North Carolina (the "Court") captioned Kim Naugle and Afrika Williams v. Meta Platforms, Inc. -and- Duke University Health System, Inc., WakeMed, and a Defendant Class of Facebook partner Medical Providers, Case No. 1:22-cv-00727 asserting negligence and other common law and statutory claims relating to Duke University Health System, Inc.'s ("Defendant" or "DUHS") alleged use of a Tracking Tool on its website, which Plaintiff claims may have led to the disclosure of certain personal or health-related information to a vendor when she and others visited Defendant's website. (Doc. 1.) On December 28, 2022, Magistrate Judge Joi Elizabeth Peake granted a Joint Motion to Transfer and Sever the claims against Meta Platforms, Inc., and transferred them to the United States District Court for the Northern District of California for coordination with In re Meta Pixel Healthcare Litigation, Case No. 3:22-cv-03580-WHO. (Doc. 39.) On April 21, 2023, Plaintiff Kim Naugle voluntarily dismissed her case from this Court and consolidated her claims against WakeMed into an existing state court case. (Doc. 44.) On July 28, 2023, Plaintiff Afrika Williams filed an Amended Class Action Complaint ("Complaint") under this case number and retitled, Afrika Williams v. DukeHealth and a Defendant Class of Facebook Partner Medical Providers (the "Litigation"). (Doc. 46.) On

March 27, 2024, the Court granted in part and denied in part, Defendant's Motion to Dismiss Plaintiff's Complaint dismissing Plaintiff's claims for intrusion upon seclusion—invasion of privacy, violation of the Electronic Communications Privacy Act, negligent misrepresentation, and negligence per se, and permitting Plaintiff's negligence and breach of contract claim to proceed. (Doc. 55.)

B. Settlement Negotiations

On July 18, 2024, the Court entered a Mediation Scheduling Order and appointed skilled mediator Jill Sperber pursuant to LR 83.9d(a). (Doc. 67.) The Parties participated in mediation sessions with Ms. Sperber on December 6, 2024, and February 25, 2025. With the assistance of Ms. Sperber, the Parties reached an agreement in principle to resolve the Litigation. Declaration of Kate Baxter-Kauf in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement ("Baxter-Kauf Decl."). (Doc. 76-3, ¶ 13.) By May 2, 2025, the Parties negotiated, drafted, and finalized the Settlement (to be paid from a $3,743,600 non-reversionary settlement fund), notice forms, and claims process. See id., ¶ 8.

C. January 2026 Hearing and Preliminary Approval Order

On May 2, 2025, Plaintiffs filed an unopposed motion requesting preliminary approval of a class action settlement, (Docs. 75, 76), and a signed Settlement Agreement. (Doc. 76-2.) On January 16, 2026, the Court held a hearing on the Motion for Preliminary Approval, and the Court entered the Preliminary Approval Order on March 19, 2026. (Doc. 81.) The Court appointed Plaintiff Afrika Williams as Class Representative, and Peter H. Burke and James 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.

D. Post-Preliminary Approval

With preliminary approval, Epiq—with the help of the Parties—disseminated Notice to the Class and implemented the claims process that the Court had 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

(Azari Decl.) ¶ 12 (Ex. 2 to Final Approval Motion). Notice reached 99% of the Settlement Class. Id. ¶ 19. 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 had until August 16, 2026, to submit claims. Id.

II. Certification of Settlement Class under Rule 23

"The class action is an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." Comcast Corp. v. Behrend, 569 U.S. 27, 33 (2013) (cleaned up). To qualify for the exception, the plaintiffs "must affirmatively demonstrate [their] compliance" with Federal Rule of Civil Procedure 23. Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011); see also Thorn v. Jefferson-Pilot Life Ins. Co., 445 F.3d 311, 318 (4th Cir. 2006) (stating "district courts must conduct a rigorous analysis to ensure compliance with Rule 23" (cleaned up)); see generally Fed. R. Civ. P 23(a). See also In re Novant Health, Inc., Case No. 1:22-CV-697, 2024 WL3028443, at *2 (M.D.N.C. June 17, 2024)

A. Ascertainability

As a threshold matter, Rule 23 requires the proposed class members be readily identifiable and the proposed class representatives be members of the proposed class. See Peters v. Aetna Inc., 2 F.4th 199, 241-42 (4th Cir. 2021) (recognizing an "implicit threshold requirement" that class members be readily identifiable); Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 625-26 (1997) ("A class representative must be part of the class." (cleaned up)). In re Novant, 2024 WL3028443, at *3.

The proposed class for settlement purposes (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. Defendant identified all members of the Class 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. The Rule 23 threshold requirements are met.

B. Rule 23(a)'s Requirements of Numerosity, Commonality, Typicality, and Adequacy of Representation

As the Court determined in its Preliminary Approval Order, the proposed Settlement Class also 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, and adequacy of representation under Rule 23(a). Id.; Preliminary Approval Order at 4.

Generally, "a class of 40 or more members raises a presumption of impracticability of joinder based on numbers alone," In re Zetia (Ezetimibe) Antitrust Litig., 7 F.4th 227, 234 (4th Cir. 2021) Here, numerosity is easily met because there are approximately 872,634 individuals DUHS has identified as comprising the Settlement Class.

