

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

JANE DOE 1 and JANE DOE 2, on
behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

WORKIT HEALTH, INC.,

Defendant.

Case No. 2:23-CV-11691-LVP-DRG

Hon. Linda V. Parker
Magistrate Judge David R. Grand

**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Plaintiffs Jane Doe 1 and Jane Doe 2, on behalf of themselves and all others similarly situated, respectfully move this Court for entry of an order: (i) conditionally certifying the Class solely for the purpose of settlement; (ii) preliminarily approving the Settlement Agreement (attached as **Exhibit 1**) reached in this case; (iii) directing notice to the Class; (iv) scheduling a Fairness Hearing for approval of the Settlement; and (v) appointing Class Counsel and Class Representatives. In support of this motion, Plaintiffs state as follows:

1. On July 14, 2023, Plaintiffs commenced this putative class action lawsuit by filing a complaint against Defendant Workit Health, Inc. (hereinafter, "Defendant"), alleging the unlawful disclosure of certain personal or health-related

information through the implementation and usage of third-party tracking technologies such as the Meta Pixel and Google Analytics.

2. In an effort to avoid the time, risk, and expense of further litigation, the Parties engaged in settlement discussions to determine whether a resolution of the case could be reached. To that end, Plaintiffs and Defendant agreed to participate in mediation with independent neutral mediator Bruce Friedman (JAMS). On March 21, 2024, Plaintiffs and Defendant participated in a full-day, in person mediation and reached agreement on the material terms of a settlement that would resolve all claims in this case subject to class settlement approval by the Court after notice to the Settlement Class. (**Ex. 2-** Coulson Decl., ¶¶10-18).¹

3. Based upon their investigation and evaluation of the facts and law relating to the matters alleged in the action, Plaintiffs (on behalf of themselves and the proposed Class) and Class Counsel have agreed to settle the lawsuit, pursuant to the terms of the Settlement Agreement.

4. The terms of the proposed settlement are fully set forth in the Settlement Agreement. (**Ex. 1**). Defendant has agreed to create a non-reversionary common fund valued at \$578,680.00 from which direct monetary payment will be

¹ The Declaration of Nicholas A. Coulson is attached herewith and is referenced throughout as “Ex. 2- Coulson Decl.”

allocated to class members pursuant to the procedures outlined in the Settlement Agreement. (*Id.* at 9).

5. The Parties have agreed to a Class, for purposes of the Settlement only, consisting of the following:

All persons in the United States who used Defendant's Website or Application (both web-based and mobile) to search for medical information, services or physicians, fill out forms, schedule appointments, sign-up for membership, register for programs or support groups, or pay for medical services between June 1, 2017 and November 23, 2022.

Excluded from the Settlement Class are: (i) Defendant, any entity in which Defendant has a controlling interest, and Defendant's affiliates, parents, subsidiaries, officers, directors, legal representatives, successors, subsidiaries, and assigns; (ii) any judge, justice, or judicial officer presiding over the Litigation and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly excludes themselves from the Settlement.

(*Id.*, pg. 8, §11).

6. As part of the proposed Settlement Agreement, the Parties have agreed to the appointment of David S. Almeida of Almeida Law Group LLC and Nicholas A. Coulson of Coulson P.C. as Class Counsel and the appointment of Plaintiffs as the Class Representatives. (**Ex. 1**, pg 4, § 11(f)).

7. The proposed Settlement was reached in good faith and further to arms' length negotiations and without any undue influence. Each side has zealously represented its interests. (**Ex. 2**, Coulson Decl., ¶¶13-14).

8. The proposed Settlement was achieved by counsel experienced in similar privacy-related class action litigation.

9. To effectuate the Settlement, the parties request that the Court enter an Order:

- a. Conditionally certifying this case for settlement purposes only as a class action pursuant to Federal Rule 23;
- b. Defining the Class as defined herein;
- c. Appointing David S. Almeida and Nicholas A. Coulson as Class Counsel;
- d. Appointing Plaintiffs as the Class Representatives;
- e. Approving the Class Notices attached as Exhibit B and C to the Settlement Agreement and the manner of providing the Class Notice as being in compliance with Federal Rule 23(e);
- f. Approving the Claim Form attached as Exhibit A to the Settlement Agreement which will be submitted with the Class Notice via first class mail to the Class;
- g. Preliminarily approving the Settlement Agreement as fair, reasonable, and adequate; and

h. Scheduling a Fairness Hearing to hear any objections from Settlement Class members and to consider final approval of the proposed Settlement.

10. A proposed Preliminary Approval Order is attached as **Exhibit D**.

WHEREFORE, Plaintiffs, on behalf of themselves and the proposed Class, respectfully request that this Honorable Court to (i) grant this Motion, (ii) enter the proposed Preliminary Approval Order (**Exhibit D** to the Settlement Agreement) and (iii) award all such other relief as is equitable and just.

Dated: September 6, 2024

Respectfully Submitted,

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

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Exhibit 3- Declaration of David S. Almeida

ISSUES PRESENTED

1. Should the proposed Settlement Class be certified for settlement purposes pursuant to Fed.R.Civ.P. 23?

Plaintiffs' answer: YES.

2. Should the Settlement Agreement be preliminarily approved as sufficiently fair, reasonable, and adequate to justify providing Notice to the proposed Settlement Class?

Plaintiffs' answer: YES.

CONTROLLING AND MOST APPROPRIATE AUTHORITIES

Fed.R.Civ.P. 23

Garner Props. & Mgmt. v. City of Inkster, 333 F.R.D. 614 (E.D. Mich. 2020)

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Moeller v. Wk. Publications, Inc., 649 F. Supp. 3d 530 (E.D. Mich. 2023)

Strano v. Kiplinger Washington Eds., Inc., 649 F. Supp. 3d 546 (E.D. Mich. 2023)

INTRODUCTION

Plaintiffs Jane Doe 1 and Jane Doe 2 brought this action, on behalf of themselves and those similarly situated, alleging that Defendant Workit Health Inc.’s (hereinafter, “Workit” or “Defendant”) implementation and use of certain third-party website tracking technologies, including the Meta Pixel and Google Analytics, resulted in the unlawful disclosure of personal or health-related information to certain third-party digital media platforms such as Facebook. Following an investigation by Plaintiffs’ experienced counsel, informal discovery between the Parties, and a full-day in-person mediation on March 21, 2024 (before a neutral mediator, Bruce Friedman (JAMS)), the Parties reached an arms’ length agreement to fully and finally resolve this case subject to Court approval on a class-wide, non-reversionary common fund basis. As detailed further below, if the Court approves the contemplated Settlement each claiming class member will receive direct monetary payment. Plaintiffs, through their counsel, are therefore pleased to present to this Honorable Court the attached proposed Settlement Agreement and respectfully request that that the Court preliminarily approve this mutually

negotiated Settlement Agreement by entering the proposed order, which is attached to the Settlement Agreement as **Exhibit D.**²

BACKGROUND

A. Description of Plaintiffs' Claims.

Plaintiffs and the proposed Settlement Class Members are individuals who accessed and used Defendant's website to receive remote medical, telehealth services. Plaintiffs' Complaint alleged that Defendant, a telehealth provider of addiction treatment, had unlawfully disclosed Plaintiffs' confidential and personally identifiable information ("PII") and protected health information ("PHI") to third parties including, but not limited to Meta Platforms, Inc. d/b/a Facebook, without Plaintiffs' knowledge or consent. [ECF No. 1, PageID. 2, ¶ 1]. Plaintiffs further alleged that their PHI and PII would allow the receiver of this information to know that a specific patient was seeking confidential medical care and the type of medical care being sought, as well as what specific type of condition they were being treated for. [*Id.*, PageID. 9, ¶ 29]. Defendant denies these allegations.

Plaintiffs seek to certify a Settlement Class consisting of: "all persons in the United States who used Defendant's Website or Application (both web-based and mobile) to search for medical information, services or physicians, fill out forms,

² Plaintiffs are authorized to state that Defendant does not oppose the relief requested in this motion. The arguments and contentions contained herein, however, are attributable to Plaintiffs.

schedule appointments, sign-up for membership, register for programs or support groups, or pay for medical services between June 1, 2017 and November 23, 2022.” (Ex. 1, Settlement Agreement, pg. 8, § 11).

B. Summary of the Litigation.

Plaintiffs filed their Complaint on July 14, 2023. [ECF No. 1] Plaintiffs’ complaint alleges ten causes of action: (i) Invasion of Privacy – Intrusion Upon Seclusion and Private Affairs; (ii) Invasion of Privacy – Public Disclosure of Embarrassing Private Facts; (iii) Unjust Enrichment; (iv) Breach of Implied Contract; (v) Negligence; (vi) Unauthorized Disclosure of Privileged Communications; (vii) Violations of the Michigan Consumer Protection Act (MCPA); (viii) Violations of Electronic Communications Privacy Act – Unauthorized Interception, Use, and Disclosure; (ix) Violations of the California Invasion of Privacy Act (CIPA); and (x) Violations of the California Confidentiality of Medical Information Act (CMIA). [ECF No. 1]. Plaintiffs’ Complaint was filed following an extensive pre-suit investigation conducted by Plaintiffs’ Counsel. (Ex. 1, Settlement Agreement, pg. 2, ¶ 4; Ex. 2- Coulson Decl., ¶¶ 11).

Despite Defendant’s denial of Plaintiffs’ claims of wrongdoing, the Parties agreed to engage in good faith settlement discussions. Accordingly, after Defendant filed a Motion to Compel Arbitration, [ECF No. 7], the Parties submitted a

stipulation to stay the case pending mediation on March 21, 2024 which was granted on March 23, 2024 [ECF No. 8].

Ultimately, the Parties voluntarily participated in a full-day mediation session with respected and experienced mediator Bruce Freidman (JAMS). (**Ex. 1**- Settlement Agreement, pg. 2, ¶5; **Ex. 2**- Coulson Decl., ¶ 11-12). As a result of this mediation, which involved adversarial, arm's-length negotiations between counsel experienced in similar matters, the Parties agreed to settle the claims asserted in the Complaint on the terms and conditions set forth herein, subject to the Court's review and approval. (*Id.*) Class Counsel wholeheartedly believes that this settlement is in the best interest of the Settlement Class under the circumstances given the time, complexity, and expense this litigation would present absent this agreement.

C. Terms of the Proposed Settlement.

Under the proposed Settlement Agreement (**Ex. 1**),³ Defendant will provide monetary relief to the Settlement Class Members and, in exchange, Plaintiffs and the Settlement Class Members will release certain claims against Defendant. (*Id.*, pgs. 29-31, ¶ 79-81& 86). Defendant will create a non-reversionary, common fund for the benefit of the Settlement Class Members in the amount of \$578,680.00, which will be distributed on a *pro rata* basis (after the payment of costs, expenses, and such

³ Capitalized terms used herein shall have the same meaning as assigned to them in the Settlement Agreement.

attorney fees and incentive awards as the Court may approve) to all Claimants who timely submit an approved Claim Form. (*Id.*, pg. 9, ¶ 14). The proposed settlement includes a full release and discharge by Plaintiffs and the Class of any and all claims that were, or could have been, asserted in this case or that relate to, concern or arise out of Defendant's use of third-party tracking technologies, including the Meta Pixel and Google Analytics, that may have led to any Third-Party Disclosure.⁴ (*Id.*, pgs. 29-31, ¶¶ 78-86). The Release binds all Class Members who do not opt out of the settlement from suing Defendant relating to the allegations made in the Class Action. (*Id.* pg. 21, ¶ 61).

The Settlement Agreement calls for the appointment of a third-party administrator, EisnerAmper (the "Administrator"), to administer the settlement and provides that notice of preliminary approval of the settlement will be distributed to the Class in accordance with the Notice specifications approved by the Court. (*Id.*, pg. 14, ¶¶ 30-31; *see also* **Ex. B, C**- Class Notices).

Within forty-five (45) days after the Court issues its Preliminary Approval Order (**Ex. D**), the Administrator will disseminate the Class Notice and Claim Form to each Class Member whose email addresses are known by Defendant for the Settlement Class Members (the "Class List"). (**Ex. 1**, pg. 17, ¶¶ 44-45). The

⁴ See the Settlement Agreement at page 7 for specific definition of "Plaintiffs' Released Claims," "Released Class Claims," "Released Persons" and "Releasing Persons."

Administrator will post on the Settlement Website the Class Notice, along with copies of this Agreement and the Claim Form for seeking compensation from the Settlement Fund, and with instructions for opting out of or objecting to the settlement. (*Id.*, pg. 18, ¶¶49-50).

Class Members will have sixty (60) days from the date Notice is emailed to object to or opt out of the Settlement. (**Ex. 1**, pg. 20, ¶ 56). And Class Members who wish to participate in the Settlement will have sixty (60) days to submit a valid, timely Claim Form for an equal, pro rata share of the common fund (less approved deductions). (*Id.* pg. 4, ¶ 11(c); pg. 13, ¶ 25; *see also* **Ex. A**- Claim Form).

For their services in representing the interests of the Class, the Settlement Agreement provides that, Plaintiffs Jane Doe 1 and Jane Doe 2 may each request a one-time, service award of \$2,500 in addition to any payment that they may receive by virtue of their status as members of the Settlement Class. (*Id.*, pg. 22, ¶ 63).

After deducting attorney's fees and costs (including those of settlement administration), the Net Settlement Fund will be divided equally among all Class Members who submit timely Claim Forms that are approved by Class Counsel as compliant with the requirements set forth in the Notice. The Settlement Agreement provides that Class Counsel may seek reimbursement of costs and an award of reasonable attorney's fees of 1/3 of the Total Settlement Value. (*Id.*, pg. 9, ¶ 14).

LEGAL STANDARD

To merit class certification, Fed.R.Civ.P. 23(a) requires a showing of four factors: “(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). Where, as here, Plaintiffs seek to certify a class under Fed.R.Civ.P. 23(b)(3), Plaintiffs must additionally demonstrate “that the questions of law or fact common to Class Members predominate over any questions affecting only individual members and that a class action is superior to other available methods” for the fair and efficient adjudication of the controversy. Fed.R.Civ.P. 23(b)(3). Finally, class certification is subject to the implicit requirement that the class is ascertainable. *See In Re OnStar Contract Litig.*, 278 F.R.D. 352, 373 (E.D. Mich. 2011). The claims of “a class proposed to be certified for purposes of settlement[] may be settled ... only with the court’s approval.” Fed. R. Civ. P. 23(e). “The question at the preliminary approval stage is simply whether the settlement is fair enough to begin the class-notice process.” *Moeller v. Week Publ’ns, Inc.*, 2023 WL 119648, at *2 (E.D. Mich. January 6, 2023) (quoting *Garner Props. & Mgmt. v. City of Inkster*, 333 F.R.D. 614, 626 (E.D. Mich. 2020) (quotation marks omitted). The Court should grant preliminary approval to a proposed class settlement if it “(1)

does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment to class representatives or of segments of the class, or excessive compensation for attorneys, and (2) appears to fall within the range of possible approval” at the final-approval stage. *Id.* (quoting *Sheick v. Auto. Component Carrier, LLC*, 2010 WL 3070130, at *11 (E.D. Mich. August 2, 2010)) (citation and quotations omitted).

