UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

In Re: Group Health Plan Litigation	Case No. 23-cv-00267 (JWB/DJF) **MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

On November 5, 2024, this Court granted preliminary approval of a proposed class action settlement between Plaintiffs Kelly Vriezen, Sandra Tapp, and Kaye Lockrem (collectively "Plaintiffs"), for themselves and on behalf of the Settlement Class,[1] and Defendant Group Health Plan, Inc. d/b/a Health Partners ("Group Health" or "Defendant"). (Order for Prelim. Approval of Class Action Settlement [ECF Doc. 146] ("Preliminary Approval Order").) Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiffs now respectfully submit this memorandum of law in support of their unopposed motion for final approval of the Settlement.

I. INTRODUCTION

The Settlement between Plaintiffs and Defendant was reached after litigating the case for many months, fully briefing and arguing a motion to dismiss, exchanging discovery, engaging in extensive arms-length settlement negotiations, and ultimately

[1] All terms not defined in this Memorandum have the meaning defined in the settlement agreement attached as Exhibit 1 to the Declaration of Christopher P. Renz in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and Notice Plan [ECF Doc. 140] (hereinafter the "Settlement" or "Settlement Agreement").

participating in a settlement conference with Magistrate Judge Dulce Foster wherein the parties reached the Settlement.

The Settlement provides significant relief to the Settlement Class by creating a non-reversionary Settlement Fund in the amount of $6,000,000.00 to be funded by Defendant. The Settlement Fund provides for direct *pro rata* payments to every Settlement Class Member who submits a valid Claim Form, as well as provide for payment of the costs of administration, notice, service awards and attorneys' fees and costs.

The Court preliminarily approved the Settlement, including the notices and releases as being fair and reasonable to Class Members. (Preliminary Approval Order.) As provided for in the Settlement and approved by the Court, individual notice was sent directly to Settlement Class Members through email and mail. The Notice provided each Settlement Class Member with information regarding the terms of the Settlement, how to reach the Settlement Website, and how to opt-out or object to the Settlement.

Plaintiffs now move for final approval of this class action Settlement. Plaintiffs are also simultaneously moving for attorneys' fees, reimbursement of litigation expenses, and a class representative service award ("Atty Fees Motion"). Based on the direct, monetary benefits the Settlement provides, the experience of Class Counsel, the risk and costs of continued litigation, the robust notice provided to the Class, the *de minimus* number of requests for exclusion, and the single objection to the Settlement, Plaintiffs respectfully request that the Court grant final approval of the Settlement as fair, reasonable, and adequate, and enter final judgment accordingly.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. History of the Litigation

On February 2, 2023, Plaintiff Kelly Vriezen filed an action against Group Health in this Court alleging that Group Health had disclosed her personally identifiable information ("PII") and protected health information ("PHI") (PPI and PHI collectively "Private Information") to third-parties, including Meta. (Compl. [ECF Doc. 1] ¶ 1.) Plaintiffs Kaye Lockrem and Sandra Tapp each filed their own complaints in separate actions making similar allegations against Defendant. (*See* Dockets in Case Nos. 23-cv-00461 and 23-cv-00483.) Following an unopposed motion to consolidate the cases of Plaintiffs Vriezen, Lockrem, and Tapp, the Court granted the motion and consolidated all cases into the present one with Plaintiff Vriezen's case adopted as the lead case. (Order, March 29, 2023 [ECF Doc. 28].)

Plaintiffs subsequently filed the Consolidated Class Action Complaint. (Consolidated Class Action Compl. [ECF Doc. 59] (the "Complaint").) The Complaint alleged that Group Health's disclosure of Plaintiffs' Private Information occurred as a result of Group Health's embedding a Facebook tracking pixel on its website where Plaintiff Vriezen and others were directed to look for medical information, book medical appointments, and locate physicians. (*Id.* ¶¶ 1, 18-22.) The Complaint alleged that the tracking pixel technology directed Plaintiffs' and others' communications and interactions to be automatically and surreptitiously sent to Facebook, along with the individual's unique Facebook identification. (*Id.* ¶ 17.)

