

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

<p>KEEFE JOHN, TODD KNUTH, <i>and</i>, NORM WALKER, <i>on behalf of themselves and all others similarly situated</i>,</p> <p style="text-align:center">Plaintiffs,</p> <p>v.</p> <p>DELTA DEFENSE, LLC and UNITED STATES CONCEALED CARRY ASSOCIATION, INC.,</p> <p style="text-align:center">Defendants.</p>	<p>Case No. 23-CV-01253</p> <p>Judge Lynn Adelman</p>
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**PLAINTIFFS’ UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Under Federal Rule of Civil Procedure 23(e), Plaintiffs Keefe John, Todd Knuth, and Norm Walker (collectively, “Plaintiffs”) respectfully move this Court to enter the proposed Order Granting Preliminary Approval of Class Action Settlement (attached as **Exhibit 1**). Plaintiffs consulted with Defendants before filing this Motion and this Motion is unopposed. The grounds for the Court’s granting of this unopposed Motion are included in the accompanying Memorandum in Support of Preliminary Approval of Class Action Settlement as well as the additional exhibits.

Date: November 7, 2025

Respectfully submitted,

/s/ David S. Almeida

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CERTIFICATE OF SERVICE

I, David S. Almeida, an attorney, hereby certify that on November 7, 2025, I electronically served the foregoing on all counsel of record via the Court's CM/ECF system.

/s/ David S. Almeida _____

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

KEEFE JOHN, TODD KNUTH, *and*,
NORM WALKER, *on behalf of*
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v.

DELTA DEFENSE, LLC and UNITED
STATES CONCEALED CARRY
ASSOCIATION, INC.,

Defendants.

Case No. 23-CV-01253

Judge Lynn Adelman

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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PRELIMINARY STATEMENT

Pursuant to Federal Rule of Civil Procedure 23(e), Plaintiffs Keefe John, Todd Knuth, and Norm Walker (“Plaintiffs”) respectfully submit this memorandum of law in support of their Unopposed Motion for Preliminary Approval of Class Action Settlement with Defendants Delta Defense, LLC and United States Concealed Carry Association, Inc. (“Defendants,” and together with Plaintiffs, the “Parties”).¹ This putative class action lawsuit concerns Defendants’ alleged disclosure of Plaintiffs’ and Class Members’ personal identifying information. Plaintiffs allege that this information included, among other things, first name, last name, email, and mobile phone alongside their video viewing histories (collectively, “Personal Information”) without their consent. Plaintiffs further allege that this Personal Information was shared with third parties like Meta Platforms, Inc. (“Meta” or “Facebook”) through tracking technologies such as the Meta Pixel and Google Analytics (“Third-Party Technologies”) that were installed on Defendants’ Website.

While Defendants deny Plaintiffs’ allegations and claims and deny any liability whatsoever, the Parties have decided to settle the Action to avoid the expense, risk, exposure, inconvenience, uncertainty, and distraction of continued litigation relating to Defendants’ alleged use of Third-Party Technologies. The Settlement will provide substantial cash benefits; specifically, if preliminarily and finally approved, Defendants will create a \$1,450,000.00 non-reversionary Settlement Fund from which all Settlement Class Members will receive an equal, pro rata share after deducting for all court-approved costs and expenses.

As explained herein, the terms of the proposed Settlement are fair, adequate, and reasonable; the proposed Settlement Class meets the requirements for certification for purposes of

¹ Unless otherwise indicated, capitalized terms refer to and have the same meaning as set forth in the Settlement Agreement (“Settlement Agreement” or “SA”), which is attached as **Exhibit A** to the Declaration of David Almeida in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval (“Almeida Decl.”).

settlement; and the proposed Notice provides the best practicable notice under the circumstances and comports with Fed. R. Civ. P 23(c)(2). Notably, Defendants do not oppose the relief requested in this Motion.

Accordingly, Plaintiffs respectfully request that this Honorable Court take the first step in the approval process and enter the proposed Preliminary Approval Order, (i) granting preliminary approval of the proposed Settlement; (ii) conditionally certifying for settlement purposes the Settlement Class contemplated by the Settlement Agreement; (iii) ordering that the proposed Notice be sent to the Settlement Class; and (iv) scheduling a Final Approval Hearing to consider final approval of the proposed Settlement, as well as approval of attorneys' fees and expenses and Service Awards to Plaintiffs.

BACKGROUND

A. Summary of the Action.

On September 21, 2023, Plaintiff Keefe John filed a class action complaint in the United States District Court for the Eastern District of Wisconsin, captioned *John, et al. v. Delta Defense LLC, et al.*, which was assigned civil case number 2:23-cv-01253. *See* Dkt. No. 1. The initial complaint alleged one cause of action against Defendants for violating the Video Privacy Protection Act (the "VPPA") 18 U.S.C. § 2710, *et seq. Id.*

Following the filing of the initial complaint, the Parties exchanged numerous letters and participated in meet-and-confers regarding Plaintiff John's claims and Defendants' defenses. *See* Almeida Decl. ¶ 9. On December 20, 2023, Defendants filed their answer and affirmative defenses to the initial complaint. *See* Dkt. Nos. 12 & 15. In January 2024, the Parties completed their Rule 26(f) meeting. *See* Dkt. No. 17. On February 15, 2024, Plaintiff John filed an amended complaint,

adding Plaintiff Jorge Hutchings to the lawsuit. *See* Dkt. No. 21.² The operative complaint alleged one cause of action against Defendants for violating the VPPA. On February 29, 2024, Defendants answered the operative complaint. *See* Dkt. No. 22. The Parties began formal discovery, including participating in numerous meet-and-confers and reviewing produced documents. *See* Almeida Decl. ¶ 12. Following formal discovery and mediation-related conversation, Plaintiffs filed a Second Amended Complaint adding Plaintiffs Todd Knuth and Norm Walker to the lawsuit, alleging Defendants' violation of the VPPA. *See* Dkt. No. 41.

B. The Parties Conducted Extensive Settlement Negotiations.

In August 2024, the Parties agreed to mediate the case before Hon. Mary Anne Mason (ret.) of JAMS. *See* Almeida Decl. ¶ 14. Between August and November 2024, the Parties continued formal discovery and mediation-related discussions and negotiations. *Id.* ¶ 15. On November 8, 2024, the Parties participated in a remote mediation with Hon. Mary Anne Mason. *Id.* ¶ 16. Throughout their negotiations, the Parties engaged in an extensive evaluation and discussion of the relevant facts and law, and the Parties carefully considered the risk and uncertainties of continued litigation. *Id.* ¶¶ 12-15. The November mediation was productive but did not result in a settlement. *Id.* ¶ 16-17

Following the November mediation, the Parties continued settlement-related negotiations and discovery. *Id.* ¶ 18. On December 9, 2024, the Parties had a second remote mediation session with Hon. Mary Anne Mason, which was productive but did not result in settlement. *Id.* ¶ 19. The Parties continued to negotiate the terms of a class settlement for several months and ultimately signed a term sheet on March 19, 2025. *Id.* ¶¶ 20-22. Following agreement on the term sheet, the Parties negotiated the terms of the comprehensive Settlement Agreement. *Id.* ¶ 25. In June 2025,

² Plaintiff Jorge Hutchings was dismissed from the case with prejudice on October 14, 2025. *See* Dkt. No. 55.

however, counsel for Plaintiffs learned of the death of former Plaintiff Jorge Hutchings and, on June 5, 2025 filed a Suggestion of Death. Dkt. No. 47. On October 14, 2025, the Court dismissed Mr. Hutchings with prejudice. The Parties have now finalized their Settlement Agreement, which is being presented to the Court for review and preliminary approval.