Under Rule 23(e), there are four factors for a Court to consider concerning whether a proposed agreement is “fair, reasonable, and adequate”: “(1) whether the class representatives and class counsel have adequately represented the class; (2) whether the proposal was negotiated at arm’s length; (3) whether the relief provided for the class is adequate; and (4) whether the proposal treats Class Members equitably relative to each other.” Fed.R.Civ.P. 23(e).

The Sixth Circuit provides seven additional factors to consider:

- (1) the risk of fraud or collusion;
- (2) the complexity, expense, and likely duration of the litigation;
- (3) the amount of discovery engaged in by the Parties;
- (4) the likelihood of success on the merits;
- (5) the opinions of class counsel and class representatives;
- (6) the reaction of absent Class Members and
- (7) the public interest.

Int’l Union, United Auto., Aerospace, & Agric. Implement Workers of America v. General Motors Corp., 497 F.3d 615, 631 (6th Cir. 2007).

ARGUMENT

I. THE COURT SHOULD CERTIFY THE PROPOSED CLASS FOR SETTLEMENT PURPOSES

To warrant class certification, Fed.R.Civ.P. 23(a) requires a showing of four factors: “(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). Where, as here, Plaintiffs seek to certify a class under Fed.R.Civ.P. 23(b)(3), Plaintiffs must additionally demonstrate “that the questions of law or fact common to Class Members predominate over any questions affecting only individual members and that a class action is superior to other available methods” for the fair and efficient adjudication of the controversy. Fed.R.Civ.P. 23(b)(3). Finally, class certification is subject to the implicit requirement that the class is ascertainable. *See In Re OnStar Contract Litig.*, 278 F.R.D. 352, 373 (E.D. Mich. 2011).

The Settlement Class satisfies each of the Rule 23 prerequisites and should therefore be certified for settlement purposes.

A. The Numerosity Requirement is Satisfied.

“Numerosity is a fact specific inquiry that turns upon such factors as geographic location and the ease of identifying Class Members, but there is no strict

numerical test to determine when the class is large enough or too numerous to be joined.” *Garner Props.*, 333 F.R.D. 614 at 622 (citing *Senter v. General Motors Corp.*, 532 F.2d 511, 523 n. 24 (6th Cir. 1976)). However, “it is generally accepted that a class of 40 or more members is sufficient to satisfy the numerosity requirement.” *Davidson v. Henkel*, 302 F.R.D. 427, 436 (E.D. Mich. 2014). Here, the Settlement Class includes thousands of people. (Ex. 2- Coulson Decl., ¶11). The numerosity requirement is plainly satisfied.

B. There Are Questions of Law or Fact Common to the Class.

“Commonality simply means that ‘there are questions of law or fact common to the class.’ Not all questions of law and fact raised in the complaint need be common.” *Speerly v. Gen. Motors, LLC*, 343 F.R.D. 493, 506 (E.D. Mich. 2023) (citations omitted). “The standard is not [that] demanding. ‘Rule 23(a) simply requires a common question of law or fact.’” *Id.* (quoting *Rockey v. Courtesy Motors, Inc.*, 199 F.R.D. 578, 583 (W.D. Mich. 2001)).

Plaintiffs allege that Defendant engaged in a common course of misconduct towards the proposed Class, giving rise to questions of both law and fact common to Class Members. [ECF No. 1, PageID. 41, ¶ 184]. The following are just some of the common questions inherent in the case:

- Whether Defendant owed a duty to Plaintiffs and members of the Class to adequately protect their PHI and PII and to provide timely and accurate notice of its use of third party tracking technologies to Plaintiffs and the Class, and whether it breached these duties;

- Whether Defendant violated federal and state laws thereby breaching its duties to Plaintiffs and the Class as a result of its use of third party tracking technologies;
- Whether Defendant knew or should have known that its use of the Pixel transmitted PHI and PII to third parties without consent;
- Whether Defendant’s conduct caused the unauthorized disclosure of Plaintiffs’ and Class Members’ PHI and PII; and
- Whether Defendant failed to inform Plaintiffs and the Class of the Third Party Tracking Technologies in a timely and accurate manner.

Plaintiffs’ allegations revolve around the common alleged course of conduct of Defendant’s implementation and use of third party tracking technologies and related unauthorized sharing of Plaintiffs’ PHI and PII. The injuries caused to Class Members are identical. For these reasons, the commonality prerequisite is satisfied.

C. The Claims of the Named Plaintiffs are Typical of the Claims of the Class Members.

In order to satisfy the “typicality” requirement for class certification, it is required that a “sufficient relationship exist between the injury to the named plaintiff and conduct affecting the class, so that the court may properly attribute a collective nature to the challenged conduct.” *Speerly v. General Motors, LLC*, 343 F.R.D. 493, 507 (E.D. Mich. 2023) (citation omitted). “Typicality is satisfied if the representative’s claim arises from the same [transaction or occurrence as] the claims of other Class Members, and [they] are based on the same legal theory.” *Strano v. Kiplinger Washington Eds., Inc.*, 649 F. Supp. 3d 546, 554 (E.D. Mich. 2023).

Plaintiffs’ claims, and those of the Class Members, entail the same type of alleged damages for the same type of injury caused by an alleged singular course of

conduct by Defendant, namely the implementation and usage of third-party tracking technologies to collect and disclose their PII and PHI to third parties. Plaintiffs' claims rest on the exact same legal theories as those of the Class. In all of the ways that are relevant to the required analysis, Plaintiffs' claims are typical of the claims of the proposed Class.

D. Plaintiffs and Class Counsel Satisfy the Adequacy of Representation Requirement.

To satisfy the final Rule 23(a) prerequisite, “the representative Parties [must] fairly and adequately protect the interests of the Class.” Fed.R.Civ.P. 23(a). The adequacy inquiry consists of two separate considerations: “(1) the representative must have some common interests with unnamed members of the class, and (2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel.” *Strano*, 649 F. Supp. 3d at 555 (quoting *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1083 (6th Cir. 1996)).

Plaintiffs have no conflict of interest with the absent Class Members and have retained Class Counsel with significant experience conducting class and complex litigation—specifically including data privacy class actions—in state and federal courts throughout the country. (Ex. 2, Coulson Decl., ¶¶5-8; Ex. 3 Almeida Declaration ¶¶4-). Class Counsel has negotiated a favorable Settlement Agreement, including through the use of a neutral mediator, and has vigorously prosecuted Plaintiffs' claims on behalf of the Class throughout this Litigation. Class Counsel's

extensive experience with data privacy class actions has been integral to resolving this matter for a substantial sum just over one year after the case was filed. Accordingly, Class Representatives and Class Counsel will adequately represent the class.

E. The Proposed Settlement Class is Ascertainable.

“The existence of an ascertainable class of persons to be represented by the proposed class representative[s] is an implied prerequisite of Federal Rule of Civil Procedure 23.” *In Re OnStar Contract Litig.*, 278 F.R.D. 352, 373 (E.D. Mich. 2011). To satisfy ascertainability “the class definition must be sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member of the proposed class.” *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 537-38 (6th Cir. 2012).

The proposed settlement Class here is readily ascertainable. The Class is defined with reference to objective criteria in the form of usage of Defendant’s website to conduct specified actions within the prescribed timeframe. To determine whether a given person is a member of the Class, all that is required is to determine whether that person used Defendant’s website or App “for medical information, services or physicians, fill out forms, schedule appointments, sign-up for membership, register for programs or support groups, or pay for medical services between June 1, 2017 and November 23, 2022.” (Ex. 1, pg. 8, § 11). Defendant has

access to this information in the form of users' account information. (*Id.*, pg. 13, ¶ 28). Class Members' email addresses are readily available to Defendant, and all Class Members will receive a Class Notice form via email (or by mail if no email is available). (Ex. B, C, Class Notices). Thus, the class is ascertainable, and the proposed settlement administration process will ensure that only verified Class Members receive compensation from the common fund.

F. The Requirements of Rule 23(b)(3) Are Also Satisfied.

1. Common Questions of Fact and Law Predominate.

“Predominance is satisfied if the Class’s individual questions of law or fact are sufficiently cohesive to warrant adjudication by representation.” *Strano*, 649 F. Supp. 3d at 555 (quotation omitted). The 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 third-party tracking technologies on Defendant’s Website and related unauthorized sharing of Plaintiffs’ PHI and PII to third parties, Defendant’s knowledge of those unauthorized disclosures, and the existence and proper measure of resultant damages—are common issues that predominate for the entire Class.

Based on the nature of the case and the Class definition, the Class has been impacted in a similar manner and to a similar degree, rendering any individual issues (to the extent they exist at all) of minimal importance—particularly in light of this

Settlement Agreement, which provides for a distribution of funds on a *pro rata* basis to all Claimants who submit approved claims. Plaintiffs submit that there are simply no individual issues left as to this Settlement Class that might overwhelm the predominating common issues.

2. A Class Action is the Superior Method for the Fair and Effective Adjudication of This Controversy.

“A class action is superior if it would vindicate[] the rights of groups of people who individually would be without effective strength to bring their opponents into court at all.” *Thomsen v. Morley Cos., Inc.*, 639 F.Supp.3d 758, 766 (E.D. Mich. 2022) (quotations omitted). “Factors that bear on the predominance and superiority inquiries in the settlement context include the class members’ interest in maintaining a separate action, other currently-pending litigation concerning the controversy, and the desirability of concentrating the litigation in a particular forum.” *Garner Properties & Mgmt., LLC v. City of Inkster*, 333 F.R.D. 614, 625 (E.D. Mich. 2020) (citing Fed.R.Civ.P. 23(b)(3)(A)–(C)). In the settlement context, any manageability concerns are obviated because the settlement eliminates the need for further management of the case. *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

Here, no other known actions have been filed, which also suggests that Class Members have little if any interest in maintaining separate actions. Class resolution achieves economies of time, effort, and expense while ensuring uniformity of

decision. The alternative to resolving this case as a class action is inefficient individual litigation that would leave unredressed the claims of most Class Members for whom active participation is not feasible for financial or other reasons. Resolving these claims together on behalf of a certified Class is fairer and incalculably more efficient. Class resolution will also prevent wasting the resources of the Court and the Parties by providing a single, orderly resolution to the case with a consistent result, as demonstrated by the proposed Settlement.

II. THE COURT WILL LIKELY BE ABLE TO APPROVE THE PROPOSED SETTLEMENT AS FAIR, REASONABLE AND ADEQUATE.

At the preliminary approval stage, “the question [] before the Court is simply whether the settlement is fair enough that it is worthwhile to expend the effort and costs associated with sending potential class members notice and processing opt-outs and objections.” *Garner Properties & Mgmt., LLC*, 333 F.R.D. at 626 (citing *Newberg on Class Actions* § 13:10 (5th ed.)). “[T]he settlement agreement should be preliminarily approved if it ‘(1) does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment to class representatives or segments of the class, or excessive compensation for attorneys, and (2) appears to fall within the range of possible approval.’” *Garner Properties & Mgmt., LLC*, 333 F.R.D. at 626 (quoting *Doe v. Deja Vu Servs., Inc.*, 2017 WL 490157, at *1 (E.D. Mich. Feb. 7, 2017)).

“At the final-approval stage, the Agreement will be approved if it is fair, reasonable, and adequate. To that end, factors from the Sixth Circuit and the Federal Rules of Civil Procedure guide the analysis.” *Moeller v. Wk. Publications, Inc.*, 649 F. Supp. 3d 530, 540–41 (E.D. Mich. 2023) (citing Fed R. Civ. P. 23(e)(2)). The applicable subrule directs the court to determine whether the terms of the proposed settlement are fair, reasonable, and adequate considering the following factors: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for the class is adequate; and (D) the proposal treats Class Members equitably to each other. Fed.R.Civ.P. 23(e)(1)(B)(i). Each of these factors, as well as the related considerations set out by the Sixth Circuit, are satisfied here.

A. The Class Representatives and Class Counsel have Adequately Represented the Class.

“[T]he first Rule 23(e) factor [adequacy of representation] is ‘redundant of Rule 23(a)(4)...’” *Strano*, 649 F. Supp. 3d at 557 (quoting *Newberg and Rubenstein on Class Actions* § 13:48 (6th ed.)) As such and as demonstrated above, the adequacy of representation factor is easily satisfied.

B. The Proposed Settlement Was Negotiated At Arm’s Length.

“The primary procedural factor courts consider in determining whether to preliminarily approve a proposed [class-action] settlement is whether the agreement arose out of arms-length, noncollusive negotiations.” *Hillson v. Kelly Servs. Inc.*,

2017 WL 279814, at *6 (E.D. Mich. 2017) (quoting *Newberg on Class Actions* § 13:14 (5th ed.)). Here, the Parties engaged in a full-day mediation before experienced and respected neutral mediator Bruce Freidman (JAMS). (Ex. 2- Coulson Decl., ¶¶13-14); See *Hillson*, 2017 WL 279814, at *6 (quoting *In re Penthouse Exec. Club Comp. Litig.*, 2013 WL 1828598, at *2 (S.D.N.Y. Apr. 30, 2013) (“The assistance of [an experienced mediator]... reinforces that the Settlement Agreement is non-collusive. A Settlement like this one, reached with the help of [a] third-party neutral[] enjoys a presumption that the settlement achieved meets the requirements of due process.”)). Leading up to and during the mediation, information was shared that allowed both sides to carefully evaluate the strengths and weaknesses of Plaintiffs’ claims and the defenses thereto as well as the concomitant value of this case. (Ex. 2- Coulson Decl., ¶14). Class Counsel believe that the benefits of early resolution greatly outweighed the risks and costs of prolonged litigation. (Ex. 2- Coulson Decl., ¶¶23-34). While any settlement is necessarily a compromise, the Settlement addresses the concerns of Plaintiffs and the Class and delivers valuable monetary relief.

C. The Monetary Relief Provided Through This Settlement Agreement Is Adequate Under The Circumstances.

Determining adequacy of relief involves consideration of several factors: “(1) the costs, risks, and delay of trial and appeal; (2) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-

member claims; (3) the terms of any proposed attorney's fee, including timing of payment; and (4) any agreement required to be identified under Rule 23(e)(3)."⁵ Fed.R.Civ.P. 23(e)(2)(C). Each of these factors counsels in favor of a finding that the Court will ultimately be able to approve the settlement.

1. The Costs, Risks, and Delay Inherent in Further Litigation, Trial, and Possible Appeal(s) Are Substantial in Complex Data Privacy Class Actions.

The consideration provided by Defendant to effectuate the proposed Settlement Agreement is an excellent result for the Class given the risk, cost, and delay inherent in further litigation. Defendant disputes Plaintiffs' allegations and denies that it is liable for any alleged harm caused to Plaintiffs and/or the Class. While Plaintiffs are confident in the merits of their case, the number of issues involved in this complex case, which centers on a developing area of law (third party tracking technology/pixel litigation), creates significant uncertainty. After considering the range of possibilities, it is Plaintiffs' counsel's experienced opinion that given the potential risks, rewards and costs of continuing litigation, that settlement on the proposed terms is the most desirable course for Plaintiffs and the Class to take. (**Ex. 2-** Coulson Decl., ¶24).

