

Consideration: December 26, 2024
Without Oral Argument

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JANE DOE and JOHN DOE, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

VIRGINIA MASON MEDICAL CENTER, and
VIRGINIA MASON HEALTH SYSTEM,

Defendants.

NO. 19-2-26674-1 SEA

**DECLARATION OF BETH E. TERRELL IN
SUPPORT OF PLAINTIFFS' UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL
OF SETTLEMENT**

I, Beth E. Terrell, declare as follows:

1. I am a member of the law firm of Terrell Marshall Law Group PLLC and co-counsel of record for Plaintiffs in this matter. I am admitted to practice before this Court and am a member in good standing of the bar of the state of Washington. I respectfully submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of Settlement. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

2. Over five years of litigation, Plaintiff responded to multiple sets of discovery requests and served five sets on VM, which produced over 10,000 pages of documents. Plaintiff served subpoenas on ten third parties, including Facebook and Google, that produced over

1 500,000 pages. And the parties took 19 depositions, including plaintiff, VM representatives, and
2 the parties' eight experts.

3 3. In February 2024, the parties participated in a day-long mediation with Judge
4 Laura Inveen. While they did not reach a settlement, the parties renewed their discussions with
5 Judge Inveen's assistance after the Court's summary judgment ruling. After several months of
6 negotiations, the parties reached an agreement in principle and notified the Court.

7 4. Since then, the parties negotiated the details of the settlement and prepared the
8 Settlement Agreement, notices, and proposed order granting preliminary approval of the
9 settlement. A copy of the final Settlement Agreement is attached as **Exhibit 1**.

10 5. I and my co-counsel believe the settlement is fair, reasonable, adequate, and in
11 the best interest of the Settlement Class. This belief is based on the discovery and motion
12 practice in this case, as well as Class Counsel's significant experience litigating and resolving
13 similar class action cases. Plaintiff John Doe also supports the settlement.

14 6. Attached as **Exhibit 2** is the Order Granting Final Approval in *In re US Fertility, LLC*
15 *Data Security Litig.*, No. 8:21-cv-299-PJM (D. Md. April 4, 2024), ECF 133.

16 7. Attached as **Exhibit 3** is the Order Granting Final Approval of Class Action
17 Settlement and Re-Certifying the Settlement Class in *Kurowski v. Rush Sys. For Health*, Case No.
18 22 Civ. 5380 (N.D. Ill. Dec. 17, 2024), ECF 160.

19 I declare under penalty of perjury under the laws of the State of Washington and the
20 United States of America that the foregoing is true and correct.

21 EXECUTED at Seattle, Washington and DATED this 20th day of December, 2024.

22

23

By: /s/ Beth E. Terrell

24

Beth E. Terrell, WSBA #26759

25

26

27

DECLARATION OF SERVICE

I, Beth E. Terrell, hereby certify that on December 20, 2024, I caused true and correct copies of the foregoing to be served via the means indicated below:

Paul G. Karlsgodt, WSBA #40311
Email: pkarlsgodt@bakerlaw.com
BAKER & HOSTETLER LLP
1801 California Street, Suite 4400
Denver, Colorado 80202
Telephone: (303) 861-0600
Facsimile: (303) 861-7805

- U.S. Mail, postage prepaid
- Hand Delivered via Messenger Service
- Overnight Courier
- Facsimile
- Electronic Mail
- Via King County Electronic Filing Notification System

Logan F. Peppin, WSBA #55704
Email: lpeppin@bakerlaw.com
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- Overnight Courier
- Facsimile
- Electronic Mail
- Via King County Electronic Filing Notification System

Attorneys for Defendants

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED this 20th day of December, 2024.

By: /s/ Beth E. Terrell, WSBA #26759
Beth E. Terrell, WSBA #26759

EXHIBIT 1

THE HONORABLE MICHAEL K. RYAN

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JOHN DOE, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

VIRGINIA MASON MEDICAL CENTER,
and VIRGINIA MASON HEALTH SYSTEM,

Defendants.

No. 19-2-26674-1 SEA

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into by, between and among the following settling parties (collectively, the “Parties”): (i) plaintiff John Doe (the “Class Representative”), individually and on behalf of the Settlement Class, by and through his counsel of record, on the one hand, and (ii) defendants Virginia Mason Medical Center and Virginia Mason Health System (“Defendants” or “Virginia Mason”), by and through their counsel of record, on the other hand. The Settlement Agreement is subject to Court approval and is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Litigation and Released Claims, upon and subject to the terms and conditions herein.

RECITALS

WHEREAS, on October 10, 2019, plaintiff¹ filed a complaint against defendant Virginia Mason in the Superior Court of Washington, County of King;

WHEREAS, on October 19, 2020, after the resolution of Virginia Mason’s various motions to dismiss, plaintiff filed the operative First Amended Complaint (“Complaint”) against Virginia Mason;

WHEREAS, the Complaint alleges that Virginia Mason maintained a web property at www.VirginiaMason.org and an online patient portal through which it encourages patients to exchange communications to search for a doctor, learn more about their conditions and treatments, access medical records and test results, and make appointments;

WHEREAS, the Complaint alleges that without patients’ knowledge, the web properties deployed computer source code to command patient computing devices to transmit data provided

¹ The original named plaintiff Jane Doe voluntarily withdrew as a class representative on February 29, 2024. Dkt. 308.

by patients to Virginia Mason through the web properties to third parties including, but not limited to, Facebook (Meta Platforms, Inc.) and Google;

WHEREAS, the Complaint alleged that Virginia Mason's use of such computer source code on the web properties caused the unauthorized transmission of personally identifiable, non-public medical information, and communications to third parties;

WHEREAS, on September 27, 2021, the Court granted plaintiff's motion for class certification;

WHEREAS, on November 12, 2021, Virginia Mason filed a motion for discretionary review of the Court's class certification order in the Washington Court of Appeals, and the motion was ultimately denied by the Washington Supreme Court on March 8, 2023;

WHEREAS, on August 16, 2023, the Court granted plaintiff's proposed class notice plan;

WHEREAS, on June 6, 2024, the Court granted in part and denied in part both plaintiff's motion for partial summary judgment and Virginia Mason's motion for summary judgment;

WHEREAS, on August 14, 2024, the Court granted in part, and denied in part, Virginia Mason's motion to decertify class, and modified the class definition as follows: "All Washington residents who are, or were, patients of Virginia Mason Medical Center or Virginia Mason Health System or any of their affiliates between October 10, 2015 and May 18, 2023, and who exchanged communications at www.virginiamason.org or the MyVirginiaMason portal";

WHEREAS, the parties have extensively litigated the case, including participating in extensive discovery and motion practice;

WHEREAS, in December 2023 the parties began to discuss the possibility of resolving the case on a classwide basis;

WHEREAS, to further their negotiations, on February 20, 2024, the parties held a mediation with Judge Laura Inveen (ret.) in Seattle, which did not end with a settlement agreement;

WHEREAS, the parties continued their settlement discussions through Judge Inveen, and were ultimately successful in reaching a settlement on a classwide basis; and

WHEREAS, this Agreement sets forth the complete and final understanding of the Parties regarding the settlement of the civil action captioned *John Doe v. Virginia Mason Medical Center, et al.*, Case No. 19-2-26674-1 SEA, Superior Court of Washington, County of King (the “Litigation”).

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by, between and among the Class Representative, individually and on behalf of the Settlement Class, Class Counsel and Virginia Mason that, subject to the approval of the Court, the Litigation and the Released Claims shall be finally, fully and forever compromised, settled, and released, and the Litigation shall be dismissed with prejudice as to the Parties, the Settlement Class, and the Settlement Class Members, except those Settlement Class Members who lawfully opt-out of the Settlement, upon and subject to the terms and conditions of this Settlement Agreement, as follows:

I. DEFINITIONS.

As used anywhere in the Settlement Agreement, including the recitals, the following terms have the meanings specified below:

1.1 “Agreement” or “Settlement Agreement” means this agreement.

- 1.2 “Attorneys’ Fees and Expenses” means the attorneys’ fees, costs, and expenses incurred by Class Counsel in connection with commencing, prosecuting, and settling the Litigation on behalf of Class Members.
- 1.3 “Claims Administration” means the processing and payment of claims received from Settlement Class Members by the Settlement Administrator.
- 1.4 “Claims Administration Cost” means all actual costs associated with or arising from Claims Administration.
- 1.5 “Claims Deadline” shall be ninety (90) days after the Notice Date.
- 1.6 “Claim Form(s)” means the form(s) that will be available for Settlement Class Members to submit a Settlement Claim to the Settlement Administrator, substantially in the form as shown in Exhibit C to this Settlement Agreement. Settlement Class Members must submit a Claim Form, subject to the provisions of this Settlement Agreement, to obtain benefits under this Settlement Agreement.
- 1.7 “Class Counsel” shall mean Jason ‘Jay’ Barnes and Eric Johnson of Simmons Hanly Conroy LLC, Beth Terrell of Terrell Marshall Law Group PLLC, Steve Gorny of the Gorny Law Firm LLC, and Jeffrey Koncius of Kiesel Law LLP.
- 1.8 “Class Representative,” “Plaintiff” or “Named Plaintiff” means named plaintiff John Doe. John Doe is a pseudonym for a real person whose identity has been disclosed to Virginia Mason and the Court in the Litigation under seal.
- 1.9 “Defendants’ Counsel” shall mean Paul Karlsgodt, Elizabeth Scully, Alexander Vitruk, and Logan Peppin of Baker & Hostetler LLP.
- 1.10 “Effective Date” shall mean the date when the Settlement Agreement becomes Final.

- 1.11 “Final” means the occurrence of all of the following events: (i) the settlement pursuant to this Settlement Agreement is approved by the Court; (ii) the Court has entered a Judgment; and (iii) the time to appeal or seek permission to appeal from the Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affirmance has become no longer subject to further appeal or review. Notwithstanding the above, any order modifying or reversing any attorneys’ fee award made in this case shall not affect whether the Judgment is “Final” or any other aspect of the Judgment.
- 1.12 “Final Approval Hearing” means the hearing at which the Court will determine whether to approve the proposed Settlement, including determining whether the settlement benefits, Attorneys’ Fees and Expenses, and Claims Administration Costs are fair, reasonable, and adequate.
- 1.13 “Judgment” means a final Judgment rendered by the Court under Wash. Sup. Ct. Civ. R. 54.
- 1.14 “Long-Form Notice” means the long-form notice of settlement to be posted on the Settlement Website, substantially in the form of Exhibit A.
- 1.15 “Non-reversionary Settlement Fund” is defined in paragraph 2.1.
- 1.16 “Objection Date” means the date by which Settlement Class Members must file with the Court any objections to the Settlement. The Objection Date shall be sixty (60) days after the Notice Date.

- 1.17 “Opt-Out Date” means the date by which Settlement Class Members must request to be excluded from the Settlement Class for that request to be effective. The Opt-Out Date shall be sixty (60) days after the Notice Date.
- 1.18 “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.
- 1.19 “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement and ordering that notice be provided to the Settlement Class. The Parties’ proposed form of Preliminary Approval Order is attached to this Agreement as Exhibit D.
- 1.20 “Related Entities” means Virginia Mason’s past or present parent, subsidiary, affiliate, division, and related or affiliated entities of any nature whatsoever, whether direct or indirect, as well as each of these entities’ respective predecessors, successors, directors, managers, officers, employees, members, principals, agents, attorneys, insurers, and reinsurers, and includes Virginia Mason Franciscan Health.
- 1.21 “Released Claims” shall mean all claims to be released as set forth in section 7.2 of this Settlement Agreement.
- 1.22 “Released Persons” means Virginia Mason and all of Virginia Mason’s Related Entities.
- 1.23 “Settlement Account” is defined in paragraph 2.8.

- 1.24 “Settlement Administrator” means Eisner Advisory Group LLC or other qualified vendor agreed to by the Parties and approved by the Court.
- 1.25 “Settlement Claim” means a claim for settlement benefits made under the terms of this Settlement Agreement.
- 1.26 “Settlement Class” means: “All Washington residents who are, or were, patients of Virginia Mason Medical Center or Virginia Mason Health System or any of their affiliates between October 10, 2015 and May 18, 2023, and who exchanged communications at www.viriniamason.org or the MyVirginiaMason portal.” The Settlement Class specifically excludes: (i) all Persons who timely and validly request exclusion from the Settlement Class, and (ii) the Judge assigned to evaluate the fairness of this settlement. The Settlement Class consists of two subclasses²:
- a. **“Patient Portal Subclass”** means Settlement Class members who logged into the MyVirginiaMason patient portal between October 10, 2015 and May 18, 2023 (the “Class Period”).
 - b. **“Public Website Subclass”** means Settlement Class Members who did not log into the MyVirginiaMason patient portal during the Class Period but who provide a self-attestation on the Claim Form that they used Virginia Mason’s public website, www.VirginiaMason.org, during the Class Period to view or search for medical-related information.

² The Patient Portal Subclass is believed to consist of approximately 348,000 members. The size of the Public Website Subclass is unknown, but there are believed to be no more than approximately 415,601 patients who could potentially fall into this subclass.

- 1.27 “Settlement Class Member” means any individual who is part of the Settlement Class, including the Class Representative.
- 1.28 “Settlement Funds” means all amounts to be paid by Virginia Mason to fund claims, administrative costs, attorneys’ fees and expenses, and a service award approved by the Court.
- 1.29 “Settlement Website” means a dedicated website created and maintained by the Settlement Administrator, which will contain relevant documents and information about the Settlement, including this Settlement Agreement, the Short-Form Notice, the Long-Form Notice, the Claim Form, and the motion for attorneys’ fees and costs, among other things as agreed upon by the Parties and approved by the Court as required.
- 1.30 “Short-Form Notice” means the short-form notice of this proposed class action Settlement, substantially in the form as shown in Exhibit B to this Settlement Agreement. The Short-Form Notice will direct recipients to the Settlement Website where recipients may view the Long-Form Notice and make a claim for monetary relief. The Short-Form Notice will also inform Settlement Class Members, *inter alia*, of the Claims Deadline, the Opt-Out Date and Objection Date and the date of the Final Approval Hearing.

II. SETTLEMENT BENEFITS.

- 2.1 **Funds Sufficient to Pay Claims:** Virginia Mason agrees to pay \$3.5 million into a non-reversionary settlement fund (hereinafter, the “Non-Reversionary Settlement Fund”) for the exclusive purpose of paying cash benefits to Settlement Class Members who submit timely claims. In addition, Virginia Mason will agree to pay

an additional amount of up to \$3.25 million to pay any claims that exceed the \$3.5 million Non-Reversionary Settlement Fund.

2.2 **Compensation of Claims:**

- a. **Cash Benefits Available for the Patient Portal Subclass:** This benefit represents compensation for claims associated with alleged web tracking of logins to the MyVirginiaMason patient portal and activity within the patient portal during the Class Period. The amount of the cash benefit under this section shall be \$90 for each claimant, subject to a pro rata adjustment under Sections 2.2(d), 2.2(e), and 2.2(f).
- b. **Cash Benefits Available for the Public Website Subclass:** This benefit represents compensation for claims associated with alleged web tracking of viewing or searching for medical-related information on www.virginiamason.org. Claimants in the Public Website Subclass shall be required to provide a self-attestation on the Claim Form that they used www.virginiamason.org during the Class Period to view or search for medical-related information. The amount of the cash benefit under this section is \$45 for each claimant, subject to a pro rata adjustment under Sections 2.2(d), 2.2(e), and 2.2(f).
- c. **Additional Cash Benefits Available for the Patient Portal Subclass:** This benefit represents compensation for claims by individuals who logged into the MyVirginiaMason patient portal but who also have claims associated with alleged web tracking of viewing or searching for medical-related information on www.virginiamason.org. Claimants in the Patient Portal Subclass who wish

to claim this additional benefit shall be required to provide attestation on the Claim Form that they used www.virginiamason.org during the Class Period to view or search for medical-related information. The amount of the cash benefit under this section is \$45 for each claimant, subject to a pro rata adjustment under Sections 2.2(d), 2.2(e), and 2.2(f).

d. **Pro Rata Upward Adjustment of Claims Totaling Less Than \$3.5 Million:**

If the total amount of claims for benefits under Section 2.2 is less than \$3.5 million, then the per-claimant benefit amount shall be increased pro rata so that 100% of the non-reversionary fund is paid out to claimants while preserving the 2:1 ratio of valuation of benefits under Sections 2.2(a) versus 2.2(b) and 2.2(c).

e. **Payment of Additional Claims Totaling More Than \$3.5 Million But Less Than \$6.75 Million:**

If the total amount of claims for benefits available under Section 2.2 is more than \$3.5 million, additional cash benefits of \$90 per claimant under Section 2.2(a) and \$45 per claimant under Section 2.2(b) and 2.2(c) shall be continued to be paid up to an additional \$3.25 million, for a total of no more than \$6.75 million in cash benefits.

f. **Pro Rata Adjustment of Claims Totaling More Than \$6.75 Million:**

If the total amount of claims for benefits available under Section 2.2 is more than \$6.75 million, then all claims shall be reduced pro rata while preserving the 2:1 ratio of valuation of benefits under Sections 2.2(a) versus 2.2(b) and 2.2(c), to ensure that the total amount paid by Virginia Mason for all claims does not exceed \$6.75 million.