The requirements for typicality and commonality often merge because both relate to whether the claims of the plaintiffs and those of the class are so similar as to ensure that the class members' interests will be sufficiently protected. See Kidwell v. Transp. Commc'ns Int'l Union, 946 F.2d

283, 305 (4th Cir. 1991). General Telephone Company of Southwest v. Falcon, 457 U.S. 147, 157 n.13 (1982). To satisfy the commonality requirement, there must be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). As the Supreme Court recognized in Wal-Mart Stores, Inc. v. Dukes, a "single common question" will satisfy the commonality requirement so long as it is "of such a nature that its determination will resolve an issue that is central to the validity of each one of the claims in one stroke." 564 U.S. at 350. Questions common to the Settlement Class include: (1) whether DUHS's privacy policy formed an implied contract; (2) whether DUHS disclosed patient health information without their patient's consent; (3) whether DUHS's alleged disclosure of patient's health information constituted a breach of contract; (4) whether DUHS had a duty of care to protect its patients' health information; and (5) whether DUHS breached said duty of care. These common questions satisfy the commonality prong of Rule 23(a).

To satisfy typicality, the claims of the named Plaintiff must be typical of the claims of the class. Fed. R. Civ. P. 23(a)(3). Typicality is met when the claims asserted by the named Plaintiff arise from the same course of conduct and are based on the same legal theories as the claims of other class members. Haywood v. Barnes, 109 F.R.D. 568, 578 (E.D.N.C. 1986).

Here, Plaintiff's breach of contract and negligence claims arise from the same course of conduct and are based on the same legal theories as the claims of the unnamed class members, and thus typicality is met. Tatum v. R.J. Reynolds Tobacco Co., 254 F.R.D. 59, 65 (M.D.N.C. 2008).

Finally, as to adequacy of representation, the Fourth Circuit has explained:

> [T]he final three requirements of Rule 23(a) tend to merge, with commonality and typicality serving as guideposts for determining whether . . . maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.

Brown v. Nucor Corp., 576 F.3d 149, 152 (4th Cir. 2009). Rule 23(a)'s requirements of commonality, typicality and adequacy of representation are met.

C. Rule 23(b)(3)'s Requirements of Predominance and Superiority

Rule 23(b)(3) provides a class action may be maintained if "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Courts have found common questions of law and fact predominated in cases involving very similar fact patterns.

See, e.g., In re Novant, 2024 WL 3028443, at *5 (tracking pixel case); Abubaker v. Dominion Dental USA, Inc., No 19-CV-1050, 2021 WL 6750844, at *3(E.D. Va. Nov. 19, 2021 (data breach case); Hutton v. Nat'l Bd. Of Exam'rs in Optometry, Inc., No. 16-CV-3025, 2019 WL 3183651, at *4 (D. Md. July 15, 2019) (same). Where the actions of the defendant similarly affected every class member, common questions predominate.

Class action adjudication of this matter is also superior to other methods. The lead Plaintiff has represented the Settlement Class Members fairly and adequately. Baxter-Kauf Decl., ¶ 10. She asserts the same harms and interests and has claims typical of the Settlement Class Members. (Doc. 1.) Class Counsel have provided adequate representation, are experienced in class action litigation, and have worked with the lead Plaintiff since 2022. Id., ¶¶ 3-6. Class certification is also superior and more efficient than individual litigation. The case involves over 870,000 members, and individual litigation would consume large amounts of resources and time of the Court and the parties, much of the work duplicative.

The requirements for class certification under Rule 23(a) and (b)(3) are met.

III. Final Settlement Approval

To determine final approval of a class settlement, 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. Cases such as this, involving alleged violations of privacy based on tracking technology, are novel, complex, risky, and expensive. See, e.g., In re Novant, 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.

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, which 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. Id. ¶¶ 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. Following their first 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.

The In re Jiffy Lube factors weigh in favor of final approval. The Settlement meets the fairness, adequacy, and reasonableness requirements of Rule 23(e). See Fed. R. Civ. P. 23(e)(2).

C. Sufficiency of the Notice

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 seeking. 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). The Notice was reasonable and satisfies the requirements of due process.

IV. Attorneys' Fees, Reimbursement of Expenses, and Service Award

A. Class Counsels' Attorneys' Fees Request is Reasonable.

Rule 23(h) of the Federal Rules of Civil Procedure provides that in a class action settlement, "the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). The Supreme Court has "recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." Boeing Co.

v. Van Gemert, 444 U.S. 472, 478 (1980); see United States v. Tobias, 935 F.2d 666, 667 (4th Cir. 1991) (explaining common fund is an "equitable exception to the 'American rule' that parties bear their own costs of litigation"). The common fund doctrine vests the district court holding jurisdiction over the fund to spread the costs of litigation proportionately across all persons benefited by the suit. Id. The Supreme Court has "applied it in a wide range of circumstances as part of [its] inherent authority." US Airways, Inc. v. McCutchen, 569 U.S. 88, 104 (2013) (collecting cases).

1. Percentage of the Fund Method is Appropriate

The award of attorneys' fees is within the sound discretion of the trial judge. Barber v. Kimbrell's, Inc., 577 F.2d 216, 226 (4th Cir. 1978) (further citation omitted). While the Fourth Circuit has not made obligatory a particular method of determining fees in common fund cases, it has recognized the financial significance of the contingency fee and associated risks. In re Abrams & Abrams, PA, 605 F.3d 238, 245 (4th Cir. 2010); Brundle on behalf of Constellis Employee Stock Ownership Plan v. Wilmington Tr., NA, 919 F.3d 763, 786 (4th Cir. 2019), *as amended* (Mar. 22, 2019) ("courts routinely impose enhanced common fund awards to compensate counsel for litigation risk at the expense of beneficiaries who do not shoulder this risk.").