⁵ The proposed Settlement Agreement is attached as **Ex. 1**, satisfying the fourth factor.

2. The Proposed Method of Distributing Relief to the Class and Proposal for Processing Class Member Claims Is Effective, and Class Counsel Has Extensive Experience Administering Similar Class Settlements.

The Settlement provides for the distribution of monetary relief on a *pro-rata* basis to all Class Members who submit a timely and valid claim form. (Ex. 1, pg. 3, ¶ 8(d)). Class Members will be afforded 60 days following the Notice Date, whereby each Class Member will receive notice via email, to submit a claim form to be paid in a form of their choosing. The equal share formula is both equitable and sensible because any potential degree in variation between the claims of Class Members is minimal and is outweighed by the cost, uncertainty, and administrative infeasibility of attempting to distinguish amongst claims. An equal basis *pro rata* distribution avoids these unnecessary costs.

Additionally, the claims process is as simple as possible without inviting fraud. This simple claims process, which requires basic proof of identity and qualification, ensures that funds are distributed only to qualifying Class Members. Both the method for making claims and the method for distributing funds are designed to be maximally effective for getting the Class relief into Class Members' hands.

3. The Requested Attorney's Fee is Standard and Reasonable Considering the Result for the Class.

Pursuant to the terms of the Settlement Agreement, Class Counsel may apply to the Court for an award of reasonable attorney's fees and plan to request attorney's fees in an amount not to exceed one-third of the total settlement value. (Ex. 1, pg. 21-22). This percentage is standard within this district and the Sixth Circuit. *See, e.g., Strano*, 649 F. Supp. 3d at 558 (granting preliminary approval to attorney's fee request not to exceed 35% in a class settlement); *Garner Props. & Mgmt. v. City of Inkster*, 2020 WL 4726938, at *10 (E.D. Mich. August 14, 2020) (finding that 33% attorney's fees were reasonable.) Given Plaintiffs' Counsel's expertise in similar complex litigation and their efforts to secure this significant relief for the Class, the standard fee request is justified. Further, any award is subject to the Court's discretion and approval.

D. The Proposed Settlement Treats All Class Members Equitably.

For many of the same reasons as discussed above, there are no concerns here regarding the equitable treatment of Class Members relative to one another. Every member of the Class will have an equal opportunity to collect on the monetary relief provided through this Settlement, and Class Members who submit timely and valid claim forms will be treated equally to one another, receiving one equal share of the Net Settlement Fund. The alleged injury here is the disclosure of a functionally identical sort of private information. There are no material differences between the

claims of Class Members that would merit departing from this fair and manageable approach.

III. THE SIXTH CIRCUIT FACTORS SIMILARLY WEIGH IN FAVOR OF PRELIMINARY APPROVAL.

Consideration of the additional Sixth Circuit factors similarly counsels in favor of preliminary approval. The factors are “(1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the Parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent Class Members; and (7) the public interest.” *UAW v. Gen. Motors Corp.*, 497 F.3d 615, 631 (6th Cir. 2007).

Factors one through five are largely subsumed by the previously outlined Rule 23(e)(2) factors rendering simple reiteration here unnecessary. *See Macy v. GC Servs. Ltd. P’ship*, 2019 WL 6684522, at *2 (W.D. Ky. December 6, 2019) (“[Rule 23(e)] largely encompasses the factors that have been employed by the Sixth Circuit[.]”). Each of these factors weighs in favor of preliminary approval or, at the very least, is neutral. The sixth factor, the reaction of absent Class Members, cannot be evaluated until notice has been disseminated and the Class’s feedback received, rendering this analysis more appropriate on final approval. The seventh factor, the public interest, weighs overwhelmingly in favor of approval. This Settlement represents the resolution of an alleged unlawful disclosure of personal information

for thousands of people which will provide meaningful relief to the community and serve the important interest of encouraging responsible data privacy practices.

IV. THE PROPOSED NOTICE PLAN IS APPROPRIATE.

“After preliminarily approving a settlement, the court must direct notice of the proposed settlement to all Class Members who would be bound by the proposal.” Fed.R.Civ.P. 23(e)(1)(B). The Settlement provides for notice to the Class in the form attached as **Exs. B & C** to the Settlement Agreement. Within forty-five (45) days after the Court issues its Preliminary Approval Order (**Ex. D**), the settlement administrator will disseminate the Class Notice and Claim Form to each Class Member via email to all Class Members for whom Defendant has such information. This is particularly appropriate where, as here, the Class Members all interacted with Defendant’s website and resultantly Defendant maintains email contact information for them. The settlement administrator shall also mail a Claim Form to Class Members upon written or telephonic request. Further, the administrator will post the Class Notice on the Settlement Website, along with copies of the Settlement Agreement and the Claim Form, and with instructions for opting out of or objecting to the settlement. Class Members will then have sixty (60) days from the Notice Date to opt out or object to the Settlement Agreement, and 60 days to file a Claim Form. **Ex. 1**, pg. 4, ¶11(c); pg. 13, ¶ 25; pg. 20, ¶ 56; *see also Ex. A- Claim Form*). Any

Class Member who chooses to opt out will not be bound by the Settlement Agreement and will not release any claims against Defendant. (*Id.*)

When, such as here, Plaintiffs seek to certify a class pursuant to Rule 23(b)(3):

Notice must also include the following in ‘plain, easily understood language:

- (1) the nature of the action;
- (2) the definition of the class certified;
- (3) the class claims, issues, or defenses;
- (4) that a Class Members may enter an appearance through an attorney is the member so desires;
- (5) that the court will exclude from the class any member who requests exclusion;
- (6) the time and manner for requesting exclusion; and
- (7) the binding effect of a class judgment on members under Rule 23(c)(3).

Moeller v. Week Pubs., Inc., 2023 WL 119648, at *8 (E.D. Mich. January 6, 2023) (quoting Fed.R.Civ.P. 23(c)(2)(B)).

The Class Notice provides all of the salient information, clearly states that it contains only a summary of the Settlement Agreement, and describes how Class Members can obtain additional information regarding the Settlement Agreement. The Notice also refers interested individuals to the Settlement website, where they may access relevant documents or seek further information. Class Members will have the opportunity to make claims, opt-out, or object to the Settlement. Plaintiffs will then seek final approval of the Settlement, at which time the Court can consider the Class’s response thereto. The Class Notice and Notice Plan should therefore be approved.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter the attached Order Granting Preliminary Approval (**Ex. D**), preliminarily approve the Settlement Class, appoint Plaintiffs' Counsel as Settlement Class Counsel, and approve the Notice program described herein.

Dated: September 6, 2024

Respectfully Submitted,

/s/ Nicholas A. Coulson

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CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2024 I served a copy of the foregoing upon all counsel of record via the Court's CM/ECF system, which will send notifications of such filing to the e-mail addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List.

/s/ Nicholas A. Coulson
Nicholas A. Coulson

SETTLEMENT AGREEMENT AND RELEASE

This Settlement and Release Agreement (“Agreement” or “Settlement Agreement”) is entered into by, between and among Plaintiffs Jane Doe 1 and Jane Doe 2 (“Plaintiffs”), individually and on behalf of the Settlement Class, and Workit Health, Inc. (“Defendant” or “Workit”) in the case of *Doe v. Workit Health, Inc.*, Case No. 2:23-cv-11691-LVP-DRG, currently pending in the Eastern District of Michigan (the “Litigation”). Defendant and Plaintiffs are each referred to as a “Party” and are collectively referred to herein as “the Parties.”

I. Recitals

1. Workit is a telehealth provider for addiction and mental health treatment. Workit owns and maintains a website at www.workithealth.com, and a web-based app webform at <https://app.workithealth.com> (collectively, “Website”), as well as mobile applications (“Applications”).

2. On July 14, 2023, Plaintiffs commenced the Litigation by filing a putative class action complaint (the “Class Action Complaint”) alleging, on behalf of themselves and the Settlement Class (defined below), that Workit’s implementation and use of certain third-party website technologies (“Third-Party Technologies”), including the Meta Pixel and Google Analytics, may have led to the disclosure of certain personal or health-related information to third-party vendors (the “Third-Party Disclosure”). Plaintiffs claim that Defendant’s implementation and usage of such Third-Party Technologies on the Website and Applications resulted in the unlawful disclosure of Plaintiffs’ and Settlement Class Members’ confidential health information without consent. Plaintiffs asserted statutory and common law claims based on their factual allegations.

3. Defendant denies all claims asserted in the Litigation, denies all allegations of wrongdoing and liability and denies all material allegations of the Class Action Complaint filed in the Litigation.

4. Class Counsel have investigated the facts relating to the claims and defenses alleged and the underlying events in the Litigation, have made a thorough study of the legal principles applicable to the claims and defenses asserted in the Litigation, and have conducted a thorough assessment of the strengths and weaknesses of the Parties' respective positions.

5. On March 21, 2024, Counsel for the Parties engaged in a full day, in-person mediation before skilled mediator Bruce Freidman (JAMS) in Orange County, California, concerning a possible settlement of the claims asserted in the Litigation. This mediation resulted in a settlement in principle, the terms of which are reflected in this Settlement Agreement.

6. The Parties desire to settle the Litigation and all claims arising out of or related to the allegations or subject matter of the Litigation, the alleged Third-Party Disclosures, and Workit's alleged use of Third-Party Technologies on its Website and/or web and mobile based Applications on the terms and conditions set forth herein for the purpose of avoiding the burden, expense, risk, and uncertainty of continuing to litigate the Litigation.

7. Plaintiffs and Class Counsel, on behalf of the Settlement Class, have concluded, based upon their investigation, and taking into account the contested issues involved, the expense and time necessary to prosecute the Litigation through trial, the risks and costs associated with further prosecution of the Litigation, the uncertainties of complex litigation, the desired outcome from continued litigation, and the substantial benefits to be received pursuant to this Settlement Agreement, that a settlement with Defendant on the terms set forth herein is fair and reasonable

and in the best interest of Plaintiffs and the Settlement Class. Plaintiffs and Class Counsel believe that the Settlement confers substantial benefits upon the Settlement Class.

8. The Settlement Agreement allocates and distributes the Settlement Fund as follows:
 - a. the Settlement Administrator's Notice and Settlement Administration Costs;
 - b. any Court-approved Settlement Class Representative Service Awards and
 - c. any Court-approved Class Counsel's Attorneys' Fees and Expenses Award
 - i. (the Settlement Fund less the allocations referenced in items a-c above is referred to herein as the "Net Settlement Fund.")
 - d. direct *pro rata* payments to each and every Settlement Class Member who timely submits a valid claim.

9. The Parties agree and understand that neither this Settlement Agreement, nor the settlement it represents, shall be construed as an admission by Defendant of any wrongdoing whatsoever, including an admission of a violation of any statute or law or of liability on the claims or allegations in the Litigation or any other similar claims in other proceedings, or that any such claims would be suitable for class treatment.

10. The Parties, by and through their respective duly authorized counsel of record, and intending to be legally bound hereby, agree that the Litigation, and all matters and claims in the Complaint, and all matters and claims arising out of or related to the allegations or subject matter of the Litigation, shall be settled, compromised, and dismissed, on the merits and with prejudice, upon the following terms and conditions.

II. Definitions

11. As used herein and in the related documents attached hereto as exhibits, the following terms have the meaning specified below:

- a. “Agreement” or “Settlement Agreement” means this settlement agreement, including all exhibits, which the Parties understand and agree sets forth all material terms and conditions of the Settlement of the Litigation between them and which is subject to preliminary and final approval by the Court.
- b. “Attorneys’ Fees and Expenses Award” means the amount awarded by the Court, if any, to be paid to Class Counsel from the Settlement Fund, such amount to be in full and complete satisfaction of Class Counsel’s claim or request (and any request made by any other attorneys) for payment of reasonable attorneys’ fees and Litigation Expenses incurred in respect of the Litigation;
- c. “Claim Deadline” means the deadline for filing claims set at a date certain sixty (60) Days from the Notice Date, as defined in Paragraph 45.
- d. “Claim Form” means the form members of the Settlement Class must complete and submit on or before the Claims Deadline to be eligible for the benefits described herein, and substantially in the form of **Exhibit A** to this Settlement Agreement (including a substantially similar digitized form to be designed by the Settlement Administrator). The Claim Form shall require a sworn affirmation under penalty of perjury but shall not require a notarization or any other form of verification.
- e. “Claimants” shall have the meaning given in Paragraph 34.
- f. “Class Counsel” shall mean David S. Almeida of Almeida Law Group LLC located at 849 W. Webster Avenue in Chicago, Illinois 60614, and Nicholas A. Coulson of Liddle Sheets Coulson P.C located at 975 E. Jefferson Avenue in Detroit, Michigan 48207.
- g. “Class Notice” means the notice of this Settlement, which shall include the Short-Form or Email Notice and a Long Form Notice, substantially in the form attached hereto as **Exhibits A and B**, respectively.
- h. “Court” means the United States District Court for the Eastern District of Michigan.
- i. “Day(s)” means calendar days, but does not include the day of the act, event, or default from which the designated period of time begins to run. Further and notwithstanding the above, when computing any period of

time prescribed or allowed by this Settlement Agreement, “Days” includes the last day of the period unless it is a Saturday, a Sunday, or a federal legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or federal legal holiday.

- j. “Third-Party Disclosure” means the alleged disclosure of personal information of Plaintiffs and members of the Settlement Class to third-party vendors, including Facebook and Google, from persons who used Defendant’s Website or Application to search for medical information, services, or physicians, fill out forms, schedule appointments, sign-up for membership, register for programs or support groups, or pay for medical services between June 1, 2017 and November 23, 2022.
- k. “Defendant’s Counsel” means Tammy Webb and Daniel Rohner of Shook, Hardy & Bacon LLP, located at 555 Mission Street, Suite 2300, San Francisco, CA 94105 and 1660 17th Street, Suite 450, Denver, CO, 80202., respectively, and Debra Geroux and located at 201 W. Big Beaver, Suite 1200, Troy, Michigan 48084.
- l. “Effective Date” means the date defined in Paragraph 86 of this Settlement Agreement.
- m. “Final” with respect to a judgment or order means that all of the following have occurred: (i) the time expires for noticing any appeal; (ii) if there is an appeal or appeals, completion, in a manner that finally affirms and leaves in place the judgment or order without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration, rehearing *en banc*, or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) final dismissal of any appeal or the final dismissal of any proceeding on certiorari.
- n. “Final Approval Hearing” means the hearing to determine whether the Settlement should be given final approval and whether the applications for Class Service Awards and Class Counsel for attorneys’ fees, costs and expenses should be approved.
- o. “Final Approval Order” means the order of the Court finally approving this Settlement.
- p. “Final Judgment” means the dismissal with prejudice in the Litigation, entered in connection with the Settlement and Final Approval Order.