- g. Under no circumstances shall Virginia Mason's liability under this Section 2.2 exceed Six Million, Seven Hundred and Fifty Thousand Dollars and No Cents (\$6,750,000.00).
- h. The Settlement Administrator shall review claims to verify their completeness and validity. In particular, each Short-Form Notice and Email Notice shall contain on the front page an individualized Settlement Claim ID. Electronic claims shall require the submission of a valid Settlement Claim ID. If a claimant does not have a Settlement Claim ID, the claimant shall be prompted to either contact the Claims Administrator for a valid Settlement Claim ID or to submit a paper claim. Paper claims submitted without a Settlement Claim ID shall be subject to verification to ensure that the claimant is a member of the Settlement Class. The Parties shall otherwise agree to a deficiency process and direct the Settlement Administrator to implement it. The Settlement Administrator shall be allowed to communicate freely with the Parties' counsel and will provide monthly reports to the Parties' counsel with the Notice, claims submission, and Claim Payment rates, and any other matters the Parties' counsel may request.
- i. Virginia Mason shall be entitled to contest any Patient Portal Subclass claims for if its records do not reflect that the claimant was actually a member of the Patient Portal class. If Virginia Mason elects to contest any of the Patient Portal Subclass claims on this basis, it shall make available to the Settlement Administrator and Class Counsel, in a secure manner, data supporting its contention that the claimant was not a Patient Portal Subclass member. If any Patient Portal Subclass claims are denied based on this review, the claimant

shall be given an opportunity to cure by providing additional information to the Settlement Administrator substantiating the claimant's status as a member of the Patient Portal Subclass. Upon receipt of any additional information provided by the claimant, the Settlement Administrator shall make a final, binding determination of any Patient Portal Subclass claims contested under this Paragraph.

2.3 **Equitable Relief:** Virginia Mason shall create and maintain a Web Governance Committee to assess the implementation and use of analytics and advertising technologies on www.virginiamason.org and the MyVirginiaMason patient portal to evaluate whether such use is consistent with Virginia Mason's mission and applicable law. While continuing to deny liability, Virginia Mason agrees that for two (2) years following final approval of the Settlement, Virginia Mason shall not use Meta Pixel, Google Analytics, Google Ads, Google DoubleClick, TheTradeDesk, or Twitter/X Pixel source code on its Websites unless the Web Governance Committee makes the requisite determination under 45 CFR § 164.514(b)(1) and Virginia Mason makes an affirmative disclosure posted on the a webpage on its Website(s) that the tool(s) is/are being used on the Website(s), by name. For purposes of this Settlement Agreement, the term "Website" shall encompass any web properties operated by Virginia Mason, including <https://www.vmfh.org/>).

2.4 **Business Associate Agreements.** The Parties understand and acknowledge that Virginia Mason may use HIPAA-compliant third-party companies to perform

analytics and de-identifying functions on its Websites, so long as Virginia Mason has a Business Associate Agreement with the third-party.

2.5 **Injunctive Relief Valuation:** The Parties agree this forbearance has value to the Settlement Class. Moreover, Virginia Mason makes this agreement irrespective of whether or not the federal government issues new guidance regarding tracking technologies on health care provider websites under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

2.6 **Timing for Payment of Settlement Funds:**

- a. Within 14 days following an order preliminarily approving the Settlement, Virginia Mason will pay an amount requested by the Settlement Administrator to cover the reasonably expected cost of notice and claims administration costs prior to final approval of the settlement.
- b. Within 14 days of the Effective Date, Virginia Mason will pay all remaining amounts due under the Settlement.
- c. The timing set forth in this provision is contingent upon the receipt of a W-9 from Eisner Advisory Group LLC for the Settlement Funds by the date that the Preliminary Approval Order is issued. If Virginia Mason does not receive this information by the date that the Preliminary Approval Order is issued, the payments specified by this paragraph shall be made within thirty (30) days after Virginia Mason receives this information.

2.7 **Custody of Settlement Funds:** The Settlement Funds shall be deposited in an appropriate trust account established by the Settlement Administrator but shall remain subject to the jurisdiction of the Court until such time as all of the Settlement

Funds are distributed pursuant to this Agreement or returned to those who paid the Settlement Funds in the event this Agreement is voided, terminated or cancelled.

In the event this Agreement is voided, terminated, or cancelled due to lack of approval from the Court or any other reason: (i) the Class Representative and Class Counsel shall have no obligation to repay any of the Cost of Claims Administration that have been paid or incurred in accordance with the terms and conditions of this Agreement (see Section 3); (ii) any amounts in the Settlement Funds, including all interest earned on the Settlement Funds net of any taxes, shall be returned to Virginia Mason; and (iii) no other person or entity shall have any further claim whatsoever to such amounts.

- 2.8 **Account for Settlement Funds:** The Settlement Funds shall be held in an account (hereinafter the “Settlement Account”) established and administered by the Settlement Administrator, at a financial institution recommended by the Settlement Administrator and approved by Class Counsel and Defendant, and shall be maintained as qualified settlement fund pursuant to Treasury Regulation § 1.468 B-1, *et seq.*
- 2.9 **Withdrawal Authorization:** No amounts may be withdrawn from the Settlement Account unless (i) expressly authorized by the Settlement Agreement, or as may be (ii) approved by the Court.
- 2.10 **Class Member Payments:** The Settlement Administrator, subject to such supervision and direction of the Court and Class Counsel as may be necessary or as circumstances may require, shall administer and oversee distribution of the Settlement Funds to claimants pursuant to this Agreement.

2.11 **Treasury Regulations and Fund Investment:** The Parties agree that the Settlement Funds are intended to be maintained as qualified settlement funds within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Funds and paying from the Settlement Funds any taxes owed by the Settlement Funds. The Parties agree that the Settlement Funds shall be treated as qualified settlement funds from the earliest date possible and agree to any relation-back election required to treat the Settlement Funds as qualified settlement funds from the earliest date possible. All Settlement Funds held in the Settlement Account shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation (“FDIC”) at a financial institution determined by the Settlement Administrator and approved by the Parties. Settlement Funds may be placed in a non-interest-bearing account as may be reasonably necessary during the payment clearing process. The Settlement Administrator shall provide an accounting of all funds in the Settlement Account, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

2.12 **Taxes:** All taxes owed on the Settlement Funds shall be paid out of the Settlement Funds, and shall be timely paid by the Settlement Administrator without prior order of the Court. Further, the Settlement Administrator shall indemnify and hold harmless the Parties and their counsel for taxes (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their

respective counsel have made no representation or warranty with respect to the tax treatment by any Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Funds. Each Class Representative and Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him or her of the receipt of funds from the Settlement Funds pursuant to this Agreement.

2.13 **Limitation of Liability:**

- a. Virginia Mason and its counsel shall not have any responsibility for or liability whatsoever with respect to (i) any act, omission, or determination of Class Counsel, the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement; (ii) the management, investment or distribution of the Settlement Funds; (iii) the formulation, design, or terms of the disbursement of the Settlement Funds; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Funds; (v) any losses suffered by, or fluctuations in the value of the Settlement Funds; or (vi) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Funds or the filing of any returns. Virginia Mason also shall have no obligation to communicate with Settlement Class Members and others regarding amounts paid under the Settlement.
- b. The Class Representative and Class Counsel shall not have any liability whatsoever with respect to (i) any act, omission, or determination of the

Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement; (ii) the management, investment, or distribution of the Settlement Funds; (iii) the formulation, design, or terms of the disbursement of the Settlement Funds; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Funds; (v) any losses suffered by or fluctuations in the value of the Settlement Funds; or (vi) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Funds or the filing of any returns.

III. SETTLEMENT ADMINISTRATION.

- 3.1 **Cost of Claims Administration:** All agreed upon and reasonable Cost of Claims Administration will be paid by Virginia Mason out of the Settlement Funds.
- 3.2 **Claims Administration Process:** The Settlement Administrator will administer the claims process in accordance with the terms of the Settlement Agreement and any additional processes agreed to by both Class Counsel and Virginia Mason's Counsel, subject to the Court's supervision and direction as circumstances may require.
- 3.3 **Claims Submission:** To make a claim, a Settlement Class Member must complete and submit a valid, timely, and sworn Claim Form. Claim Forms shall be returned or submitted to the Settlement Administrator online or via U.S. mail, postmarked by the Claims Deadline set by the Court, or be forever barred unless such claim is otherwise approved by the Court at the Final Approval Hearing, for good cause shown as demonstrated by the applicable Settlement Class Member.

- 3.4 **Claims Review:** The Settlement Administrator will initially review each Claim Form for validity, timeliness, and completeness. Within 15 days of the deadline for submission of claims, the Settlement Administrator will send deficiency letters to any claimants whose claims are deemed invalid or incomplete. Claimants will be given 30 days to correct deficiencies identified in a deficiency letter. Deficient claims not corrected timely will not be paid. Deficiencies may include, but may not be limited to: 1) unsigned claims; 2) unattested claims; 3) claims made by individuals who cannot be identified as falling within the Settlement Class. Untimely claims will not be paid under any circumstances unless approved by the Court.
- 3.5 **Claims Payments:** Subject to the terms and conditions of this Settlement Agreement, thirty (30) days after the Effective Date, the Settlement Administrator shall provide a digital payment (by PayPal, Venmo, or Zelle) or mail a check (a “Claim Payment”) to each claimant that has submitted a Claim Form approved by the Settlement Administrator or by the Court, for good cause shown, in accordance with the distribution amounts for valid claims made set forth in Section 2.2 above. If, due to the need for a pro-rata adjustment, the process for evaluating deficient claims as described in Section 3.4 above makes it infeasible to determine the applicable dollar amounts within the 30-day deadline, the deadline may be extended to accommodate the calculation of valid claim amounts.
- 3.6 **Delivery of Claims Payments:** Each Claim Payment shall be delivered to the digital or physical address provided by the claimant on his or her Claim Form. All Claim Payments issued under this section shall be void if not negotiated within

ninety (90) calendar days of their date of issue and shall contain a legend to that effect. Claim Payments issued pursuant to this section that are not negotiated within ninety (90) calendar days of their date of issue shall not be reissued.

- 3.7 **Undeliverable Claims Payments:** For any Claim Payment returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to find a valid address and resend the Claim Payment within thirty (30) days after the payment is returned to the Settlement Administrator as undeliverable. The Settlement Administrator shall only make one attempt to resend a Claim Payment.
- 3.8 **Residual Funds:** No portion of the Non-reversionary Settlement Fund shall revert or be repaid to Virginia Mason after the Effective Date. To the extent it is infeasible to distribute the entirety of the Non-reversionary Settlement Fund to claimants, the parties will confer and seek Court approval of an appropriate cy pres recipient for the remaining funds in the Non-reversionary Settlement Fund. However, any amounts paid by Virginia Mason to Settlement Class Members outside of the Non-reversionary Settlement Fund on a claims-made basis shall revert or be repaid to Virginia Mason, to the extent that there are uncashed checks or other amounts that Settlement Class Members do not claim.
- 3.9 **Third-Party Creditors:** In the event a third party, such as a bankruptcy trustee, former spouse, or other third party has or claims to have a claim against any payment made to a Settlement Class Member, it is the responsibility of the Settlement Class Member to transmit the funds to such third party. Unless otherwise

ordered by the Court, the Parties will have no, and do not agree to any, responsibility for such transmittal.

IV. NOTICE TO SETTLEMENT CLASS MEMBERS

- 4.1 **The Notice Program:** The Parties agree the following “Notice Program” provides reasonable notice to the Settlement Class.
- 4.2 **Defendants’ Obligation to the Notice Program:** Virginia Mason has already provided the Settlement Administrator with a list of names and addresses for Settlement Class Members. If requested by the Settlement Administrator to ensure an adequate reach of the Notice Program, Virginia Mason shall make reasonable efforts to supplement or update email or physical address information for Settlement Class Members.
- 4.3 **Notice Timing:** Within thirty (30) days following entry of the Preliminary Approval Order (“Notice Date”), the Settlement Administrator shall send the Short-Form Notice to all Settlement Class Members. The Settlement Administrator shall send a reminder email to any Settlement Class Members (to the extent an email address is available) who have not submitted a Claim Form thirty (30) calendar days before the deadline to file a claim.
- 4.4 **Notice Method:** This notice shall be provided by email to the greatest extent possible, for those Settlement Class Members for whom valid email addresses are readily available. To the extent that an email address is not readily available for a Settlement Class Member, notice shall be provided by USPS regular mail. The Short-Form Notice may be reformatted by the Settlement Administrator for use in email notifications.

- 4.5 **Settlement Website:** No later than thirty (30) days following entry of the Preliminary Approval Order, and prior to the delivery of notice to all Settlement Class Members, the Settlement Administrator will create a dedicated Settlement Website. The Settlement Administrator shall cause the amended complaint, Short-Form Notice, Long-Form Notice, Claim Form, this Settlement Agreement, and other relevant settlement and court documents to be available on the Settlement Website, including the motion for attorneys' fees, costs and service award within 24 hours of it being filed with the Court. Any other content proposed to be included or displayed on the Settlement Website shall be approved in advance by counsel for the Parties, which approval shall not be unreasonably withheld. The website address and the fact that a more detailed Long-Form Notice and a Claim Form are available through the website shall be included in the Short-Form Notice.
- 4.6 **Notice Publication Period:** The Settlement Website shall be maintained from the Notice Date until sixty (60) days after the Claims Deadline has passed.
- 4.7 **Affidavit of Compliance:** Prior to the Final Approval Hearing, the Settlement Administrator shall provide to Class Counsel to file with the Court, an appropriate affidavit or declaration from the Settlement Administrator concerning compliance with the Court-approved Notice Program.
- 4.8. **Post-Distribution Accounting:** Within 21 days of completion of the Settlement Administration Process set forth in Section III, the Settlement Administrator shall provide to Class Counsel, to file with the Court, a Post-Distribution Accounting that includes the total Settlement Funds, the total number of Settlement Class Members, the total number of Settlement Class Members to whom notice was sent

and not returned as undeliverable, the number and percentage of Claim Forms submitted, the number of Settlement Class Members who received Claim Payments, the number of claimants who received Claim Payments under section 2(a), 2(b), and 2(c) above and the amount of the Claim Payments, the number and value of checks not cashed, and the amounts distributed to each cy pres recipient.

V. OPT-OUT PROCEDURES.

- 5.1 **Opt-Out Method:** Each Person wishing to opt-out of the Settlement Class shall individually sign and timely submit written notice of such intent to the designated postal address established by the Settlement Administrator. The written notice must clearly manifest a Person's intent to be excluded from the Settlement Class, which intent shall be determined by the Settlement Administrator. So-called "mass" or "class" opt-outs shall not be allowed. Written notice must be postmarked by the Opt-Out Date to be effective. Settlement Class Members may only opt-out on behalf of themselves; mass or class opt-outs will not be valid.
- 5.2 **Opt-Out Effect:** All Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class, referred to herein as "Opt-Outs," shall not receive any benefits of and shall not be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Settlement Class who do not appropriately request to be excluded from the Settlement Class shall be bound by the terms of this Settlement Agreement and Judgment entered thereon.
- 5.3 **Opt-Out Reporting:** Commencing one week from the date Notice commences, the Settlement Administrator will notify Defendants' Counsel and Class Counsel regarding the number of potential Settlement Class Members that have elected to

opt-out of the Settlement Class and will continue to provide weekly updates. No later than seven (7) days after the Claims Deadline, the Settlement Administrator shall provide a final report to Class Counsel and Defendants' Counsel that summarizes the number of written notifications of Opt-Outs received to date, and other pertinent information as requested by Class Counsel and Defendants' Counsel.