Plaintiffs alleged that the Pixel Installation harmed them and the Settlement Class Members. (*See generally id.*) Plaintiffs alleged various causes of action against Group Health to recover for that harm, including Invasion of Privacy, Unjust Enrichment, Breach of Fiduciary Duty, Violation of numerous provisions of the Electronic Communications Privacy Act ("ECPA"), Violation of the Computer Fraud and Abuse Act ("CFAA"), Breach of Confidence, and Violation of the Minnesota Uniform Deceptive Trade Practices Act ("MUDPTA"). (*Id.*) Plaintiffs brought the action against Group Health on behalf of themselves and others similarly situated. (*Id.* ¶¶ 237-54.)

In August of 2023, Defendant brought a motion seeking to dismiss Plaintiffs' claims. (Def's Mot. Dismiss [ECF Doc. 65].) On December 21, 2023, following briefing and oral argument on Defendant's Motion to Dismiss, the Court issued its Order Granting in Part and Denying in Part Motion to Dismiss. (Order [ECF Doc. 93].) The Court dismissed Plaintiffs' claims for breach of fiduciary duty and breach of confidence, but otherwise denied Defendant's Motion to Dismiss. (*Id.* at 21-22.)

B. History of Negotiations

Following the Court's Order on Defendant's Motion to Dismiss, the Parties began, with the assistance of the Court, to prioritize discovery for the purpose of exploring potential settlement and set the matter on for a settlement conference with the Court. (*See, e.g.*, Order, Feb. 12, 2024 [ECF Doc. 100] (ordering a May 30, 2024 settlement conference); Order, February 21, 2024 [ECF Doc. 103] (directing plaintiffs to serve priority discovery requests in anticipation of settlement conference).)

On May 30, 2024, in conformity with the Court's orders, the parties participated in a settlement conference with the Honorable Dulce J. Foster wherein they reached terms of settlement. (*See* Text-Only Entry, June 3, 2024 [ECF Doc. 122].) The Parties subsequently agreed on a full settlement agreement incorporating those terms. (*See* Settlement Agreement.)

On November 5, 2024, the Court granted the motion and preliminarily and conditionally approved the following Class proposed by the parties:

> **Class:** All individuals who logged into healthpartners.com and virtuwell.com, between January 1, 2018 and November 10, 2023.[2]

(Preliminary Approval Order ¶ 3.) The Court appointed Bryan L. Bleichner and Gary M. Klinger as Class Counsel. (*Id.* ¶ 4.) The Court also approved the Notice Program in the Settlement Agreement, including the Long Form Notice and Short Form Notice finding that it the best Notice practicable under the circumstances. (*Id.* ¶¶ 10, 11.) The Court set a final approval hearing for June 26, 2025. (*Id.* ¶ 25.) Plaintiffs are simultaneously filing an application to the Court for an award of attorneys' fees, and service awards to Plaintiffs. (Pls' Appl. Award of Atty Fees and Class Rep Awards [ECF Doc. 149] ("Attorney Fee Motion").)

---

[2] Pursuant to the Preliminary Approval Order, the following were excluded from the Settlement Class: (i) the officers and directors of Defendant and its affiliates, parents, and subsidiaries; (ii) any judge, justice, or judicial officer presiding over the Litigation and the members of their immediate families and judicial staff; (iii) any individual who timely and validly excludes themselves from the Settlement, and (iv) the successors or assigns of any such excluded persons. (Preliminary Approval Order ¶ 1.) The Court went on to clarify that the exclusions did not apply and should not be read to apply to those employees of Defendant who receive notification from the Settlement Administrator regarding the Settlement Agreement. (*Id.*)

III. SETTLEMENT AGREEMENT

A. Benefits to the Settlement Class

i. Settlement Fund

Under the Settlement, Defendant will pay $6,000,000.00 into a non-reversionary Settlement Fund, which will be used to pay settlement benefits to Class Members on a *pro rata* distribution basis after distributions for settlement administration costs and expenses, Class Counsel's attorneys' fees and expenses, and the Class Representatives Service Awards. The *pro rata* payments will be made to all Settlement Class Members who submit a valid and timely Claim Form. (Settlement Agreement ¶¶ 26, 36.) To the extent any funds remain in the Settlement Fund more than 120 days after the last Settlement Payment is mailed by the Settlement Administrator, 100% of the remaining funds in the Settlement Fund will be donated to a charitable organization agreed upon by the Parties and accepted by the Court (*id.* ¶ 38); the charitable organization proposed is the Justice & Democracy Centers of Minnesota, in which neither the parties nor their counsel have an interest. (Mem. Supp. Pls' Unopp. Am. Motion Prelim. Approval of Class Action Settlement [ECF Doc. 139] ("Prelim. Approval Mem.") at 26; Declaration of Christopher P. Renz in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement and Notice Plan [ECF Doc. 140] ("Renz Prelim. Decl.") ¶ 18.)