- q. “Litigation” means the lawsuit entitled *Doe v. Workit Health, Inc.*, Case No. 2:23-cv-11691-LVP.DRG pending in the United States District Court for the Eastern District of Michigan filed on July 14, 2023.
- r. “Litigation Costs” means costs and expenses incurred by Class Counsel in connection with commencing, prosecuting, mediating, settling the Litigation, and obtaining an order of final judgment.
- s. “Long-Form Notice” means the written notice substantially in the form of **Exhibit B** to this Settlement Agreement.
- t. “Notice and Claims Administration Costs” means all approved reasonable costs incurred or charged by the Settlement Administrator in connection with providing notice to members of the Settlement Class and administering the Settlement. This does not include any separate costs incurred directly by Defendant or any of Defendant’s attorneys, agents, or representatives in this Litigation.
- u. “Net Settlement Fund” means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (i) reasonable Notice and Claims Administration Costs incurred pursuant to this Settlement Agreement, (ii) any taxes owed by the Settlement Fund, (iii) any Service Awards approved by the Court, and (iv) any Attorneys’ Fees, Costs, and Expenses approved by the Court.
- v. “Notice Program” means the notice program described in Section VII.
- w. “Objection Deadline” shall have the meaning set forth in Paragraph 56 or as otherwise ordered by the Court.
- x. “Opt-Out” means a Settlement Class Member (i) who timely submits a properly completed and executed Request for Exclusion, (ii) who does not rescind that Request for Exclusion before the end of the Opt-Out Period, and (iii) as to which there is not a successful challenge to the Request for Exclusion.
- y. “Opt-Out Date” means the date by which Settlement Class Members must mail their Request for Exclusion in order to be excluded from the Settlement Class. The postmark date shall constitute evidence of the date of mailing for these purposes. The Opt-Out Date shall be sixty (60) Days after the Notice Date.
- z. “Parties” means Plaintiffs collectively and Defendant, and a “Party” means one of the Plaintiffs or the Defendant.

- aa. “Plaintiffs’ Released Claims” means all claims and other matters released in and by Section XV of this Settlement Agreement.
- bb. “Email Notice” or “Short-Form Notice” means the written notice to be sent to Settlement Class Members pursuant to the Preliminary Approval Order substantially in the form as the Short-Form Notice attached as **Exhibit C** to this Settlement Agreement.
- cc. “Preliminary Approval Date” means the date the Preliminary Approval Order has been executed and entered by the Court.
- dd. “Preliminary Approval Order” means the order certifying the proposed Class for settlement purposes, preliminarily approving this Settlement Agreement, approving the Notice Program, and setting a date for the Final Approval Hearing, entered in a format the same as or substantially similar to that of the Proposed Preliminary Approval Order attached hereto as **Exhibit D**.
- ee. “Related Entities” means Defendant’s past or present parents, subsidiaries, divisions, and related or affiliated entities whether direct or indirect, as well as each of Defendant’s and these entities’ respective predecessors, successors, members, directors, officers, employees, principals, agents, attorneys, providers, customers, insurers, and reinsurers, and includes, without limitation, any person related to any such entity who is, was, or could have been named as a defendant in this Litigation.
- ff. “Released Class Claims” means all class claims and other matters released in and by Section XV of this Settlement Agreement.
- gg. “Released Persons” means Defendant and the Related Entities, and each of their present and former parents, subsidiaries, divisions, departments, affiliates, predecessors, successors, assigns, insurers, and each of the foregoing’s former or present directors, trustees, officers, employees, representatives, agents, providers, consultants, advisors, attorneys, accountants, partners, vendors, customers, insurers, reinsurers, and subrogees.
- hh. “Releasing Persons” means Plaintiffs and the Settlement Class Members and each of their heirs, estates, trustees, principals, beneficiaries, guardians, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns and/or anyone claiming through them or acting or purporting to act for them or on their behalf.
- ii. “Settlement” means the settlement reflected by this Settlement Agreement.

- jj. “Settlement Administrator” means the class action settlement administrator retained to carry out the notice plan and administer the claims and settlement fund distribution process. After reviewing bids, the Parties, subject to Court approval, have agreed to use EisnerAmper LLP as Settlement Administrator in this matter.
- kk. “Settlement Agreement” means this Settlement Agreement, including releases and all exhibits hereto.
- ll. “Settlement Class” means all persons in the United States who used Defendant’s Website or Application (both web-based and mobile) to search for medical information, services or physicians, fill out forms, schedule appointments, sign-up for membership, register for programs or support groups, or pay for medical services between June 1, 2017 and November 23, 2022.
 - i. Excluded from the Settlement Class are: (i) Defendant, any entity in which Defendant has a controlling interest, and Defendant’s affiliates, parents, subsidiaries, officers, directors, legal representatives, successors, subsidiaries, and assigns; (ii) any judge, justice, or judicial officer presiding over the Litigation and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly excludes themselves from the Settlement.
- mm. “Settlement Class Member[s]” means all persons who are members of the Settlement Class.
- nn. “Settlement Fund” means the non-reversionary sum of Five Hundred Seventy-Eight Thousand Six Hundred and Eighty dollars and no cents (\$578,680), to be paid by or on behalf of Defendant as specified in this Agreement, including any interest accrued thereon after payment.
- oo. “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 Email Notice, the Long-Form Notice, and the Claim Form, among other things as agreed upon by the Parties and approved by the Court as required.

III. CERTIFICATION OF THE SETTLEMENT CLASS

12. For settlement purposes only, Plaintiffs will request that the Court certify the Settlement Class. And Defendant does not oppose Plaintiffs’ request for certification.

13. If this Settlement Agreement is validly terminated or otherwise not approved by the Court, or if the Effective Date should not occur for any reason, then Plaintiffs' request for certification of the Settlement Class shall be considered withdrawn and deemed to be of no force or effect for any purpose in this Litigation and/or any other proceeding.

IV. THE SETTLEMENT FUND

14. Defendant agrees to make a payment of Five Hundred Seventy-Eight Thousand Six Hundred and Eighty dollars and no cents (\$578,680.00), and to deposit that payment into the Settlement Fund within thirty (30) Days after the Effective Date. For the avoidance of doubt, and for purposes of this Settlement Agreement only, Defendant's liability shall not exceed Five Hundred Seventy-Eight Thousand Six Hundred and Eighty dollars and no cents (\$578,680.00), inclusive of attorneys' fees, costs, and expenses. The timing set forth in this provision is contingent upon the receipt of a W-9 from the Settlement Administrator for the Settlement Fund before the Effective Date. If Defendant does not receive this information before the Effective Date, the payments specified by this paragraph shall be made within thirty (30) Days after Defendant receives this information.

15. The Settlement Fund 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 the entirety of the Settlement Fund is distributed pursuant to this Agreement or returned to those who paid the Settlement Fund in the event this Agreement is voided, terminated, or cancelled.

16. 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 Representatives and Class Counsel shall have no obligation to repay any of the Notice and Claims Administration Costs that have been paid or incurred in accordance with the terms and conditions of this Agreement; (ii) any amounts

remaining in the Settlement Fund after payment of Notice and Claims Administration Costs paid or incurred in accordance with the terms and conditions of this Agreement, including all interest earned on the Settlement Fund net of any taxes, shall be returned to Defendant; and (iii) no other person or entity shall have any further claim whatsoever to such amounts.

17. This Settlement is non-reversionary. As of the Effective Date, all rights of Defendant in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is voided, cancelled, or terminated, as described in Section XIV of this Agreement. In the event the Effective Date occurs, no portion of the Settlement Fund shall be returned to Defendant.

18. As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for: (i) reasonable Notice and Claims Administration Costs incurred pursuant to this Settlement Agreement as approved by the Parties and approved by the Court, (ii) any taxes owed by the Settlement Fund, (iii) any Service Awards approved by the Court, (iv) any Attorneys' Fees, Costs, and Expenses Award as approved by the Court, and (v) any benefits to Settlement Class Members, pursuant to the terms and conditions of this Agreement.

19. The Settlement Fund shall be an 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 a qualified settlement fund pursuant to Treasury Regulation § 1.468 B-1, *et seq.*

20. No amounts may be withdrawn from the Settlement Fund unless (i) expressly authorized by the Settlement Agreement, or as may be (ii) approved by the Court. The Parties, by agreement, may authorize the periodic payment of actual reasonable Notice and Claims Administration Costs from the Settlement Fund as such expenses are invoiced without further

order of the Court. The Settlement Administrator shall provide Class Counsel and Defendant with notice of any withdrawal or other payment the Settlement Administrator proposes to make from the Settlement Fund before the Effective Date at least seven (7) business days prior to making such withdrawal or payment.

21. 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 Fund to Claimants pursuant to this Agreement.

22. The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund 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 Fund and paying from the Settlement Fund any taxes owed by the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund 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. Funds may be placed in a non-interest-bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

23. All taxes owed by the Settlement Fund shall be paid out of the Settlement Fund, shall be considered a Notice and Claims Administration Cost, and shall be timely paid by the

Settlement Administrator without prior order of the Court. Further, the Settlement Fund 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 Fund. Each Class Representative and Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

24. Limitation of Liability

- a. Defendant 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 or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund or (vi) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns. Defendant also shall have no obligation to communicate with Settlement Class Members and others regarding amounts paid under the Settlement.
- b. The Class Representatives 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 or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration calculation of payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund or (vi) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

V. BENEFITS TO SETTLEMENT CLASS MEMBERS

25. Settlement Class Members must submit a valid Claim Form in order to receive a settlement benefit. Claims will be subject to review for completeness, validity, and timeliness by the Settlement Administrator. For any claims deemed invalid, the Settlement Administrator will provide claimants an opportunity to cure in the manner set forth below. All Settlement Class members who submit a valid claim form will receive a *pro rata* share of the Net Settlement Fund, which will be paid in accordance with Section VI below.

VI. SETTLEMENT ADMINISTRATION

26. All agreed upon and reasonable Notice and Settlement Administration Costs will be paid from the Settlement Fund.

27. The Parties agree to solicit and did solicit competitive bids for settlement administration, including Notice and Claims Administration Costs, to rely upon Email Notice, and to utilize other appropriate forms of notice where practicable, in order to contain the administration costs while still providing effective notice to the Settlement Class Members. The approved Settlement Administrator shall agree to execute a HIPAA compliant business associate agreement or other comparable agreement acceptable to Defendant ensuring the protection of any personally identifiable information supplied by Defendant pursuant to the terms of this Agreement.

28. The Settlement Administrator will provide written notice via email, to the extent such addresses are kept by Defendant (“Email Notice”). Email Notice shall be sent to each Settlement Class member for whom Defendant has such information on two occasions and on dates suggested by the Settlement Administrator and shall include a hyperlink to the Claim Form on the Settlement Website. The Claim Form on the website shall be prepopulated. Settlement Class Members shall have sixty (60) Days from the Notice Date to object to the Settlement Agreement.

29. The Settlement Administrator shall also provide notice via publication to the extent such notice is deemed appropriate by the Settlement Administrator in consultation with the Parties in order to provide the best notice practicable under the circumstances.

30. The Settlement Administrator will administer the notice process in accordance with the terms of the Settlement Agreement and any orders of the Court. The Settlement Administrator may request the assistance of the Parties to facilitate providing notice and to accomplish such other purposes as may be approved by both Class Counsel and Defendant's Counsel. The Parties shall reasonably cooperate with such requests.

31. 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 Defendant's Counsel, subject to the Court's supervision and direction as circumstances may require.

32. To make a claim, a Settlement Class Member must complete and submit a valid, timely, and sworn Claim Form. A Claim Form shall be submitted online at the Settlement Website or by U.S. mail and must be postmarked no later than the Claim Deadline.

33. The Settlement Administrator will review and evaluate each Claim Form, including any required documentation submitted, for validity, timeliness, and completeness.

34. If, in the determination of the Settlement Administrator, the Settlement Class Member submits a timely but incomplete or inadequately supported Claim Form, the Settlement Administrator shall give the Settlement Class Member notice of the deficiencies, and the Settlement Class Member shall have twenty-one (21) Days from the date of the written notice to cure the deficiencies. The Settlement Administrator will provide notice of deficiencies concurrently to Defendant's Counsel and Class Counsel. If the defect is not cured within the 21-

Day period, then the Claim will be deemed invalid. All Settlement Class Members who submit a valid and timely Claim Form, including a Claim Form deemed defective but timely cured, shall be considered “Claimants.”

35. The Settlement Administrator will maintain records of all Claim Forms submitted until three hundred and sixty (360) Days after entry of the Final Judgment. Claim Forms and supporting documentation may be provided to the Court upon request and to Defendant, Class Counsel, and Defendant’s Counsel to the extent necessary to resolve claims determination issues pursuant to this Settlement Agreement. Class Counsel or the Settlement Administrator will provide other reports or information that the Court may request or that the Court or Defendant’s Counsel may reasonably require.

36. Subject to the terms and conditions of this Settlement Agreement, thirty (30) Days after the Effective Date, the Settlement Administrator shall mail or otherwise provide a payment via check (“Claim Check”) or digital payment selected in consultation with the Settlement Administrator (collectively, “Claim Payment”) to each Claimant for their pro rata share of the Settlement Fund, in accordance with the following distribution procedures:

- a. The Settlement Administrator shall utilize the Net Settlement Fund to make all Cash Compensation payments as described in Paragraph 38.
- b. The amount of each Cash Compensation payment shall be calculated by dividing the Net Settlement Fund by the number of valid Claimants.

37. Each Claim Check shall be mailed to the address provided by the Claimant on his or her Claim Form. All Claim Checks 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 Checks issued pursuant to this section that are not negotiated within ninety (90) calendar days of their date of issue shall not be reissued.

38. To the extent any monies remain in the Net Settlement Fund more than one hundred twenty (120) Days after the distribution of Claim Payments to the Claimants, a subsequent payment will be evenly made to all Claimants who cashed or deposited their initial Claim Payments they received, provided that the average payment amount is equal to or greater than Three Dollars and No Cents (\$3.00). The distribution of this remaining Net Settlement Fund shall continue until the average payment amount in a distribution is less than Three Dollars and No Cents (\$3.00), whereupon the amount remaining in the Net Settlement Fund, if any, shall be distributed to one or more appropriate recipients by mutual agreement of the Parties and the Court (but shall, in no event, revert to Defendant).

39. For any Claim Check 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 Check within thirty (30) Days after the check is returned to the Settlement Administrator as undeliverable. The Settlement Administrator shall only make one attempt to resend a Claim Check.

40. No portion of the Net Settlement Fund shall revert or be repaid to Defendant after the Effective Date. Any residual funds remaining in the Net Settlement Fund, after all payments and distributions are made pursuant to the terms and conditions of this Agreement shall be distributed according to the provisions outlined in Paragraph 38.

VII. NOTICE TO SETTLEMENT CLASS MEMBERS

41. The Parties agree that the following Notice Program provides reasonable notice to the Settlement Class.

42. Direct Notice shall be provided to Settlement Class Members via email to the extent such addresses are possessed by Defendant and shall consist of the Short Form Notice substantially in the form of Exhibit C. The Settlement Administrator shall have discretion to format this Short Form Notice for email in a reasonable manner to minimize administrative costs. The Notice shall be sent via email to each Settlement Class member for whom Defendant has such information on two occasions and on dates suggested by the Settlement Administrator and shall include a hyperlink to the Claim Form on the Settlement Website. The Claim Form on the website shall be prepopulated.