5.4 In the event that within ten (10) days after the Opt-Out Date, the Settlement Administrator receives more than 500 Opt-Outs from the Settlement, Virginia Mason shall have the right, but not the obligation, to terminate the Settlement Agreement in its entirety. If Virginia Mason voids the Settlement Agreement under this paragraph then, (a) the Parties shall be restored to their respective positions in the Litigation, and the Parties shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or Party's counsel; (b) the terms and provisions of the Settlement Agreement and statements made in connection with seeking approval of the settlement shall have no further force and effect with respect to the Parties, and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated and null and void, *nunc pro tunc*; except (c) Virginia Mason shall be responsible for all Cost of Claims Administration incurred in the event Virginia Mason voids this Settlement Agreement under this paragraph. Virginia Mason must exercise its right to terminate the Settlement pursuant to this Paragraph within ten (10) days after

receiving the list of Opt-Outs and at least three (3) days prior to the Final Approval Hearing, by giving written notice to Class Counsel.

VI. OBJECTIONS TO THE SETTLEMENT.

- 6.1 **Objection Method:** Any Settlement Class Member who wishes to object to the proposed Settlement Agreement must file with the Court and serve a written objections to the settlement (“Objection(s)”) on the Settlement Administrator, at the address listed in the Short-Form Notice, the Long-Form Notice, and on the Settlement Website.
- 6.2 **Objection Requirements:** Each Objection must include (i) the Settlement Class Member’s full name, current address, telephone number, and email address; (ii) the Settlement Class Member’s original signature; (iii) a statement of the specific basis for the Objection and copies of any documents the Settlement Class Member wishes to submit in support of the Objection; (iv) the identity and telephone number of all counsel representing the Settlement Class Member, if any; and (v) a statement of whether the Settlement Class member intends to appear at the Final Approval Hearing, with or without counsel.
- 6.3 **Objection Deadline:** Objections must be made in writing, and filed with the Court as well as served on the Settlement Administrator by mail no later than sixty (60) days after the Notice Date (the “Objection Date”).
- 6.4 **Objection Response:** Class Counsel and Defendants’ Counsel may, but need not, respond to the Objections, if any, by means of a memorandum of law served prior to the Final Approval Hearing.

- 6.5 **Objector Noncompliance:** Any Settlement Class Member who fails to timely file and serve an Objection and notice, if applicable, shall not be treated as having filed a valid Objection to the Settlement and shall forever be barred from raising any objection to the Settlement.
- 6.6 **Reciprocity:** Other than attorney-client communications or communications otherwise protected from disclosure pursuant to law or rule, the Parties shall promptly provide to each other copies of Objections, comments, or other documents or filings received from a Settlement Class Member.

VII. RELEASE.

- 7.1 **Effect of Release:** Subject to Court approval, as of the Effective Date, Plaintiff and Settlement Class Members shall release, resolve, relinquish, and discharge forever each of the Released Persons from each of the Released Claims as defined in section 7.2.
- 7.2 **Released Claims:** Released Claims means any and all claims and causes of action, both known and unknown, and including any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, statutory damages, exemplary damages, restitution, the appointment of a receiver, and any other form of relief that either has been or could have been asserted by any Settlement Class Member against any of the Released Persons in the Litigation, as well as any claims based on the factual predicate in the First Amended Class Action Complaint (Dkt. 93). Released Claims shall not include the right of any Settlement Class Member or any of the Released Persons to enforce the terms of the settlement contained in this Settlement

Agreement and shall not include the claims of Settlement Class Members who have timely excluded themselves from the Settlement Class.

7.3 **Covenant Not to Sue:** Plaintiff and Settlement Class Members will be deemed to have agreed not to sue any Released Person with respect to any of the Released Claims and to have agreed to be forever barred from doing so.

7.4 **Inclusion of Fees:** Without in any way limiting the scope of the Release, the Release covers, without limitation, any and all claims for attorneys' fees, costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiff or Settlement Class Members, or any of them, in connection with or related in any manner to the Litigation, the Settlement, the administration of such Settlement and/or the Released Claims as well as any and all claims for the Service Award to Plaintiff.

VIII. ATTORNEYS' FEES, COSTS, AND EXPENSES, AND SERVICE AWARDS.

8.1 **Attorney's Fees, Costs, and Expenses:** Class Counsel will ask the Court to approve an attorneys' fee award of no more than \$5,000,000 plus litigation costs not to exceed \$378,601 ("Fee and Cost Award"). Court approval of the full amount of the Fee and Cost Award Class Counsel seeks shall not be a condition precedent to the approval of the Class Settlement as described herein and the Court's denial or reduction of the requested Fee and Cost Award shall not be a basis for Plaintiff or Class Counsel to terminate the Settlement. Any Fee and Cost Award approved by the Court shall be paid by Virginia Mason out of the Settlement Funds. The Fee and Cost Award shall be paid no later than thirty (30) days after the Effective Date.

- 8.2 **Service Award:** Class Counsel shall request the Court to approve a service award of Ten Thousand Dollars (\$10,000) for Named Plaintiff John Doe, which award is intended to recognize Plaintiff for Plaintiff's efforts in the Litigation and commitment on behalf of the Settlement Class ("Service Award"). If approved by the Court, this Service Award will be paid by Virginia Mason no later than thirty (30) days after the Effective Date. For the avoidance of doubt, the Court approved amount for any Service Awards shall be paid by Virginia Mason out of the Settlement Funds. The Parties did not discuss or agree upon payment of a service award until after they agreed on all material terms of relief to the Settlement Class.
- 8.3 **Application Deadline:** Class Counsel will file applications with the Court for the requested Service Award and attorneys' fees, costs, and expenses no later than thirty (30) days prior to the Objection Date. The motion will be posted on the Settlement Website within 24 hours after it is filed.
- 8.4 **Non-Contingent Provision:** The Parties agree that the Court's approval or denial of any request for the Service Award or the Fee and Cost Award are not conditions to this Settlement Agreement and are to be considered by the Court separately from final approval, reasonableness, and adequacy of the settlement. Any reduction to the Service Award or Fee and Cost Award shall not operate to terminate or cancel this Settlement Agreement.

IX. SETTLEMENT APPROVAL PROCESS.

- 9.1 **Preliminary Approval Order Requirements:** After execution of this Settlement Agreement, Plaintiff shall timely move the Court to enter the Preliminary Approval Order, which:

- a. Preliminarily approves this Settlement Agreement;
- b. Preliminarily finds the proposed settlement is sufficiently fair, reasonable, adequate, and in the best interests of the Settlement Class;
- c. Finds the Notice Program constitutes valid, due, and sufficient notice to the Settlement Class Members, and constitutes the best notice practicable under the circumstances, complying fully with the requirements of the laws of Washington, the Constitution of the United States, and any other applicable law and that no further notice to the Class is required beyond that provided through the Notice Program;
- d. Appoints the Settlement Administrator;
- e. Directs the Settlement Administrator to provide notice to Settlement Class Members in accordance with the Notice Program provided for in this Settlement Agreement;
- f. Approves the Claim Form and directs the Settlement Administrator to administer the Settlement in accordance with the provisions of this Settlement Agreement;
- g. Approves the Opt-Out and Objection procedures as outlined in this Settlement Agreement;
- h. Schedules a Final Approval Hearing to consider the final approval, reasonableness, and adequacy of the proposed settlement and whether it should be finally approved by the Court; and
- i. Contains any additional provisions agreeable to the Parties that might be necessary or advisable to implement the terms of this Settlement Agreement.

- 9.2 **Preliminary Approval Order:** A copy of the proposed Preliminary Approval Order is attached as Exhibit D to this Settlement Agreement.

X. FINAL APPROVAL HEARING & ORDER.

- 10.1 **Final Approval Hearing:** The Parties will recommend that the Final Approval Hearing shall be scheduled no fewer than 45 days after the deadline for claim forms (at least 135 days after the Preliminary Approval Order).
- 10.2 **Final Approval Motion:** Plaintiff will file a motion for final approval of the settlement no later than 14 days after the deadline for claim forms.
- 10.3 **Responding to Objections:** The Parties may file a response to any Objections to the Settlement no later than fourteen (14) days prior to the Final Approval Hearing.
- 10.4 **Objector Attendance:** An objecting Settlement Class Member has the right, but is not required, to attend the Final Approval Hearing. If an objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he or she must file a notice of appearance in the Litigation no later than ten days before the Final Approval Hearing. The Court shall determine whether a Settlement Class Member's failure to comply with this requirement and the requirements set forth in Section 6 of this Settlement Agreement shall waive and forfeit the right to appear at the Final Approval Hearing or object separately, and shall foreclose the ability to seek review of the Settlement or its terms by appeal or other means.
- 10.5 **Attending Objector Counsel:** If the objecting Settlement Class Member intends to appear at the Final Approval Hearing through counsel, he or she must also identify the attorney(s) representing the objecting Settlement Class Member who will appear

at the Final Approval Hearing and include the attorney(s) name, address, phone number, e-mail address, state bar(s) to which counsel is admitted, as well as associated state bar numbers.

10.6 **Final Approval Order:** The Parties shall ask the Court to enter a Final Approval Order and Judgment which includes the following provisions:

- a. A finding that the Notice Program fully and accurately informed all Settlement Class Members entitled to notice of the material elements of the settlement, constitutes the best notice practicable under the circumstances, constitutes valid, due, and sufficient notice, and complies fully with the laws of Washington, the United States Constitution, and any other applicable law;
- b. A finding that after proper notice to the Settlement Class, and after sufficient opportunity to object, no timely objections to this Settlement Agreement have been made, or a finding that all timely objections have been considered and overruled;
- c. Approval of the settlement, as set forth in the Settlement Agreement, as fair, reasonable, adequate, and in the best interests of the Settlement Class, in all respects, finding that the settlement is in good faith, and ordering the Parties to perform the Settlement in accordance with the terms of this Settlement Agreement;
- d. A finding that neither the Final Judgment, the settlement, nor the Settlement Agreement shall constitute an admission of liability by any of the Parties, or any liability or wrongdoing whatsoever by any Party;

- e. A finding that Plaintiff and Class Counsel have adequately represented the Settlement Class Members;
- f. A finding that Plaintiff and each Settlement Class Member shall be bound to this Settlement Agreement, including the release and covenant not to sue in Section VII;
- g. Subject to the reservation of jurisdiction for matters discussed in subparagraph (h) below, a dismissal with prejudice of the Litigation;
- h. A reservation of exclusive and continuing jurisdiction over the Litigation and the Parties for the purposes of, among other things, (i) supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement, the Final Approval Order, and the Final Judgment; and (ii) supervising the administration and distribution of the relief to the Settlement Class and resolving any disputes that may arise with regard to the foregoing; and
- i. If and when the Settlement becomes Final, the Litigation shall be dismissed with prejudice, with the Parties to bear their own costs and attorneys' fees, costs, and expenses not otherwise awarded in accordance with this Settlement Agreement.

XI. TERMINATION OF THIS SETTLEMENT AGREEMENT.

- 11.1 **Termination Rights:** Each Party shall have the right to terminate this Settlement Agreement if:

- a. The Court denies preliminary approval of this Settlement Agreement (or grants preliminary approval through an order that materially differs in substance to Exhibit D hereto);
- b. The Court denies final approval of this Settlement Agreement (or grants final approval through an order that materially differs in substance from the findings listed in Section 10.6, above);
- c. More than 500 Settlement Class Members opt-out of the Settlement Class;
- d. The Final Approval Order and Final Judgment do not become final by reason of a higher court reversing final approval by the Court, and the Court thereafter declines to enter a further order or orders approving the settlement on the terms set forth herein;
- e. A party, its counsel, or the Settlement Administrator breaches the terms of this Settlement Agreement prior to the Effective Date; or
- f. The Effective Date cannot occur.

11.2 **Termination Notice:** If a Party elects to terminate this Settlement Agreement under this Section XI, that Party must provide written notice to the other Party's counsel, by hand delivery, mail or e-mail within ten (10) days of the occurrence of the condition permitting termination. The specific notice provisions set forth in Section 5.4, above, shall govern how notice must be provided under sections 5.4 and 11.1(c).

11.3 **Effect of Termination or Settlement Non-Occurrence:** If this Settlement Agreement is terminated or disapproved or if the Effective Date should not occur for any reason, then: (i) this Settlement Agreement, the Preliminary Approval

Order, the Final Approval Order (if applicable), and all of their provisions shall be rendered null and void; (ii) all Parties shall be deemed to have reverted to their respective status in the Litigation as of the date and time immediately preceding the execution of this Settlement Agreement, except that Virginia Mason will be responsible for all Cost of Claims Administration if it elects to terminate the Settlement Agreement under Paragraph 11.1(c) or Paragraph 5.4 above; (iii) except as otherwise expressly provided, the Parties shall stand in the same position and shall proceed in all respects as if this Settlement Agreement and any related orders had never been executed, entered into, or filed; and (iv) no term or draft of this Settlement Agreement nor any part of the Parties' settlement discussions, negotiations, or documentation (including any declaration or brief filed in support of the motion for preliminary approval or motion for final approval), will have any effect or be admissible into evidence for any purpose in the Litigation or any other proceeding.

- 11.4 **Reservation of Rights:** If the Court does not approve the Settlement or the Effective Date cannot occur for any reason, Defendants shall retain all of their rights and defenses in the Litigation, without any qualification whatsoever. For example, Defendants shall have the right to object to the maintenance of the Litigation as a class action, to move for summary judgment, and to assert defenses at trial, and nothing in this Settlement Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument by any Party concerning whether the Litigation may properly be maintained as a class action, or for any other purpose.

11.5 **Appellate Right:** Nothing shall prevent Plaintiff or Defendants from appealing or seeking other appropriate relief from an appellate court with respect to any denial by the Court of final approval of the Settlement.

XII. MISCELLANEOUS PROVISIONS.

- 12.1 **Superseding Agreement:** This Settlement Agreement constitutes the entire Settlement Agreement between and among the Parties with respect to the Settlement of the Litigation. This Settlement Agreement supersedes all prior negotiations and Settlement Agreements and may not be modified or amended except by a writing signed by the Parties and their respective counsel. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part of the subject matter of this Settlement Agreement has been made or relied on except as expressly set forth in this Settlement Agreement.
- 12.2 **Incorporation of Recitals & Exhibits:** The recitals and exhibits to this Settlement Agreement are integral parts of the Settlement and are expressly incorporated and made a part of this Settlement Agreement.
- 12.3 **Best Efforts:** In the event that there are any developments in the effectuation and administration of this Settlement Agreement that are not dealt with by the terms of this Settlement Agreement, then such matters shall be dealt with as agreed upon by the Parties, and failing agreement, as shall be ordered by the Court. The Parties shall execute all documents and use their best efforts to perform all acts necessary and proper to promptly effectuate the terms of this Settlement Agreement and to take all

necessary or appropriate actions to obtain judicial approval of this Settlement Agreement to give this Settlement Agreement full force and effect.

- 12.4 **Severability**: In the event that one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions of the Settlement Agreement, which shall remain in full force and effect as though the invalid, illegal, or unenforceable provision(s) had never been a part of this Settlement Agreement as long as the benefits of this Settlement Agreement to Defendants or the Settlement Class Members are not materially altered, positively or negatively, as a result of the invalid, illegal, or unenforceable provision(s).
- 12.5 **Successors & Assigns**: This Settlement Agreement will be binding upon and inure to the benefit of the successors and assigns of the Parties, Released Persons, and Settlement Class Members.
- 12.6 **Construction Equality**: This Settlement Agreement shall not be construed more strictly against one Party than another merely because it may have been prepared by counsel for one of the Parties, it being recognized that because of the arm's-length negotiations resulting in this Settlement Agreement, all Parties hereto have contributed substantially and materially to the preparation of the Settlement Agreement. All terms, conditions, and exhibits are material and necessary to this Settlement Agreement and have been relied upon by the Parties in entering into this Settlement Agreement.
- 12.7 **Non-Waiver**: There shall be no waiver of any term or condition in this Settlement Agreement absent an express writing to that effect by the non-waiving Party. No

waiver of any term or condition in this Settlement Agreement shall be construed as a waiver of a subsequent breach or failure of the same term or condition, or waiver of any other term or condition of this Settlement Agreement.

12.8 **Counterparts:** This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any Party who has signed it and all of which shall be deemed a single Settlement Agreement.