ii. Releases

In exchange for the consideration above, Class Members who did not timely and validly exclude themselves from the Settlement will be deemed to have released Defendant

from claims related to the Pixel Disclosure or Defendant's use of Tracking Tools that were or could have been asserted in the litigation. (Settlement Agreement ¶¶ 81-82.)

iii. Service Award

The Settlement Agreement also provides for a requested class service award to each of the Plaintiffs up to $2,500.00. (Settlement Agreement ¶ 64.) Plaintiffs have been diligent class representatives and spent substantial time and effort pursuing this matter on behalf of the Settlement Class. ((Decl. of Christopher P. Renz Supp. Pls' Mot. Final Approval of Class Action Settlement ("Renz Final Decl.") ¶ 3.) Class Counsel is simultaneously filing a motion requesting the Court grant this reasonable service award. (Atty Fees Motion.)

iv. Attorneys' Fees and Expenses

Class Counsel is simultaneously filing a Motion for Attorneys' Fees, requesting a Fee Award of $2,000,000.00, which is one-third (1/3) of the Settlement Fund. (*Id.*)

IV. NOTICE PLAN AND SETTLEMENT ADMINISTRATION

A. Class Notice

Pursuant to the Settlement Agreement, the Parties implemented the Notice Plan approved by the Court in coordination with the approved Settlement Administrator, Atticus Administration, LLC ("Atticus"). (*See generally* Decl. of Bryn Bridley on Class Notice and Settlement Admin. ("Bridley Decl.").) Defendant provided Atticus a "Class List" of all names, emails, and/or mailing addresses of potential Settlement Class Members. (*Id.* ¶ 5; Settlement Agreement ¶ 42.)

Atticus provided e-mail notice to each Settlement Class Member for whom it had an e-mail address and provided mailed notice of the Short Form Notice to those Settlement Class Members for whom Defendant did not provide an e-mail address or whose e-mail address produced an undeliverable response. (Bridley Decl. ¶¶ 6-9.) The e-mail notice and Short Form Notice informed Settlement Class Members of the amount of the Settlement Fund, that they may do nothing and be bound by the Settlement, object, or exclude themselves by completing the exclusion form and not be bound by the Settlement. (*Id.*, Exs. B, C.) Atticus also published a Long Form Notice on the Settlement Website established and administered by Atticus, which contained information about the Settlement, including copies of the Notices, the Settlement Agreement, and all court documents related to the Settlement. (*Id.* ¶¶ 11-12.) Further, Atticus established a toll-free number and dedicated e-mail address to receive and respond to inquiries. (*Id.* ¶ 14.)

Of the 978,305 individuals identified by Defendant as being Settlement Class Members, Atticus successfully delivered notice to 977,713[3] of those Settlement Class Members, which is notice to 99% of the Settlement Class Members. This is a high notice rate. *See* Federal Judicial Center's "Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide" 2010 at 1 (noting 70-95% of people reached by a notice campaign is a "high percentage"), available at https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf (quoted by *Feldman v. Star*

[3] 886,674 of the 971,282 email notices were not bounced back and deemed successfully disbursed. (Bridley Decl. ¶ 8.) 90,639 of the 91,620 Short Form Notices mailed out (which includes to Settlement Class Members whose e-mail address was undeliverable) were not returned and therefore deemed successfully disbursed. (*Id.* ¶ 9.)

Tribune Media Co., LLC, No. 22-cv-1731 (ECT/TNL), 2024 WL 3026556, *7 (noting, in approving a class action settlement in pixel litigation, that the 78% of class members reached constituted a "high percentage")). Notice to the Settlement Class thus satisfies all due process concerns.

B. CAFA Notice

Pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715(b), Defendant, with Atticus' assistance, issued the CAFA Notice. (Bridley Decl. ¶ 4.) No state's attorney general responded to the CAFA Notice. (Renz Final Decl. ¶ 4.)