SUMMARY OF THE PROPOSED SETTLEMENT

As detailed herein, the proposed Settlement provides a straightforward claims process by which Settlement Class Members may obtain an award from the Settlement or exclude themselves or object. In exchange for monetary benefits, the Settlement Class Members will release any and all claims against Defendants arising from or related in any way to the claims that have been brought or could have been brought in the Action.

A. The Settlement Class.

Further to the Settlement Agreement and Federal Rule of Civil Procedure Rule 23(b)(3), the Parties agree to the conditional certification for settlement purposes of the following Class:

All persons in the United States who had an account (free or paid) with a Defendant and visited a page on a Defendant's website housing a video behind a paywall or subscription wall between September 21, 2020 to June 2, 2025.

SA, ¶ 1.29. The Settlement Class consists of approximately 295,727 individuals. *See* Almeida Decl. ¶ 38. Excluded from the Settlement Class are the following individuals and/or entities: (i) Defendants and their parents, subsidiaries, officers and directors, and any entity in which Defendants have a controlling interest; (ii) all persons who submit a timely and valid request for exclusion from the Settlement Class; and (iii) the Judge assigned to this Action as well as their immediate family and staff. SA, ¶ 1.29.

B. The Settlement Benefits to the Class.

Under the Settlement, Defendants will establish a \$1,450,000.00 non-reversionary Settlement Fund from which Class Members submitting valid claims will receive pro rata cash payments of the amount remaining in the Settlement Fund after deduction of all court-approved costs and expenses including Settlement Class Counsel's attorneys' fees and expenses, the Settlement Administrator's fees and expenses, and Service Awards to the Class Representatives. SA, ¶¶ 1.32, 3.2.1. To participate in the Settlement and receive a cash payment, Class Members merely need to submit a paper or online Claim Form on or before the Claim Deadline. *Id.* ¶ 5.1.

The Parties negotiated the settlement benefits and structure as fair compensation by discussing, among other things, the type of Personal Information allegedly collected and shared by Defendants and the amount of alleged damages this sharing caused Plaintiffs and Class Members. Here, the benefits to the Class outweigh the risk, time delay, and net expected value of continued litigation.

C. Scope of the Release of the Class's Claims.

In exchange for Defendants \$1,450,000.00 payment, Plaintiffs and Class Members will release and discharge Defendants from any and all claims asserted in the operative complaint against Defendants and their directors, officers, members, managers, employees, general partners, limited partners, principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, joint ventures, assigns, or related entities, and those working on behalf of each of them, and each of their respective executors, successors, assigns, and legal representatives that arise out of or are related to the Action. SA, ¶¶ 1.23-1.24.

D. Class Representative Service Awards.

Class Representatives have diligently pursued this matter on behalf of themselves and the Class Members. As part of the negotiated Settlement, Class Representatives will seek Service

Awards in the amount of \$2,000.00 each, subject to Court approval. SA, ¶ 2.1.3. The Service Awards are fair, reasonable, and adequate because of Class Representatives' efforts on behalf of the Class and the substantial recovery achieved for the Class in this case. The Parties did not discuss Service Awards until after the amount of the Settlement Fund was agreed upon. *See* Almeida Decl. ¶ 31.

E. Attorneys' Fees & Litigation Expenses.

The Settlement permits proposed Settlement Class Counsel to seek an award for attorneys' fees, costs, and expenses up to one third of the Settlement Fund (totaling \$483,333.00). SA, ¶ 2.1.4. Class Counsel's experience in data privacy class action matters and ability to efficiently manage this Action were vital in procuring the Settlement Fund. *See* Almeida Decl. ¶¶ 49-60. The Parties did not discuss attorneys' fees and litigation expenses until after the amount of the Settlement Fund was agreed upon.. *Id.* ¶ 31.

F. Settlement Administration & Notice to the Settlement Class.

The Parties have agreed, subject to Court approval, to utilize RG/2 Claims Administration, LLC ("RG/2") as the Settlement Administrator for this Action. SA, ¶ 1.28. RG/2 has vast experience handling the settlement administration for class action settlement, including many data privacy class actions such as this one. *See* Declaration of Melissa E. Baldwin Regarding Notice Administration, attached here to as **Exhibit 2**, ¶ 3 ("RG/2 Decl."). The proposed Notice program in this case is robust and will provide notice to the Settlement Class Members via individual email notice for all Class Members for whom Defendants have a valid email address and by USPS regular mail to the postal addresses of Class Members for whom email addresses are not available (attached to the Settlement Agreement as Exhibit B). *Id.* ¶ 7.

The notice documents are clear and concise and directly apprise Class Members of all the information they need to know to make a claim or to opt-out of or object to the Settlement. *See*

SA, Exhibits 2-5 (long-form notice, short-form notice, postcard notice claim form, electronic claim form). A Settlement Website will be established and administered by the Settlement Administrator and shall contain information about the Settlement, including electronic copies of the exhibits to the Settlement Agreement (or any forms of these notices that are approved by the Court), the Settlement Agreement, and all Court documents related to the Action and Settlement such as the operative complaint. *Id.* ¶ 4.3. The Settlement Website is viewed as an important piece of the notice plan to Class Members. The Settlement Administrator will also have a toll-free telephone number that Class Members can call with questions. *Id.* ¶ 4.5.

G. Class Members' Right to Opt-Out or Object.

Class Members have 60 days from the notice date to Opt-Out of or Object to the Settlement. SA, ¶ 1.26. The Settlement Agreement will not bind Settlement Class Members who timely and validly request to be excluded (also known as opting out) from the settlement. *Id.* ¶ 6.2. Individual requests for exclusion may be submitted to the Settlement Administrator electronically (through the Settlement Website) or by postal mail. *Id.* All requests for exclusion must be in writing and must: (a) clearly identify the case name and number; (b) include the full name and the unique identification number for the Settlement Class Member assigned by the Settlement Administrator; (c) include the address, telephone number, and email address of the Settlement Class Member seeking exclusion; (d) contain a statement that the requestor does not wish to participate in the settlement; and (e) be signed personally by the Settlement Class Member. *Id.* ¶ 6.2.1. The Settlement Website shall contain a copy of an Opt-Out Form, substantially similar to the form attached as Exhibit 6, that Settlement Class Members may (but are not required to) use to request exclusion from the settlement. *Id.*

Objections may be submitted to the Settlement Administrator by email, or to either the Settlement Administrator or the Court by postal mail. *Id.* ¶ 6.1. All objections and supporting

papers must be in writing and must: (a) clearly identify the case name and number; (b) include the full name and the unique identification number for the Settlement Class Member assigned by the Settlement Administrator; (c) include the address, telephone number, and email address of the objecting Settlement Class Member; (d) provide a detailed explanation stating the specific reasons for the objection, including any legal and factual support and any evidence in support of the objection; and (e) include the full name, address, telephone number, and email address of the objector's counsel, the state bar(s) to which counsel is admitted, and any objections filed in the last two years (if the objector is represented by counsel). *Id.* ¶ 6.1.1. The objection will not be valid if it only objects to the lawsuit's appropriateness or merits. *Id.* All Class Members will be apprised of their right to opt-out or object to the Settlement through the Notice Program, including the Postcard Notice and this information will be included on the Settlement Website.