12.9 **Independent Judgment:** Each Party to this Settlement Agreement and the signatories thereto warrant that he, she, or it is acting upon his, her or its independent judgment and the advice of his, her, or its counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Party, other than the warranties and representations expressly made in this Settlement Agreement.

12.10 **Authority:** Each signatory below warrants that she, he or it has the requisite authority to execute this Settlement Agreement and bind the Party on whose behalf she, he or it is executing the Settlement Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties have hereby accepted and agreed to the

Settlement Agreement.

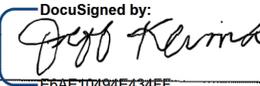
Dated: December 16, 2024

Dated: December 17, 2024

Defendants Virginia Mason Medical Center and Virginia Mason Health System

Plaintiff John Doe



DocuSigned by:


By: Ketul J. Patel
Virginia Mason Franciscan Health
Chief Executive Officer (CEO)

By:

CommonSpirit Health
President, Northwest Region

Approved as to form:

Approved as to form:



By: Paul Karlsgodt
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Health System***

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Class Counsel

EXHIBIT A

KING COUNTY SUPERIOR COURT

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

John Doe v. Virginia Mason Medical Center, et al.
King County Case No. 19-2-26674-1 SEA

IF YOU ARE A WASHINGTON RESIDENT WHO IS, OR WAS, A PATIENT OF DEFENDANTS VIRGINIA MASON MEDICAL CENTER OR VIRGINIA MASON HEALTH SYSTEM OR ONE OF THEIR AFFILIATES AND YOU LOGGED INTO THE MYVIRGINIAMASON PATIENT PORTAL OR USED VIRGINIA MASON’S PUBLIC WEBSITE, WWW.VIRGINIAMASON.ORG, BETWEEN OCTOBER 10, 2015 AND MAY 18, 2023, YOU MAY BE ENTITLED TO BENEFITS IN A CLASS ACTION SETTLEMENT.

A Court authorized this Notice. This is not a solicitation from a lawyer.

**THIS IS A NOTICE OF A SETTLEMENT OF A CLASS ACTION LAWSUIT.
THIS IS NOT A NOTICE OF A LAWSUIT AGAINST YOU.**

YOUR LEGAL RIGHTS ARE AFFECTED EVEN IF YOU DO NOTHING.

PLEASE READ THIS NOTICE CAREFULLY.

- A settlement has been proposed to end a class action lawsuit against Virginia Mason Medical Center and Virginia Mason Health System (collectively, “Virginia Mason” or “Defendants”). The lawsuit alleges that computer source code on Virginia Mason’s website and patient portal transmitted certain data provided by patients to third parties, including Facebook and Google.
- The parties in the lawsuit have agreed to settle the lawsuit to resolve the claims of a Settlement Class defined as follows:

All Washington residents who are, or were, patients of Virginia Mason Medical Center or Virginia Mason Health System or any of their affiliates between October 10, 2015 and May 18, 2023, and who exchanged communications at www.virginiamason.org or the MyVirginiaMason patient portal.

- The Court has scheduled a final approval hearing for <<DATE>>. If the settlement is approved and becomes final, you will receive a payment only if (1) you are a member of the Settlement Class; and (2) you submit a valid claim form before <<DATE>>. Even if you do not submit a claim form, your rights will be affected if you are a member of the Settlement Class and you do not exclude yourself from the settlement. Read below or call <<PHONE NUMBER>> for more information.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

SUBMIT A CLAIM BY THE CLAIM DEADLINE OF <<DATE>>

This is the only option that allows you to get a payment.

If you are a member of the Settlement Class, you may submit a claim form to share in the settlement proceeds paid by Virginia Mason to settle the lawsuit. You may submit a claim for one or both of the monetary benefits described below, if you qualify. You can complete and submit a claim form electronically on this website or you can print the claim form and submit it by mail.

	<p>If your claim form is approved and the settlement is approved by the Court and becomes final, you will give up your right to bring your own lawsuit about the issues in this case.</p> <p>Members of the Settlement Class who file a timely claim may be entitled to the following monetary benefits:</p> <p>Cash benefits for users of the MyVirginiaMason patient portal. If you logged into the MyVirginiaMason patient portal, you may request compensation for claims associated with alleged web tracking of logins to the patient portal and activity within the patient portal. You may be entitled to a payment of \$90, subject to a possible pro rata adjustment depending on the total number of claims for benefits.</p> <p>Cash benefits for patients who used Virginia Mason’s public website. If you used Virginia Mason’s public website, www.virginiamason.org, you may request compensation for claims associated with alleged web tracking of viewing or searching for medical-related information on the website. You may be entitled to a payment of \$45, subject to a possible pro rata adjustment depending on the total number of claims for benefits.</p>
<p>DO NOTHING</p>	<p>Stay in this lawsuit. Get no payment. Give up certain rights.</p> <p>By doing nothing, you will not get a payment from the settlement. But, you will give up any right to sue Virginia Mason separately about the same legal claims in this lawsuit.</p>
<p>EXCLUDE YOURSELF FROM THE SETTLEMENT BY THE OPT-OUT DATE OF <<DATE>></p>	<p>Get out of this lawsuit. Get no payment. Keep rights.</p> <p>If you ask to be excluded, you will receive no benefits, but you will retain any rights you may have to sue Virginia Mason separately about the same legal claims in this lawsuit.</p>
<p>OBJECT BY THE OBJECTION DATE OF <<DATE>></p>	<p>Tell the Court why you disagree with the settlement.</p> <p>If you do not exclude yourself from the settlement, you may object to or comment about the settlement and Class Counsel’s request for attorneys’ fees, litigation expenses, and a service award for the Class Representative who brought this lawsuit. To object to the settlement, you must file a written Objection to the settlement with the Court explaining why you do not like the settlement, and serve copies of your Objection on the Settlement Administrator at the addresses listed in Response #14 below. You must remain in the Settlement Class to object to the settlement. If you want to get the settlement benefits described above, you also have to complete a claim form.</p>
<p>ATTEND THE FINAL APPROVAL HEARING ON <<DATE>></p>	<p>If you do not exclude yourself from the settlement, you may ask to speak in Court about the fairness of the settlement. You do not need to attend the hearing to receive cash compensation.</p>

QUESTIONS? VISIT WWW.WEBSITE.COM

1. What is this Notice?

This is a Court-authorized Notice of a proposed settlement of a class action, *John Doe v. Virginia Mason Medical Center, et al.*, Case No. 19-2-26674-1 SEA, filed in the Superior Court of Washington, County of King. The person who sued is called the “Plaintiff” or “Class Representative” and the companies he sued, Virginia Mason Medical Center and Virginia Mason Health System, are known as the “Defendants” in this case.

The Court has certified the Settlement Class (defined below in Response #6) and has granted preliminary approval of the Settlement Agreement. This Notice explains the nature of the class action lawsuit, the terms of the Settlement Agreement, and the legal rights and obligations of Settlement Class Members. Please read the instructions and explanations below carefully so that you can better understand your legal rights.

2. Why did I receive a Notice?

You may have received a Notice because you were identified as a Washington resident who is or was a patient of Defendants Virginia Mason Medical Center or Virginia Mason Health System or their affiliates between October 10, 2015 and May 18, 2023.

3. What is this lawsuit about?

Plaintiff alleges that Defendants installed computer code on their website, www.virginiamason.org, and patient portal, MyVirginiaMason, that caused medical information to be disclosed to third parties, including Facebook and Google. Defendants deny any wrongdoing whatsoever.

4. Why is this a class action?

A class action is a lawsuit in which an individual called a “Class Representative” brings a single lawsuit on behalf of other people who have similar claims. All of these people together are a “Settlement Class” or “Settlement Class Members.” When a class action is settled, the settlement, which must be approved by the Court, resolves the issues for all Settlement Class Members, except for those who exclude themselves from the settlement.

5. Why is there a settlement?

To resolve this matter without the expense, delay, and uncertainties of protracted litigation, the Parties reached a settlement that resolves all claims brought on behalf of the Settlement Class. If finally approved by the Court, the Settlement Agreement requires Defendants to provide cash compensation to certain Settlement Class Members who submit valid and timely claim forms. The settlement is not an admission of wrongdoing by Defendants.

The Court overseeing this Litigation must give final approval to the Settlement Agreement before it can become effective. The Court has preliminarily approved the Settlement Agreement so that Settlement Class Members may

QUESTIONS? VISIT WWW.WEBSITE.COM

be given notice and the opportunity to exclude themselves from the Settlement Class or to voice their support for or opposition to final approval of the Settlement Agreement. If the Court does not finally approve the Settlement Agreement, or if it is terminated by the Parties, then the Settlement Agreement will be void, and the Litigation will proceed as if there had been no settlement.

6. How do I know if I am a part of the settlement?

You are a Settlement Class Member if you are a Washington resident and you are or were a patient of Defendants Virginia Mason Medical Center or Virginia Mason Health System or their affiliates between October 10, 2015 and May 18, 2023, and you logged into the MyVirginiaMason patient portal or used Virginia Mason’s public website, www.virginiamason.org, to view or search for medical-related information. Viewing or searching for “medical-related information” on www.virginiamason.org generally means that you browsed or searched on the website for medical symptoms, conditions, or treatment options related to your own healthcare.

Excluded from the Settlement Class are: (1) all persons who timely and validly request exclusion from the Settlement Class; (2) the Judge assigned to evaluate the fairness of this settlement.

YOUR BENEFITS UNDER THE SETTLEMENT

7. What can I get from the settlement?

The complete terms of the settlement are found in the Settlement Agreement, which is available on the Documents section of the Settlement Website, www.website.com. This notice only provides a summary.

Defendants will pay \$3.5 million into a non-reversionary settlement fund for the exclusive purpose of paying cash benefits to Settlement Class Members who submit timely claims. Defendants will pay an additional amount up to \$3.25 million to the extent the initial \$3.5 million payment is not sufficient to cover the amount of claims that are made. The settlement funds will be distributed to Settlement Class Members who submit timely and valid claim forms as follows:

Cash benefits for users of the MyVirginiaMason patient portal. If you logged into the MyVirginiaMason patient portal, you may request compensation for claims associated with alleged web tracking of logins to the patient portal and activity within the patient portal. You may be entitled to a payment of \$90, subject to a possible pro rata adjustment depending on the total number of claims for benefits.

Cash benefits for patients who used Virginia Mason’s public website. If you used Virginia Mason’s public website, www.virginiamason.org, you may request compensation for claims associated with alleged web tracking of viewing or searching for medical-related information on the website, such as medical symptoms, conditions, or treatment options related to your own healthcare. You may be entitled to a payment of \$45, subject to a possible pro rata adjustment depending on the total number of claims for benefits.

QUESTIONS? VISIT WWW.WEBSITE.COM

To receive settlement benefits, you must submit a claim form.

Non-Monetary Benefits. The settlement also provides for non-monetary relief. Virginia Mason will create and maintain a Web Governance Committee to assess the implementation and use of analytics and advertising technologies on Virginia Mason’s web properties and evaluate whether this use is consistent with Virginia Mason’s mission and applicable law. For two years following final approval of the settlement, Virginia Mason will not use Meta Pixel, Google Analytics, Google Ads, Google DoubleClick, TheTradeDesk, or Twitter/X Pixel source code on its web properties unless the Web Governance Committee makes the requisite determination under 45 C.F.R. § 164.514(b)(1) and Virginia Mason makes an affirmative disclosure on its web properties that the tools, identified by name, are being used.

8. How do I get a payment?

Complete a claim form by <<DATE>>. This is the only way to get a payment from the settlement. Settlement Class Members who qualify for cash compensation may choose to receive electronic payments or paper checks.

Once completed, the claim form can be submitted electronically on the settlement website, www.website.com, or printed and mailed to the following address:

<<Mailing caption>>, c/o Eisner Advisory Group LLC, PO Box XXXX, New York, NY 10017-XXXX

Mailed claim forms must be postmarked by <<DATE>>. Each Settlement Class member is entitled to submit only one claim form. If you submit a claim form through the settlement website, please do not submit a duplicate claim form by mail, and vice versa. Duplicate claim forms will be rejected.

9. When will I receive the benefits?

If you timely submit a valid claim form for monetary benefits and the settlement is finally approved, you will receive payment in the amount approved by the Settlement Administrator after the Settlement Administrator processes your claim form. You will receive any payment after the settlement is final and has become effective.

10. What am I giving up if I remain in the settlement?

By staying in the Settlement Class, all the Court’s orders will apply to you and will bind you. You also give Defendants a “release,” which means you cannot sue or be part of any other lawsuit or other legal action against Defendants about or arising from the claims or issues in this lawsuit.

The precise terms of the release are in the Settlement Agreement, which is available in the Documents section of the Settlement Website. Unless you formally exclude yourself from this settlement, you will release your claims. If you have any questions, you can talk for free to the attorneys identified below who have been appointed by the

QUESTIONS? VISIT WWW.WEBSITE.COM

Court to represent the Settlement Class or you are welcome to talk to any other lawyer of your choosing at your own expense.

11. What happens if I do nothing at all?

By doing nothing you are staying in the Settlement Class but you are giving up the ability to get a payment from the settlement. To get a payment you must submit a claim form by <<DATE>>. By doing nothing or submitting a claim form, you are choosing to stay in the Settlement Class and, if the settlement becomes final, you give up any right to sue the Defendants separately about the same issues in this lawsuit. See Response #10.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to remain in the settlement, but you want to preserve your legal claims against Defendants, then you must take steps to exclude yourself from this settlement.

12. How do I get out of the settlement?

To exclude yourself from the settlement, you must send an opt-out request by mail stating that you want to be excluded from *John Doe v. Virginia Mason Medical Center, et al.*, Case No. 19-2-26674-1 SEA, to the Settlement Administrator. Your opt-out request must include: (1) your full name and address; (2) the case name and docket number (*John Doe v. Virginia Mason Medical Center, et al.*, Case No. 19-2-26674-1 SEA); (3) a written statement that you wish to be excluded from the settlement; and (4) your signature. You must mail your opt-out request, **postmarked no later than <<DATE>>**, to:

<<Mailing Caption>>

c/o Eisner Advisory Group LLC

PO Box XXXX

New York, NY 10017-XXXX

13. If I exclude myself, do I still receive benefits from this settlement?

No, if you submit an opt-out request you will not receive any monetary benefits from the settlement, but you may sue Defendants over the claims raised in this case, either on your own or as a part of a different lawsuit. If you exclude yourself, the time you have to file your own lawsuit (called the “statute of limitations”) will begin to run again. You will have the same amount of time to file the suit that you had when this case was filed. If you file an Objection (see Response #14), you may still receive benefits if you timely file a claim.

OBJECTING TO THE SETTLEMENT

14. How do I tell the Court that I do not like the settlement?

QUESTIONS? VISIT WWW.WEBSITE.COM

If you are a Settlement Class Member and have not excluded yourself from the settlement, you can comment on or object to the settlement, Class Counsel’s request for attorneys’ fees and litigation expenses, and the request for a service award for the Class Representative, and the Court will consider your views. If you file an objection, you may still receive benefits so long as you timely submit a claim form.

To object to the settlement, you must file and serve a written objection (such as a letter or legal brief) stating that you object and the reasons why you think the Court should not approve the settlement. Your objection must:

- i. State your full name, current address, telephone number, and email address;
- ii. Include your original signature;
- iii. State the specific basis for your objection to the settlement and include copies of any documents you wish to submit in support of your objection;
- iv. Identify all lawyers representing you, if any, and provide their telephone number(s); and
- v. State whether you intend to appear at the Final Approval Hearing, with or without a lawyer.

Your objection must be filed by **<<DATE>>** to be considered by the Court. To be considered, your objection must include the information listed above and be filed with King County Superior Court, located at 516 Third Avenue, Seattle WA 98104 (see <https://kingcounty.gov/en/court/superior-court/about-superior-court/contact>), no later than **<<DATE>>**, and served on the Settlement Administrator at the address below:

<<Mailing Caption>>
c/o Eisner Advisory Group LLC
PO Box **XXXX**
New York, NY 10017-**XXXX**

THE LAWYERS REPRESENTING THE CLASS

15. Do I have a lawyer in this case?

The Court has appointed Jason ‘Jay’ Barnes and Eric Johnson of Simmons Hanly Conroy LLC, Beth Terrell of Terrell Marshall Law Group PLLC, Steve Gorny of the Gorny Law Firm LLC, and Jeffrey Koncius of Kiesel Law LLP to represent the Settlement Class as Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense. If you hire your own lawyer to speak for you or to appear in Court, your lawyer should file a Notice of Appearance with the Court.