C. Requests for Exclusion and Objections

The response to the Settlement has been overwhelmingly positive. Out of approximately 977,713 Settlement Class Members successfully sent Notice of the Settlement, there have been only 67 requests to be excluded from the Settlement and one objection to the Settlement. (Bridley Decl. ¶¶ 8-9, 15-16; ECF Doc. 147)

V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE, AND SHOULD BE APPROVED

The law strongly favors resolving litigation through settlement, particularly in the class action context. *White v. Nat'l Football League*, 822 F. Supp. 1389, 1416 (D. Minn. 1993); *In re Zurn Pex Plumbing Prods. Liab. Litig.*, No. 08-MDL-1958 ADM/AJB, 2013 WL 716088, at *6 (D. Minn. Feb. 27, 2013); *Liddell v. Bd. Of Educ.*, 126 F.3d 1049, 1056 (8th Cir. 1997). The Eighth Circuit has recognized that "strong public policy favors [settlement] agreements, and courts should approach them with a presumption in their favor." *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1148 (8th Cir. 1999) (cleaned up).

"Settlement agreements are presumptively valid, particularly where 'a settlement has been negotiated at arm's length, discovery is sufficient, the settlement proponents are experienced in similar matters and there are few objectors.'" *In re Zurn*, 2013 WL 716088, at *6 (cleaned up); *see also In re Uponor, Inc., F1807 Plumbing Fittings Prod. Liab. Litig.*, 716 F.3d 1057, 1063 (8th Cir. 2013); *Phillips v. Caliber Home Loans, Inc.*, No. 19-CV-2711 (WMW/LIB), 2022 WL 832085, at *3 (D. Minn. Mar. 21, 2022).

In approving a settlement under Rule 23(e), "the district court acts as a fiduciary who must serve as guardian of the rights of absent class members." *In re Resideo Techs., Inc., Sec. Litig.*, No. 19-cv-2863 (WMW/BRT), 2022 WL 872909, at *1 (D. Minn. Mar. 24, 2022) (citations omitted). Courts give "great weight" to the opinions of counsel and are "entitled to rely on the judgment of experienced counsel in its evaluation of the merits of a class action settlement." *Welsch v. Gardebring*, 667 F. Supp. 1284, 1295 (D. Minn. 1987).

As discussed in the Settlement Agreement preliminarily approved by the Court, it is critical to determine whether a class action settlement should be approved as being fair, reasonable, and adequate, including (1) the merits of plaintiff's case weighed against the settlement terms; (2) the defendant's financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement. *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 932–33 (8th Cir. 2005) (citing *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 124 (8th Cir. 1975)); *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988); *see also Dryer v. Nat'l Football League*, No. 09-2182 (PAM/AJB), 2013 WL 5888231, at *2 (D. Minn. Nov. 1, 2013). Rule 23 of the Federal

Rules of Civil Procedure requires a finding that (1) the class representatives and class counsel have adequately represented the class; (2) the settlement was negotiated at arm's-length; (3) the relief provided to the class is adequate; and (4) the settlement treats Class Members equitably. Based upon the foregoing reasons—and those upon which the Settlement Agreement was preliminarily approved—the Court should grant final approval of the Settlement Agreement.

A. The Class Representative and Class Counsel Have Adequately Represented the Class

Rule 23(e)(2)(A) requires class representatives and class counsel to have adequately represented the class. Plaintiffs have devoted their time and resources in service to the Class. (Renz Final Decl. ¶ 3.) Plaintiffs have made themselves available for mediation and settlement discussions, have actively participated in the litigation, provided information in discovery, and actively monitored the litigation through continuous communication with Class Counsel. (*Id.*; Renz Prelim. Decl. ¶ 8; *see also* Decl. of Pl. Kelly Vriezen Supp. Mot. Award of Atty Fees and Service Award [ECF Doc. 151-4] ¶¶ 4-6; Decl. of Pl. Sandra Tapp Supp. Mot. Award of Atty Fees and Service Award [ECF Doc. 151-4] ¶¶ 4-6; Decl. of Pl. Kaye Lockrem Supp. Mot. Award of Atty Fees and Service Award [ECF Doc. 151-4] ¶¶ 4-6.) The Parties and their counsel achieved a settlement by being well-informed, and also each side zealously advocating for their interests. (Renz Prelim. Decl. ¶ 11.)

B. The Proposed Settlement is the Product of an Arms' Length Negotiation Supported by Experienced Counsel

After engaging in mediation, and subsequently engaging in negotiations on the terms of the proposed settlement agreement, Plaintiff and Class Counsel entered into the Settlement in which the Parties agreed to resolve all claims on behalf of the Class. (*Id.* ¶¶ 2-3.) Plaintiff's counsel has significant experience in representing plaintiffs in data privacy class action cases such as this one. (*Id.* ¶ 5; *see also generally* Joint Decl. Class Counsel Supp. Of Pls' Appl. Atty Fees and Class Rep. Awards [ECF Doc. 151-2].)