In a class action settlement, "[c]ourts either use the lodestar method, the percentage of the fund method, or a combination of both." Phillips v. Triad Guaranty Inc., No. 1:09CV71, 2016 WL 2636289, at *2 (M.D.N.C. May 9, 2016). Within the Fourth Circuit, the percentage-of-the-fund method "is the preferred approach to determine attorneys' fees." Kruger v. Novant Health, Inc., No. 1:14CV208, 2016 WL 6769066, at *2 (M.D.N.C. Sept. 29, 2016) (internal citation omitted); see also Phillips, 2016 WL 2636289, at *2 (noting that district courts within the Fourth Circuit "overwhelmingly" prefer the percentage-of-the-fund method in common fund settlement); Jones v. Dominion Res. Servs., Inc., 601 F. Supp. 2d 756, 758 (S.D.W. Va. 2009) ("The percentage method has overwhelmingly become the preferred method for calculating attorneys' fees in common fund cases."

The percentage-of-the-fund method provides strong incentives for counsel to obtain the maximum possible recovery in the shortest time possible under the circumstances by removing the incentive, which occurs under the lodestar method, for class counsel to "over-litigate" or "draw out" cases in an effort to increase the number of hours used to calculate their fees. See Jones, 601 F. Supp. 2d at 759; see also Ferris v. Sprint Communs. Co. LP, No. 5:11-cv-00667-H, 2012 WL 12914716, at *2 (E.D.N.C. Dec. 13, 2012) (noting that the percentage method "better aligns the interests of class counsel and class members because it ties the attorneys' award to the overall result achieved rather than the hours expended by the attorneys.") (internal citation and quotation omitted); DeWitt v. Darlington Cty., No. 4:11-cv-00740, 2013 WL 6408371, at *6 (D.S.C. Dec. 6, 2013) ("The percentage-of-the fund approach rewards counsel for efficiently and effectively bringing a class action case to a resolution, rather than prolonging the case in the hopes of artificially increasing the number of hours worked on the case to inflate the amount of attorneys' fees on an hourly basis.").

Under the percentage method, the attorneys' fee award is calculated using the gross amount of benefits provided to class members, including administrative costs, attorneys' fees and expenses. See Ferris, 2012 WL 12914716, at *2-3. In this Circuit, fees constituting one-third of the settlement (or more) have been found reasonable. McAdams v. Robinson, 26 F. 4th 149, 162 (4th Cir. 2022) (affirming attorneys' fees award of $1,300,000 or 43% of the $3,000,000 common fund class action settlement); Kruger, 2016 WL 6769066, at *6 (awarding attorneys' fees of $10,666,666 comprising 1/3 of the monetary benefits made available to the class); Chrismon v. Pizza, No. 5:19-CV-155-BO, 2020 WL 3790866, at *5 (E.D.N.C. July 7, 2020) (noting that "[m]any courts in the Fourth Circuit have held that attorneys' fees in the amount of 1/3 of the settlement fund is reasonable." (collecting cases)); In re Cotton, 3:18-cv-00499, 2019 WL 1233740, at *4 (W.D.N.C. Mar.15, 2019) (approving an award of 33 percent of the total settlement value); *Neal v. Wal-Mart Stores, Inc.*, 3:17-cv-00022, 2021 WL 1108602, at *2 (W.D.N.C. Mar. 19, 2021). Attorneys' fees in common fund cases typically reflect "around one-third of the recovery."

2. The Relevant Factors Support the Fee Award.

Although the Fourth Circuit has not adopted specific factors for consideration in determining an appropriate attorneys' fees award in a common fund case, there are currently two sets of factors Courts in this Circuit employ. They are contained in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717–19 (5th Cir. 1974) (adopted in Barber v. Kimbrell's, Inc., 577 F.2d 216, 226 (4th Cir. 1978)) and those mentioned in In re Mills Corp. Sec. Litig., 265 F.R.D. 246, 261 (E.D. Va. 2009). Both sets of factors focus on the reasonableness of the fees and many of the factors overlap.

North Carolina federal courts have used the In re Mills factors in the past. See, e.g., Speaks v. U.S. Tobacco Coop., Inc., 324 F.R.D. 112, 155 (E.D.N.C. 2018). The In re Mills factors support the fee request here: "(1) the results obtained for the [c]lass; (2) objections by members of the [c]lass to the settlement terms and/or fees requested by counsel; (3) the quality, skill, and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) public policy; and (7) awards in similar cases." In re Mills Corp. Sec. Litig., 265 F.R.D. at 261.

a. Class Counsel Obtained an Excellent Result for the Class

"In the Fourth Circuit, the most critical factor in calculating a reasonable fee award is the degree of success obtained." Decohen v. Abbasi, LLC, 299 F.R.D. 469, 481 (D. Md. 2014) (citation omitted). Class Counsel should be rewarded for litigating this matter with considerable diligence and efficiency. Plaintiffs' counsel responded to a motion to sever and a motion to transfer, before filing a comprehensive amended class action complaint. Thereafter, Plaintiff's counsel briefed and survived, in part, Defendant's Motion to Dismiss, propounded discovery, and mediated this matter to a successful resolution, presenting the settlement agreement for preliminary approval under Fed. R. Civ. P. 23.