LEGAL STANDARD

Federal Rule of Civil Procedure 23(e) requires judicial approval of any proposed settlement of claims brought on behalf of a class. *See* Fed. R. Civ. P. 23(e) (“The claims . . . of a certified class—or a class proposed to be certified for purposes of settlement—may be settled . . . only with the court’s approval.”). Courts may approve a proposed class settlement upon a “finding that [the settlement] is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). To assist the Court, Rule 23(e)(1)(A) requires the Parties to “provide the Court with information sufficient to enable it to determine whether to give notice of the proposal to the class.”

Public policy generally favors and encourages settlements. *See, e.g., Nat’l Cas. Co. v. White Mountains Reinsurance Co. of Am.*, 735 F.3d 549, 556 (7th Cir. 2013). There is an “overriding public interest in favor of settlement of class actions.” *Donovan v. Estate of Fitzsimmons*, 778 F.2d 298, 307 (7th Cir. 1985) (cleaned up); *see also McKinnie v. JP Mogan*

Chase Bank, NA, 678 F. Supp. 2d 806, 811 (E.D. Wis. 2009) (“Federal courts look favorably upon the settlement of class action lawsuits.”).

When preliminary approval of a class action settlement is sought under Rule 23(e), the Court must consider three essential factors: (i) whether it is probable the class will be certified for purposes of judgement on the proposed settlement; (ii) whether the proposed settlement is within the range of possible approval with regard to the criteria included in Rule 23(e)(2); and (iii) direct notice to the class in a manner that is practicable under the circumstances of the case. *See Holloway v. Kohler Co.*, 2024 WL 3518644, at *3 (E.D. Wis. July 24, 2024). The second factor, whether the proposed settlement is within the range of potential possible approval, balances six criteria including (i) the strength of Plaintiffs’ case on the merits, balanced against the extent of the settlement offer; (ii) the complexity, length, and expense of further litigation; (iii) the amount of opposition to the settlement; (iv) the reaction of Class Members to the settlement; (v) the opinion of competent counsel; and (vi) the stage of the proceedings and the amount of discovery completed. *See, e.g., Wong v. Accretive Health, Inc.*, 773 F.3d 859, 863 (7th Cir. 2014) (citation omitted); *In re Advoc. Aurora Health Pixel Litig.*, 740 F. Supp. 3d 736, 748 (E.D. Wis. 2024).

If the Court finds the Settlement within the range of possible approval at the time of preliminary approval, notice of the Settlement will be given to Class Members and a hearing scheduled to consider final approval. Accordingly, the Court assesses the ultimate question of fairness only at the final hearing, after notice of the Settlement has been given to Class Members and after Class Members have had the opportunity to voice their view of the settlement. *See Moore’s Federal Practice*, 23.165[3] (3d ed. 2005). Indeed, “[i]n this circuit, the practice is for the court to give its preliminary approval after reviewing the proposed settlement and then to give

final approval after notifying the class members and holding a hearing.” *Jones v. Crusin’ Chubbys Gentlemen’s Club*, 2018 WL 11236460, at *1 (W.D. Wis. Nov. 21, 2018).

Plaintiffs now request that the Court grant preliminary approval of the Settlement, which only requires that the Court find that the proposed Settlement is fair, reasonable, adequate, and “within the range of possible approval.” *Bills v. TLC Homes Inc.*, 2020 WL 5982880, at *1 (E.D. Wis. Oct. 8, 2020).

DISCUSSION

I. The Settlement Class Should be Certified for Settlement Purposes.

To determine whether the Court will likely be able to certify the Settlement Class for purposes of entering judgment on the Settlement, the Court looks to the requirements of Rule 23(a) (numerosity, commonality, typicality, and adequacy) and the requirements of any subsection of Rule 23(b), here subsection (b)(3) (predominance and superiority). For the reasons set forth below, the Settlement Class satisfies all the necessary requirements for certification.

A. The Settlement Class Satisfies the Requirements of Rule 23(a).

Certification is appropriate under Rule 23(a) if: “(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a). Settlement classes are routinely certified in similar cases dealing with consumer data privacy. *See, e.g., In re Advoc. Aurora Health Pixel Litig.*, 740 F. Supp. 3d at 767 (granting final approval).

1. The Class of Nearly 300,000 Individuals Satisfies Numerosity.

The numerosity requirement under Rule 23(a)(1) is satisfied where the class is so numerous that joinder of all Class Members is impracticable. Fed. R. Civ. P. 23(a)(1). The Seventh Circuit has deemed forty class members to be sufficient to establish numerosity. *See, e.g., Swanson v. Am. Consumer Indus., Inc.*, 415F.2d 1326, 1333 n.9 (7th Cir. 1969). Wisconsin federal courts have similarly found that hundreds of class members satisfies Rule 23’s numerosity requirement. *See Holloway*, 2024 WL 3518644, at *3 (finding approximately 500 sufficient); *see also Arandell Corp. v. Xcel Energy Inc.*, 2023 WL 2387813, at *2 (W.D. Wis. Mar. 7, 2023) (finding thousands sufficient). Here, the approximately 295,727 Class Members satisfy numerosity. *See Almeida Decl.* ¶ 38.

2. Common Questions of Law and Fact Exist.

Rule 23(a)(2) requires that there be “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). The Supreme Court has stated that Rule 23(a)(2)’s commonality requirement is satisfied where Plaintiffs assert claims that “depend upon a common contention” that is “of such a nature that it is capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Both the majority and dissenting opinions in that case agreed that “for purposes of Rule 23(a)(2) even a single common question will do.” *Id.* (cleaned up).

Here, there are questions of law and fact common to the proposed Class that predominate over any individual questions. These questions include, but are not limited to:

- Whether Defendants use the Meta Pixel to capture and to disclose Plaintiffs’ and Class Members’ video viewing history;

- Whether Defendants’ alleged use of the Meta Pixel to capture and disclose Plaintiffs’ and Class Members’ video viewing history was without user consent and authorization;
- Whether Defendants obtained and shared or caused to be obtained and shared Plaintiffs’ and Class members’ Personal Information through tracking using Meta Pixel;
- Whether Defendants’ conduct violates the VPPA;
- Whether Defendants’ alleged acquisition and transmission of Plaintiffs’ and Class members’ Personal Information resulted in harm; and
- Whether Defendants should be enjoined from engaging in such alleged conduct in the future.

These common questions, and others alleged by Plaintiffs in their operative Complaint, are central to the single cause of action brought under the VPPA here and can be addressed on a class-wide basis. Thus, Plaintiffs have met the commonality requirement of Rule 23. *See, e.g., Linman v. Marten Transp., Ltd.*, 2024 WL 2974831, at *1 (W.D. Wis. June 13, 2024) (finding commonality met); *Fox v. Iowa Health Sys.*, 2020 WL 5678704, at *1 (W.D. Wis. Sept. 16, 2020) (same).

3. Class Representatives’ Claims are Typical of the Class Members’ Claims.

To satisfy the typicality requirement of Rule 23(a)(3), the claims or defenses of the representative parties must be typical of the claims or defenses of the class. “[A] plaintiff’s claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory.” *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992) (internal citations omitted). Typicality seeks to ensure that there are no conflicts between the class representatives’ claims and the claims of the Class Members represented. Moreover, “[t]he typicality requirement may be satisfied even if there are factual distinctions between the claims of the named plaintiffs and those of other class members.” *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983).