C. The Relief Provided for the Class is Adequate

In determining whether the relief provided for the Class is adequate, courts look to, among other things, (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3). *In re Resideo Techs., Inc.,* 2022 WL 872909, at *2. All these factors support granting final approval of the Settlement.

Class Counsel remain confident in Plaintiffs' claims against Defendant, but recognize the substantial risks involved in establishing liability and damages in this case. (Renz Prelim. Decl. ¶ 10.) From the outset of this litigation, Defendant has consistently maintained that the allegations in this action are meritless. (*See*, *e.g.*, Def's Mot. Dismiss [ECF Doc. 65], Def's Mem. Supp. Mot. Dismiss [ECF Doc. 67].) Furthermore, Class Counsel acknowledges there is a risk that a jury might award little or nothing in the way of

damages. (Renz Final Decl. ¶ 2; See also Settlement Agreement ¶ 8.) And even if Plaintiffs prevailed through summary judgment and trial, they and the Class would still face the potential for prolonged appeals. (Renz Final Decl. ¶ 2.)

In contrast, the Settlement offers immediate and significant cash payments to all Class Members. The Class Members who file valid and timely Claim Forms will receive a *pro rata* payment from a Common Fund of $6,000,000 after deductions for Attorneys' Fees and Expenses, settlement administration expenses, and Service Awards. (Renz Prelim. Decl. ¶ 5.)

The Settlement delivers real, tangible value to Settlement Class Members. This will result in the distribution of approximately $3,679,873[4] to Settlement Class Members who have submitted valid and timely Claim Forms. (Renz Preliminary Decl. ¶ 3). 74,473 Settlement Class Members submitted valid Claim Forms, resulting in a claims rate of 8%. (Bridley Decl. ¶ 20.) Therefore, it is currently estimated that each Settlement Class Member will receive a payment of approximately $49.41.

These amounts are within range of, or better than, other class cases pertaining to technology tracking tools being placed on healthcare website:

- claims rate of 7.28% and a per-valid-claim payment of $6.28 in *Koskosky, et. al. v. Davita, Inc.*, No. CACE-24-009252 (Broward County, State of Florida) (see Pls' Mot. Final Approval [Filing #212002102] at 2, 10);

- claims rate of 10.44% and a per-valid-claim payment of $18.77 in *John v. Froedtert Health, Inc.*, No. 23-CV-1935 (Milwaukee County Circuit Court, State of Wisconsin) (*see* Prelim. Approval Mem. at 17);

[4] The Common Fund of $6,000,000.00 less the attorneys' fees of $2,000,000, service awards totaling $7,500.00, and class administration fee of $312,627. (*See* Atty Fees Motion (detailing fee request and class representative awards); Bridley Decl. ¶ 21.)

- claims rate of 22.26% and a per-valid claim payment of $11.64 in *In re Advocate Aurora Health Pixel Litig.*, No. 22-CV-1253 (E.D. Wis.) (*see* Pls' Supp. Br. Supp. Final Approval in In re Advocate Aurora Health Pixel Litig. [ECF Doc. 51] at 5; Joint Decl. Supp. Pl's Mot. for Final Approval in *In re Advocate Aurora Health Pixel Litig.* [ECF Doc. 47-2] ¶¶ 11, 21; *see also* Prelim. Approval Mem. at 19); and

- claims rate of 11.7% and a per-valid claim payment of $24.67 in *In re Novant Health, Inc.*, No. 1:22-cv-00697 (M.D.N.C.) (*see* Pls' Mem. Supp. Unopposed Mot. for Final Approval in *In re Novant Health*, n. 2 [ECF Doc. 65] at 6, n. 2; *see also* Prelim. Approval Mem. at 20).

Furthermore, the claims rate of 8% in this case far exceeds the lower-end of claims rates deemed acceptable in class actions by the 8th Circuit. *See*, *e.g.*, *Pollard v. Remington*, 896 F.3d 900, 905, 906-07 (8th Cir. 2018) (approving claims rate of .29%); *Keil v. Lopez*, 862 F.3d 685, 697 (8th Cir. 2017) (holding that "a claim rate as low as 3 percent is hardly unusual in consumer class actions and does not suggest unfairness") (noting "consumer claim filing rates rarely exceed seven percent, even with the most extensive notice campaigns" (quoting *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 329 n 60 (3d Cir. 2011)).