The $3,743,600 non-reversionary common fund represents a significant recovery for approximately 872,634 individuals in the class and is comparable to settlements in other data pixel cases. John v. Froedtert Health, Inc., No. 23-CV-1935 (Milwaukee County Circuit Court, Sept. 29, 2023) ($2,000,000 for class of 435,000); In re Advocate Aurora Health Pixel Litigation, 740 F. Supp. 3d 736, 742 (E.D. Wis. 2024) ($12,225,000 for class of over 2.5 million); In re Novant, 2024 WL 3028443, at *2 ($6,660,000 for class of over 1.3 million).

b. The Class is Responding Favorably to the Settlement so Far.

As already discussed, few Class members opted-out, none objected, and tens of thousands submitted claims, demonstrating that Class Members view the Settlement favorable.

c. The Skill Required to Perform the Services Rendered Supports the Fee Request.

The expertise of the attorneys involved in this matter, combined with the complexity of the case, likewise supports the requested fee award. Class Counsel have demonstrated skill commensurate with their reputations and prosecuted a tough case on behalf of the Plaintiff and the Settlement Class. See generally, Memorandum in Support of Plaintiffs Unopposed Motion for Preliminary Approval of Class Action Settlement. (Docs. 75, 76.) Each firm invested substantial hours of both attorney and paralegal time.

Here, Class Counsel negotiated a non-reversionary common fund settlement with experienced defense counsel. Class Counsel utilized their experience to efficiently resolve this lawsuit, engaging in two mediation sessions and significant follow-up negotiations under the guidance of a qualified mediator, to reach a settlement in a largely untested area of the law.

d. A Lodestar Crosscheck Confirms the Reasonableness of Class Counsel's Fee Request.

"Given that courts in the Fourth Circuit approve of the percentage-of-the-fund method for awarding fees in common fund cases, it is not necessary for the Court to conduct a lodestar analysis." Kruger, 2016 WL 6769066, at *4 (internal citations and quotations omitted). "However, courts in this Circuit will review the lodestar method to serve as a 'cross-check' to ensure that the percentage award is fair and reasonable." Id. "[W]here used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court." Goldberger v. Integrated Resources, Inc., 209 F.3d 43, 50 (2d Cir. 2000); see also Jones, 601 F. Supp. 2d at 766 (noting that the court "may use Class Counsels' estimate of the hours they spent working on this case" to complete the lodestar cross-check).

Class Counsel's attorneys' fees request is reasonable when analyzed under the lodestar cross-check. Here, as Class Counsel attests, they reasonably expended 733.3 hours litigating this case. Counsel for both firms coordinated their work to avoid duplication of effort. Nonetheless, extensive research was required given the novel nature of the claims asserted. Counsel drafted a voluminous and detailed initial class action complaint, responded to a motion to sever and motion to transfer, while continuing to investigate challenging and complex legal and factual claims. Furthermore, Class Counsel researched and drafted a successful, in part, opposition to Defendant's motion to dismiss, and propounded substantial paper discovery before agreeing to mediate this matter. After two full mediation sessions with Jill Serber, Esq., and the exchange of legal and factual memoranda and information counsel drafted the Settlement Agreement, the motion for Preliminary Approval, and its concomitant notices. The hours Class Counsel spent litigating this matter reflect the reasonable and necessary effort required to achieve this result.

The requested rates are reasonable. An "attorney's actual billing rate provides a starting point for purposes of establishing a prevailing market rate." Rum Creek Coal Sales, Inc. v. Caperton, 31 F.3d 169, 175 (4th Cir. 1994) (internal quotation omitted). Here, Class Counsel are experienced in class action litigation, and their customary rates are within the reasonable range of rates charged by attorneys with similar levels of experience and credentials in complex class action field.

As detailed in each individual firm's declaration, (Doc. 51), Class Counsels' billing rates are within the range of rates approved in the Fourth Circuit and others in this state as reasonable. See e.g., Kruger, 2016 WL 6769066, at *4 (approving hourly rates of $998 for attorneys with 25 years of experience, $850 for attorneys with 15-24 years of experience, $612 for attorneys with 5-15 years of experience, $460 for attorneys with 2-4 years of experience; $309 for paralegals and law clerks, and $190 for legal assistants); Rehberg v. Flowers Baking Co. of Jamestown, LLC, No. 3:12-cv-00596-MOC-DSC (W.D.N.C. June 30, 2017), ECF Nos. 250, 245-5, 245-1 (approving hourly rates of $975 for an attorney practicing 23 years and $590 for an attorney practicing 10 years); McCoy v. North State Aviation, LLC, No. 17-cv-346, 2018 WL 11486307 (M.D.N.C June 15, 2018).

Furthermore, the multiplier in this case is below those awards in other class action cases. In the Fourth Circuit, courts have awarded positive multipliers of up to greater than 4.5. See, e.g, Kruger, 2016 WL 6769066, at *5 (multiplier of 3.69); Gaston v. LexisNexis Risk Solutions Inc., No. 5:16-cv-00009, 2021 WL 2077812, at * 7 (W.D.N.C. May 24, 2021) (multiplier of 1.85); Nieman v. Duke Energy Corp., No. 3:12-cv-00456, 2015 WL 13609363, at *1 (W.D.N.C. Nov. 2, 2015) (approving a lodestar multiplier of greater than 4.5 and discussing that a typical lodestar multiplier in class action matters ranges from 1.3 to 4.5); In re Microstrategy, Inc., 172 F. Supp. 2d 778, 790 (E.D. Va. 2001) (multiplier of 2.6); Berry v. Schulman, 807 F.3d 600, 617 (4th Cir. 2015) (multiplier of 1.99).