16. How will the lawyers for the Settlement Class be paid?

Class Counsel will ask the Court to approve an attorneys’ fee award of no more than \$5,000,000 and reimbursement of litigation expenses not to exceed \$378,601. Class Counsel will also request a service award of \$10,000 for the Class Representative. Virginia Mason will pay the Court-approved attorneys’ fees, litigation expenses, and service award separately from the settlement benefits for the Settlement Class described above.

QUESTIONS? VISIT WWW.WEBSITE.COM

The motion for attorneys' fees, litigation expenses, and service award will be posted on the Settlement Website after it is filed.

THE FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to grant final approval of the settlement. You may attend if you wish, but you are not required to do so.

17. Where and when is the Final Approval Hearing?

The Court has already preliminarily approved the Settlement Agreement. The Court will hold the Final Approval Hearing on <<DATE>>, at <<TIME>> A.M. ET in the courtroom of the Honorable _____, Courtroom XX, which is located in the courthouse at 516 Third Avenue, Seattle WA 98104. The purpose of the hearing will be for the Court to determine whether the proposed settlement is fair, reasonable, and adequate and in the best interests of the Settlement Class, and to determine the appropriate amount of compensation for Class Counsel and the Class Representative. At that hearing, the Court may hear any objections and arguments concerning the fairness of the proposed settlement. The Court will then decide whether to approve the settlement.

YOU ARE **NOT** REQUIRED TO ATTEND THE FINAL APPROVAL HEARING TO RECEIVE BENEFITS FROM THIS SETTLEMENT. Please be aware that the hearing may be postponed to a later date without notice.

18. May I speak at the hearing?

If you are a Settlement Class Member and have not opted out of the settlement, you may ask the Court for permission to speak at the Final Approval Hearing. You cannot speak at the hearing if you exclude yourself from the Settlement Class.

GETTING MORE INFORMATION – CONTACT:

This Notice only provides a summary of the proposed settlement. Complete details about the settlement can be found in the Settlement Agreement available on the Settlement Website.

www.website.com

If you have any questions or need to change your address, you can contact the Settlement Administrator online at www.website.com or by mail at <<Mailing Caption>>, c/o Eisner Advisory Group, PO Box XXXX, New York, NY 10017-XXXX. You may also contact Class Counsel with questions about the settlement by calling 1-XXX-XXX-XXXX or by writing to: Terrell Marshall Law Group PLLC, 936 N 34th Street, Suite 300, Seattle, Washington 98103.

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF COURT, THE JUDGE, OR DEFENDANTS' COUNSEL.

QUESTIONS? VISIT WWW.WEBSITE.COM

EXHIBIT B

DocuSign Envelope ID: 9410F33A-8A01-4794-9B36-F9348AED9F55
c/o Eisner Advisory Group LLC
733 3rd Ave
New York, NY 10017

FIRST-CLASS MAIL
U.S. POSTAGE PAID
CITY, ST
PERMIT NO. XXXX

ELECTRONIC SERVICE REQUESTED

COURT APPROVED LEGAL NOTICE

*John Doe v. Virginia Mason Medical Center, et al., Case No.
19-2-26674-1 SEA*

IF YOU RECEIVED THIS NOTICE, YOU HAVE BEEN IDENTIFIED AS A WASHINGTON STATE RESIDENT WHO IS OR WAS A PATIENT OF VIRGINIA MASON MEDICAL CENTER OR VIRGINIA MASON HEALTH SYSTEM WHO LOGGED INTO THE MYVIRGINIAMASON PATIENT PORTAL OR USED VIRGINIA MASON'S PUBLIC WEBSITE, WWW.VIRGINIAMASON.ORG BETWEEN OCTOBER 10, 2015 AND MAY 18, 2023.

This is not a solicitation from a lawyer.

This is NOT a Claim Form.

For more information about the settlement and how to file a Claim Form visit or call:

www.website.com

(XXX) XXX-XXXX

SETTLEMENT CLAIM ID: 

<<Refnum Barcode>>

CLASS MEMBER ID: <<Refnum>>

Postal Service: Please do not mark barcode

<<FirstName>> <<LastName>>

<<Address1>>

<<Address2>>

<<City>>, <<State>> <<Zip>>-<<zip4>>

<<Country>>

V DocuSign Envelope ID: 9410F33A-8A01-4794-9B36-F9348AED9F55 enter, et al., Case No. 19-2-26674-1 SEA, filed in the Superior Court of Washington, County of King. The person who sued is called the Plaintiff or "Class Representative" and the companies he sued, Virginia Mason Medical Center and Virginia Mason Health System, are known as the "Defendants" in this case. Plaintiff alleges that Defendants installed computer code on their website, www.virginiamason.org and patient portal, MyVirginiaMason, that caused medical information to be disclosed to third parties, including Facebook and Google. Defendants deny any wrongdoing whatsoever.

Who Is A Settlement Class Member? You are a Settlement Class Member if you are a Washington resident, you are or were a patient of Virginia Mason Medical Center or Virginia Mason Health System or one of their affiliates between October 10, 2015 and May 18, 2023, and you logged into the MyVirginiaMason patient portal or used Virginia Mason's public website, www.VirginiaMason.org, to view or search for medical information. The Settlement Class excludes: (i) all persons who timely and validly request exclusion from the Settlement Class; and (ii) the Judge assigned to evaluate the fairness of this settlement.

What Are The Settlement Class Member Benefits? Defendants have agreed to pay \$3.5 million into a non-reversionary settlement fund for the exclusive purpose of paying cash benefits to Settlement Class Members who submit timely claims. Defendants will pay an additional amount up to \$3.25 million to the extent the initial \$3.5 million payment is not sufficient to cover the amount of claims that are made. Patient portal users are eligible to claim a payment of \$90. All Settlement Class Members are eligible to make a claim for \$45 upon attestation they used the public website to view or search for medical information. Defendants will pay Court-approved costs of administration, attorneys' fees, litigation costs, and a service award for the Class Representative separately and in addition to the amounts made available for claims.

How To Make A Claim? To receive a payment from the Settlement, you must file a Claim Form online at www.website.com by **<Claims Deadline>**, or by mail postmarked by **<Claims Deadline>**, and mailed to the Settlement Administrator's address below.

What Are My Other Rights? If you do not want to be legally bound by the settlement, you must exclude yourself by **Opt-Out Date**. If you do not exclude yourself, you will release any claims you may have against Defendants and the Related Parties, as more fully described in the Settlement Agreement, available at **WEBSITE**. If you do not exclude yourself, you may object to the settlement by **Objection Date**. Visit **WEBSITE** for complete information on how to exclude yourself from or object to the settlement.

Do I Have A Lawyer? Yes, the Court has appointed Jason Jay Barnes and Eric Johnson of Simmons Hanly Conroy LLC, Beth Terrell of Terrell Marshall Law Group PLLC, Steve Gorny of the Gorny Law Firm LLC, and Jeffrey Koncius of Kiesel Law LLP to represent you and the Settlement Class. Class Counsel will request Court approval of an attorneys' fee award of \$5,000,000, reimbursement of litigation costs up to \$378,601, and a service award of \$10,000 for the Class Representative, to be paid separately by Defendants from the amounts paid to Settlement Class Members.

The Final Approval Hearing: The Court has scheduled a hearing for **DATE/TIME** in Courtroom **X**, located at 516 Third Ave, Seattle WA 98104, to consider whether to approve the settlement, the requested attorneys' fees and litigation costs, and the service award, and to consider any objections. You or your attorney may request to appear at the hearing, but you are not required to appear. The date or time of the hearing may change, please check **WEBSITE** for updates.

This Notice is only a summary.

For Additional Information or to Update Your Address & Contact Information:

Visit **WEBSITE** or contact the Settlement Administrator:

Mail: **<<Settlement Administrator – Case ID>>**, c/o Eisner Advisory Group LLC, P.O. Box **XXXX**,

New York, NY 10017-XXXX

Toll-Free: **(XXX) XXX-XXXX**

EXHIBIT C

You should fill out and submit this claim form online or by mail if you are a Settlement Class Member and you would like to receive a payment from the settlement.

You are a Settlement Class Member if you are a Washington State resident, you are or were a patient of Virginia Mason Medical Center or Virginia Mason Health System or one of their affiliates between October 10, 2015 and May 18, 2023, and you logged into the MyVirginiaMason patient portal or used Virginia Mason’s public website, www.virginiamason.org, to view or search for medical-related information.

You may receive a payment if you fill out this claim form completely, if the settlement is approved, and if you are found to be eligible for a payment.

The settlement notice describes your legal rights and options. Please visit the official settlement administration website, www._____.com, or call 1-_____ for more information.

If you wish to submit a claim for a settlement payment, you need to provide all of the applicable information requested below, including the SETTLEMENT CLAIM ID specified on the front page of the notice document you received. If you do not clearly provide the applicable requested information, and indicate that you qualify and would like to receive benefits from the settlement, your claim form may be deemed invalid and your claim may be denied.

Please print clearly in blue or black ink. This claim form must be submitted online or postmarked by _____, 2025.

I. CLASS MEMBER NAME AND CONTACT INFORMATION

Provide your name and contact information below. You must notify the Settlement Administrator if your contact information changes after you submit this form.

First Name

Last Name

Street Address

City

State

Zip Code

Phone Number

Email Address

**Your claim
must be
postmarked by:**
XXXXXXXX

STATE OF WASHINGTON, COUNTY OF KING

John Doe v. Virginia Mason Medical Center, et al.,
Case No. 19-2-26674-1 SEA

Claim Form

**Virginia Mason
Medical Center
& Virginia
Mason Health
System**

II. BENEFIT SELECTION

Please complete one or both sections below, as applicable.

If you logged into the MyVirginiaMason patient portal:

If you logged into the MyVirginiaMason patient portal, you may request compensation for claims associated with alleged web tracking of logins to the patient portal and activity within the patient portal. You may be entitled to a payment of \$90, subject to a possible adjustment depending on the total number of claims for benefits.

_____ I attest that I am or I was a patient of Virginia Mason Medical Center or Virginia Mason Health System or one of their affiliates between October 10, 2015 and May 18, 2023, and I logged into the MyVirginiaMason patient portal.

SETTLEMENT CLAIM ID: _____

If you used Virginia Mason’s public website, www.virginiamason.org:

If you used Virginia Mason’s public website, www.virginiamason.org, you may request compensation for claims associated with alleged web tracking of viewing or searching for medical-related information on the website. You may be entitled to a payment of \$45, subject to a possible adjustment depending on the total number of claims for benefits.

_____ I attest that I am or I was a patient Virginia Mason Medical Center or Virginia Mason Health System or one of their affiliates between October 10, 2015 and May 18, 2023, and I used www.virginiamason.org to view or search for medical-related information such as medical symptoms, conditions, or treatment options related to my own healthcare.

SETTLEMENT CLAIM ID: _____

III. PAYMENT OPTIONS

Please select **one** of the following four payment options:

PayPal - Enter your PayPal email address: _____

Venmo - Enter the mobile number associated with your account: _____ - _____ - _____

Zelle - Enter the mobile number or email address associated with your account:

Mobile Number: _____ - _____ - _____ or Email Address: _____

Physical Check - Payment will be mailed to the address provided above.

**Your claim
must be
postmarked by:
XXXXXXX**

STATE OF WASHINGTON, COUNTY OF KING

John Doe v. Virginia Mason Medical Center, et al.,
Case No. 19-2-26674-1 SEA

Claim Form

**Virginia Mason
Medical Center
& Virginia
Mason Health
System**

IV. SIGN AND DATE YOUR CLAIM FORM

I declare that the information I supplied in this claim form is true and correct to the best of my recollection, and that I executed this form on the date set forth below.

Your signature

Date: _____
MM DD YYYY

Your name

MAIL YOUR CLAIM FORM OR SUBMIT YOUR CLAIM FORM ONLINE.

This claim form must be:

Postmarked by _____, 2025 and mailed to: _____, c/o _____; OR

Submitted through the Settlement Website by midnight on _____, 2025 at: _____.

EXHIBIT D

THE HONORABLE MICHAEL K. RYAN

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JANE DOE and JOHN DOE, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

VIRGINIA MASON MEDICAL CENTER, and
VIRGINIA MASON HEALTH SYSTEM,

Defendants.

NO. 19-2-26674-1 SEA

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

THIS MATTER came before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement. The Settlement Agreement has been filed with the Court (Dkt. No. __) and the definitions and terms set forth in the Settlement Agreement are incorporated herein by reference. The Court, having reviewed the Settlement Agreement entered into by Plaintiff John Doe ("Plaintiff" or "Class Representative") and Defendants Virginia Mason Medical Center and Virginia Mason Health System ("Virginia Mason" or "Defendants") (collectively, the "Parties"), hereby orders that:

1. The Court has considered the proposed settlement of the claims asserted by a certified class of consumers defined as follows:

All Washington residents who are, or were, patients of Virginia Mason Medical Center or Virginia Mason Health System or any of their affiliates between October 10, 2015 and May 18, 2023, and who exchanged communications at www.virginiamason.org or the My VirginiaMason portal.

1 2. The Settlement Agreement appears, upon preliminary review, to be fair,
2 reasonable, and adequate to Settlement Class Members. Accordingly, for settlement purposes
3 only, the proposed settlement is preliminarily approved, pending a Final Approval Hearing, as
4 provided for in this Order.

5 3. If the Settlement Agreement is not finally approved, is not upheld on appeal, or
6 is otherwise terminated for any reason before Final Approval, then the Settlement Agreement
7 and all negotiations, proceedings, and documents prepared, and statements made in
8 connection therewith, shall be without prejudice to any Party and shall not be deemed or
9 construed to be an admission or confession by any Party of any fact, matter, or proposition of
10 law; and all Parties shall stand in the same procedural position as if the Settlement Agreement
11 had not been negotiated, made, or filed with the Court.

12 4. The Court appoints Eisner Advisory Group LLC as the Settlement Administrator.

13 5. The Court will hold a Final Approval Hearing pursuant to Civil Rule 23(e) on
14 _____, 2025 in the King County Courthouse, Courtroom _____, 516 Third
15 Avenue, Seattle WA at _____.m. for the following purposes:

- 16 (a) To determine whether the proposed settlement is fair, reasonable, and
17 adequate and should be granted final approval by the Court;
18 (b) To determine whether a final judgment should be entered dismissing the
19 claims of the Settlement Class with prejudice, as required by the
20 Settlement Agreement;
21 (c) To consider the application of Class Counsel for an award of attorneys'
22 fees, litigation expenses, and for a service award to the Class
23 Representative; and
24 (d) To rule upon other such matters as the Court may deem appropriate.

25 6. As is provided in the Settlement Agreement, within seven days of entry of this
26 Order, Defendants shall provide the names, any last known email addresses (to the extent
27

1 available) and last known home addresses for the Settlement Class Members to the Settlement
2 Administrator, who shall send the agreed upon Notices to the Settlement Class Members within
3 30 days of this Order (the "Notice Date") in accordance with the notice program set forth in the
4 Settlement Agreement. The Court also approves the Notices, which are attached to the
5 Settlement Agreement. To the extent the Parties or Settlement Administrator determine that
6 ministerial changes to the Notices are necessary before disseminating them to the Settlement
7 Class, they may make those changes without further application to the Court.

8 7. The Court finds this manner of giving notice fully satisfies the requirements of
9 Civil Rule 23 and due process, constitutes the best notice practicable under the circumstances,
10 including its use of individual notice to all Settlement Class Members who can be identified with
11 the available data and reasonable effort, and shall constitute due and sufficient notice to all
12 persons entitled thereto.

13 8. If a class member chooses to opt out of the Settlement Class, the class member
14 is required to submit an Opt-Out request to the Settlement Administrator, postmarked on or
15 before the date specified in the Notice, which shall be 60 calendar days from the Notice Date.
16 The Opt-Out request must clearly manifest the Settlement Class Member's intent to be
17 excluded from the Settlement Class, be signed by the Settlement Class Member, and may only
18 request exclusion for that one individual. No person within the Settlement Class, or any person
19 acting on behalf of or in concert or participation with that person, may submit an Opt-Out
20 request on behalf of any other person within the Settlement Class. "Mass" or "class" exclusion
21 requests shall not be permitted.