Here, Plaintiffs' claims are typical of the claims of the Class because they arise out of the same course of conduct by Defendants—their alleged use of Third-Party Technologies—and rest on the same legal theory—whether Defendants disclosed Plaintiffs' Personal Information without authorization to third parties. The legal and factual arguments that Plaintiffs representing the Settlement Class advance are the same arguments that other Settlement Class Members would advance in support of their claims. As such, Rule 23(a)(3)'s typicality requirement is satisfied.

4. Class Representatives & Class Counsel Adequately Represent the Class.

The final requirement of Rule 23(a) is that “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “This requires an absence of potential conflicts between named representatives and class members and that [the class representatives] will vigorously prosecute the case.” *Aguilar v. Husco Int'l, Inc.*, 2009 WL 3102791, at *2 (E.D. Wis. Sept. 24, 2009) (internal citations omitted). The interests of Plaintiffs align with the members of the Settlement Class. As discussed above, Plaintiffs are prosecuting the same claim as the Settlement Class and this VPPA claim arises out of the same alleged course of conduct by Defendants and rests on the same legal theory. Plaintiffs have also demonstrated their commitment to monitor and supervise the prosecution of the case on behalf of the Settlement Class. *See Almeida Decl.* ¶¶ 34-35. Ultimately, Plaintiffs have no conflicts with the Class and have actively participated in the case.

Moreover, proposed Settlement Class Counsel has significant experience in class and complex litigation, including collectively more than 100 data privacy class actions in state and federal courts nationwide. *Id.* ¶¶ 49-60. Class Counsel's extensive experience with data privacy class actions was integral to resolving this matter for a substantial sum within two years of the case being filed. *Id.* Accordingly, Class Representatives and Class Counsel will adequately represent the Class.

B. The Settlement Class meets the Requirements of Rule 23(b).

Rule 23(b)(3) requires that “questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Predominance and superiority exist in this case.

Here, numerous questions common to the Class, including those listed above, demonstrate commonality under Rule 23(a)(2) and predominate over any individual issues. The key elements of Plaintiffs’ claims—the alleged existence of the Meta pixel on Defendants’ Website and related alleged unauthorized sharing of Plaintiffs’ Personal Information to third parties in violation of the VPPA, Defendants’ knowledge or constructive knowledge of those alleged unauthorized disclosures, and the existence and amount of resulting damages—are common issues that predominate for the entire Class. Thus, the class is “sufficiently cohesive to warrant adjudication by representation,” *Chicago Teachers Union, Local No. 1 v. Board of Educ. of City of Chicago*, 797 F.3d 426, 444 (7th Cir. 2015) (citation omitted). And the predominance requirement “scarcely demands commonality as to all questions.” *Id.*

Further, a class action is the superior method for the fair and efficient adjudication of the claims in this case. Class Members’ individual damages have relatively low dollar amounts and the large size of the Class makes it too burdensome and expensive to prosecute each Class Member’s claims individually. Moreover, judicial economy is promoted through resolving this matter under the superior method of a class action. *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 658 (7th Cir. 2015). With Rule 23(a) and Rule 23(b)(3) satisfied, certification of the proposed Settlement Class is appropriate.

II. The Settlement meets the Rule 23(e)(2) requirements for Preliminary Approval.

The proposed Settlement is fair, reasonable, adequate, and well within the range of possible approval because it provides substantial cash benefits to all Class Members through the \$1,450,000.00 non-reversionary Settlement Fund. The Settlement was reached while the status of the merits of the Action was still uncertain and permits the Parties to avoid the uncertainty and expense of prolonged litigation. The Settlement Agreement satisfies each of the factors courts within the Seventh Circuit analyze in assessing whether a proposed settlement agreement is fair, reasonable, and adequate: (1) the strength of the case for plaintiffs on the merits, balanced against the extent of settlement offer; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of members of the class to settlement; (5) the opinion of competent counsel; and (6) stage of the proceedings and the amount of discovery completed. *Wong*, 773 F.3d at 863 (citation omitted).

In weighing these factors, the Seventh Circuit has emphasized that the “most important factor relevant to the fairness of a class action settlement is the strength of plaintiff’s case on the merits balanced against the amount offered in the settlement.” *Thompson v. Volunteers of Am. of Minnesota*, 2024 WL 3898608, at *2 (E.D. Wis. Aug. 22, 2024) (internal quotations & citation omitted). The Court should also “consider the facts in the light most favorable to the settlement” and focus on the “settlement in its entirety.” *In re Advoc. Aurora Health Pixel Litig.*, 740 F. Supp. 3d at 748 (cleaned up). All factors weigh in favor of granting preliminary approval of the class action settlement in this matter.

1. The Strength of Plaintiffs’ Case Balances Well Against the Settlement Amount & Complexity, Length, and Expense of Further Litigation Favors Settlement.

“[A]n integral part of the strength of a case on the merits is a consideration of the various risks and costs that accompany continuation of the litigation.” *Donovan*, 778 F.2d at 309. Here,

Defendants dispute Plaintiffs’ allegations and deny that they are liable for any alleged harm caused to Plaintiffs and the Class. SA, ¶ 7.1.1. Defendants indicated they would strenuously defend the case and relied on decisions such as *Martinez v. D2C, LLC*, 2024 WL 4367406 (S.D. Fla. Oct. 1, 2024) for the proposition that Plaintiffs would not be able to certify a class. While Plaintiffs are confident that they have arguments and authorities supporting their allegations and claims including *Jancik v. WebMD LLC*, 2025 WL 560705 (N.D. Ga. Feb. 20, 2025) granting class certification, the number of issues in this case, which centers on a developing area of law—pixel tracking litigation—creates significant uncertainty. *See, e.g., In re Facebook Internet Tracking Litig.*, 2022 WL 16902426, at *4 (N.D. Cal. Nov. 10, 2022), *aff’d sub nom. In re Facebook, Inc. Internet Tracking Litig.*, 2024 WL 700985 (9th Cir. Feb. 21, 2024) (finding settlement class meets the prerequisites for certification where novel and uncertain damage theories that may likely require a “battle of experts”).

Additionally, there are inherent risks with taking any Third-Party Technology class action to trial, including pre-trial risks of obtaining class certification and defeating summary judgment. *See Almeida Decl.* ¶¶ 40-41. Even if Plaintiffs can achieve class certification and Plaintiffs are successful at trial, or if Defendants obtain summary judgment, Defendants or Plaintiffs would likely appeal, causing further delay and increasing expenses. *Id.* The Settlement allows Class Members to obtain certain benefits soon—as opposed to potentially waiting for years—and eliminates the potential of receiving no benefits.

Moreover, “[s]ettlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources.” *Harvey v. Cmty. Health Network, Inc.*, 2023 WL 3240878, at *2 (S.D. Ind. May 3, 2023) (cleaned up). This case is no different in that it is a complex class

action case based on pixel-tracking software litigation. The complexity, length, and expense of continued litigation favors settlement now. Litigating this case to a favorable conclusion would require a considerable amount of time and resources including continued electronic discovery and depositions, class certification, summary judgment, and a potential trial (as well as possible appeals). The length of time and expense associated with pursuing this tracking-technology privacy class action weighs in favor of accepting the Settlement. *See, e.g., In re Advoc. Aurora Health Pixel Litig.*, 740 F. Supp. 3d at 748 (finding “likely complexity, length, and expense of further litigation balanced against the stage of litigation reached and the work actually performed” weighs in favor of approving settlement). In sum, the significant Settlement Fund is balanced well against the obstacles Plaintiffs would be required to overcome to achieve a successful result potentially many years in the future. This factor weighs in favor of preliminary approval.