The 8% claims rate is more than acceptable in the Eighth Circuit and every Settlement Class Member that filed a valid claim is receiving $49.41[5], a significant amount in the context of a tracking tools class case. Therefore, the relief afforded by this Settlement is fair and reasonable, especially when weighed against the anticipated cost, prolonged nature, and uncertain outcome of continued litigation.

[5] This figure may change slightly based on the claim verification process by Atticus.

D. The Settlement Treats Class Members Equitably

Rule 23(e)(2)(D) "calls attention to a concern that may apply to some class action settlements—inequitable treatment of some class members vis-a-vis others. Matters of concern could include whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." Fed. R. Civ P. 23(e)(2)(D), 2018 advisory cmt. note. There are no such concerns here. Beyond Plaintiffs' Service Awards, the Settlement provides valuable and equivalent relief to all Settlement Class Members who submit timely and valid Claim Forms. In all other aspects, apportionment among Settlement Class Members, per the Notice Plan and claims process, will result in equitable treatment of all.

This factor is fair, reasonable and adequate, and further supports granting final approval.

VI. ADDITIONAL FACTORS ALSO CONSIDERED BY THE COURT FURTHER SUPPORT FINAL APPROVAL

A. Defendant's Financial Condition Further Supports Final Approval

Finally, the defendant's financial condition is often considered neutral when, as here, the defendant's ability to pay is not an issue. *Dryer*, 2013 WL 5888231, at *4 (D. Minn. Nov. 1, 2013). "However, just because defendants could pay more does not necessarily mean they should have to pay more than the parties negotiated to settle these claims." *Zanghi v. Freightcar Am., Inc.*, No. 3:13-cv-146, 2016 WL 223721, at *19 (W.D. Pa. Jan. 19, 2016). There is no evidence in the record regarding Defendant's ability to pay.

Therefore, this factor is neutral. Based on all the factors enumerated in Rule 23(e)(2) plus additional factors sometimes considered by the Eighth Circuit and courts in this District, Plaintiffs have established that the Settlement is fair, adequate, and reasonable, and the Court should grant final approval of the Settlement. Both the Notice Plan and its execution far exceed the Due Process requirements.

VII. THE CLASS SATISFIES THE REQUIREMENTS OF RULE 23(a) AND 23(b)(3) AND SHOULD BE CERTIFIED FOR PURPOSES OF SETTLEMENT

Finally, Class Counsel respectfully submit that the Court should confirm its preliminarily approved certification for final approval, because it fulfills all requirements of Rule 23 as discussed in the Memorandum of Law in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement [ECF Doc. 139].

This Court previously considered the Fed. R. Civ. P. 23(a) factors of numerosity, commonality, typicality, and adequacy. (Preliminary Approval Order [ECF Doc. 146] ¶ 2; *see also* Prelim. Approval Mem. at 7-10.) Moreover, this Court considered whether the bases for certification per Fed. R. Civ. P. 23(b) existed, that "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." (*See generally* Preliminary Approval Order [ECF Doc. 146]; *see also* Prelim. Approval Mem. at 10-12.)

This Court granted preliminary approval as to these elements on November 5, 2024. (Preliminary Approval Order [ECF Doc. 146].) To date, none of the circumstances underlying these factors have changed. Because of this, Plaintiffs request that this Court

grant final certification of the Settlement Class for the reasons it granted preliminary certification.

VIII. THE COURT SHOULD APPROVE THE SETTLEMENT IN LIGHT OF THE RELATIVELY *DE MINIMIS* NUMBER OF OPT-OUTS AND SINGLE OBJECTION AND SHOULD OVERRULE THE SINGLE OBJECTION.

Furthermore, a mere 67 opt-outs and a single objector from the 977,313 notices successfully delivered is further demonstration that the Settlement is fair and reasonable. (*See* Bridley Decl. ¶¶ 8-9, 15-16, 18; [ECF Doc. 147].) The opt-out requests are currently 0.00068% of the Settlement Class. (*Id*.) This exceedingly small fraction of class members objecting or seeking exclusion demonstrates a favorable class response. *See In re Uponor, Inc., F1807 Plumbing Fittings Prods. Liab. Litig.*, No. 11-MD-2247, 2012 WL 2512750, at *8 (D. Minn. June 29, 2012), *aff'd*, 716 F.3d 1057 (8th Cir. 2013) ("Twenty-six Objectors, out of a class likely totaling more than 30,000, represents only token opposition to this Settlement."); *Keil*, 862 F.3d at 698 (with a settlement class of approximately 3.5 million households, and "only fourteen class members submitted timely objections," the "amount of opposition is minuscule . . . ."). The overwhelmingly positive response (or silence) from the Settlement Class suggests that class members view the Settlement as reasonable.