43. Additional Notice may be provided via publication pursuant to Paragraph 29, to the extent such notice is deemed appropriate by the Settlement Administrator in consultation with the Parties in order to provide the best notice practicable under the circumstances.

44. Within fifteen (15) Days of the entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the names and/or usernames and last email addresses known to Defendant for the Settlement Class Members (the "Class List").

45. Within forty-five (45) Days following entry of the Preliminary Approval Order ("Notice Date"), the Settlement Administrator shall email the Email Notice (the first of two emails) to all Settlement Class Members. The Settlement Administrator shall mail a Claim Form to Settlement Class Members upon written or telephonic request.

46. The Email Notice shall be sent to each Settlement Class member for whom Defendant has such information on two occasions and on dates suggested by the Settlement Administrator and shall include a hyperlink to the Claim Form on the Settlement Website. Other than as set forth above, neither the Parties nor the Settlement Administrator shall have any other obligation to re-email Notices.

47. The emailed notice will consist of the Email Notice substantially in the form of **Exhibit C**. The Settlement Administrator shall have discretion to format this Email Notice in a reasonable manner. Before the emailing of the Email Notice is commenced, Class Counsel and Defendant's Counsel shall first be provided with a proof copy (including what the items will look like in their final form) and shall have the right to inspect the same for compliance with the Settlement Agreement and the Court's order(s).

48. No later than forty-five (45) Days following entry of the Preliminary Approval Order, the Settlement Administrator shall effectuate any publication notice made pursuant to paragraph 29, to the extent that this notice is deemed to be necessary by the Parties.

49. No later than forty-five (45) Days following entry of the Preliminary Approval Order, and prior to the emailing of the Email Notice to all Settlement Class Members, the Settlement Administrator will create a dedicated Settlement Website. The Settlement Administrator shall cause the Class Action Complaint, Email Notice, Long-Form Notice, Claim Form, this Settlement Agreement, and other relevant settlement and court documents to be available on the Settlement Website. 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, by Class Counsel and Defendant's Counsel. The Settlement 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 Email Notice.

50. Claimants shall be able to submit their claims via the Settlement Website.

51. The Settlement Website shall be maintained from the Notice Date until sixty (60) Days after the Claims Deadline has passed.

52. Claim Forms shall be returned or submitted to the Settlement Administrator online or via U.S. mail, postmarked or received 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.

53. 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.

VIII. OBJECTIONS TO THE SETTLEMENT

54. Any Settlement Class Member who wishes to object to the proposed Settlement Agreement must file with the Court and serve a written objection(s) to the Settlement (“Objection(s)”) on Class Counsel and Defendant’s Counsel, at the addresses set forth in the Long-Form Notice.

55. Each Objection must (i) set forth the Settlement Class Member’s full name, current address, telephone number, and email address; (ii) contain the Settlement Class Member’s signature; (iii) contain proof that the Settlement Class Member is a member of the Settlement Class (e.g., copy of settlement notice, proof of Workit membership during relevant time period, or other proof of use of Workit’s Website web or mobile based Applications during the relevant time period); (iv) state that the Settlement Class Member objects to the Settlement, in whole or in part; (v) set forth a statement of the legal and factual basis for the Objection; (vi) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position; (vii) identify all counsel representing the Settlement Class Member, if any; (viii) contain the signature of the Settlement Class Member’s duly authorized attorney or other duly authorized representative, along with documentation setting forth such representation; and (ix) contain a list, including case

name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement in the past three (3) years.

56. Objections must be filed with the Court and served on Class Counsel and Defendant's Counsel no later than sixty (60) Days after the Notice Date (the "Objection Deadline"). The Objection Deadline shall be included in the Short-Form and Long-Form Notices.

57. Class Counsel and Defendant's 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.

58. 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 also file a notice of appearance with the Court (as well as serve the notice on Class Counsel and Defendant's Counsel) by the Objection Deadline.

- a. 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.
- b. Any Settlement Class Member who fails to timely file and serve an Objection and notice, if applicable, of his or her intent to appear at the Final Approval Hearing in person or through counsel pursuant to this Settlement Agreement, as detailed in the Long-Form Notice, and otherwise as ordered by the Court, shall not be permitted to object to the approval of the

Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means.

59. Any Settlement Class Member who does not submit a timely Objection in complete accordance with this Settlement Agreement and the Long-Form Notice, or as otherwise ordered by the Court, 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.

IX. OPT-OUT PROCEDURES

60. Each Person wishing to opt-out of the Settlement Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Claims Administrator. Settlement Class Members may also mail or submit the exclusion form attached hereto as **Exhibit C** via the Settlement Website. The written notice must clearly manifest a Person's intent to opt-out of the Settlement Class. To be effective, written notice must be postmarked no later than the Opt-Out Date.

61. All Persons who submit valid and timely notices of their intent to opt-out of the Settlement Class, as set forth in paragraph 60 above, referred to herein as "Opt-Outs," shall not receive any benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Settlement Class who do not opt-out of the Settlement Class in the manner set forth in paragraph 60 above shall be bound by the terms of this Settlement Agreement and Judgment entered thereon.

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

62. Class Counsel shall request the Court to approve an award of attorneys' fees not to exceed 1/3 of the Settlement Fund plus reasonable costs and expenses incurred in prosecuting the

litigation. Class Counsel's attorneys' fees, costs, and expenses awarded by the Court shall be paid no later than thirty (30) Days after the Effective Date. For the avoidance of doubt, the Court approved amount of any attorneys' fees, costs, and expenses shall be paid from the Settlement Fund. Defendant shall take no position with regard to Class Counsel's application for the Attorneys' Fees and Expenses Award if the application complies with the provisions of this section. The Parties did not discuss or agree upon any provision relating to attorneys' fees until after they agreed on all material terms of relief to the Settlement Class.

63. Class Counsel shall request the Court to approve a service award of two thousand five hundred dollars (\$2,500) for each of the named Plaintiffs, which is intended to recognize Plaintiffs for their 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 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 from the Net Settlement Fund. The Parties did not discuss or agree upon payment of service awards until after they agreed on all material terms of relief to the Settlement Class.

64. Class Counsel will file applications with the Court for the requested Service Awards and attorneys' fees, costs, and expenses no later than fourteen (14) Days prior to the Objection Deadline.

65. The Parties agree that the Court's approval or denial of any request for the Service Awards or attorneys' fees 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. If the Court declines to approve, in whole or in part, any request for Service Awards or for an Attorneys' Fees and Expenses Award, all remaining provisions in this Agreement shall remain in full force

and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the payment of Services Awards or an Attorneys' Fees and Expenses Award, or the amounts thereof, shall be grounds to terminate or cancel this Settlement Agreement.

XI. NOTICES

66. All notices to the Parties required by the Settlement Agreement shall be made in writing and communicated by mail to the following addresses:

All notices to Class Counsel or Plaintiffs shall be sent to:

David S. Almeida
Almeida Law Group LLC
849 W. Webster Avenue
Chicago, Illinois 60614
Tel: 312.576.3024

Nicholas A. Coulson
Liddle Sheets Coulson P.C
975 E. Jefferson Avenue
Detroit, Michigan 48207
Tel: (313) 392-0015

All notices to Defendant's Counsel or Defendant shall be sent to:

Daniel Rohner
Shook, Hardy & Bacon LLP
1660 17th Street, Suite 450
Denver, Colorado, 80202
Tel: (303) 285-5300
drohner@shb.com

Tammy Webb
Shook, Hardy & Bacon LLP
555 Mission Street, Suite 2300
San Francisco, CA 94105
Tel: (415) 544-1900
tbwebb@shb.com

67. 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

comments, Objections, or other documents or filings received from a Settlement Class Member as a result of the Notice Program.

XII. SETTLEMENT APPROVAL PROCESS.

68. After execution of this Settlement Agreement, the Parties shall promptly move the Court to enter the Preliminary Approval Order, which:

- a. Preliminarily approves this Settlement Agreement;
- b. Provisionally certifies the Settlement Class;
- c. Finds the proposed Settlement is sufficiently fair, reasonable, adequate, and in the best interests of the Settlement Class;
- d. Finds the Notice Program constitutes valid, due, and sufficient notice to the Settlement Class Members, constitutes the best notice practicable under the circumstances, complying fully with the requirements of the laws of Michigan, the Constitution of the United States, and any other applicable law, and that no further notice to the Settlement Class is required beyond that provided through the Notice Program;
- e. Appoints the Settlement Administrator;
- f. Directs the Settlement Administrator to provide notice to Settlement Class Members in accordance with the Notice Program provided for in this Settlement Agreement;
- g. Approves the Claim Form and directs the Settlement Administrator to administer the Settlement in accordance with the provisions of this Settlement Agreement;

- h. Approves the Objection procedures as outlined in this Settlement Agreement;
- i. 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,
- j. Contains any additional provisions agreeable to the Parties that might be necessary or advisable to implement the terms of this Settlement Agreement.

XIII. FINAL APPROVAL HEARING

67. The Parties will recommend that the Final Approval Hearing shall be scheduled no earlier than one hundred thirty (130) Days after the entry of the Preliminary Approval Order.

68. The Parties may file a response to any objections and a Motion for Final Approval no later than twenty-eight (28) Days before the Final Approval Hearing.

69. Any Settlement Class Member who wishes to appear at the Final Approval Hearing, whether *pro se* or through counsel, must, by the Objection Deadline, either mail or hand-deliver to the Court or file a notice of appearance in the Litigation, take all other actions or make any additional submissions as may be required in the Long-Form Notice, this Settlement Agreement, or as otherwise ordered by the Court, and mail that notice and any other such pleadings to Class Counsel and Defendant's Counsel as provided in the Long-Form Notice.

70. 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 Michigan, 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 denied;
- 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. Subject to the reservation of jurisdiction for matters discussed in subparagraph (g) below, a dismissal with prejudice of the Litigation;
- f. A finding that Plaintiffs shall, as of the entry of the Final Judgment, conclusively be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from the Plaintiffs' Released Claims;
- g. A finding that all Settlement Class Members shall, as of the entry of the Final Judgment, conclusively be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from the Released Class Claims; and

- 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 Preliminary 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.

71. 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.

XIV. TERMINATION OF THIS SETTLEMENT AGREEMENT

72. 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;
- c. 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; or
- d. The Effective Date cannot occur.

73. In addition to the grounds set forth above, Defendant shall have the sole option to withdraw from and terminate this Settlement in its entirety in the event that 10% or more of Settlement Class Members submit timely and valid requests to Opt-Out by the Opt-Out Date.

74. If a Party elects to terminate this Settlement Agreement under this Section XIV, 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.

75. Nothing shall prevent Plaintiffs or Defendant 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.

76. 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; (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), nor any rulings regarding class certification for settlement purposes (including the Preliminary Approval Order and, if applicable, the Final Approval Order and Final Judgment), will have any effect or be admissible into evidence for any purpose in the Litigation or any other proceeding.

77. If the Court does not approve the Settlement or the Effective Date cannot occur for any reason, Defendant shall retain all its rights and defenses in the Litigation. For example, Defendant 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.

XV. RELEASE

78. The Final Approval Order and Final Judgment shall provide that the Litigation is dismissed with prejudice as to the Plaintiffs and all Settlement Class Members.

79. On the Effective Date, Plaintiffs and each and every Settlement Class Member shall be bound by this Settlement Agreement and shall have recourse only to the benefits, rights, and remedies provided hereunder. No other action, demand, suit, arbitration, or other claim or proceeding, regardless of forum, may be pursued against Released Persons with respect to the Plaintiffs' Released Claims or the Released Class Claims.

80. On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, Plaintiffs will be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from any and all past and present claims, counterclaims, lawsuits, set-offs, costs, expenses, attorneys' fees and costs, losses, rights, demands, charges, complaints, actions, suits, causes of action, obligations, debts, contracts, penalties, damages, or liabilities of any nature whatsoever, known, unknown, or capable of being known, in law or equity, fixed or contingent, accrued or unaccrued and matured or not matured that arise out of or are connected to the Litigation, or that were or could have been asserted in the Litigation, or that relate to, concern or arise out of Defendant's implementation and use of the Third-Party Technologies, including the Meta Pixel and Google Analytics, that may have led to any Third-Party Disclosure. The Plaintiffs' Release shall be included as part of the Final Approval Order so that all claims released thereby shall be barred by principles of res judicata, collateral

estoppel, and claim and issue preclusion. The Plaintiffs' Released Claims shall constitute and may be pled as a complete defense to any proceeding arising from, relating to, or filed in connection with the Plaintiffs' Released Claims.

81. On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, each Settlement Class Member will be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from any and all past and present claims, counterclaims, lawsuits, set-offs, costs, expenses, attorneys' fees and costs, losses, rights, demands, charges, complaints, actions, suits, causes of action, obligations, debts, contracts, penalties, damages, or liabilities of any nature whatsoever, known, unknown, or capable of being known, in law or equity, fixed or contingent, accrued or unaccrued and matured or not matured that arise out of or are connected to the Litigation, or that were or could have been asserted in the Litigation, or that relate to, concern or arise out of Defendant's implementation and use of the Third-Party Technologies, including Meta Pixel and Google Analytics, that may have led to any Third-Party Disclosure. The Settlement Class Release shall be included as part of the Final Approval Order so that all claims released thereby shall be barred by principles of res judicata, collateral estoppel, and claim and issue preclusion. The Released Class Claims shall constitute and may be pled as a complete defense to any proceeding arising from, relating to, or filed in connection with the Released Class Claims.

82. Subject to Court approval, as of the Effective Date, Plaintiffs and all Settlement Class Members shall be bound by this Settlement Agreement and the Settlement Class Release and all of Plaintiffs' Released Claims and the Released Class Claims shall be dismissed with prejudice and released.

83. The Plaintiffs' Released Claims and Released Class Claims include the release of Unknown Claims. "Unknown Claims" means claims that could have been raised in the Litigation and that any of the Plaintiffs and each of their respective heirs, executors, administrators, representatives, agents, partners, trustees, successors, attorneys, and assigns do not know to exist or suspects to exist, which, if known by him, her or it, might affect his, her, or its agreement to release Defendant and all other Released Persons, or might affect his, her, or its decision to agree to, or object or not to object to the Settlement.

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

85. Without in any way limiting the scope of the Plaintiffs' Release or the Settlement Class Release, the Releases cover, without limitation, any and all claims for attorneys' fees, costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs 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 Plaintiffs' Released Claims or the Released Class Claims as well as any and all claims for the Service Award to Plaintiffs.

86. Nothing in the Releases shall preclude any action to enforce the terms of this Settlement Agreement, including participation in any of the processes detailed herein. Nor shall the Releases be construed to release claims arising out of any injuries alleged to arise from the treatment Plaintiffs and Settlement Class Members received from Defendant.