2. There has been no Opposition to the Settlement.

Understanding that Class Notice is yet to be issued and, as a result, that no Class Members beyond the proposed Class Representatives have had the opportunity to review the proposed Settlement or the ability to object to it, consideration of this factor is premature. Accordingly, this factor is neutral in the analysis at this stage of the proceedings.

3. Class Counsel believes the Settlement is Fair, Reasonable, and Adequate.

Proposed Settlement Class Counsel is extremely familiar with and experienced in VPPA, data privacy, and tracking technology class action litigation and fully endorses the proposed Settlement. The work of proposed Class Counsel in this action to date, as well as their experience prosecuting complex litigation matters, demonstrates that they are well-qualified to represent the Class and opine on the fairness of the proposed Settlement. *See, e.g., Almeida Decl.* ¶¶ 26-33, 49-60. Here, Class Counsel relied on their vast experience handling data privacy class actions, including VPPA cases, to efficiently investigate, draft and file the initial and amended

complaints, conduct discovery, and skillfully negotiate a substantial Settlement Fund for the benefit of the Class. *Id.* This factor supports granting preliminary approval.

4. The Stage of Proceedings and Amount of Discovery Favors Settlement.

The Parties participated in formal discovery for months before agreeing to mediate the case, including responses to written discovery, production and review of documents, and meet-and-confers on the scope of discovery. *See* Almeida Decl. ¶¶ 12-18, 28-30. In completing formal discovery, the Parties worked to determine the appropriate scope and size of the class in advance of mediation. *Id.* ¶¶ 30, 38. Through discovery and ongoing discussions with Defendants, Plaintiffs were able to make informed decisions about the size of the Class as well as merits of the Class's allegations and legal claims. *Id.* In conducting this due diligence, Plaintiffs spent significant time and effort researching and preparing this case. *Id.* ¶¶ 27-33. Thus, this factor also supports preliminary approval of the Settlement.

5. The Proposed Service Awards that Plaintiffs will Request are Reasonable.

The Class Representatives have remained engaged in this Action including participating in discovery and reviewing and approving the terms of the Settlement Agreement. Their collective efforts have been integral to the \$1,450,000.00 Settlement Fund. Courts within this district have approved service awards at or above the \$2,000.00 Service Awards sought in this case for each Plaintiff. *See, e.g., Bills v. TLC Homes Inc.*, 2020 WL 5982880, at *5 (E.D. Wis. Oct. 8, 2020) (granting \$3,500 service award); *Benoskie v. Kerry Foods, Inc.*, 2020 WL 5769488, at *5 (E.D. Wis. Sept. 28, 2020) (granting \$5,000 service award); *Weninger v. Gen. Mills Operations, LLC*, 2019 WL 1746703, at *1 (E.D. Wis. Apr. 18, 2019) (granting \$5,000 service award); *Pintor v. Hypro, Inc.*, 2018 WL 4705847, at *1 (E.D. Wis. Oct. 1, 2018) (granting \$5,000 service award). Accordingly, Class Representatives' requests for \$2,000.00 Service Awards are each reasonable under the circumstances and warrant preliminary approval.

6. Attorneys' Fees and Expenses that the Proposed Settlement Class Counsel will Request are Reasonable.

At least two weeks prior to the objection deadline, Class Counsel will separately file a motion for an award of attorneys' fees not to exceed one third of the Settlement Fund and reimbursement of litigation expenses not to exceed \$10,000.00. S.A. ¶ 2.1.4. Wisconsin federal courts routinely award fee requests that are one third of the settlement fund in addition to the reimbursement of litigation expenses. *See, e.g., Arandell Corp.*, 2023 WL 2387813, at *3-4 (preliminarily approving a fee request of 35% plus litigation expenses and noting that “the same 35% net fee recovery was approved in six prior Wisconsin class settlements.”); *Collins v. Kohl's Dep't Stores Inc.*, 2021 WL 807244, at *2 (E.D. Wis. Mar. 3, 2021) (“The request for fees totaling one-third of the settlement amount is consistent with the market in the Eastern District of Wisconsin.”). Notably, there is no “free sailing” clause in the Settlement, Plaintiffs' forthcoming fee and expenses request will be subject to approval by this Court, and the Court itself will retain discretion to ensure any fee and expense request is reasonable. S.A. ¶ 2.1.4. Finally, the Settlement Agreement's effectiveness and finality are not dependent on any award of fees, costs, and expenses. *Id.*

III. The Notice Program should be Approved as it is the Best Notice Practicable.

Under Rule 23(e), the Court “must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). Rule 23(e) requires notice that is “reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the [settlement proposed] and afford them an opportunity to present their objections.” *Towers v. City of Chicago*, 173 F.3d 619, 628 (7th Cir. 1999). The proposed Notice meets these requirements.

For classes, like this one, certified under Rule 23(b)(3), the parties must provide “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B) (permitting notice to be sent by “United States Mail, electronic means, or other appropriate means”). With regard to contents, a notice is the best practicable under the circumstances where it “is reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

Here, the Notice Program negotiated and agreed to is the best practicable under the specific circumstances of this case. *See* Almeida Decl. ¶¶ 46-48. The Parties negotiated the form of the Notice with the Settlement Administrator’s aid. *Id.* ¶ 46. Notice of the Settlement utilizes the list of impacted individuals whose names, email addresses, addresses, and other contact information are maintained by Defendants. SA, ¶ 4.2. The Settlement Administrator will provide direct email notice to the Class or otherwise provide direct notice via U.S. Mail where emails are unavailable. *See, e.g., Kujat v. Roundy’s Supermarkets Inc.*, 2019 WL 1953107, at *4 (N.D. Ill. May 2, 2019) (“Courts in this District routinely approve notice distribution by both U.S. mail and email, since email is a ubiquitous means of communication, and individuals often retain the same email address despite multiple changes in their mailing addresses.”). Further, the Settlement provides for a claims process that requires minimal documentation from Class Members while conferring significant benefits to the Class. Each Class Member need only submit a Claim Form with minimal information to receive a cash benefit. SA, ¶ 3.2.1. Accordingly, the simplified claims process weighs in favor of preliminary approval.

Additionally, the Settlement Administrator will provide Notice pursuant to the notice plan as follows: the Settlement Administrator shall send the Short Form Notice or Postcard Notice to all Class Members for whom Defendants have valid email or mailing addresses. *Id.* ¶¶ 1.21, 1.34. The Short Form Notice and Postcard Notice, attached as Exhibits 3 and 4 to the Settlement Agreement, are clear and concise and include all information required by Rule 23(c)(2)(B).³ The proposed Short-Form and Postcard Notices inform Settlement Class Members of the general terms of the Settlement, the relief provided by the Settlement, and provide information regarding the date, time, and place of the final approval hearing. See SA, Exs. 3-4.