Here, Settlement Class Counsel's requested fee represents a multiplier of 1.88% as of July 2, 2024, which is squarely on the low end of the multipliers discussed above. Moreover, the multiplier will continue to decrease through the administration of settlement. The lodestar cross-check confirms that the requested fee is reasonable.

e. Data Privacy Cases are Novel and Inherently Complex.

Although nearly all class actions involve a high level of risk, expense, and complexity, this is a particularly complex class action in an especially risky area of data privacy stemming from Tracking Tool technologies. Similar Tracking Tool-based data privacy cases have faced substantial hurdles in making it past the pleading stage. See, e.g., Kurowski v. Rush Sys. for Health, 659 F. Supp. 3d 931, (N.D. Ill. 2023), reconsidered by 2023 WL 8544084 (N.D. Ill. Dec. 11, 2023); Hartley v. Univ. of Chicago Med. Ctr., No. 22 C 5891, 2023 WL 7386060 (N.D. Ill. Nov. 8, 2023). Roldan v. Bland Landscaping Co., Inc., No. 3:20-CV-00276, 2022 WL 17824035, at *4 (W.D.N.C. Dec. 19, 2022) (In complex, multi-year class actions, the risks inherent in the litigation are immense. Indeed, settlement must be evaluated taking into account the uncertainty and risks involved in litigation and in light of the strength of the claims and possible defenses.") (internal citations and quotations omitted); see also In re Equifax Inc. Customer Data Sec. Breach Litig., No. 1:17-md-2800, 2020 WL 256132, at *6 (N.D. Ga. Mar. 17, 2020) (recognizing the complexity and novelty of issues in data privacy class actions); Gordon v. Chipotle Mexican Grill, Inc., No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) (noting that data privacy cases "are particularly risky, expensive, and complex."). This case was no exception, and the Settlement was only obtained through the dedicated efforts of Class Counsel.

f. There was Substantial Risk of Non-Payment, and Public Policy Favors the Fee Request.

Plaintiff and Class Counsel faced the genuine and ever-present risk of zero recovery in the case, like all cases on a contingency fee basis. Data privacy cases are, by nature, particularly risky and expensive. Such cases also are innately complex. See, e.g., In re Equifax, 2020 WL 256132, at *6 (recognizing the complexity and novelty of issues in data privacy class actions); Gordon, 2019 WL 6972701, at *1 ("noting that data privacy 'cases are particularly risky, expensive, and complex.'").

This case was no exception involving novel issues of allegedly unauthorized use of Tracking Tools involving over 872,000 Class Members, complicated and technical facts, as well as a well-funded and motivated defendant. Class Counsel, who took this matter on contingency, who expended significant time and energy into the case, and who have not yet been compensated, faced numerous challenges. Certainly, the Court's ruling on DUHS's motion to dismiss (Doc. No. 55) crystallizes some of the risks faced here.

Courts have recognized that such risk deserves extra compensation and is a critical factor in determining the reasonableness of a fee. See, e.g., Stocks v. Sullivan, 717 F. Supp. 397, 402 (E.D.N.C. 1989); Gilbert LLP v. Tire Eng'g & Distribution, Ltd. Liab. Co., 689 F. App'x 197, 201 (4th Cir. 2017); In re Dun & Bradstreet Credit Svcs. Cons. Lit., 130 F.R.D. 366, 373 (S.D. Ohio 1990); Behrens v. Wometco Enters., Inc., 118 F.R.D. 534, 548 (S.D. Fla. 1988), aff'd, 889 F.2d 21 (11th Cir. 1990); In re Cont. Ill. Sec. Litig., 962 F.2d 566, 569 (7th Cir. 1992). Thus, the existence of these issues show that Class Counsel's risk of nonpayment was tangible and justifies the requested fee.

Moreover, public policy favors incentivizing "capable and seasoned counsel" to undertake complex litigation. In re The Mills, 265 F.R.D. at 263. Class Counsel have been involved in prosecuting other health care related pixel cases. Public policy concerns thus also weigh in favor of granting the fee request. See Haney v. Genworth Life Ins. Co., No. 3:22-cv-55, 2023 WL 1111646, at *8 (E.D. Va. Jan. 30, 2023) (finding uncertain recovery and public policy "weighs in favor of the requested fee").