XVI. EFFECTIVE DATE

87. The “Effective Date” of this Settlement Agreement shall be the first Day after the date when all of the following conditions have occurred:

- a. This Settlement Agreement has been fully executed by all Parties and their counsel;
- b. Orders have been entered by the Court certifying the Settlement Class, granting preliminary approval of this Settlement Agreement, and approving the Notice Program and Claim Form, all as provided above;
- c. The Court-approved Email Notice has been emailed, other notice required by the Notice Program, if any, has been effectuated and the Settlement Website has been duly created and maintained as ordered by the Court;
- d. The Court has entered a Final Approval Order finally approving this Settlement Agreement, as provided above; and
- e. The Final Approval Order and Final Judgment have become Final, as defined in Paragraph 11(m).

XVII. MISCELLANEOUS PROVISIONS

88. 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.

89. This Settlement Agreement is for settlement purposes only. Neither the fact of nor any provision contained in this Settlement Agreement nor any action taken hereunder shall constitute or be construed as an admission of the validity of any claim or any fact alleged in the Complaint or Litigation or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Defendant or any admission by Defendant of any claim in this Litigation or allegation made in any other proceeding, including regulatory matters, directly or indirectly involving

Workit's implementation or use of Third-Party Technologies or any allegations asserted in the Class Action Complaint and the Litigation. This Settlement Agreement shall not be offered or be admissible in evidence against the Parties or cited or referred to in any action or proceeding between the Parties, except in an action or proceeding brought to enforce its terms. Nothing contained herein is or shall be construed or admissible as an admission by Defendant that Plaintiffs' claims, or any similar claims, are suitable for class treatment.

90. 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.

91. In the event the aggregate amount of all Cash Compensation payments exceeds the total amount of the Net Settlement Fund, then the value of those payments shall be reduced on a *pro rata* basis, such that the aggregate value of the Cash Compensation payments does not exceed the Net Settlement Fund. All such determinations shall be performed by the Settlement Administrator.

92. No person shall have any claim against Plaintiffs, Class Counsel, Defendant, Defendant's Counsel, the Settlement Administrator, the Released Persons, or any of the foregoing's agents or representatives based on the administration of the Settlement substantially in accordance with the terms of the Settlement Agreement or any order of the Court or appellate court.

93. 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.

94. 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.

95. 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.

96. 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.

97. This Settlement Agreement shall be construed under and governed by the laws of the State of Michigan without regard to its choice of law provisions.

98. If any press release is to be issued by the Parties, including their respective counsel, concerning the Settlement, the language of such press release must be approved in advance and in writing by the other Party. Otherwise, the Parties, and the Parties' counsel, shall not issue any press releases or make any postings on social media about this Litigation or the Settlement.

99. 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 Defendant or the Settlement Class Members are not materially altered, positively or negatively, as a result of the invalid, illegal, or unenforceable provision(s).

100. 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.

101. The headings used in this Settlement Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement. In construing this Settlement Agreement, the use of the singular includes the plural (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

102. The Parties stipulate to stay all proceedings in the Litigation until the approval of this Settlement Agreement has been finally determined, except the stay of proceedings shall not

prevent the filing of any motions, affidavits, and other matters necessary to obtain and preserve judicial approval of this Settlement Agreement.

103. 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.

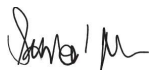
104. Each Party to this Settlement Agreement and the signatories thereto warrant that he, she, or it is acting upon his, her or its independent judgment and the advice of his, her, or its counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any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

105. Each signatory below warrants that he or she has authority to execute this Settlement Agreement and bind the Party on whose behalf he or she is executing the Settlement Agreement.

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

Workit Health, Inc.

By:
Its:



Samantha Nelson (Jane Doe 1)



Sarah Pillow (Jane Doe 2)

prevent the filing of any motions, affidavits, and other matters necessary to obtain and preserve judicial approval of this Settlement Agreement.

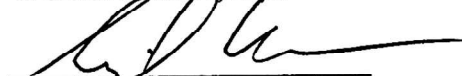
103. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any Party who has signed it and all of which shall be deemed a single Settlement Agreement.

104. 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.

105. Each signatory below warrants that he or she has authority to execute this Settlement Agreement and bind the Party on whose behalf he or she is executing the Settlement Agreement.

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

Workit Health, Inc.



By: *Gilad Kochman*


Its: *CEO*

Samantha Nelson (Jane Doe 1)

Sarah Pillow (Jane Doe 2)

APPROVED AS TO FORM AND CONTENT BY COUNSEL FOR PLAINTIFFS AND THE SETTLEMENT CLASS:

By: 
David S. Almeida, *Esq.*
ALMEIDA LAW GROUP LLC
849 W. Webster Avenue
Chicago, Illinois 60614
Tel: 312-576-3024
david@almeidawgroup.com

By: 
Nicholas A. Coulson, *Esq.*
Coulson P.C
300 River Place Drive, Suite 1700
Detroit, Michigan 48207
Tel: (313) 644-2685
ncoulson@LSCcounsel.com

APPROVED AS TO FORM AND CONTENT BY COUNSEL FOR DEFENDANT:

By: 
Daniel Rohner, *Esq.*
Shook, Hardy & Bacon LLP
1660 17th Street, Suite 450
Denver, Colorado, 80202
Tel: (303) 285-5300
drohner@shb.com


By: 
Tammy B. Webb, *Esq.*
Shook, Hardy & Bacon LLP
555 Mission Street, Suite 2300
San Francisco, CA 94105
Tel:
tbwebb@shb.com

Exhibit A

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<p>YOUR CLAIM FORM MUST BE SUBMITTED ON OR BEFORE <<DATE>></p>	<p>In re Workit Health, Inc. [Address]</p>	<p>FOR OFFICE USE ONLY</p>
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In re Workit Health, Inc

U.S. District Court for the Eastern District of Michigan (Case No. 2:23-cv-11691)

CLAIM FORM

SAVE TIME BY SUBMITTING YOUR CLAIM ONLINE AT WWW.XXXXXXXXXXXXXXXXXX.COM

GENERAL CLAIM FORM INFORMATION

You may complete and submit this Claim Form online or by mail if you are a Settlement Class Member. The Settlement Class consists of persons in the United States who used Workit Health, Inc.’s Website or Application (both web-based and mobile) to search for medical information, services or physicians, fill out forms, schedule appointments, sign-up for membership, register for programs or support groups, or pay for medical services between June 1, 2017 and November 23, 2022 (the “Settlement Class”).

If you wish to submit a Claim for a settlement cash payment, please provide the information requested below. You must submit your Claim via the Settlement Website by the Claims Deadline of <<date>>, or complete and mail this Claim Form to the Settlement Administrator, postmarked by <<date>>.

Settlement Class Members who submit a timely and valid Claim Form will be eligible to receive a pro rata cash payment from the Net Settlement Fund. Each Settlement Class Member will receive, at most, one (1) payment.

The Notice includes only a summary of your legal rights and options. Please visit the official Settlement Website, **www.xxxxxxxxxxxx.com**, or call **(xxx) xxx-xxxx** for more information.

TO SUBMIT A CLAIM FOR PAYMENT BY MAIL:

1. Complete all sections of this Claim Form.
2. Sign the Claim Form.
3. Submit the completed Claim Form to the Settlement Administrator so that it is postmarked by <<date>>.

This Claim Form should only be used if a Claim is being mailed and is not being filed online. You may go to **www.xxxxxxxxxxxx.com** to submit your Claim online, or you may submit this Claim Form by mail to the address at the top of this form.

Payment will be mailed in the form of a check to the address you provide below. If you would like to receive a payment electronically (e.g., via Venmo, PayPal, or ACH), you must submit a Claim Form online at **www.xxxxxxxxxxxx.com.**

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Page 1 of 2

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Page 1 of 2

1. Settlement Class Member Information

*First Name

MI

*Last Name

*Mailing Address: Street Address/P.O. Box (include Apartment/Suite/Floor Number)

*City

*State

*Zip Code

Zip4 (Optional)

@

*Current Email Address

(____) _____ - _____
Current Phone Number (Optional)

*Settlement Claim ID: 00000 _____

*Settlement Claim ID: Your Settlement Claim ID can be found on the Postcard Notice you received informing you about this Settlement. If you need additional help locating this ID, please contact the Settlement Administrator at (xxx) xxx-xxxx.

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Page 2 of 2

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2. Certification

I declare under penalty of perjury under the laws of the United States and the state where this Claim Form is signed that the information I have supplied in this Claim Form is true and correct to the best of my recollection, and that this form was executed on the date set forth below.

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I understand that all information provided on this Claim Form is subject to verification and that I may be asked to provide supplemental information by the Settlement Administrator before my claim will be considered complete and valid.

___ ___ / ___ ___ / ___ ___ ___ ___

Signature

Date (mm/dd/yyyy)

Print Name

Please keep a copy of your completed Claim Form for your records.

Mail your completed Claim Form to the Settlement Administrator:

In re: Workit Health, Inc.

[Settlement Administrator Address]

or submit your Claim online at

www.xxxxxxxxxxxxxx.com

It is your responsibility to notify the Settlement Administrator of any changes to your contact information after you submit your Claim. You can update your contact information on the Contact page at

www.xxxxxxxxxxxxxx.com.

Exhibit B

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT FOR USERS OF THE WORKIT HEALTH WEBSITE OR APPLICATION (BOTH WEB-BASED AND MOBILE) TO SEARCH FOR MEDICAL INFORMATION, SERVICES OR PHYSICIANS, FILL OUT FORMS, SCHEDULE APPOINTMENTS, SIGN-UP FOR MEMBERSHIP, REGISTER FOR PROGRAMS OR SUPPORT GROUPS, OR PAY FOR MEDICAL SERVICES BETWEEN JUNE 1, 2017 AND NOVEMBER 23, 2022.

Doe v. Workit Health, Inc., Case No. 2:23-cv-11691-LVP-DRG (E.D. Mich.)

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

THIS IS A NOTICE OF A PROPOSED 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.

YOU MAY BE ENTITLED TO PARTICIPATE IN A CLASS ACTION SETTLEMENT BECAUSE CERTAIN INFORMATION REGARDING YOUR USE OF WORKIT HEALTH, INC.'S WEBSITE AND APPLICATION BETWEEN JUNE 1, 2017 AND NOVEMBER 23, 2022 MAY HAVE BEEN DISCLOSED OR ACCESSIBLE TO THIRD PARTIES SUCH AS GOOGLE

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM BY <<date>>	If you submit a Claim Form by <<DATE>>, you may receive a pro rata share of the Net Settlement Fund as compensation. You must timely submit a Claim Form either via U.S. mail or online to receive monetary compensation under this Settlement. IF YOU DO NOTHING , you will not receive Settlement benefits, but you will still be bound by the Settlement.
EXCLUDE YOURSELF FROM THE SETTLEMENT BY <<date>>	You will receive no benefits, but you will retain any legal claims you may have against Workit Health.
OBJECT BY <<date>>	File with the Court a written objection to the Settlement, at the address below, about why you do not like the Settlement. You must remain in the Settlement Class to object to the Settlement.

<p>GO TO THE FINAL APPROVAL HEARING ON <<date>> AT <<time>></p>	<p>Ask to speak in Court about the fairness of the Settlement. You do not need to attend the hearing to object to the Settlement, or to receive monetary compensation under the Settlement.</p>
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1. What is this Notice?

This is a court-authorized Long-Form Notice of a proposed Settlement (the “Settlement”) of a class action lawsuit (the “Litigation”), *Doe v. Workit Health, Inc.*, Case No. 2:23-cv-11691-LVP-DRG, pending in the U.S. District for the Central District of California (the “Court”). The Settlement would resolve the Litigation alleging that that Workit Health, Inc.’s (“Workit”) implementation and use of certain third-party website technologies (“Third-Party Technologies”), including the Meta Pixel and Google Analytics, on its website at www.workithealth.com, and a web-based app webform at <https://app.workithealth.com> (collectively, “Website”), as well as mobile applications (“Applications”), may have led to the disclosure of certain personal or health-related information to third-party vendors (the “Third-Party Disclosure”). The Court has granted Preliminary Approval of the Settlement Agreement and has conditionally certified the Settlement Class for purposes of Settlement only. This Long-Form Notice explains the nature of the Litigation, the terms of the Settlement Agreement, and the legal rights and obligations of members of the Settlement Class. Please read the instructions and explanations below carefully so that you can better understand your legal rights. The Settlement Administrator in this case is **Insert Name**.

2. Why did I get this Notice?

You were identified as a person who may have used Workit’s Website or Applications, and thus, Plaintiff alleges in this Litigation that information about your actions on those digital platforms may have been accessible or disclosed to third parties, like Google.

3. What is this lawsuit about?

The Litigation arises out of Workit’s alleged implementation and use of the Third-Party Technologies on its Website and Applications, which Plaintiff contends resulted in certain information being shared with Google, allegedly resulting in an invasion of Plaintiff’s and Settlement Class Members’ privacy.

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. In a class action settlement, 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 claims 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, if approved by the Court, would resolve all claims brought on behalf of the Settlement Class related to Workit’s use of Third-Party Technologies on its Website and Applications. If approved by the Court, the Settlement Agreement provides for cash compensation from Workit to Settlement Class Members who submit valid and timely Claim Forms. Workit denies that it did anything wrong or that any personal or health-related information was actually disclosed to third-parties, and the Settlement is not an admission of wrongdoing by Workit and does not imply that there has been, or would be, any finding that Workit violated the law. Further, the Court overseeing the Litigation has not determined that Workit did anything wrong.

The Court already has preliminarily approved the Settlement Agreement. Nevertheless, because the settlement of a class action determines the rights of all members of the Settlement Class, the Court overseeing this Litigation must give final approval to the Settlement Agreement before it can be effective. The Court has conditionally certified the Settlement Class for settlement purposes only, so that members of the Settlement Class may be given notice and the opportunity to exclude themselves from the Settlement Class or to voice their support or opposition to final approval of the Settlement Agreement. If the Court does not grant final approval to 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 and no certification of the Settlement Class.

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

You are a member of the Settlement Class if you used Defendant’s Website or Application (both web-based and mobile) to search for medical information, services or physicians, fill out forms, schedule appointments, sign-up for membership, register for programs or support groups, or pay for medical services between June 1, 2017 and November 23, 2022.

Excluded from the Settlement Class are: (i) Workit, any entity in which Workit has a controlling interest, and Workit’s affiliates, parents, subsidiaries, officers, directors, legal representatives, successors, subsidiaries, and assigns; (ii) any judge, justice, or judicial officer presiding over the Litigation and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly excludes themselves from the Settlement..

YOUR BENEFITS UNDER THE SETTLEMENT

7. What can I get from the Settlement?

Settlement Class Members who file a valid and timely Claim Form may receive a pro rata cash payment from the Net Settlement Fund. The Net Settlement Fund is what remains of the \$578,680 Settlement Fund following the payment of Notice and Settlement Administration Costs, Class

Representative Service Award (\$2,500 per Class Representative), and Attorneys' Fees and Expenses Award (fees up to one third of the Settlement Fund or \$192,893 plus expenses up to \$15,000), subject to the Court's approval.

*****To receive Settlement benefits, you must submit a Claim Form by [REDACTED]*****

8. When will I receive the benefits?

If you timely submit a valid Claim Form for a cash payment, you will receive payment in the amount approved by the Settlement Administrator once the Settlement is Final and has become effective.