Further, the Settlement Administrator will establish a Settlement Website and a toll-free telephone number that Class Members can call for more information regarding the Settlement. *Id.* ¶¶ 1.33, 4.5. The proposed notice plan is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950); *see also Berghund v. Matthews Senior Hous. LLC*, 2023 WL 6847696, at *6 (E.D. Wis. Oct. 17, 2023) (finding notice “constitutes the best notice practicable under the circumstances, including individual notice to all putative Settlement Class members who can be identified with reasonable effort”). Thus, the proposed method of Notice described above satisfies due process

³ Specifically, they provide detailed information concerning: (a) the rights of Class Members, including the how and by when to lodge objections or opt out; (b) the nature of the Action and the claims at issue; (c) the proposed Settlement; (d) the available recoveries to Class Members; (e) the process for filing a claim; (f) that fees and expenses are to be sought by Plaintiffs’ counsel from the Settlement Fund; and (g) the date of the Final Approval Hearing. They further advise Class Members on how to obtain additional information about the Settlement, including the Long Form Notice and Settlement Agreement, from the Settlement Website.

requirements and should be approved.⁴ *See, e.g., In re AT & T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 351 (N.D. Ill. 2010) (finding similar email notice to settlement class members was the best practicable and satisfied concerns of due process).

IV. The Court Should Appoint the Settlement Administrator.

In connection with the Notice Program and Settlement Administration, Plaintiffs request that the Court appoint RG/2 to serve as the Settlement Administrator. RG/2 has a trusted and proven track record of supporting class action administration and extensive legal administration experience. *See generally* RG/2 Decl.

V. The Court Should Schedule a Final Approval Hearing.

The last step in the Settlement approval process is a final approval hearing during which the Court will make its final evaluation of the Settlement based on, among other things, Class Members' responses to the notice, which Class Counsel expect to be overwhelmingly positive. Plaintiffs and proposed Settlement Class Counsel request that the Court schedule the Final Approval Hearing no earlier than 150 days after entry of the Preliminary Approval Order.⁵

CONCLUSION

The proposed Settlement, reached between experienced counsel after receipt and evaluation of discovery, is within the range of reasonableness and readily meets the standards for preliminary approval. Accordingly, Plaintiffs respectfully request this Honorable Court to enter an order:

- (i) Preliminarily approving the Settlement and provisionally certifying the Settlement

⁴ Rule 23(e) mandates that “[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal.” Fed. R. Civ. P. 23(e)(2)-(3). Here, there are no additional agreements.

⁵ The Proposed Preliminary Approval Order, attached as **Exhibit 1** to the Settlement Agreement, will also be provided to the Court as an editable Word document.

Class in accordance with the proposed Preliminary Approval Order;

- (ii) Approving the notice program and directing that notice be distributed to the Settlement Class Members in accordance with the provisions of the Settlement Agreement;
- (iii) Appointing RG/2 as Settlement Administrator;
- (iv) Appointing Plaintiffs as Class Representatives;
- (v) Appointing the law firms of Almeida Law Group LLC and Hansen Reynolds LLC as Class Counsel;
- (vi) Scheduling a Final Approval Hearing to consider the entry of the Final Approval Order and Judgment and request for Attorneys' Fees, Expenses and Service Awards, to be held approximately 150 days after entry of the Preliminary Approval Order; and
- (vii) Awarding all such other relief as the Court deems just and proper.

Dated: November 7, 2025

Respectfully submitted,

/s/ David S. Almeida

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Attorneys for Plaintiffs & the Settlement Class

CERTIFICATE OF SERVICE

I, David S. Almeida, an attorney, hereby certify that on November 7, 2025, I electronically served the foregoing on all counsel of record via the Court's CM/ECF system.

/s/ David S. Almeida

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

KEEFE JOHN, TODD KNUTH and NORM
WALKER, *on behalf of themselves and all
others similarly situated,*

Plaintiffs,

v.

DELTA DEFENSE, LLC and UNITED
STATES CONCEALED CARRY
ASSOCIATION, INC.,

Defendants.

Case No. 23-CV-1253

Judge Lynn Adelman

**DECLARATION OF DAVID S. ALMEIDA IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

I, David S. Almeida, hereby declare and state as follows:

1. I am an attorney admitted and licensed to practice law before the courts of the states of Wisconsin, Illinois, and New York and am a member of the bars of numerous federal district and appellate courts.

2. I am the Founder & Managing Partner of the law firm Almeida Law Group LLC (“ALG”), a class action litigation boutique law firm specializing in data privacy and consumer fraud cases.

3. I serve as counsel of record, along with co-counsel Tim Hansen and Mike Lueder at Hansen Reynolds LLC, for Plaintiffs Keefe John, Todd Knuth and Norm Walker and the proposed Settlement Class in the above-captioned case (the “Action”).¹

¹ Unless otherwise indicated, capitalized terms herein refer to and have the same meaning as in the Settlement Agreement.

4. Throughout this litigation, ALG has been primarily responsible for the investigation into and prosecution of Plaintiffs' claims on behalf of the proposed Settlement Class.

5. I submit this Declaration in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement. Except where otherwise stated, I have personal knowledge of the facts set forth in this Declaration based on active participation in all aspects of the prosecution and resolution of this Action. If called upon to testify, I could and would testify competently to the truth of the matters stated herein.

6. Filed concurrently herewith as **Exhibit A** is a true and correct copy of the Class Action Settlement Agreement entered into by Plaintiffs, on behalf of themselves and the proposed Settlement Class, and Defendants Delta Defense, LLC and U.S. Concealed Carry Association, Inc. The following exhibits are attached to the Settlement:

- **Exhibit 1**: Parties' [proposed] Preliminary Approval Order
- **Exhibit 2**: Long-Form Notice
- **Exhibit 3**: Short-Form Notice
- **Exhibit 4**: Postcard Notice and Claim Form
- **Exhibit 5**: Electronic Claim Form
- **Exhibit 6**: Opt-Out Form
- **Exhibit 7**: Parties' [proposed] Final Approval Order

SUMMARY OF THE ACTION

7. On September 21, 2023, Plaintiff Keefe John, on behalf of himself and all others similarly situated, filed a class action complaint in the United States District Court for the Eastern District of Wisconsin, captioned *John, et al. v. Delta Defense LLC, et al.*, which was assigned civil case number 2:23-cv-01253. ECF No. 1.

8. The initial complaint alleged Defendants violated the federal Video Privacy Protection Act, 18 U.S.C. § 2710 (“VPPA”) by embedding tracking technologies on their Websites that disclosed their digital subscribers’ identities and video viewing information to Facebook without the proper consent.

9. Following the filing of the initial complaint, the Parties exchanged numerous letters and participated in meet-and-confers regarding Plaintiff John’s claims and Defendants’ defenses.

10. Defendants filed their respective Answers to Plaintiff Keefe John’s Complaint on December 15, 2023 and December 20, 2023. ECF Nos. 12 & 15.

A. On February 15, 2024, Plaintiff Keefe John filed a First Amended Complaint (“FAC”), adding Plaintiff Jorge Hutchings as a named Plaintiff and proposed class representative. ECF No. 21.² The FAC alleged that Defendants violated the VPPA by, among other things, using Third-Party Technologies including the Meta Pixel to collect and share with third parties, such as Facebook and Meta Platforms, Inc., the viewing information of subscribers without obtaining consent.

11. Defendants filed their Answer to Plaintiffs’ FAC on February 29, 2024. ECF No. 22.

12. In March, the Parties began formal discovery, and the Court entered the Parties’ Stipulated Protective Order. ECF Nos. 24-25. Through formal discovery, the Parties exchanged interrogatories, requests for admission, and requests for production. Electronic discovery was also produced and reviewed. The Parties participated in numerous meet-and-confers over the next eight months.