22 9. A class member who submits a valid and timely Opt-Out request shall be
23 excluded from the Settlement Class for any and all purposes. No later than seven days after the
24 deadline to opt out, the Settlement Administrator shall prepare a declaration listing all of the
25 valid Opt-Outs received and shall provide the declaration and list to Class Counsel and
26 Defendants' counsel, and Class Counsel will then report the names appearing on this list to the
27

1 Court before the Final Approval Hearing.

2 10. A Settlement Class Member who does not file a timely and valid Opt-Out
3 request shall be bound by all subsequent proceedings, orders, and judgments in this action
4 pertaining to the Settlement Class.

5 11. Any Settlement Class Member who wishes to be heard orally at the Final
6 Approval Hearing, or who wishes for any objection to be considered, must file a written notice
7 of objection with the Court and mail it to the Settlement Administrator no later than 60 days
8 after the Notice Date.

9 12. As set forth in the Settlement Agreement, the Objection must include the
10 following: (1) the Settlement Class Member's full name, current address, telephone number,
11 and email address; (2) the Settlement Class Member's original signature; (3) a statement of
12 the specific basis for the Objection and copies of any documents the Settlement Class Member
13 wishes to submit in support of the Objection; (4) the identity and telephone number of all
14 counsel representing the Settlement Class Member, if any; and (5) a statement of whether the
15 Settlement Class member intends to appear at the Final Approval Hearing, with or without
16 counsel. The Objection must be filed with the Court and served on the Settlement
17 Administrator.

18 13. Any Settlement Class Member who fails to timely file and serve a written
19 Objection pursuant to the terms of Settlement Agreement shall not be permitted to object to
20 the approval of the settlement or the Settlement Agreement and shall be foreclosed from
21 seeking any review of the settlement or the terms of the Settlement Agreement by appeal or
22 other means. A Settlement Class Member may withdraw an Objection by communicating the
23 withdrawal in writing to Class Counsel.

24 14. The Court approves the claims procedures set forth in the Settlement
25 Agreement. A valid Claim Form, as defined in the Settlement Agreement, must be submitted
26 online or postmarked no later than 90 calendar days after the Notice Date.

1 15. All briefs, memoranda, petitions, and affidavits to be filed in support of a service
2 award to the Class Representative and in support of Class Counsel’s application for fees and
3 expenses, shall be filed with the Court no later than 30 days after the Notice Date.

4 16. Any other briefs, memoranda, petitions, or affidavits that Class Counsel intends
5 to file in support of final approval shall be filed not later than 14 days after the deadline for
6 Opt-Outs and Objections. The Parties may file declarations from the Settlement Administrator
7 regarding any updates in information regarding notice, claims, and opt-outs, as well as
8 responses to any Objections, no later than 14 days before the Final Approval Hearing.

9 17. Neither this Preliminary Approval Order, nor the Settlement Agreement, shall
10 be construed or used as an admission or concession by or against Defendants or any of the
11 Released Persons of any fault, omission, liability, or wrongdoing, or the validity of any of the
12 Released Claims. This Preliminary Approval Order is not a finding of the validity or invalidity of
13 any claims in this lawsuit or a determination of any wrongdoing by Defendants or any of the
14 Released Persons. The preliminary approval of the Settlement Agreement does not constitute
15 any opinion, position, or determination of this Court, one way or the other, as to the merits of
16 the claims and defenses of Plaintiff, the Settlement Class Members, or Defendants.

17 18. The Court retains exclusive jurisdiction over this action to consider all further
18 matters arising out of or connected with the Settlement Agreement. All proceedings before the
19 Court are stayed pending final approval of the settlement, except as may be necessary to
20 implement the settlement or comply with the terms of the Agreement. The Court reserves the
21 right to adjourn or continue the date of the Final Approval Hearing without further notice to
22 Settlement Class Members, and retains jurisdiction to consider all further applications arising
23 out of or connected with the settlement. The Court may approve or modify the settlement
24 without further notice to Settlement Class Members.

25 19. Counsel are hereby authorized to take all reasonable steps in connection with
26 approval and administration of the Settlement not materially inconsistent with this Order or the
27

1 Agreement, including, without further approval of the Court, making minor changes to the
2 content of the Notices that they jointly deem reasonable or necessary.

3 IT IS SO ORDERED.

4 DATED this _____ day of _____, 2024.

7 _____
THE HONORABLE MICHAEL K. RYAN

8 Presented by:

9 TERRELL MARSHALL LAW GROUP PLLC

10 By: /s/ Beth E. Terrell, WSBA #26759

11 Beth E. Terrell, WSBA #26759
12 Email: bterrell@terrellmarshall.com
13 Amanda M. Steiner, WSBA #29147
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EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Southern Division

IN RE US FERTILITY, LLC

Master File No. 8:21-cv-299

DATA SECURITY LITIGATION

This Document Relates To: All Actions

**~~PROPOSED~~ ORDER GRANTING PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiffs Alec Vinsant, Marla Vinsant, Jane Doe 1, Lisa Cox, Nikitia Hollingsworth Forest, Doris Matthew, Jane Doe, Paul Porta, Kelly Jacobs, Heidi Schneider, Laura Peterson, Riley Fadness, Tiffany Hitaffer, Karen Logan, Raynard Stuckey, Samantha Stuckey, Britt Decker, Anne Strickland, Cristielly Santana, and Patrisia Vela, (collectively, "Plaintiffs") individually and on behalf of the proposed Settlement Class,¹ request that this Court grant their Motion for Final Approval of Class Action Settlement and enter final approval of a proposed Settlement of claims against Defendants US Fertility, LLC, Shady Grove Reproductive Science Center P.C., and Fertility Centers of Illinois, PLLC (together, "Defendants" or "USF"). For the reasons set forth herein, the Court GRANTS the Motion.

I. BACKGROUND

From November 2020 through January 2021, Defendants notified patients of its network of fertility clinics that US Fertility's systems were accessed during a ransomware attack perpetrated by an unauthorized party. US Fertility announced that between August 12 and September 14, 2020, the attackers acquired files containing Personally Identifiable Information

¹ Unless otherwise specifically defined herein, all capitalized terms have the same meanings as those set forth in the parties' Settlement Agreement ECF No. 106 ("S.A.").

(PII) and Personal Health Information (PHI) of the approximately 884,000 individuals that comprise the settlement class.

Beginning in January 2021, Plaintiffs began filing lawsuits in this Court: *Doe et al. v. US Fertility, LLC* (“Doe”), Case No. TDC-21-248 (D. Md. Jan. 28, 2021); *Vinsant v. US Fertility, LLC*, Case No. TDC-21-225 (Jan. 26, 2021); *Fadness v. US Fertility, LLC*, Case No. PJM-21-299 (Feb. 4, 2021); *Churchill v. US Fertility, LLC*, Case No. PWG-21-370 (Feb. 15, 2021); *Decker v. US Fertility, LLC*, Case No. PWG-21-404 (Feb. 17, 2021); *Mateson v. US Fertility, LLC*, Case No. PWG-21-466 (Feb. 23, 2021); *Stuckley v. US Fertility, LLC*, Case No. PWG-21-496 (Feb. 25, 2021); and *Forest v. US Fertility, LLC*, Case No. TDC-21-646 (Mar. 15, 2021). The Court consolidated these cases and appointed a team of counsel to lead the litigation for Plaintiffs. On June 7, 2021, Plaintiffs filed a consolidated class action complaint. (ECF No. 39). In July 2021, the Court consolidated *Mullinix v. US Fertility, LLC*, 1:21-cv-01430 and *Leonard v. US Fertility, LLC*, 1:21-cv-1783 with the previously consolidated cases. Plaintiffs amended their consolidated class action complaint on November 15, 2021 (ECF No. 60).

The First Amended Consolidated Class Action Complaint (“Consolidated Complaint”) asserts claims on behalf of a proposed nationwide class and state-specific subclasses for negligence, unjust enrichment, breach of confidence, declaratory and injunctive relief, breach of contract, California’s Confidentiality of Medical Information Act (“CMIA”), data privacy laws of Maryland and Virginia, and consumer protection laws of Maryland, Nevada, Florida, Illinois, Washington, North Carolina, Idaho, and Utah.

On November 22, 2021, Defendants filed a motion to dismiss the Consolidated Complaint and a motion to strike (ECF No. 65). After the motion to dismiss was fully briefed, the Court held

oral argument on April 28, 2022, on Defendants' motion to dismiss Plaintiffs' Consolidated Complaint (ECF No. 83).

On January 26, 2022, Plaintiffs moved to intervene in another case arising from the Data Breach, *Doe v. US Fertility*, No. 1:21-cv-00579 (N.D. Ill.), and sought to transfer it to this Court. Judge Feinerman of the United States District Court for the Northern District of Illinois granted Plaintiffs' motion as to the claims against Defendants and transferred the case on July 6, 2022. Plaintiffs moved to consolidate *Doe* with *In re: US Fertility, LLC Data Security Litigation*, No. 8:21-cv-299, on September 8, 2022.

Prior to filing their Consolidated Complaint, the Parties mediated this matter before mediator Bennett G. Picker on September 28, 2021. Although this mediation did not result in agreement on settlement terms, the Parties continued negotiations and agreed to engage in a second mediation on June 13, 2022 before Judge Morton Denlow (Ret.), a retired U.S. Magistrate Judge and an experienced mediator in assisting in the resolution of class litigation. The Parties were unable to reach an agreement as to settlement terms on that date. Ultimately, on October 4, 2022, Judge Denlow provided the Parties with a mediator's recommendation as to the monetary terms of the settlement. On October 10, 2022, after further negotiations among the Parties, counsel for the Parties reached a tentative agreement with regard to those terms. Thereafter, the Parties engaged in extensive negotiations relating to business practice commitments which are to be included as part of the settlement. All of these terms are incorporated into the Settlement Agreement executed by the Parties in August 2023.

On November 22, 2023, this Court granted preliminary approval of the proposed settlement and approved the issuance of notice to the Class. ECF No. 121. On January 29, 2024, Class Counsel

filed a Motion for Fees, Costs, and Service Awards. ECF No. 126. A hearing for final approval was held on April 18, 2024.

II. SETTLEMENT TERMS

A. The Proposed Class

The Settlement Agreement contemplates certification of the following Settlement Classes for settlement purposes only:

The Nationwide Class: All persons residing in the United States or its territories whose PII and/or PHI, as defined herein, was compromised in the Data Breach that US Fertility or its subsidiaries or partners first announced in November 2020.

The CMIA Subclass: All United States residents whose information was provided to a fertility clinic in California and whose PHI, as defined herein, was compromised in the Data Breach that US Fertility announced in November 2020.

S.A. ¶ 39.

B. Benefits to the Settlement Class

1. Monetary Benefits

The Settlement Agreement provides monetary benefits in the form of a common fund of \$5,750,000.00, from which shall be paid (1) all payments to Settlement Class members, (2) all Administrative Costs, (3) any Fee and Expense Award approved by the Court, and (4) any Service Awards to the Class Representatives approved by the Court. *See* S.A. ¶ 35. After payment of costs of administration and notice and any attorneys' fees, expenses, and service awards authorized by the Court, the Net Settlement Fund will be distributed to Settlement Class Members as described below. *Id.* ¶ 15.

Members of the Nationwide Class and the CMIA Subclass have submitted claims for (a) a payment of up to \$50 without any documentation; (b) reimbursement of up to four hours of Time Spent at \$25 per hour, capped at \$100.00, with a brief description of how and when the time was

spent and how the expenditure of time is related to the data breach and/or (c) reimbursement of Out-of-Pocket Losses of up to \$15,000 with documentation. *Id.* ¶¶ 53, 50, 48. Members of the CMIA Subclass also submitted claims for a statutory payment of up to \$200. Members of the Nationwide and CMIA subclass could claim more than one category of benefits but no one individual may receive in excess of the total sum of \$15,000. S.A. ¶ 62. Defendants identified approximately 884,090 records for Settlement Class Members and have represented that they had what they believed to be the most recent mailing addresses as of the time of notice. *Id.* After analyzing the data provided by Defendants and removing duplicative records, the Settlement Administrator identified an overall combined total of 881,215 unique records. ECF No. 128-1 at ¶¶ 3-5.

After de-duplication, processing for fraud, reduction on a pro rata share, payment of expenses, attorneys' fees, and costs of notice and administration, each of the 61,563 Settlement Class Member who submitted a valid claim will receive the following benefits. Settlement Class Members who claimed the Cash Payment option will receive \$26.95 for that portion of their claim. Settlement Class Members who qualified for the CMIA Cash Payment (residents of California) will receive \$107.80 for that portion of their claim. Those Settlement Class Members who had documented lost money will receive on average \$220.98 for that portion of their claim. Finally, those Settlement Class Members who made valid claims for lost time will receive on average \$39.53 for that lost time portion of their claim. ECF No. 128-1 at ¶¶ 14-18. As provided in the Settlement Agreement, many Class Members will receive payments under more than one of the categories for which they were eligible.

If a settlement check is not cashed within 90 days after the date of issue, the Settlement Administrator shall undertake the following actions: (1) attempt to contact the Settlement Class

Member by email and/or telephone to discuss how to obtain a reissued check; (2) if those efforts are unsuccessful, make reasonable efforts to locate an updated address for the Settlement Class Member using advanced address searches or other reasonable methods; and (3) reissuing a check or mailing the Settlement Class Member a postcard (either to an updated address if located or the original address if not) providing information regarding how to obtain a reissued check. S.A. ¶ 58. Any reissued Settlement Checks issued to Settlement Class Members shall remain valid and negotiable for 60 days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Settlement Class Members within that time. *Id.*

To the extent any funds remain in the Net Settlement Fund more than 150 days after the distribution of Settlement payments to the Settlement Class Members, or 30 days after all reissued settlement checks are no longer negotiable, whichever occurs later or as otherwise agreed to by the Parties, any remaining monies shall be divided pro rata and disbursed in a secondary distribution to the CMIA Subclass Members who submitted valid claims, except that if the remaining funds, after covering additional costs of administration, are insufficient to provide a secondary distribution of at least \$5.00 per eligible recipient, then they shall be distributed as required by state law or to the Non-Profit Residual Recipient as approved by the Court. *Id.* ¶ 59. In no event shall any remaining funds be returned to Defendants. *Id.*

2. Prospective Injunctive Relief

In addition to the monetary relief, the Settlement Agreement also includes important and valuable injunctive relief. As part of the Settlement, Defendants have already implemented or agreed to implement a number of contractual business practice commitments and remedial measures for at least three years following the Effective Date of the Settlement Agreement. *Id.* ¶ 65. These measures are designed to safeguard patients' PII and PHI, and are described in detail

in Exhibit A to the S.A., filed under seal. These commitments are substantial and their implementation is subject to verification by Defendants' counsel to Class Counsel throughout the commitment period.

C. The Settlement Here Compares Favorably to Settlements of Similar Cases

Data breach class action litigation is inherently risky and wades into uncharted territory as cases proceed to class certification and trial. While members of Class Counsel have certified both monetary and injunctive relief classes, successful motions for class certification are rare and no major data breach class action has ever proceeded to trial. Armed with extensive experience litigating data breach and privacy cases (and particularly class actions), Class Counsel state that the benefits available to Settlement Class Members compare favorably with the benefits in other data breach class action settlements. *See* ECF No. 112 at 3–4 (outlining the values that other recent class action data breach settlements have provided, ranging from under \$3 per class member with an average of \$5.74 per class member).

D. Settlement Administrator and Administration Costs

To date, the Settlement has been administered by Angeion Group (“Angeion”), a class action administration firm with extensive experience administering data breach class action settlements. ECF No. 128-2 at ¶ 45; ECF No. 104-2. All Administrative Costs shall be paid from the Settlement Fund. S.A. ¶ 42. As of February 2024, the Settlement Administrator estimates that it has incurred costs amounting to \$614,166.10 and agreed from the outset that the costs will not exceed \$779,500. ECF No. 104-2 at ¶ 26; ECF No. 128-1 at ¶ 22. The Settlement Administrator has overseen the provision of Class Notice to the Settlement Class Members and administration of the Common Fund. ECF No. 128-1 at ¶¶ 3–18.

E. Class Member Release

Upon the Effective Date, and in consideration for the Settlement Payment and for Defendants' other promises contained herein, each Settlement Class Member will be deemed to have released the Released Entities from all claims that were or could have been asserted by the Class Representatives or Settlement Class Members arising out of, or relating to, the Data Breach. S.A. ¶ 28. The release is appropriately tailored, in that it covers claims arising from the identical factual predicate to the claims asserted in the operative complaint.