g. Attorneys' Fees Awards in Similar Cases

Class Counsel's fee request is consistent with the other data privacy class action cases. For example, the fee request awarded in John v. Froedtert Health Inc., No. 2023CV001935 (Milwaukee County, Circuit Court, Sept. 29, 2023), a similar pixel tracking tool class action settlement, was 35% of the gross settlement fund. Courts across the country routinely award attorneys' fees of 1/3 of the common fund in data privacy class action settlements. Lamie v. Lending Tree, LLC, No. 3:22-cv-00307-FDW-SCR, (Doc. No. 60) (WD NC February 27, 2024) (approving one-third contingent fee for common fund data breach settlement); Thomsen v. Morley Cos., *Inc.*, No. 1:22-cv-10271, 2023 WL 3437802, at *2 (E.D. Mich. May 12, 2023) (noting that "a 33% award is presumably reasonable" for attorneys' fees in a data privacy class action); In re Forefront Data Breach Litig., No. 21-cv-887, 2023 WL 6215366, at *8 (E.D. Wis. Mar. 22, 2023) (awarding attorneys' fees of 1/3 of the settlement fund in a data privacy class action settlement); Stoll v. Musculoskeletal Institute, No. 8:20-cv-1798, 2022 WL 16927150, at *3 (M.D. Fla. July 27, 2022) (same); Migliaccio v. Parker Hannifin Corp., No. 1:22-cv-835, (Doc. 42) (N.D. Ohio Aug. 2, 2023) (same); Tucker v. Marietta Area Healthcare, Inc., No. 2:22-cv-184, (Doc. 38) (S.D. Ohio Dec. 7, 2023) (same).

B. Class Counsels' Litigation Expenses are Reasonable.

Federal Rule of Civil Procedure 23(h) allows a court approving a class settlement to "award reasonable…nontaxable costs that are authorized by law or by the parties' agreement." Accordingly, courts in the Fourth Circuit allow plaintiffs to recover "reasonable litigation-related expenses as part of their overall award." Decohen, 299 F.R.D. at 483 (citation omitted). "Litigation expenses such as supplemental secretarial costs, copying, telephone costs and necessary travel are integrally related to the work of the attorney and the services for which outlays are made may play a significant role in the ultimate success of litigation…." Daly v. Hill, 790 F.2d 1071, 1083 (4th Cir. 1986).

The Settlement Agreement permits Class Counsel to request reimbursement of litigation expenses not to exceed $30,000. Class Counsel's request for litigation expenses of $19,448.40[2] is reasonable because each expense was incurred in the prosecution of this litigation. The vast majority of Class Counsel's expenses were for Ms. Sperber's mediation services. The remaining costs are attributed to the filing fee, process service, pro hac vice admissions, and forthcoming travel and lodging expenses for the final approval hearing currently scheduled for August 27, 2026. Courts regularly award litigation expenses in addition to attorneys' fees in class action cases. See, e.g., Kabore v. Anchor Staffing, Inc., No. L-10-3204, 2012 WL 5077636, at *10 (D. Md. Oct. 17, 2012) ("It is well-established that Plaintiffs who are entitled to recover attorneys' fees are also entitled to recover reasonable litigation-related expenses as part of their overall award."). Class Counsel's request for expenses should be approved as fair

[2] Class Counsel may submit to the Settlement Administrator additional actual expenses incurred subsequent to their submitting their Fees Motion, including reasonable travel expenses incurred to travel to the Final Approval Hearing, the total not to exceed $30,000 as set forth in the Settlement Agreement.

and reasonable given that counsel has a strong incentive to keep costs and expenses at a reasonable level due to the high risk of no recovery when the fee is contingent.

C. The Requested Service Award is Reasonable.

Service awards are "routinely approved" in class actions to "encourage socially beneficial litigation by compensating named plaintiffs for their expenses on travel and other incidental costs, as well as their personal time spent advancing the litigation on behalf of the class and for any personal risk they undertook." Kay Co. v. Equitable Prod. Co., 749 F. Supp. 2d 455, 472 (S.D.W. Va. 2010); Berry, 807 F.3d at 613 (service awards compensate the class representative for work done on behalf of the class and make up for financial risk undertaken in bringing the action). Serving as a class representative "is a burdensome task and it is true that without class representatives, the entire class would receive nothing." Kay Co., 749 F. Supp. 2d at 473.

Over the nearly four years of this Litigation, Williams put herself forward in litigating this case as the only named plaintiff, kept abreast of the case's status, participated in settlement negotiations, and discussed various aspects of the case with counsel. See Burke v. Shapiro, Brown & Alt, LLP, No. 3:14-cv-201 (DJN), 2016 WL 2894914, at *6 (E.D. Va. May 17, 2016). A service award of $7,500 for Ms. Williams is reasonable as she is the sole plaintiff in this action. Much larger service awards have been regularly approved by judges in this District and the Fourth Circuit. See e.g., Kruger, 2016 WL 6769066, at *6 (granting $25,000 service awards); Brown v. Charles Schwab & Co., Inc., No. 2:07-cv-03852, 2011 WL 13199227, at *7 (D.S.C. July 26, 2011) (approving $10,000 service award to named plaintiff); see also Neal v. Wal-Mart Stores, Inc., 3:17-cv-00022, 2021 WL 1108602, at *2 (W.D.N.C. Mar. 19, 2021) (approving service awards of $10,000 to each Settlement Class Representative); In re Cotton, 2019 WL 1233740, at *4 (approving service awards of $10,000 to each Settlement Class Representative).

The requested Service Award of $7,500 is less than what has been approved in a similar class action settlement. See, e.g., Lutz v. Electromed, Inc., No. 21-cv-02198, (Doc. 73) (D. Minn.) (service award of $9,900 in a data breach class action). Ms. Williams aptly fulfilled her class duties, making the Service Award requested appropriate.