9. I want to be a part of the Settlement. What do I do?

All Settlement Class Members are part of the Settlement unless they request to be excluded from it. To submit a claim for cash compensation, you must timely submit the Claim Form on the Settlement Website at www.xxxxxxxxxx.com, or by mail to In re Workit Health, Inc. c/o **insert name of Settlement Administrator** [insert address]

You must submit any claims by <<date>>. There can be only one (1) valid and timely Claim per Settlement Class Member.

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

By staying in the Settlement Class, you will give Workit a "release," and all the Court's orders will apply to you and bind you. A release means you cannot sue or be part of any other lawsuit or other legal action against Workit about or arising from the claims or issues in this Litigation, including Workit's use of Third-Party Technologies on Website and Applications.

The precise terms of the release are in the Settlement Agreement, which is available on 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 Class Counsel identified below who have been appointed by the Court to represent the Settlement Class, or you are welcome to talk to any other lawyer of your choosing at your own expense.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to remain in the Settlement, and instead want to keep any legal claims you may have against Workit, then you must take steps to exclude yourself from this Settlement.

11. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter by mail stating that you want to be excluded from *Doe v. Workit Health, Inc.*, Case No. 2:23-cv-11691-LVP-DRG (E.D. Mich.) to the

Settlement Administrator. Such notice must include: (1) the case name and number of the Litigation (*Doe v. Workit Health, Inc.*, Case No. 2:23-cv-11691-LVP-DRG (E.D. Mich.); (2) your full name, address, and telephone number; (3) your personal and original signature; and (4) a written statement that you wish to be excluded from the Settlement. You may only request exclusion for yourself, and no one else can request exclusion for you. You must mail your exclusion request so that it is postmarked **no later than** <<date>>, to:

In re: Workit Health, Inc.
c/o **Insert Settlement Admin**
[insert address]

12. If I exclude myself, do I still receive benefits from this Settlement?

No, if you submit an exclusion request, you will not receive anything from the Settlement, but you retain your right to sue Workit over the claims raised in the Litigation.

THE LAWYERS REPRESENTING THE SETTLEMENT CLASS

13. Do I have a lawyer in this case?

The Court has appointed the following attorneys to represent the Settlement Class as Class Counsel:

Class Counsel

David S. Almeida
Almeida Law Group LLC
849 W. Webster Avenue
Chicago, Illinois 60614
Tel: 312.576.3024

Nicholas A. Coulson
Coulson P.C
300 River Place Drive, Suite 1700
Detroit, Michigan 48207
Tel: (313) 644-2685

If you want to be represented by your own lawyer, you may hire one at your own expense.

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

Class Counsel will be paid from the Settlement Fund. Class Counsel will seek Court approval to be paid reasonable attorneys' fees up to one-third of the Settlement Fund, plus their expenses incurred in the Litigation up to \$15,000. The motion for attorneys' fees and expenses will be posted on the Settlement Website after it is filed.

OBJECTING TO THE SETTLEMENT

15. How do I tell the Court that I do not like the Settlement?

If you are a Settlement Class Member, you can object to the Settlement, or some part of it, and the Court will consider your views. In order to object to the Settlement, you must submit 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 some or all of the Settlement. Your objection must include: (i) the case name and number of the Litigation; (ii) set forth the Settlement Class Member’s full name, current address, telephone number, and email address; (iii) contain the Settlement Class Member’s personal and original signature; (iv) if the objecting Settlement Class Member is represented by an attorney, or received assistance from an attorney in drafting his or her objection, the name, address, telephone number, and email address of the attorney; (v) contain a statement indicating the basis for the objecting Settlement Class Member’s belief that he or she is a member of the Settlement Class; (vi) state whether the objection applies only to the Settlement Class Member, to a specific subset of the Settlement Class, or to the entire Settlement Class; (vii) set forth a statement of the legal and/or factual basis for the Objection; and (viii) state whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, and if so, whether personally or through counsel. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your attorney

If you file an objection, you may still receive benefits under the Settlement so long as you timely file a valid claim. To be timely, written notice of an objection in the appropriate form described above must be filed with the Court no later than the Objection Deadline, as noted below:

United States District Court for the Eastern District of Michigan
[Insert Address]

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.

16. Where and when is the Final Approval Hearing?

The Court has already given Preliminary Approval to the Settlement Agreement. A final hearing on the Settlement, called a Final Approval Hearing, will be held to determine the fairness of the Settlement Agreement.

The Court will hold a hearing on <<date>>, at <<time>> PT in the courtroom of the Honorable Hon. Linda V. Parker, Courtroom [Insert], which is located at [Insert Address]. 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 rule on the request for a Service Award for the Class Representative. At that hearing, the Court will be available to 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 RECIEVE BENEFITS FROM THIS SETTLEMENT. Please be aware that the hearing may be postponed to a later date without notice.

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.xxxxxxxxxxxxxxxxxx.com

If you have any questions, you can contact the Settlement Administrator or Class Counsel at the phone numbers listed above. In addition to the documents available on the Settlement Website, all pleadings and documents filed in this Litigation may be reviewed or copied at the Clerk of Court’s office.

DO NOT CALL OR SEND ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT, THE JUDGE, OR WORKIT OR ITS COUNSEL. ALL QUESTIONS ABOUT THE SETTLEMENT SHOULD BE REFERRED TO THE SETTLEMENT ADMINISTRATOR OR CLASS COUNSEL.

QUESTIONS? VISIT WWW.XXXXXXXXXXXXXXXXXX.COM

Exhibit C

In re: Work 'n Health, Inc.
[address]

FIRST CLASS MAIL
U.S. POSTAGE PAID
CITY, STATE ZIP
PERMIT NO. XXXX

NOTICE OF CLASS ACTION
SETTLEMENT

You may be entitled to submit a claim
for monetary compensation under a
proposed class action settlement.

www.xxxxxxxxxxxxx.com

<<Barcode>> Class Member ID:

<<Refnum>>

<<FirstName>> <<LastName>>

<<BusinessName>>

<<Address>>

<<Address2>>

<<City>>, <<ST>> <<Zip>>-<<zip4>>

WHO IS A CLASS MEMBER?

In the lawsuit *Debra K. Kalka Health Inc.*, Case No. 2:23-cv-11691-LVP-DRG you are a Settlement Class Member if you used Defendant's website at www.workithealth.com, and/or its web-based app webform at <https://app.workithealth.com> (collectively, "Website"), and/or its mobile applications ("Applications") to search for medical information, services or physicians, fill out forms, schedule appointments, sign-up for membership, register for programs or support groups, or pay for medical services between June 1, 2017 and November 23, 2022. Workit denies any wrongdoing and all the claims asserted against it, and the Court has not ruled that Workit did anything wrong.

WHAT ARE THE SETTLEMENT BENEFITS AND TERMS?

Settlement Class Members who submit a valid Claim Form may receive a pro rata cash payment from the Net Settlement Fund. The Net Settlement Fund is what remains of the \$578,680 Settlement Fund following the payment of the Notice and Settlement Administration Costs, any Class Representative Service Award (\$2,500 per Class Representative), and any Attorneys' Fees and Expenses Award (up to one-third of the Settlement Fund, plus up to \$15,000 in expenses). More information, including a copy of the Settlement Agreement, is available at www.xxxxxxxxxxxx.com.

WHAT ARE YOUR RIGHTS AND OPTIONS?

Submit a Claim Form. To qualify for a cash payment, you must timely mail a Claim Form that is attached to this notice or complete and submit a Claim Form online at www.xxxxxxxxxxxx.com. Your Claim Form must be postmarked or submitted online no later than _____, 2024.

Opt-Out. You may exclude yourself from the Settlement and retain your right to sue Workit by mailing a written request for exclusion to the Settlement Administrator that is postmarked no later than _____, 2024. If you do not exclude yourself, you will be bound by the Settlement and give up your right to sue regarding the released claims.

Object. If you do not exclude yourself, you have the right to object to the Settlement. Written objections must be filed with the Court no later than _____, 2024, and provide the reasons for the objection.

Do Nothing. If you do nothing, you will not receive a Settlement payment and will lose the right to sue regarding the released claims. You will be bound by the Court's decision because this is a conditionally certified class action.

Attend the Final Approval Hearing. The Court will hold a **Final Approval Hearing** at _____ m. on _____, 2024, in the U.S. District Courthouse at [Insert Address], to determine if the Settlement is fair, reasonable, and adequate. You may appear at the Final Approval Hearing, but you do not have to.

Who are the attorneys for the Plaintiffs and the proposed Settlement Class?

The Court appointed David S. Almeida of Almeida Law Group LLC located at 849 W. Webster Avenue in Chicago, Illinois 60614, and Nicholas A. Coulson of Coulson P.C located at 300 River Place Drive, Suite 1700 in Detroit, Michigan 48207 as Class Counsel to represent the Settlement Class. If you want to be represented by your own lawyer, you may hire one at your own expense.

Do I have any obligation to pay attorneys' fees or expenses? No. Any attorneys' fees and expenses will be paid exclusively from the Settlement Fund as approved by the Court. The motion for attorneys' fees and expenses will be posted on the Settlement Website after it is filed with the Court.

What is the amount of the Class Representative Service Awards? The named Plaintiffs, also called the Class Representatives, will seek a Service Award in the amount of \$2,500 for their efforts in this case.

Who is the Judge overseeing this settlement? Judge Linda V. Parker, United States District Judge, Eastern District of Michigan.

Where can I learn more about the case, the Settlement, and my options?

www.xxxxxxxxxxxx.com.

In re Workit Health, Inc.
[insert address]

<<Blair e >> / Class Member ID:
<<Refnum>>

CLAIM FORM

Claims for a cash payment must be postmarked no later than _____, 2024. You may also submit a Claim Form online at www.xxxxxxxxxx.com no later than _____, 2024.

NAME: _____

ADDRESS: _____

Cash Payment: Would you like to receive a cash payment under the Settlement? (circle one) Yes No

If you are a Settlement Class Member, you may receive a cash payment from the Net Settlement Fund after all claims are received.

By signing my name below, I confirm that I would like to receive a cash payment under the Settlement.

_____ (signature)

Exhibit D

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

JANE DOE 1 and JANE DOE 2, *on
behalf of themselves and all others
similarly situated,*

Plaintiffs,

v.

WORKIT HEALTH, INC.,

Defendant.

Case No. 2:23-CV-11691-LVP-DRG

Hon. Linda V. Parker
Magistrate Judge David R. Grand

**[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION
SETTLEMENT**

Plaintiffs JANE DOE 1 and JANE DOE 2, individually and on behalf of each member of the Settlement Class, moved this Court pursuant to Rule 23 of the Federal Rules of Civil Procedure for an order preliminarily approving the proposed settlement of this lawsuit in accordance with the Settlement Agreement and Release (the “Agreement”)¹ filed with this Court, and the Court having read and considered the Agreement, and Plaintiffs and Defendant having consented to the entry of this Order:

IT IS HEREBY ORDERED:

¹ Capitalized terms used herein but not defined shall have the meanings ascribed to them in the Agreement.

1. The Agreement, and all of its terms and conditions, is preliminarily approved as fair, just, reasonable and adequate, subject to further consideration at a Fairness Hearing.

2. For purposes of settlement only, the Court conditionally certifies the Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3). The Court further finds that all of the requirements of Fed. R. Civ. P. 23(a) and (e)(1) are satisfied. Jane Doe 1 and Jane Doe 2 are appointed as representatives of the Settlement Class, and Nicholas A. Coulson and David S. Almeida are hereby appointed as Class Counsel.

3. The Court appoints EisnerAmper as Settlement Administrator (the “Administrator”). The Administrator shall perform all duties set out in the Agreement as established therein.

4. The Court approves the form of the Class Notices (Exhibits A and B to the Agreement) and directs that the Administrator shall serve same upon the Settlement Class in compliance with the Agreement. The Court finds that service of the Settlement Notice in this manner constitutes the best notice practicable under the circumstances to members of the Settlement Class and complies fully with the provisions set forth in Federal Rule of Civil Procedure 23(e)(1) and any and all substantive and procedural due process rights guaranteed by the United States Constitution and any other applicable law. The Court further finds that the Class Notices clearly and concisely inform the Settlement Class of their rights and options

with respect to the proposed settlement, in plain, easily understood language, in conformance with the requirements of Federal Rule of Civil Procedure 23.

5. As provided for in the Class Notice, the Settlement Class shall be afforded the right to either Opt-Out of the Settlement Agreement or object to the final approval of this Settlement.

7. The Final Fairness Hearing is scheduled for _____, 2024 at _____, at which time the Court will consider the entry of a Final Order and Judgment, as well as Plaintiffs' anticipated request for fees, expenses, and incentive awards.

8. Members of the Settlement Class shall have until sixty (60) days after the issuance of Notice to Opt-Out of the Settlement Class. Any Class Member who chooses to Opt-Out shall be excluded from the Settlement Class and shall have no rights under the Agreement. A request for exclusion must comply with the requirements in Section IX of the Agreement. All Persons who submit valid and timely notices of their intent to opt-out of the Settlement Class, as set forth in paragraph 60 of the Agreement, referred to herein as "Opt-Outs," shall not receive any benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Settlement Class who do not opt-out of the Settlement Class in the manner set forth in paragraph 60 of the Agreement shall be bound by the terms of the Agreement and Judgment entered thereon.

9. All members of the Settlement Class who do not Opt-Out of the settlement shall have sixty (60) days after the issuance of Notice to object to the proposed settlement. Any objection must comply with the requirements in Section VIII. of the Agreement. Objections must be filed with the Court and served on Class Counsel and Defendant's Counsel no later than sixty (60) Days after the Notice Date (the "Objection Deadline"). The Objection Deadline shall be included in the Short-Form and Long-Form Notices. Class Counsel and Defendant's 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. 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 also file a notice of appearance with the Court (as well as serve the notice on Class Counsel and Defendant's Counsel) by the Objection Deadline. Any member of the Settlement Class who fails to timely object substantially in the manner prescribed herein or to appear at the Fairness Hearing may be deemed to have waived his or her objections and forever be barred from making any such objections in this action. Only members of the Settlement Class shall have the right to object to the settlement.

IT IS SO ORDERED.

DATED: _____

BY: _____
HON. LINDA V. PARKER
United States District Judge

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

JANE DOE 1 and JANE DOE 2, on
behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

WORKIT HEALTH, INC.,

Defendant.

Case No. 2:23-CV-11691-LVP-DRG

Hon. Linda V. Parker
Magistrate Judge David R. Grand

DECLARATION OF NICHOLAS A. COULSON

I, Nicholas A. Coulson, declare:

1. I have personal knowledge of the matters herein. If called as a witness, I could and would testify truthfully and competently thereto under oath.

2. I am counsel of record for the Plaintiffs in this action.

3. I am an attorney licensed to practice in the State of Michigan with a State Bar of Michigan Identification No. 78001. I have been licensed to practice law in the State of Michigan since 2013. Since that time, I have been continually licensed to practice. I have never been disciplined, suspended, or disbarred. I am also licensed to practice in the United States District Courts for the Eastern District of Michigan, the Western District of Michigan, the Western District of New York, the Eastern District of Wisconsin, the Western District of Wisconsin, the District of Colorado,

the Middle District of Tennessee, and the Northern District of Illinois, in addition to the United States Courts of Appeals for the Second, Third, Fifth, Sixth, and Ninth Circuits.