III. NOTICE TO THE SETTLEMENT CLASS

After preliminary approval, the Parties provided Notice of the Settlement in accordance with the Parties' agreement and this Court's preliminary approval order. ECF No. 128-1 at ¶¶ 4–6. The Class Notice consisted of direct notice in the form of postcard notice, as well as a settlement website where Class Members could view and request to be sent the Long Form Notice. Postcard notice was sent to 875,416 Class Members for whom Defendants provided an address. ECF No. 128-1 ¶¶ 4–6. Of the 884,090 originally identified Settlement Class Members, approximately 875,416 postcard notices were sent, with only 18,408 undeliverable. Of these, approximately 11,791 were remailed on February 12, 2024, and then 2,649 were remailed on March 1, 2024. Altogether, the postcard notice program achieved over a 98% deliverable rate (*i.e.*, 18,408/880,490) for the Settlement Class, a figure that will only increase with the notices that were resent in February and March. ECF No. 128-1 ¶¶ 4–6.

The Class Notice adequately described the litigation and the Settlement Agreement and the procedures to opt out and object. The Notices further explained the amount of the Settlement, the plan of allocation, Class Counsel's intent to apply for an award of attorneys' fees and expenses and for Class Representative Service Awards, and the percentage and/or amounts that would be

requested. Notice was also provided to state and federal officers as required by the Class Action Fairness Act, 28 U.S.C. § 1715.

IV. LEGAL STANDARD FOR FINAL APPROVAL

Settlement of class actions must be approved by the Court. Fed. R. Civ. P. 23(e); *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991); *Whitaker v. Navy Fed. Credit Union*, No. 09CV2288, 2010 WL 3928616, at *2 (D. Md. Oct. 4, 2010); *McDaniels v. Westlake Servs., LLC*, No. CIV.A. ELH-11-1837, 2014 WL 556288, at *8 (D. Md. Feb. 7, 2014).

As of December 1, 2018, Fed. R. Civ. P. 23(e) provides specific guidance to federal courts in considering whether to grant final approval of a class action settlement. The Fed. R. Civ. P. 23(e)(2) final approval factors include whether: (A) the class representative and class counsel have adequately represented the class; (B) the proposal was negotiated at an arm's length; (C) the relief provided is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3);² and (D) the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2).

Before 2018, to determine whether a settlement meets the requirements of Fed. R. Civ. P. 23 and warrants final approval, the Fourth Circuit adopted a bifurcated analysis involving inquiries into the fairness and adequacy of the settlement, still utilized today. *Scardelletti v. Debarr*, 43 F. App'x 525, 528 (4th Cir. 2002); *In re Jiffy Lube Sec. Litig.*, 927 F.2d at 158; *Donaldson v. Primary Residential Mortg., Inc.*, No. CV ELH-19-1175, 2021 WL 2187013, at *3-4 (D. Md. May 28, 2021) (citing Fed. R. Civ. P. 23(e)(2) factors and *Jiffy Lube* factors in assessing final approval).

² The Settlement Agreement is the only relevant agreement here.

In assessing the fairness of a proposed settlement, the Court looks to the following Fourth Circuit factors: (1) posture of the case at the time the settlement is proposed; (2) extent of discovery that has been conducted; (3) circumstances surrounding the negotiations; and (4) experience of counsel in the relevant area of class action litigation. *Scardelletti*, 43 F. App'x at 528; *In re Jiffy Lube Sec. Litig.*, 927 F.2d at 159; *Robinson v. Nationstar Mortg. LLC*, No. 8:14-CV-03667-TJS, 2020 WL 8256177, at *2 (D. Md. Dec. 11, 2020), *aff'd sub nom. McAdams v. Robinson*, 26 F.4th 149 (4th Cir. 2022).

In determining the adequacy of the proposed settlement, the Fourth Circuit factors instruct the Court to consider: (1) the relative strength of plaintiff's case on the merits; (2) existence of any difficulties of proof or strong defenses plaintiff is likely to encounter if the case proceeds to trial; (3) anticipated duration and expense of additional litigation; (4) solvency of defendant and likelihood of recovery of a litigated judgment; and (5) degree of opposition to the settlement. *Scardelletti*, 43 F. App'x at 528; *In re Jiffy Lube Sec. Litig.*, 927 F.2d at 159; *Robinson*, 2020 WL 8256177, at *2. Many of these factors overlap with the Rule 23(e) factors cited above.³

V. FINDINGS

The Court finds that the Settlement Agreement is fair, reasonable, and adequate and warrants final approval under the applicable Fed. R. Civ. P. 23 and Fourth Circuit factors.

1. With respect to the adequacy and experience of counsel, Class Counsel and Defendants' Counsel are experienced in class action litigation. Moreover, it appears to the Court that the Class Representatives and Class Counsel have adequately represented the proposed

³ The Fourth Circuit has recognized that these "factors for assessing class-action settlements almost completely overlap with the new Rule 23(e)(2) factors." *In re: Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Pracs. & Prod. Liab. Litig.*, 952 F.3d 471, 484 n.8 (4th Cir. 2020).

Settlement Class. Class Counsel are experienced and sophisticated, with years of experience in complex class action litigation and litigation involving data privacy and security. The Class Representatives have also supervised the litigation by reviewing pleadings, reviewing the Settlement, and communicating with Class Counsel regarding the litigation. Rule 23(e)(2)(A) and the fourth fairness factor are satisfied.

2. “These adversarial encounters dispel any apprehension of collusion between the parties.” *In re NeuStar, Inc. Sec. Litig.*, No. 1:14–CV–885(JCC/TRJ), 2015 WL 5674798, at *10 (E.D. Va. Sept. 23, 2015). The Court finds that the Settlement was negotiated at arm’s length before experienced mediators and between experienced and sophisticated counsel. The settling Parties vigorously contested Defendants’ motion to dismiss, which included oral argument, and engaged in formal settlement mediation with two respected, experienced, and neutral mediators—Bennett G. Picker and subsequently Judge Morton Denlow (Ret.). The proposed settlement was reached after months of negotiation and after evaluating the merits of the case and defenses presented at dismissal. The Settlement satisfies Fed. R. Civ. P. 23(e)(2)(B), and the third *Jiffy Lube* fairness factor.

3. As to the posture of the case, it appears that the Settlement was reached after significant work was performed. Class Counsel engaged in a thorough investigation of the legal theories and Defendants’ practices prior to filing and throughout the litigation, and later reviewed and analyzed informal discovery from Defendants to understand and appreciate the facts and circumstances surrounding the data security incident. Class Counsel have litigated many similar data breach class actions and knew what information and data would be critical for resolving the Settlement Class’s claims. Thus, Class Counsel obtained through informal discovery information and data similar to what they would have received through the formal discovery process, while

allowing the Parties to focus their efforts on the merits of the causes of action and potential defenses. ECF No. 128-2 at ¶¶ 20–21. Plaintiffs have conducted sufficient investigation and discovery to permit Class Counsel and the Court to intelligently and fairly evaluate the fairness and adequacy of the Settlement. The provision of informal discovery is sufficient to satisfy this fairness factor. *In re Jiffy Lube*, 927 F.2d at 159 (recognizing that informal discovery can provide satisfactory information prior to preliminary approval); *see also Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 480 (D. Md. 2014) (finding proposed settlement met fairness factors where “parties ha[d] engaged in informal discovery, assuring sufficient development of the facts to permit an accurate assessment of the merits of the case”). Thus, the first two fairness factors are met: the case was sufficiently advanced and sufficient discovery was completed.

4. With regard to the adequacy of the Settlement, Fed. R. Civ. P. 23(e)(2)(C)(i), and the first two *Jiffy Lube* adequacy factors focus on the relief provided, in light of (1) the strength of the plaintiffs’ case on the merits, and (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial. *In re Jiffy Lube Sec. Litig.*, 927 F.2d at 159; Fed. R. Civ. P. 23(e)(2)(C)(i) (requiring evaluation of the relief provided, taking into account the costs and risks of trial and appeal). These factors weigh “how much the class sacrifices in settling a potentially strong case in light of how much the class gains in avoiding the uncertainty of a potentially difficult one.” *In re The Mills Corp. Securities Litig.*, 265 F.R.D. 246, 256 (E.D. Va. 2009). The Settlement relief is fair, reasonable, and adequate when balanced against the probable outcome of further litigation, liability, and damages issues, and potential appeals of rulings. While litigation presents serious risks at many stages, not to mention substantial expense and delay without any guarantee of additional benefit to the Settlement Class, the Settlement provides immediate and substantial benefits to over 881,215 Settlement Class Members. And these

benefits are substantial: without expending any costs or expenses for attorneys' time and efforts, individuals who make claims are automatically entitled to cash payments, reimbursement of time spent, and reimbursement of out-of-pocket expenses. *See* S.A. Because the Class Notice Plan was so successful and the claims rate was higher than anticipated, the Settlement Administrator will apply *pro rata* adjustments to reduce the amounts paid to individual Class Members. *Id.* Presently, the claims rate is approximately 6.99% and will result in each Settlement Class Member receiving approximately 50% to 55% of the projected presumptive amounts originally forecast.⁴ ECF No. 128-1 at ¶¶ 13–18. A *pro rata* reduction does not undercut Plaintiffs' Motion for Final Approval. *See, e.g., Boger v. Citrix Systems, Inc.*, 2023 WL 3763974 (D. Md. June 1, 2023) (approving settlement where potential *pro rata* share of the net settlement fund was still found to be fair and reasonable); *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665 (D. Md. 2013) (same).

5. The third *Jiffy Lube* adequacy factor (the anticipated duration and expense of additional litigation) also favors approval. This case is settling in its early stages; if the Settlement is not approved, the Parties will receive a ruling on Defendants' Motion to Dismiss, amend pleadings, and will likely need to litigate through multiple dispositive motions and a motion for class certification. ECF No. 128-2. The litigation would likely take years to resolve and involve expensive expert discovery and substantial time engaging in in protracted and expensive discovery disputes. *Id.* And of course, all Parties would need to spend significant resources preparing for trial. The drawn out and expensive process that further litigation would entail would lead to significant legal costs to both sides, but would not necessarily lead to a better result for the class. Thus, this factor favors approval. *See Edelen*, 2013 WL 3816986, at *9 (approving settlement

⁴ The claim rate is precisely 6.9864%. (881,215 x .069862 = 61,563).

where absent approval, “litigation of this dispute could prove to be long and expensive” and “require substantial time by the parties’ attorneys”).

6. There is nothing to indicate that Defendants are not solvent or could not satisfy any judgment, so the fourth *Jiffy Lube* adequacy factor is neutral.

7. The fifth *Jiffy Lube* factor—the degree of opposition to the settlement—also weighs heavily in favor of final approval. Of the approximate 881,215 Settlement Class Members, only 39 requested to opt-out of the Settlement, ECF No. 128-1 at ¶ 39, and only one objected to the settlement. ECF No. 127. While the number in this case are miniscule, even “[a] small number of objections and a low opt-out rate suggest that the proposed settlement is adequate.” *In re Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg. Sales Pracs.*, 2018 WL 11203065, at *6 (E.D. Va. Oct. 9, 2018), *aff’d sub nom In re: Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Pracs. & Prod. Liab. Litig.*, 952 F.3d 471, 485 (4th Cir. 2020) (“Finally, only 94 of the 178,859 class members who responded to the class-action settlement notice opted out of the settlement (about 0.05%), and 12 class members objected thereto (about 0.006%). Those figures provide further support for the settlement's adequacy.”); *see also Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 461 (D. Md. 2014) (“The fact that no class member objected supports final approval of the Settlement as fair, adequate, and reasonable.”). This support is particularly notable given that there were 355,282 page views of the Settlement Website Settlement and the Administrator fielded 752 calls totaling 3,542 minutes via telephone. ECF No. 128-1 at ¶¶ 9–12.⁵

8. This Court will overrule the single objection. ECF No. 128. The “objection” does not address any substantive component of the Settlement, such as the amount of monetary

⁵ Class Counsel also received direct calls from numerous class members which were unanimously positive.

compensation to the Class Members, the requested attorneys' fees, litigation costs. Or Service Awards. *See generally id.* Instead, this one objector suggested that a forensic specialist *may* have accessed his information and demanded that his information be deleted from Defendants' systems. *Id.* at 1. Class Counsel has confirmed that the forensic vendor has not retained any data it reviewed in connection with this incident. In addition, Defendants have agreed to stronger safeguards through the business practice changes and remediation efforts that were filed under seal as part of the Settlement in this case. *See* ECF No. 104 (including sealed exhibit outlining Defendants' agreements to business practice changes and remediation efforts). Those exact changes cannot be disseminated to the public precisely because of this one objector's concerns: it would provide confidential and sensitive information that nefarious actors could use in an attempt to gain access to Defendants' systems. The Court reviewed these proposals at the preliminary approval stage and found them to be adequate (ECF No. 121) and nothing has since changed to disturb that analysis. This Court is also sensitive to the possibility that Defendants cannot simply delete the Settlement Class Members PII/PHI data until this matter is finally resolved, as they may be required to preserve the PII/PHI data imposed by local, state, and/or national laws.

9. Finally, it appears to the Court that the Parties' proposed allocation of the Settlement, and plan for distribution is equitable and effective, as required by Rule 23(e)(2)(C)(ii). Under the settlement, Defendants will provide a \$5,750,000.00 cash common fund. The cash common fund will provide cash payments to Settlement Class Members, as well as Administrative Costs for notice and to administer the settlement, and any Fee and Expense Award and Service Awards that the Court may approve. Settlement Class Members are eligible for cash payments, as well as reimbursement for time spent and out-of-pocket expenses. S.A. ¶¶ 48–50. The Settlement Administrator has performed an initial assessment of all of these claims and has preliminarily

determined that a pro rata reduction of Settlement Class benefits is likely, reducing the monetary benefits to 50% to 55% of their presumptive values. ECF No. 128-1 at ¶¶ 14-18.

Importantly, Settlement Class Members were informed that these *pro rata* reductions could occur. *See* ECF No. 104 (Notice exhibits to Settlement informing that monetary benefits “are subject to pro rata adjustment”). Not a single Settlement Class Member objected to this potential reduction.

This method is consistent with the distribution of common funds in other data breach cases. *See, e.g., In re Hanna Andersson and Salesforce.com Data Breach Litig.*, No. 3:20-cv-812 (N.D. Cal.) (finally approved data breach settlement providing settlement benefits valued at \$2 per class member with pro rata adjustments equally across all forms of monetary relief); *In re 21st Century Oncology Customer Data Sec. Breach Litig.*, No. 8:16-md-02737 (M.D. Fla.) (same; value of \$3.64 per class member); *Monegato v. Fertility Centers of Illinois, PLLC*, No. 2022 CH 00810 (Ill. Cir. Ct.) (same; value of \$5.99 per class member); *Abubaker v. Dominion Dental USA Inc.*, No. 1:19-cv-1050 (E.D. Va.) (same; value of \$0.53 per class member).

10. These resulting monetary benefits that Settlement Class Members will receive are still well within norms. *See* ECF No. 112 at 3–4 (responding to the Court’s inquiry about a potential *pro rata* reduction, and outlining the values that other recent class action data breach settlements have provided, ranging from under \$3 per class member with an average of \$5.74 per class member). Even still, where Class Counsel estimated that each Settlement Class Member might receive value of approximately \$6.50 per claim, here, Settlement Class Members who have made claims stand to recover much higher amounts. *See* ECF No.128-1 at ¶¶ 14-18 (cash payments of approximately \$26.95; CMIA payments of approximately \$107.80; time spent reimbursement of approximately \$39.53; and out-of-pocket expenses recovered at approximately \$220.98). Taking

into account the risks of litigation (including no recovery should the case have an adverse result), these amounts are fair and reasonable.

The monetary benefits of the Settlement also are enhanced by Defendants agreeing to implement a number of contractual business practice commitments and remedial measures for at least three years following the Effective Date of the Settlement Agreement. S.A. ¶ 65. These measures are designed to safeguard patients' PII and PHI, and are described in detail in Exhibit A to the Settlement Agreement, filed under seal. These commitments are substantial and their implementation is subject to verification by Defendants' counsel to Class Counsel throughout that commitment period.

11. The proposed method of distributing relief is also effective. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii). The Parties have agreed upon an experienced Settlement Administrator to administer the settlement. *See generally* ECF No. 104. Settlement Class Members will have the option to choose to receive their payments digitally, and for those who do not so choose, the Settlement Administrator will mail checks to the Settlement Class Members, after running their addresses through the National Change of Address database.