IT IS HEREBY ORDERED that:

1. This Final Approval Order incorporates the definitions in Section II of the Settlement Agreement.

2. The Final Approval Motion and the Fees Motion are **GRANTED** as stated herein.

3. Jurisdiction: The Court has jurisdiction over the subject matter of this Litigation and over all claims raised therein and all parties thereto, including the Settlement Class.

4. The Settlement Agreement, including the exhibits attached thereto, is approved as fair, reasonable, and adequate, in accordance with Rule 23(e) of the Federal Rules of Civil Procedure. The Court finds that the Settlement was entered into by the parties for the purpose of settling and compromising disputed claims, and is fair, reasonable, and adequate, and in the best interests of all those affected by it. The Settlement Agreement was entered in good faith following informed, arm's-length negotiations conducted by experienced counsel with the assistance of a well-respected mediator and is non-collusive.

5. Class Certification for Settlement Purposes Only: For purposes of the Settlement only, the Court finds and determines that the Action may proceed as a class action under Rule 23(b)(3) of the Federal Rules of Civil Procedure, and that: (a) the Settlement Class certified herein is sufficiently numerous, as it includes approximately 872,634 people, and joinder of all such persons would be impracticable; (b) there are questions of law and fact that are common to the Settlement Class, and those questions

of law and fact common to the Settlement Class predominate over any questions affecting any individual Settlement Class Member; (c) the claims of the Plaintiffs are typical of the claims of the Settlement Class they seek to represent for purposes of settlement; (d) a class action on behalf of the Settlement Class is superior to other available means of adjudicating this dispute; and (e) as set forth below, Plaintiff and Class Counsel are adequate representatives of the Settlement Class. The proposed Class satisfies all of Rule 23's requirements, so the Court will finally certify the Settlement Class.

6. Class Definition: The Court hereby certifies, for settlement purposes only, a Settlement Class 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.

7. 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.

8. Class Notice: The approved Notice Program provided for a copy of the Postcard Notice to be mailed and/or

emailed to all Settlement Class Members for whom a valid address is available, and additional notice via the Long Form Notice posted on the Settlement Website for those whose mailing or emailing addresses were not available within Defendant's records. For mailed notices returned with a forwarding address, the Settlement Administrator mailed Short Form Notices to the forwarding addresses. The Settlement Administrator maintained the Settlement Website, which provided information about the Settlement, including copies of relevant Court documents, the Settlement Agreement, the Long Form Notice, and the Claim Form. The Settlement Administrator also maintained a toll-free number with interactive voice response, FAQs, and an option to speak to a live operator to address Settlement Class Members' inquiries.

9. Findings Concerning Notice: The Court finds and determines that the Notice Program, preliminarily approved on March 19, 2026 and implemented on May 18, 2026, constituted the best notice practicable under the circumstances, constituted due and sufficient notice of the matters set forth in the notices to all persons entitled to receive such notices, and fully satisfies the requirements of due process, Rule 23 of the Federal Rules of Civil

Procedure, 28 U.S.C. § 1715, and all other applicable laws and rules. The Notice Program involved direct notice via mail and/or email and the Settlement Website providing details of the Settlement, including the benefits available, how to exclude from or object to the Settlement, when the Final Approval Hearing would be held, and how to inquire further about details of the Settlement. The Court further finds that all the notices are written in plain language and are readily understandable by Settlement Class Members. The Court further finds that notice has been provided to the appropriate state and federal officials in accordance with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715, drawing no objections.

10. Appointment of Class Representatives: The Court appoints Afrika Williams as Settlement Class Representative pursuant to Federal Rule of Civil Procedure 23(a).

11. Appointment of Class Counsel: The Court appoints Peter H. Burke and James 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.

12. Exclusion from Class: Any person falling within the definition of the Settlement Class had the opportunity, upon request, to be excluded from or "opt out" from the

Class. The thirty-seven (37) person(s) who opted to be excluded from the Settlement shall have no rights under the Settlement, shall not share in the distribution of the Settlement benefits, and shall not be bound by the Settlement or any final judgment entered in this Action.

13. Objections and Appearances: Any Settlement Class Member had the opportunity to enter an appearance in the Action, individually or through counsel of their own choice. Any Settlement Class Member also had the opportunity to object to the Settlement and the attorneys' fees and expenses award and to appear at the Final Approval Hearing and show cause, if any, why the Settlement should not be approved as fair, reasonable, and adequate to the Settlement Class, why a final judgment should not be entered thereon, why the Settlement should not be approved, or why the attorneys' fees and expenses award should not be granted, as set forth in the Court's Preliminary Approval Order. There were no objections submitted in this case to either the Settlement or the attorneys' fees and expenses award. Any Settlement Class Member who did not make their objections in the manner and by the date set forth in ¶¶ 17-18 of the Court's Preliminary Approval Order shall be deemed to have waived any objections and shall be forever barred from raising such objections in

this or any other action or proceeding, absent further order of the Court.

14. Release: Upon the Effective Date of this Order, the Releasing Persons, including Plaintiff and each Settlement Class Member, will be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from any and all past, present, and future claims, counterclaims, lawsuits, set-offs, costs, expenses, attorneys' fees and costs, losses, rights, demands, charges, complaints, actions, suits, causes of action, obligations, debts, contracts, penalties, damages, or liabilities of any nature whatsoever, known, unknown, or capable of being known, in law or equity, fixed or contingent, accrued or unaccrued, and matured or not matured that arise out of, or are based upon or connected to, or relate in any way to the Pixel Disclosure, Defendant's use of Tracking Tools, the allegations in the Complaint, or that were or could have been asserted in the Litigation.