² Plaintiff Jorge Hutchings was dismissed from the case with prejudice on October 14, 2025. *See* Dkt. No. 55.

13. During formal discovery, two additional Plaintiffs were retained by ALG, whose claims were discussed at mediation.

14. In August 2024, the Parties agreed to mediate the case before Hon. Mary Anne Mason (ret.) of JAMS.

15. Between August and November 2024, the Parties continued formal discovery and mediation-related discussions and negotiations.

16. On November 8, 2024, the Parties, through experienced and accomplished counsel, engaged in adversarial, arm's length negotiations including an all-day mediation conducted by Honorable Mary Anne Mason (Ret.) of JAMS.

17. The Parties did not settle the case at the mediation.

18. Following the November mediation, the Parties continued formal and informal discovery and mediation-related negotiations with and without the assistance of Judge Mason.

19. On December 9, 2024, the Parties had a second remote mediation session with Hon. Mary Anne Mason, which was productive but likewise did not result in settlement.

20. The Parties continued to negotiate the terms of a class settlement for several months.

21. On March 12, 2024, the Parties notified the Court that, as a result of extensive negotiations both with and without the assistance of the Judge Mason, the Parties were able to reach an agreement in principle to resolve the claims asserted in this case in their entirety via a class action settlement.

22. The Parties ultimately signed a term sheet on March 19, 2025

23. On May 7, 2025, Plaintiffs John and Hutchings filed a Second Amended Complaint ("SAC") that added Plaintiffs Todd Knuth and Norm Walker. ECF No. 41.

24. On May 21, 2025, Defendants filed their Answer to Plaintiffs' SAC. ECF No. 44.

25. In June 2025, the Parties finalized and executed the proposed Settlement Agreement.

**PLAINTIFFS' & COUNSELS' ROLE IN PROSECUTING
& SETTLING THIS CLASS ACTION LAWSUIT**

26. Plaintiffs and their Counsel zealously represented the interests of the proposed Settlement Class and committed substantial resources to the prosecution and eventual resolution of the Settlement Class's claims.

27. Prior to filing the Complaint, Plaintiffs' Counsel undertook a robust investigation into the factual issues raised in this Action including examining the facts and circumstances of Defendants' alleged use of tracking technologies to capture video viewing information. Counsel also researched the applicable law to determine how their clients' VPPA claim applied to these facts and to anticipate and address Defendants' potential defenses.

28. After filing the Complaint, Plaintiffs' Counsel undertook additional efforts to prosecute Plaintiffs' and the proposed class claims including, but certainly not limited to, amending the complaint, propounding and responding to discovery, scheduling and participating in multiple meet and confers with Defendants' Counsel, reviewing documents produced in discovery, and additional substantial legal research.

29. After numerous discussions among the Parties regarding the merits of Plaintiffs' claims and the exchange of formal discovery, the Parties scheduled a mediation with Judge Mason.

30. Leading up to the mediation, the Parties engaged in pre-mediation conferences, engaged in informal pre-mediation discovery, and prepared and reviewed detailed mediation statements and other supporting materials outlining their respective legal positions regarding the

merits of Plaintiffs' VPPA claim, Rule 23 considerations, and the scope of damages. Plaintiffs learned the details of the underlying facts including, *inter alia*, how many people were impacted by Defendants' alleged use of tracking technologies.

31. The Parties did not discuss Service Awards or attorneys' fees, costs, or expenses until after the amount of the Settlement Fund was agreed upon.

32. Following the mediation, Plaintiffs' Counsel spent nearly six months continuing discussions with Defendants' Counsel and Plaintiffs to draft and to revise the term sheet and Settlement Agreement.

33. Further, Plaintiffs' Counsel have vigorously represented the Class in this Action and will continue to do so throughout preliminary and final approval of the Settlement (if approved).

34. Plaintiffs have been actively engaged in this Action, have stayed informed about the case, worked with Counsel to prepare and review the complaints and other pleadings, have assisted with responding to discovery, and have communicated regularly with Counsel throughout the case, up to and including evaluation and approval of the proposed Settlement.

35. Plaintiffs are committed to continuing to vigorously prosecute this case all the way through the Court's final approval

RECOMMENDATION OF COUNSEL

36. Based on thorough examination and investigation of the facts and law relating to Plaintiffs' claims on behalf of the Settlement Class, including the information exchanged before, during, and after mediation, I believe the proposed Settlement is in the best interest of the Settlement Class.

37. Extensive factual and legal investigation informed ALG about the strengths and weaknesses of Plaintiffs' claims as well as Defendants' potential defenses and allowed ALG to conduct an informed, fair and objective evaluation of the value and risks of continued litigation.

38. Specifically, the Parties were able to define the scope of the Settlement Class and determine that it includes approximately 295,727 individuals.

39. Plaintiffs' Counsel recognize that despite our belief in the strength of Plaintiffs' claims and their ability to secure a judgment and award of damages, the expense, duration, and complexity of protracted litigation would be substantial and the outcome uncertain.

40. Plaintiffs' Counsel are mindful that absent the proposed Settlement, Defendants' defenses could deprive Plaintiffs and the proposed Settlement Class of any potential relief whatsoever. Defendants would continue to challenge liability, would oppose class certification vigorously, and would prepare a competent defense at trial. Defendants could also appeal any adverse decision on the merits or challenge the award of statutory damages.

41. The present value of the Settlement is significant compared to the risks.

42. In my professional opinion, the relief provided by the proposed Settlement is fair, adequate, reasonable, and in the best interests of the Settlement Class, and I respectfully recommend it to the Court for its preliminary approval.

SELECTION OF SETTLEMENT ADMINISTRATOR

43. The Parties selected RG/2 Claims Administration, LLC ("RG/2"), based in part on its experience in similar consumer digital privacy class actions and a notice plan proposal that includes innovative, thoughtful, and technologically sophisticated means of providing notice to Settlement Class Members at a reasonable cost.

44. To ensure that the Parties obtained the best value for the Settlement Class, we received proposals from three claims administration companies. RG/2 submitted the strongest proposal.

45. The cost of administering the Settlement will depend on a variety of factors, including the number of claims submitted by Settlement Class Members. RG/2 estimates the cost of administration at approximately \$100,000.00. *See* Declaration of Melissa E. Baldwin Regarding Notice Administration, attached to the Memorandum of Law in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement as **Exhibit 2**.

46. The Parties negotiated the form of the Notice with RG/2's aid.

47. It is also Plaintiffs' Counsels' opinion, based on our collective experience, that the Claim Form, Short Form Notice, and Long Form Notice, accurately and plainly explain the Settlement benefits and how to obtain them, offer a clear opportunity for members of the Settlement Class to exclude themselves if they so choose, and provide a mechanism for the Settlement Class to object or share their opinions about the settlement with the Court and Counsel.

48. It is Plaintiffs' Counsels' further opinion that the Notice Plan here provides the best notice practicable.

COUNSEL QUALIFICATIONS

49. During the course of this litigation, ALG and Hansen Reynolds LLC worked tirelessly to obtain the excellent settlement result proposed here.

50. I have extensive experience in class action litigation generally and data privacy class actions in particular. My experience, and that of other legal professionals with ALG, is described below.