4. I submit this declaration in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement. This Declaration includes a brief discussion of the history of this litigation, as well as my professional qualifications.

5. I am the founding and principal partner of the law firm Coulson P.C. and was formerly a partner of Liddle Sheets Coulson P.C., where I practiced in class action and complex litigation since 2013.

6. I have extensive experience in prosecuting class action litigation and have been appointed as class counsel in dozens of cases in various courts, including, without limitation: *Clark-Floyd Landfill, LLC v. Gonzalez*, No. 19A-CT-2680, 2020 Ind. App. LEXIS 257, at *21 (Ct. App. June 18, 2020) (certification affirmed on appeal); *Ross, et al. v. USX Company*, Case No. G.D. 17-008663 (Allegheny Cty., PA Ct. of Common Pleas); *Bright et al v. Wake County Disposal, LLC*, Case No. 18-cvs-10976 (Wake Cty. NC Superior Ct.); *Michaely v. Browning-Ferris Industries of California, Inc.* (California Superior- Los Angeles Case No. BC497125 2019); *Batties v. Waste Management of Pennsylvania, LLC*, No. 14-7013, 2016 U.S. Dist. LEXIS 186335, at *47 (E.D. Pa. May 11, 2016); *Beck v. Stony Hollow Landfill, Inc.*, No. 3:16-cv-455, 2018 U.S. Dist. LEXIS 199221, (S.D. Ohio Nov. 26, 2018);

Johnston, et al. v. Deffenbaugh Disposal, Inc., Case No: 2:16-cv-02648-JTM-KGG (D. Kan.); *Brown v. Rhode Island Resource Recovery Corporation*, C.A. NO. PC 2015-0947 (Rhode Island Superior 2018); *McCarty v. Okla. City Landfill, LLC*, No. CIV-12-1152-C (W.D. Okla. April 11, 2016); *Ng. v. International Disposal Corp. of California*, Case No. 112CV228591 (Santa Clara CA Superior Court Aug. 1, 2016); *Connors v. AmeriTies West, LLC*, (Wasco County Oregon Case No. 16-CV-25390, 2018); *Gingrasso, et al. v. Cedar Grove Composting Facility, Inc.*, (King County (WA) Superior Court Case No: 13-2-05334-9 KNT, 2018); *Bundy, et al. v. Cedar Grove Composting Facility, Inc.*, Snohomish County (WA) Superior Court Case No: 13-2-02778-8, 2018) (thousands of residents near composting facility); *Averett v. Metalworking Lubricants Co.*, No. 1:15-cv-01509-JMS-MPB, 2017 U.S. Dist. LEXIS 158184, at *1 (S.D. Ind. Sep. 27, 2017); *Dabney v. Taminco US, Inc.*, Case No. 3:15-cv-533/MCR/EMT (N.D. FL); *Maroz v. Arcelormittal Monessen, LLC*, No. 15-cv-00771-AJS (W.D. PA Nov. 14, 2016); *Fritz v. City of Ecorse*, Case No. 13-000371-NZ (Wayne County MI Circuit Ct.); *Ray v. City of Lansing*, Case No. 13-124242-NZ (Ingham County MI Circuit Ct.); *Laprarie v. City of Warren*, Case No. 11-0044560NZ (Macomb County MI Circuit Ct.); *Baynai v. City of Riverview*, Case No. 12-0072979 (Wayne County MI Circuit Ct.); *Domino v. City of Livonia*, Case No. 11-010285-NZ (Wayne County MI Circuit Ct.).

7. I have successfully litigated class actions involving data privacy violations, specifically related to use of third-party tracking technologies such as the Facebook Pixel. I resolved *Feldman v. Star-Tribune Media Co.*, Case No. 0:22-cv-1731-ECT-TNL (D. Minn) for \$2.9 Million on behalf of a certified class of visitors to the defendant's website. I also served as class counsel in *Waller et al v. Times Publishing Company*, Case No. 2023-027889-CA-01 (Miami-Dade County, FL Cir. Ct.), which my co-counsel and I resolved for \$950,000 on behalf of another class of website visitors.

8. Other examples of noteworthy results in cases I have resolved include:

In *McKnight v. Uber Techs., Inc.*, No. 14-cv-05615-JST, 2017 U.S. Dist. LEXIS 124534, at *23 (N.D. Cal. Aug. 7, 2017), I was appointed by the United States District Court for the Northern District of California to represent a nationwide class of millions of Uber passengers. That case resulted in a \$32.5 million settlement.

I served as primary class counsel in *Dykehouse v. The 3M Company*, Case No. 1:18-cv-01225 (W.D. Mich), wherein the court approved a class settlement of \$11.9 million for Michigan residents whose municipal water had been contaminated by PFAS.

9. My law firm's website, found at <http://www.CoulsonPC.com>, provides information about certain other class action and "mass" action lawsuits that my firm is currently prosecuting in state and federal courts.

10. In this matter, Plaintiffs request certification of the following Class for settlement purposes:

All persons in the United States who used Defendant's Website or Application (both web-based and mobile) to search for medical information, services or physicians, fill out forms, schedule appointments, sign-up for membership, register for programs or support groups, or pay for medical services between June 1, 2017 and November 23, 2022. Excluded from the Settlement Class are: (i) Defendant, any entity in which Defendant has a controlling interest, and Defendant's affiliates, parents, subsidiaries, officers, directors, legal representatives, successors, subsidiaries, and assigns; (ii) any judge, justice, or judicial officer presiding over the Litigation and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly excludes themselves from the Settlement.

11. Defendant shared confidential information at mediation (which we expect to provide at the final approval stage) sufficient for us to determine the approximate number of Class Members, which is well into the thousands.

12. I believe that the named Plaintiffs, Jane Doe 1 and Jane Doe 2, have acted, in their role as the representatives of the Class, in the best interest of the Class. I am informed and believe that there are no conflicts that exist between Plaintiffs and the absent Class Members.

13. I believe Coulson P.C. and Almeida Law Group LLC are more than qualified to represent the interests of the Class as Class Counsel. We have diligently sought to represent the interests of the proposed Settlement Class in this action. We have carefully investigated both the liability issues and class issues alleged in the complaint and participated in a full-day mediation session with skilled mediator Bruce Freidman of Judicial Arbitration and Mediation Services on March 21, 2024.

14. Since the commencement of the suit, Plaintiffs' Counsel vigorously litigated the case against Defendant, which included the following:

- i. An extensive investigation of Defendant's website, including gathering all information available regarding Plaintiffs and the Third Party Tracking Technologies on Defendant's website;
- ii. Drafting and filing the unusually extensive and detailed Complaint;
- iii. Engaging in pre-mediation settlement discussions with counsel for Defendant;
- iv. Conducting an extensive file review and briefing in advance of mediation;
- v. Mediating the case before experienced neutral mediator, Bruce Freidman;
- vi. Negotiating and drafting the settlement documents and associated moving papers.

15. The Settlement came about as the result of protracted, arms' length negotiations, including through a respected and experienced third-party neutral.

16. The settlement requires the Defendant to pay the Settlement Class \$578,680.

17. We propose that the settlement be administered by EisnerAmper LLP, a qualified and experienced third party settlement administrator.

18. The Costs of the Notice and Claims Administration will be paid out of the Settlement Fund.

19. Defendant agrees not to oppose an application by Plaintiffs' counsel for an award of attorneys' fees, costs, and expenses not to exceed 1/3 of the Settlement Fund. This amount was negotiated after the primary terms of the Settlement were negotiated.

20. Plaintiffs intend to seek a Service Award of \$2,500 ("Service Award") to each. The Service Awards are meant to recognize Plaintiffs for their efforts on behalf of the Settlement Class, including assisting in the investigation of the case, reviewing the pleadings, remaining available for consultation throughout the mediation and settlement negotiations, answering counsel's many questions, and reviewing the terms of the Settlement Agreement. The Service Awards were also negotiated after the primary terms of the Settlement were negotiated.

21. Settlement Class Counsel will submit a separate motion seeking Plaintiffs' Award of Attorneys' Fees, Costs, and Service Awards to Class Representatives no later than fourteen (14) Days prior to the Objection Deadline.

22. Complex data privacy class actions are inherently expensive and time consuming to litigate, and the complexity and potential liability involved lends itself to prolonged litigation and appeals. While it is always possible that more would be recovered at trial, data privacy cases face many significant hurdles in reaching trial, any one of which could be the death-knell of the case. Complex issues of causation and damages place the outcome of any trial in doubt, and the specter of appeal

introduces even more risk. These cases are also extremely expensive to litigate, and it is generally (or at least often) not economically feasible to take on cases like this on an individual basis.

23. This settlement provides meaningful compensation to Plaintiffs and the Class and avoids the risk, complexity, time, and cost of further litigation. I believe this settlement falls comfortably within the range of reasonableness and represents a fair and reasonable discount from the potential recovery. It is also my considered opinion that the Claim Form, Short Notice, and Long 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 share their opinions about the settlement with the Court.

24. I believe, based on the benefits being made available to the Class under the proposed Settlement, and considering the risk and potential duration of further protracted litigation, that the instant Settlement confers substantial benefits upon the Settlement Class and is therefore in the best interests of the Class, in addition to being reasonable, fair, and adequate.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Dated: September 6, 2024
Detroit, Michigan

/s/ Nicholas A. Coulson
Nicholas A. Coulson

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

JANE DOE 1 and JANE DOE 2, *on
behalf of themselves and all others
similarly situated,*

Plaintiffs,

v.

WORKIT HEALTH, INC.,

Defendant.

Case No. 2:23-CV-11691-LVP-DRG

Hon. Linda V. Parker
Magistrate Judge David R. Grand

DECLARATION OF DAVID S. ALMEIDA

I, David S. Almeida, declare:

1. I have personal knowledge of the matters set forth herein. If called as a witness, I could and would testify truthfully and competently thereto under oath.

2. I am an attorney admitted and licensed to practice law before the courts of the states of Illinois, New York, Wisconsin and Arizona. I am the Founder and Managing Partner of the Almeida Law Group LLC (“ALG”), a class action litigation boutique specializing in data privacy and consumer fraud cases.

3. I am privileged to serve, along with Nicholas A. Coulson, Principal of Coulson P.C. (formerly a partner of Liddle Sheets Coulson P.C.), as counsel on behalf of Plaintiffs and the putative settlement class in this litigation and submit this

declaration in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

4. The resolution achieved in the Settlement resulted from well-informed parties and their counsel. Indeed, ALG has significant experience in litigating similar cases involving the alleged use of tracking technologies on digital web properties to collect and to disclose protected and/or individually identifiable health information including:

- *John v. Froedtert Health, Inc.*, 23-CV-1935 (Wis. Cir. Ct.) (co-counsel in pixel tracking class action, settled on a class-wide basis; final approval Sept. 29, 2023);
- *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; final approval July 10, 2024);
- *Guenther v. Rogers Behavioral Health System, Inc.*, (Wis. Cir. Ct.) (co-counsel in pixel tracking class action, settled on a class-wide basis; final approval hearing August 12, 2024) and
- *K.S.B. v. Wisp, Inc.*, 3:23-cv-06155 (N.D. Cal.) (counsel in telehealth pixel tracking class action).

5. In addition to the foregoing cases, I have served as class counsel in numerous class action lawsuits involving damages arising from data breaches, pixel tracking and claims under various consumer protection and privacy-related statutes such as the Electronic Communications Privacy Act ("ECPA"), the California Medical Information Act ("CMIA"), the Illinois Biometric Information and Privacy

Act (“BIPA”), and the Video Privacy Protection Act (“VPPA”) including, but not limited to:

- *Tambroni, et al. v. WellNow Urgent Care, P.C. et al.*, 1:24-cv-01595 (N.D. Ill.) (co-lead counsel in data breach class action);
- *Taylor, et al. v. Teladoc Health, Inc.*, 7:24-cv-00664-NSR (S.D.N.Y.) (co-lead counsel in operative pixel tracking class action);
- *Aragon v. Weil Foot & Ankle Institute LLC*, 2021-CH-01437 (Cook County Cir. Ct.) (co-lead counsel in BIPA class action, preliminary approval granted) and
- *John v. Delta Defense LLC & U.S. Concealed Carry Association Inc.*, 2:23-cv-01253 (E.D. Wisc.) (lead counsel in VPPA class action).

6. Our law firm’s website, found at <https://almeidawgroup.com/>, provides information about certain other class action lawsuits that we are currently prosecuting in state and federal courts throughout the country.

7. Plaintiffs request certification of the following Class for settlement purposes:

All persons in the United States who used Defendant’s Website or Application (both web-based and mobile) to search for medical information, services or physicians, fill out forms, schedule appointments, sign-up for membership, register for programs or support groups, or pay for medical services between June 1, 2017 and November 23, 2022.

Excluded from the Settlement Class are: (i) Defendant, any entity in which Defendant has a controlling interest, and Defendant’s affiliates, parents, subsidiaries, officers, directors, legal representatives, successors, subsidiaries, and assigns; (ii) any judge, justice, or judicial officer

presiding over the Litigation and the members of their immediate families and judicial staff and (iii) any individual who timely and validly excludes themselves from the Settlement.

8. Along with co-counsel, ALG has diligently represented the interests of the proposed Settlement Class in this case. Since the commencement of the suit, Plaintiffs' Counsel vigorously litigated the case, which included, among other things, the following:

- i. Gathering all information available regarding the use of third-party tracking technologies on Defendant's website;
- ii. Vetting clients for possible inclusion as plaintiffs and class representatives;
- iii. Collaborating with an expert for technical review of Defendant's website and source code;
- iv. Drafting, revising and filing the Complaint;
- v. Discussing Plaintiffs' allegations, Defendant's merits, class certification and other defenses with defense counsel;
- vi. Conducting an extensive file review and preparing a mediation statement in advance of mediation (which included an exhaustive review of all pixel-related class settlements throughout the country);
- vii. Traveling to California and mediating the case before experienced neutral mediator, Bruce Freidman.

9. Plaintiffs' Counsel have carefully and thoroughly investigated both the liability issues and class issues alleged in this case as well as reviewed information provided by Defendant to evaluate the strengths and weaknesses of the case.

10. After doing so, Plaintiffs' Counsel participated in a full-day, in person mediation session with skilled mediator Bruce Freidman of Judicial Arbitration and Mediation Services (JAMS) on March 21, 2024.

11. In short, the Settlement came about as the result of protracted, arms' length negotiations among very experienced and capable counsel.

12. I believe, based on the benefits being made available to the Class under the proposed Settlement, and considering the risk and potential duration of further litigation, that the instant Settlement confers substantial benefits upon the Settlement Class and is therefore reasonable, fair and adequate and in the best interests of the Settlement Class.

13. It is also my considered opinion that the Claim Form, Short Notice and Long 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 share their opinions about the settlement with the Court.

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

Dated: September 6, 2024
Chicago, Illinois

/s/ David S. Almeida
David S. Almeida