Likewise, the mere single objection to the Settlement (*see* [ECF Doc. 147]) constitutes further support that the Settlement is fair, reasonable, adequate, and in the best interest of the Class. *See In re Eng'g Animation Sec. Litig.*, 203 F.R.D. 417, 422 (S.D. Iowa 2001) ("[T]he Court notes there was minimal opposition to this settlement. This weighs in favor of finding it fair"); *see also Mengelkoch v. Bemidji State Univ.*, No. 99-

1383 DWF/RLE, 2002 WL 27126, at *2 (D. Minn. Jan. 8, 2002) (where only three objections were filed, the court approved settlement of class action); *In re BankAmerica Corp. Sec. Litig.*, 350 F.3d at 750 (settlement determined to be fair and reasonable where there were ten objections out of "the hundreds of thousands of eligible class members"); *Burum v. Mankato State Univ.*, No. 98-696 DWF/RLE, 2003 WL 1785881, at *2 (D. Minn. Mar. 31, 2003) (where only one objection filed, the court approved settlement of class action alleging gender-based discrimination); *In re Cendant Corp. Litig.*, 264 F.3d 201, 235 (3d Cir. 2001) ("The vast disparity between the number of potential class members who received notice and the number of objectors creates a strong presumption . . . in favor of the Settlement . . .").

Furthermore, the single objection that was made essentially contends that they believe the amount of the Settlement should have been greater, but without anything specific to support that contention. (*See* Objection [ECF Doc. 147].) Courts routinely reject such unsupported objections. In *Ryder v. Wells Fargo Bank, N.A.*, the court overruled an objection that individual payments were too low because the objector had the ability to opt out of the settlement and "provided no evidence to support a higher payment." No. 1:19-cv-638, 2022 WL 223570, at *2 (S.D. Ohio Jan. 25, 2022). Similarly, in *Rosado v. Ebay Inc.*, the court noted that "[i]f the objector believes he has suffered damages that are significantly higher than the typical class member, he should opt out of the class and separately pursue his claims against" the defendant. No. 5:12-cv-4005, 2016 WL 3401987, at *9 (N.D. Cal. June 21, 2016). The court in *Nunez v. BAE Sys. San Diego Ship Repair Inc.* likewise found an objection unpersuasive because "the class member was free to opt

out if he or she believed that the settlement amount was too low." 292 F. Supp. 3d 1018, 1042 (S.D. Cal. 2017). In this case, the single objector failed to provide evidence that a higher payment was warranted (see [ECF Doc. 147]) and failed to opt-out of the Settlement, in fact submitting a claim for settlement benefits the day after her objection (Bridley Decl. ¶ 18). The Court should overrule the objection and approve the Settlement.

Courts consistently recognize that settlements by their nature are compromises, meaning parties do not obtain their full recovery. *Abadilla v. Precigen, Inc.*, No. 20-cv-6936, 2023 WL 7305053, at *13 (N.D. Cal. Nov. 6, 2023) (overruling an objection that the settlement amount was too low, noting that "a settlement generally requires a level of compromise under which litigants receive a certain recovery less than the full amount of their losses"); *see also Free Range Content, Inc. v. Google, LLC*, No. 14-cv-2329, 2019 WL 1299504, at *8 (N.D. Cal. Mar. 21, 2019); *In re FedEx Ground Package Sys., Inc., Emp. Pracs. Litig.*, No. 3:05-MD-527, 2017 WL 1735578, at *3 (N.D. Ind. Apr. 28, 2017) (noting that an objector claiming a settlement is too low "might be right, but that's the nature of settlements: if a settlement had to produce full compensation for everything a plaintiff lost, no defendant would settle. A settlement is, by its nature, a compromise"). Plaintiffs have demonstrated that the overall Settlement is in line with other settlements in cases of this nature (Prelim. Approval Mem. at 16-21) and that the claims rate and per-valid-claim payment is in-line with the same (*see supra* § V.C). Not only has the lone Objector failed to account for the inherent compromise in settlement, but the settlement amounts are in-line with settlements in tracking technology cases. The Court should overrule the Objection and approve the Settlement.