51. ALG is a nationwide law firm that, since its inception in 2023, has focused not just on litigating complex civil cases, but instead on being leading litigators in each attorney's respective practice area. *See* ALG Firm Resume, attached hereto as **Exhibit B**.³

52. For instance, I lead ALG's data privacy and protection practice. I have not only litigated a number of significant data privacy class actions but also cases brought under the Video Privacy Protection Act, data breach class actions, and patient and consumer privacy Pixel tracking cases. I also currently represent clients in consumer privacy actions under the California Medical Information Act ("CMIA"), the Illinois Biometric Information and Privacy Act ("BIPA"), the Video Privacy Protection Act ("VPPA") and the Telephone Consumer Protection Act ("TCPA").

53. Notably, a significant portion of my career has been devoted to serving as a class action defense lawyer, representing hospital systems, medical providers, retail and hospitality companies, and various consumer-facing entities in class action lawsuits related to privacy. Before establishing ALG, I was a Partner at Benesch, Friedlander, Coplan and Aronoff LLP; while there, I founded and chaired the Class Action Practice Group and lead the Firm's Telephone Consumer Protection Act Team and its Retail, Hospitality and Consumer Products Practice Group.

54. My extensive experience spans over 350 class action lawsuits across the country. These cases encompass issues such as data breaches and privacy violations, state consumer fraud and deceptive business practices, false advertising and false labeling, as well as numerous statutory violations.

55. As a recognized authority in the field, I am well-versed in data privacy and security issues, direct and mobile marketing, emerging payment systems, as well as social and digital media

³ Additional information about co-counsel at Hansen Reynolds LLC can be found attached hereto as **Exhibit C**.

matters. I am an author and speaker on these topics and am sought after by local and national publications for my insights.

56. I have received multiple listings as an Illinois Super Lawyers and have been acknowledged as a “Rising Star” by the National Law Journal. I earned my Bachelor of Arts from Salisbury University, graduating *summa cum laude*, and obtained my Juris Doctor from Cornell Law School, where I served as an Editor of the Cornell Law Review.

57. ALG has the necessary resources to represent the Settlement Class in this action and has committed and will continue to commit the resources required to bring this matter to conclusion. ALG attorneys and staff are proficient in the use of litigation support technology and the firm has invested in the technological resources needed to litigate complex matters.

58. With respect to privacy cases, ALG attorneys have served as Lead Counsel, Co-Counsel, or Class Counsel on VPPA, data breach, and privacy litigation including:

- a. *In re Advocate Aurora Health Pixel Litigation*, 2:22-cv-01253 (E.D. Wis.) (co-counsel in consolidated pixel tracking class action, settled on a class-wide basis);
- b. *Guenther v. Rogers Behavioral Health System, Inc.* (Wis. Cir. Ct.) (co-counsel in pixel tracking class action, settled on a class-wide basis); *Doe v. Workit Health Inc.*, 2:23-cv-11691 (E.D. Mich.) (counsel in telehealth pixel tracking class action, settled on a class-wide basis);
- c. *Reedy v. Everylywell, Inc.*, 1:24-cv-02713 (N.D. Ill.) (co-lead counsel in telehealth pixel tracking class action, settled on a class-wide basis, settled on a class-wide basis);
- d. *Smith v. Loyola University Medical Center*, 1:23-cv-15828 (N.D. Ill.) (co-lead counsel in pixel tracking class action, settled on a class-wide basis);
- e. *Vriezen v. Group Health Plan, Inc.*, 23-cv-00267 (D. Minn.) (counsel in consolidated pixel tracking class action, settled on a class-wide basis);
- f. *Cooper v. Mount Sinai Health System Inc.*, 1:23-cv-09485 (S.D.N.Y.) (counsel in pixel tracking class action, settled on a class-wide basis);

- g. *Reedy v. Kane v. University of Rochester Medical Center*, 6:23-cv-06027 (W.D.N.Y.) (counsel in pixel tracking class action, settled on a class-wide basis);
- h. *Singh v. The Moses H. Cone Memorial Hospital Operating Corporation et al.*, 1:24-cv-00558 (M.D.N.C.) (co-counsel in pixel class action; settled on a class-wide basis, preliminary approval hearing pending);
- i. *Macalpine v. Onnit, Inc.*, 1:24-cv-00933 (W.D. Tex.) (counsel in VPPA class action);
- j. *Mrozinski v. Aspirus, Inc.*, 2023CV000170 (Wisc. Cir. Ct., Marathon County) (co-lead counsel in pixel tracking class action, settled on a class-wide basis);
- k. *McCulley v. Banner Health*, 2:23-cv-00985 (D. Ariz.) (co-lead counsel in consolidated pixel tracking class action);
- l. *Doe v. Adventist Health Care Network, Inc.*, 22ST-cv-36304 (L.A. Sup. Ct.) (co-lead counsel in consolidated pixel tracking class action);
- m. *Isaac v. Northbay Healthcare Corp.*, FCS059353 (L.A. Sup. Ct.) (co-lead counsel in consolidated pixel tracking class action, settled on a class-wide basis);
- n. *Mayer v. Midwest Physicians Administrative Services LLC*, 1:23-cv-03132 (N.D. Ill.) (co-lead counsel in pixel tracking class action);
- o. *Doe v. Wellstar Health System, Inc.*, 1:24-cv-01748 (N.D. Ga.) (co-lead counsel in telehealth pixel tracking class action);
- p. *Pattison v. Teladoc Health, Inc.*, 7:23-cv-11305-NSR (S.D.N.Y.) (co-lead counsel in consolidated pixel tracking class action);
- q. *In re CityMD Data Privacy Litigation*, 2:24-cv-06972 (D.N.J.) (interim Co-Lead Class Counsel in urgent care pixel tracking class action);

59. ALG attorneys have also participated in other data breach and privacy litigation including: *Spann v. Superior Air-Ground Ambulance Service, Inc.*, 1:24-cv-04704 (N.D. Ill.) (co-lead counsel in operative data breach class action, final approval granted); *In re Practice Resources, LLC Data Security Breach Litigation*, 6:22-cv-00890 (N.D.N.Y.) (co-lead counsel in consolidated data privacy class action, settled on a class-wide basis, final approval hearing set for June 11, 2025); *In re City of Hope Data Security Breach Litigation*, 24STCV09935 (L.A. Sup.

Ct.) (counsel in consolidated data breach class action); *Tambroni et al v. WellNow Urgent Care, P.C. et al.*, 2025LA000013 (Cir. Ct., Sangamon County, Ill.) (co-lead counsel in data breach class action, pending preliminary approval); *Hulse v. Acadian Ambulance Services, Inc.*, 6:24-cv-01011 (W.D. La.) (executive Committee in consolidated data breach class action); *Gorder v. FCDG Management LLC d/b/a First Choice Dental*, 2024-CV-002164 (Dane County Circuit Court) (co-lead counsel in data breach class action); *In re Rockford Gastroenterology Associates, Ltd Data Breach Litigation*, 2024-CH-0000120 (Winnebago Cir. Ct.) (interim Co-Lead Class Counsel in data breach class action); *Fitzsimons v. Long Island Plastic Surgical Group, PC*, 2:25-cv-00309 (E.D.N.Y.) (counsel in data breach class action).

60. ALG is fully committed to pursuing the best interests of Plaintiffs and the Settlement Class and will devote all the necessary resources to bring this matter to a successful conclusion.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on November 7, 2025 in Chicago, Illinois.

Date: November 7, 2025

Respectfully submitted,

/s/ David S. Almeida
David S. Almeida