12. The Court finds that early resolution of this Action will conserve the resources of the Parties and the Court, while at the same time, the Parties have vigorously litigated the legal issues and Defendants provided sufficient informal discovery to permit Class Counsel and the Court to intelligently evaluate the Settlement offered against the risks and benefits of continued litigation.

13. For all of the same reasons the Court preliminarily certified the Settlement Class, none of which have changed, the Court now grants final certification. Ascertainability is satisfied in this case, as the members of each class are identifiable (and have been identified) based on

objective criteria applied to records kept by Defendants. The Settlement Class is sufficiently numerous, including over 881,215 Settlement Class Members. There are common issues concerning Defendants' practices and policies that predominate over individual issues. The proposed Class Representatives are typical of the Class because their claims and the class claims against Defendants arise from the same course of conduct: the focus on a defendant's security measures in a data breach class action "is the precise type of question that makes class-wide adjudication worthwhile." *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 312 (N.D. Cal. 2018). And the proposed CMIA Subclass Representatives are typical of the CMIA Subclass because, like with the nationwide class, their claims are identical with the added element that they all provided their information to a fertility clinic in California. The proposed Class Representatives and Subclass Representatives have no conflicts with the respective classes, have participated in this action, and are adequate. Class Counsel are experienced and adequate. Finally, class treatment is superior because class-wide resolution is the only practical method of addressing the alleged violations at issue in this case. There are many class members with modest individual claims, most of whom likely lack the resources necessary to seek individual legal redress. *See Decohen*, 299 F.R.D. at 478 (finding superiority satisfied where "denial of the settlement will effectively foreclose relief for most class members as the harm each individual suffered will likely not justify the high costs of individual suits").

14. The Court also grants Plaintiffs' motion for attorneys' fees, reimbursement of litigation expenses, and Service Awards. Class Counsel have explained in their Motion for Attorneys' Fees, Expenses, and Service Awards why the proposed fees, costs, and service awards are reasonable and justified, including providing the Court with a detailed breakdown of each firm's attorneys' fees and costs with a supporting declaration detailing the tasks that Class Counsel

have undertaken to support the interests of the Settlement Class and the benefits secured—all on a contingency basis without any promise or guarantee of recovery. ECF No. 125. Since that filing, Class Counsel have incurred additional hours responding to inquiries from and assisting Settlement Class Members, preparing this Final Approval motion, working with the Settlement Administrator to review, analyze, and process requests from Settlement Class Members, responding to the single objection, and preparing for the Final Approval hearing. Class Counsel will incur additional attorneys' fees and costs supervising and seeing the administration of benefits to conclusion, addressing any appeals, and other matters to bring this Settlement and litigation to finality. ECF No. 128-2 ¶ 5.

The 33% request is well within the range of reasonableness for class action settlements in this District and Circuit. *See, e.g., Singleton*, 976 F. Supp. 2d at 685 (recognizing that fee awards in percentage-of-recovery class actions range as high as 40%); *Dickman v. Banner Life Ins. Co.*, 2020 WL 13094954, at *5 (D. Md. May 20, 2020) (39.5% of settlement fund) *aff'd* 28 F.4th 513 (4th Cir. 2022); *Wegner v. Carahsoft Tech. Corp.*, 2022 WL 316653, at *5 (D. Md. Feb. 1, 2022) (“A request for one-third of a settlement fund is common in this circuit and generally considered reasonable”); *Kelly*, 2020 WL 434479, at *3 (noting that “[c]ontingent fees of up to one-third are common in this circuit”) (collecting cases).

15. The requested costs are also reasonable. “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.” *Kabore v. Anchor Staffing, Inc.*, No. L–10–3204, 2012 WL 5077636, at *10 (D. Md. Oct. 17, 2012). The Fourth Circuit has stated that such costs may include “those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services.” *Spell v. McDaniel*, 852

F.2d 762, 771 (4th Cir. 1988) (internal quotations omitted). The Settlement Agreement provided for recovery of up to \$75,000, and Class Counsel are only requesting \$39,280.83. These include filing fees, mediation costs, and other costs necessary to pursue this litigation and secure the excellent settlement benefits available to Settlement Class Members. ECF No. 128-2 ¶ 6. The court therefore finds that these submissions support an award of \$39,280.83 in costs.

16. Service Awards are routinely made to class representatives in Fed. R. Civ. P. 23 class actions. *See, e.g., In re Tyson Foods, Inc.*, No. RDB-08-1982, 2010 WL 1924012, at *4 (D. Md. May 11, 2010). “Because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit.” *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998). To determine whether an incentive payment is warranted, a court should consider “the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefited from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation.” *Id.* Here, the Plaintiffs came forward to represent the interests of thousands of others, with very little personally to gain, as their individual alleged damages were very small. Before and during litigation, Plaintiffs had their highly sensitive financial information regarding their highly sensitive information surrounding fertility exposed. Plaintiffs participated in the litigation by reviewing the complaint and other filings and making themselves available to assist with discovery. And Plaintiffs all worked with counsel to initiate separate cases, assisted Class Counsel with the investigation of their claims and providing private information and documentation about themselves. Thus, this Court approves a \$2,500 award each for named Plaintiff. Similar to the requests for attorneys’ fees and costs, no objections have been made to the Service Awards, which indeed fall below amounts that are routinely upheld in this District. *See, e.g., Yost v. Elon Prop. Mgmt. Co-Lexford Pools 1/3, LLC*,

2023 WL 185178, at *10 (D. Md. Jan. 13, 2023) (approving \$5,000 service award and collecting cases approving \$3,500, 5,000, \$6,000, and \$7,000); *Boyd v. Coventry Health Care, Inc.*, 299 F.R.D. 451, 469 (D. Md. 2014) (same); *Alexander v. Carrington Mortg. Servs., LLC*, No. 1:20-cv-2369-RDB (D. Md. Nov. 10, 2022), ECF No. 67 (approving \$5,000 for each plaintiff).

VI. ORDER

Accordingly, the Court having considered the Motion for Final Approval of Class Action Settlement, it is hereby ORDERED that:

1. The Motion for Final Approval of Class Action Settlement, ECF No. 128, is GRANTED;
2. The proposed Settlement is approved as being fair, reasonable, and adequate pursuant to Rule 23(e);
3. Alec Vinsant, Marla Vinsant, Jane Doe 1, Lisa Cox, Nikitia Hollingsworth Forest, Doris Matthew, Jane Doe, Paul Porta, Kelly Jacobs, Heidi Schneider, Laura Peterson, Riley Fadness, Tiffany Hitaffer, Karen Logan, Raynard Stuckey, Samantha Stuckey, Britt Decker, Anne Strickland, Cristielly Santana, and Patrisia Vela are appointed as Class Representatives;
4. Lisa Cox, Heidi Schneider, Laura Peterson, and Patrisia Vela are appointed as Subclass Representatives;
5. John A. Yanchunis of Morgan & Morgan Complex Litigation Group, Gayle M. Blatt of Casey Gerry Schenk Francavilla Blatt & Penfield, LLP, Hassan A. Zavareei of Tycko & Zavareei LLP, David M. Berger of Gibbs Law Group LLP, and Nikoletta S. Mendrinos of Murphy, Falcon & Murphy are appointed as Class Counsel;
6. The Court awards \$1,914,750.00 in attorneys' fees and \$39,280.83 in reimbursed costs to Class Counsel;

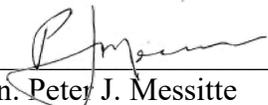
7. The Court approves Service Awards of \$2,500 to each of the Class Representatives;
and

8. Without affecting the finality of the Court's judgment in any way, the Court retains jurisdiction over this matter for purposes of resolving issues related to interpretation, administration, implementation, effectuation, and enforcement of the Settlement.

This Action is **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

Dated: 4/18/2024



Hon. Peter J. Messitte
United States District Judge

EXHIBIT 3

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

)	
MARGUERITE KUROWSKI and)	
BRENDA MCCLENDON, on behalf of)	
herself and others similarly situated,)	Case No. 1:22-cv-05380
)	
Plaintiffs,)	The Honorable Matthew F. Kennelly, Judge
vs.)	
)	
RUSH SYSTEM FOR HEALTH d/b/a)	
RUSH UNIVERSITY SYSTEM FOR)	
HEALTH,)	
)	
Defendant.)	
)	

**ORDER GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND RE-CERTIFYING THE SETTLEMENT CLASS**

On October 4, 2024, the Court entered an order granting preliminary approval of the Settlement Agreement between Defendant Rush System for Health (“Rush”) and Plaintiffs Marguerite Kurowski and Brenda McClendon (“Plaintiffs”), certifying the Settlement Class for injunctive relief purposes, appointing Settlement Class Counsel, appointing Plaintiffs as Settlement Class Representatives, and setting a schedule for final approval. Dkt. 152 (“Preliminary Approval Order”).

On November 15, 2024, Plaintiffs moved for final approval and re-certification of the Settlement Class. On December 17, 2024, the Court held a Final Approval Hearing to determine whether the proposed Settlement is fair, reasonable, and adequate, and whether judgment should be entered dismissing this litigation with prejudice. Having considered Plaintiffs’ Motion for Final Approval of Class Action Settlement; all supporting materials thereto; and the oral argument of counsel, **IT IS HEREBY ORDERED** as follows:

1. Defined Terms. This Order incorporates by reference the definitions in the Settlement Agreement (Dkt. 150-1), and all terms used in this Order shall have the same meanings as set forth in the Settlement Agreement unless otherwise noted.

2. Final Approval of the Settlement. The Court approves the Settlement Agreement, as fair, reasonable, and adequate, in accordance with Rule 23(e) of the Federal Rules of Civil Procedure. Specifically, the Court finds that the Settlement Class Representatives and Settlement Class Counsel have adequately represented the Settlement Class in all respects. The Court also finds that the Settlement was negotiated at arm's length by informed and experienced counsel after two years of hard-fought litigation on both sides. The injunctive relief provided to the Class under the Settlement Agreement is adequate and will provide a benefit to all Class Members, and more broadly to all visitors of Rush's web properties. Moreover, there would be substantial costs, risks and delay associated with proceeding to trial and potential appeal. Finally, the Court finds that the Settlement Agreement treats Settlement Class Members equitably relative to each other, and provides benefits equally to Members of the Settlement Class.

3. Injunction: Rush has agreed (Dkt. 150-1, ¶¶ 2.1-2.3), and the Court hereby orders, as follows: Rush shall adopt, implement, and/or maintain the following privacy commitments:

(1) Pursuant to the Settlement Agreement, ¶ 2.1, and for a period of two years, Rush shall remove any remaining vestiges of the following tracking technologies on Rush's Websites:

- a. Google Analytics
- b. Google DoubleClick
- c. Google Ads
- d. Meta (including Facebook, Instagram, and all other Meta entities)
- e. Amazon
- f. TikTok
- g. Pinterest
- h. Liveramp

- i. TheTradeDesk
- j. LinkedIn (except for on Rush's careers page)
- k. Oracle
- l. BidSwitch
- m. Yahoo
- n. Bidtellect
- o. Twitter / X
- p. Rubicon Project
- q. YouTube
- r. Hotjar
- s. CrazyEgg

For purposes of this injunction, the term "Websites" shall be defined to mean www.rush.edu, doctors.rush.edu, and mychart.rush.edu.

- (2) Pursuant to the Settlement Agreement, ¶ 2.2, Rush may use HIPAA-compliant third-party companies to perform analytics and de-identifying functions on Rush's Websites, so long as Rush has a Business Associate Agreement with the third-party.
- (3) Pursuant to the Settlement Agreement, ¶ 2.3, on an annual basis each year following the date of this Order, for a two-year period, Rush shall provide Class Counsel with a declaration, signed under oath, attesting to continued compliance with the above-stated requirements. Service shall be made on Class Counsel as follows (email service shall be sufficient):

Jason 'Jay' Barnes
SIMMONS HANLY CONROY LLP
112 Madison Avenue, 7th Floor
New York, NY 10016-7416
jaybarnes@simmonsfirm.com

-and-

Nada Djordjevic
DICELLO LEVITT LLP
Ten North Dearborn St., Sixth Floor
Chicago, IL 60602
ndjordjevic@dicellolevitt.com

4. Class Definition & Certification. The Court incorporates its preliminary conclusions in the Preliminary Approval Order (Dkt. 152) regarding the satisfaction of Federal Rule of Civil Procedure 23(a) and (b) and re-certifies, solely for purposes of the Settlement Agreement and this Final Approval Order, the following Settlement Class:

All Rush University System for Health, Rush University Medical Center, Rush Oak Park Hospital, Rush Copley Medical Center, Rush Medical Group, and any and all predecessor entities' patients who are current Rush MyChart patient portal users and/or account holders.

5. Settlement Class Representatives. The Court re-appoints Margeurite Kurowski and Brenda McClendon as Settlement Class Representatives and concludes they have fairly and adequately represented the Settlement Class and shall continue to do so.

6. Settlement Class Counsel. The Court re-appoints Jason 'Jay' Barnes of Simmons Hanly Conroy LLP and Nada Djordjevic of DiCello Levitt LLP as Co-Lead Settlement Class Counsel for the Settlement Class (together, "Class Counsel"). Class Counsel have fairly and adequately represented the Settlement Class and shall continue to do so.

7. Class Notice. Because this Settlement provides injunctive relief to and for the Settlement Class, the Court finds and determines that providing notice to the relevant federal and state regulatory authorities pursuant to 28 U.S.C. § 1715 (the "CAFA Notice"), constitutes sufficient notice of the matters and fully satisfies the requirements of due process, Rule 23(e) of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and all other applicable laws and rules.

See, e.g., Jeanne and Nicolas Stathako, et al., v. Columbia Sportswear Co., et al., No. 4:15-CV-04543-YGR, 2018 WL 582564, at *3 (N.D. Cal. Jan. 25, 2018) (“In injunctive relief only class actions certified under Rule 23(b)(2), federal courts across the country have uniformly held that notice is not required.”) (collecting cases); *Lilly v. Jamba Juice Co.*, No. 13-CV-02998-JST, 2015 WL 1248027, at *9 (N.D. Cal. Mar. 18, 2015) (“Because, even if notified of the settlement, the settlement class would not have the right to opt out from the injunctive settlement and the settlement does not release the monetary claims of class members, the Court concludes that class notice is not necessary.”); *Jermyn v. Best Buy Stores, L.P.*, No. 08 CIV. 214 CM, 2012 WL 2505644, at *12 (S.D.N.Y. June 27, 2012) (quoting *Green v. Am. Express Co.*, 200 F.R.D. 211, 212–13 (S.D.N.Y. 2001)) (“Courts have held that no notice is required under several circumstances, including . . . ‘when the settlement provides for only injunctive relief, and therefore, there is no potential for the named plaintiffs to benefit at the expense of the rest of the class, . . . when there is no evidence of collusion between the parties, and . . . when the cost of notice would risk eviscerating the settlement agreement.’”).

8. Attorneys’ Fees, Expenses & Service Awards. Class Counsel separately move for an award of attorneys’ fees, expenses and service awards. The Court will issue a ruling on that motion separately.

9. Release. The Settlement Class Representatives and all Settlement Class Members conclusively are deemed to have fully, finally, and forever released any claims for injunctive relief against defendant Rush System for Health (and Rush conclusively is deemed to have fully, finally, and forever released claims against Plaintiffs) to the extent defined under the terms and as set forth in the releases in the Settlement Agreement. The Settlement Class Representatives (but not any other members of the Settlement Class) also release their individual claims for money damages, as also defined under the terms and as set forth in the releases in the Settlement Agreement.

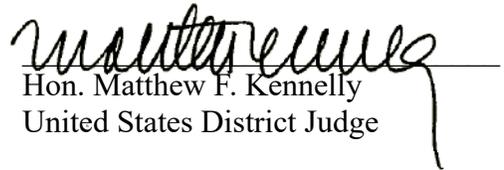
10. Retention of Jurisdiction. The Court will retain jurisdiction over this litigation and the Parties with respect to the interpretation, implementation, and enforcement of the Settlement Agreement for all purposes.

11. Dismissal. The Court hereby dismisses this litigation in its entirety with prejudice, and without fees or costs except as otherwise provided for herein.

NOW, THEREFORE, the Court hereby GRANTS Plaintiffs' Motion for Final Approval and Re-Certification of the Settlement Class. A Judgment per Fed. R. Civ. P. 58 will be entered separately.

IT IS SO ORDERED:

Date: 12/17/2024


Hon. Matthew F. Kennelly
United States District Judge