IX. CONCLUSION

For all these reasons, Plaintiffs respectfully request the Court to enter an Order: (1) granting final certification of the proposed Settlement Class; (2) granting final approval of the proposed Settlement; (3) finding that notice has been conducted in accordance with the Court-approved notice plan and due process; (4) overruling the Objection; (5) directing payment from the Common Fund pursuant to the Settlement; and (6) dismissing with prejudice Plaintiffs' and other Settlement Class Members' claims against Defendant.

Dated: May 27, 2025

Respectfully submitted,

s/ Christopher P. Renz

Bryan L. Bleichner (MN #0326689)
Christopher P. Renz (MN #0313415)
Jeffrey D. Bores (MN #227699)
Philip J. Krzeski (MN #0403291)
CHESTNUT CAMBRONNE PA
100 Washington Avenue South, Suite 1700
Minneapolis, MN 55401
Telephone: (612) 339-7300
bbleichner@chestnutcambronne.com
crenz@chestnutcambronne.com
jbores@chestnutcambronne.com
pkrzeski@chestnutcambronne.com

Gary M. Klinger (admitted *pro hac vice*)
Alexandra M. Honeycutt (admitted *pro hac vice*)
Glen L. Abramson (admitted *pro hac vice*)
MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC
227 W. Monroe Street, Suite 2100
Chicago, IL 60606
Telephone: (866) 252-0878
gklinger@milberg.com
ahoneycutt@milberg.com
gabramson@milberg.com

Interim Co-Lead Counsel for Plaintiffs and the Class

Terence R. Coates (admitted *pro hac vice*)
Dylan J. Gould (admitted *pro hac vice*)
MARKOVITS, STOCK & DEMARCO, LLC
119 E. Court St., Ste. 530
Cincinnati, Ohio 4502
Telephone: (513) 651-3700
tcoates@msdlegal.com
dgould@msdlegal.com

Joseph M. Lyon (admitted *pro hac vice*)
LYON LAW FIRM
2754 Erie Ave.
Cincinnati, Ohio 45208
Telephone: (513) 381-2333
jlyon@thelyonfirm.com

David S. Almeida (admitted *pro hac vice*)
ALMEIDA LAW GROUP
849 Webster Ave.
Chicago, Illinois 60614
Telephone: (312) 576-3024
david@alameidalawgroup.com

Stephen R. Basser (admitted *pro hac vice*)
Samuel M. Ward* (admitted *pro hac vice*)
BARRACK RODOS & BACINE
One America Plaza
600 West Broadway, Suite 900
San Diego, California 92101
Telephone: (619) 230-0800
sbasser@barrack.com
sward@barrack.com

John Emerson (admitted *pro hac vice*)
EMERSON FIRM LLP
2500 Wilcrest, Ste. 300
Dallas, Texas 77042
Telephone: (800) 551-8649
jemerson@emersonfirm.com

Brian C. Gudmundson (MN #336695)
Jason P. Johnston (MN #0391206)
Michael J. Laird (MN #398436)
Rachel K. Tack (MN #0399529)
ZIMMERMAN REED LLP
1100 IDS Center
80 South 8th Street
Minneapolis, MN 55402
Telephone: (612) 341-0400
brian.gudmundson@zimmreed.com
jason.johnston@zimmreed.com
michael.laird@zimmreed.com
rachel.tack@zimmreed.com

Hart L. Robinovitch (MN #0240515)
ZIMMERMAN REED LLP
14646 N. Kierland Blvd., Suite 145
Scottsdale, AZ 85254
Telephone: (480) 348-6400
hart.robinovitch@zimmreed.com

Daniel E. Gustafson (MN #202241)
Karla M. Gluek (MN #238399)
David A. Goodwin (MN #386715)
Anthony J. Stauber (MN #401093)
GUSTAFSON GLUEK PLLC
Canadian Pacific Plaza
120 South 6th Street, Suite 2600
Minneapolis, MN 55402
Telephone: (612) 333-8844
dgustafson@gustafsongluek.com
kgluek@gustafsongluek.com
dgoodwin@gustafsongluek.com
tstauber@gustafsongluek.com

Counsel for Plaintiffs and the Class the Class