15. The Released Claims include the release of Unknown Claims. "Unknown Claims" means claims relating in any way to the subject matter of the Complaint that could have been raised in the Litigation and that any of the Plaintiff and each of their respective heirs, executors,

administrators, representatives, agents, partners, trustees, successors, attorneys, and assigns do not know to exist or suspect to exist, which, if known by them, might affect their agreement to release Defendant and all other Released Persons, or might affect their decision to agree to, or object or not to object to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiff (on behalf of herself and each Settlement Class Member) expressly shall have, and by operation of the Final Approval Order and Judgment the Settlement Class Members shall have, released any and all Released Claims, including Unknown Claims. Plaintiff (on behalf of herself and each Settlement Class Member) may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiff (on behalf of herself and each Settlement Class Member) expressly shall have, and by operation of the Final Approval Order and Judgment shall have, upon the Effective Date, fully, finally, and forever settled and released any and all Released Claims, including Unknown Claims. Upon the Effective Date, the Plaintiff expressly shall have, and all other Releasing Persons shall be deemed to have, and by operation of the Judgment shall have, expressly waived and relinquished for the Released Claims, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Upon the Effective Date, the Plaintiff expressly shall have, and all other Releasing Persons also shall be deemed to have, and by operation of the Judgment shall have, waived for the Released Claims any and all provisions, rights and benefits conferred by any law of any state or territory of the United States (including, without limitation, Montana Code Ann. § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to § 1542 of the California Civil Code. The Releasing Persons acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any

Unknown Claims they may have, as that term is defined in this Paragraph. The Settling Parties acknowledge, and the Releasing Persons shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

16. Attorneys' Fees and Costs: Class Counsel moved for an award of attorneys' fees and litigation expenses on July 2, 2026 (Doc. 82), to which Defendant took no position. Class Counsel requested $1,247,866 in attorneys' fees and reimbursement of actual expenses of up to $30,000. The Court finds that Class Counsel's request for attorneys' fees and expenses is fair and reasonable, particularly in light of the results achieved through this litigation as well as the contingent nature of the fee award. Accordingly, Class Counsel are awarded attorneys' fees in the amount of $1,247,866 and reimbursement of actual litigation expenses in an amount of up to $30,000. These amounts shall be paid from the Settlement Fund in accordance with the terms of the Settlement.

17. Service Award: Plaintiff moved for her Service Award on July 2, 2026 (Doc. 82), to which Defendant took no position. Plaintiff requested a service award of $7,500.00. The Court finds that Plaintiff's request for a Service Award is fair and reasonable, particularly in light of the results obtained for

the Settlement Class as a direct result of Plaintiff's willingness to act as Class Representative and assist Class Counsel in this litigation. Accordingly, Plaintiff is awarded a Service Award in the amount of $7,500.00. This amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement.

18. Payment to Settlement Class Members: The Settlement Administrator shall make all required payments from the Settlement Fund in accordance with the amounts and the times set forth in the Settlement Agreement, including all payments to Settlement Class Members who submitted an approved claim, for the attorneys' fees and costs, for the service award, and for all settlement administration costs.

19. Funds Held by Settlement Administrator: All funds held by the Settlement Administrator shall be deemed and considered to be in custodia legis of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds are distributed pursuant to the Settlement or further order of the Court.

20. This Final Approval Order, and all acts, statements, documents, and proceedings relating to the Settlement Agreement are not, and shall not constitute or be construed as, an admission of the validity of any claim or any fact alleged in

the Complaint or Litigation or of any wrongdoing, fault, violation of law or liability of any kind on the part of Defendant or any admission by Defendant of any claim in this Litigation or allegation made in any other proceeding, including regulatory matters, directly or indirectly involving the Pixel Disclosure, Defendant's use of any Tracking Tools, or allegations asserted in the Complaint and Litigation. This Final Approval Order and the Settlement Agreement shall not be offered or be admissible in evidence against the Parties or cited or referred to in any action or proceeding between the Parties, except in an action or proceeding brought to enforce its terms. Nothing contained herein is or shall be construed or admissible as an admission by Defendant that Plaintiff's claims, or any similar claims, are suitable for class treatment.

21. Dismissal with Prejudice: The above-captioned Action is hereby **DISMISSED WITH PREJUDICE**. Except as otherwise provided in this Final Approval Order and Judgment, the parties shall bear their own costs and attorneys' fees. Without affecting the finality of the Judgment hereby entered, the Court reserves jurisdiction over the implementation of the Settlement, including enforcement and administration of the Settlement Agreement.

22. Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement and Plaintiff's Unopposed Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award to Class Representative are **GRANTED** and Final Judgment is hereby entered.

23. On entry of this Final Approval Order and Judgment, the Plaintiff and Settlement Class Members shall be enjoined from prosecuting the Released Claims in any proceeding in any forum against any of the Released Persons, or based on any actions taken by any Released Persons authorized or required by this Settlement Agreement or the Court or an appellate court as part of this Settlement.

24. The Clerk is directed to **CLOSE THIS CASE** and **TERMINATE** any pending motions as **MOOT**.

IT IS SO ORDERED.

This the 27th day of August, 2026.

William L. Osteen, Jr.
United States District Judge