

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY FLORIDA**

ABBY GRUBOR and JULIETTE BLATT,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

BAREFOOT DREAMS, INC.,

Defendant.

Case No. CACE26003507

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

Hon. Michele Towbin Singer

Div. 21

Pursuant to Florida Rule of Civil Procedure 1.220, Plaintiffs Abby Grubor and Juliette Blatt (“Plaintiffs”), individually and on behalf of the proposed Settlement Class,¹ respectfully submit this Unopposed Motion for Preliminary Approval of Class Action Settlement.

I. INTRODUCTION

Plaintiffs now move for certification of the class and preliminary approval of the class action settlement in this case. The Settlement Agreement (hereafter, “Settlement Agreement”) and its exhibits are attached as **Exhibit 1** to the concurrently filed Declaration of Philip L. Fraietta (the “Fraietta Decl.”). This case concerns allegations that Defendant Barefoot Dreams, Inc. (“Defendant”) intercepted and disclosed its customers’ confidential personally identifiable information (“PII”) and purchase information in violation of state and federal law.

Defendant vigorously denies Plaintiffs’ allegations, and continued litigation poses risks to Plaintiffs and the putative class they seek to represent. Settlement Agreement, Recitals ¶ F. Absent

¹ All capitalized terms herein shall have the same meanings as those defined in Section 1 of the Settlement Agreement, attached as **Exhibit 1**.

settlement, Defendant would challenge the pleadings, oppose class certification, move for summary judgment, litigate the case at trial and appeal any victory for Settlement Class Members. Fraietta Decl. ¶¶ 11–12. Victory for the Defendant at any one of those steps would leave putative class members without any relief whatsoever.

Recognizing the risk and uncertainty of protracted litigation, the parties conducted a full-day, arm’s-length mediation session with Marc E. Isserles, Esq. of JAMS New York, followed by several weeks of follow-on settlement discussions. *Id.* ¶ 9. These efforts resulted in a Settlement Agreement that provides substantial monetary benefits to the proposed Class, summarized as follows:

- 1) Defendant has agreed to make available an \$8 Cash Payment to each Settlement Class Member who submits a timely, Valid Claim. *See* Settlement Agreement, §§ 1.3, 1.39, 1.40, 1.45, 2.1.
- 2) Defendant will pay the costs of notice and settlement administration out of the gross Settlement Fund. Settlement Agreement § 1.38. The notice includes direct notice, two reminder notices, and publication notice via the Settlement Website to all persons who purchased a product from www.barefootdreams.com or any of Defendant’s associated URLs from October 14, 2023, to and through the date of Notice. *Id.* at §§ 1.40; 4.

This is an outstanding recovery, particularly taking into account the novelty of the case and the risks to Plaintiffs and putative class members going forward. Due at least in part to their cutting-edge nature and the rapidly evolving law, privacy cases, including tracking pixel cases such as this one, generally face substantial hurdles, even just to make it past the pleading stage. Fraietta Decl. ¶ 11. Class certification is another hurdle, which would be hotly contested, for which success is

certainly not guaranteed. *Id.* Moreover, it is likely that a win by either party would result in appeals, which would further increase costs and extend the time until Plaintiffs and Settlement Class Members could receive relief. *Id.* Despite this fact, the Settlement Agreement provides significant, meaningful monetary relief. In sum, the Settlement is not only fair and reasonable but represents a resounding victory for Plaintiffs and the Class.

Plaintiffs respectfully request this Court to enter an Order Preliminarily Approving Class Action Settlement. That Order will:

- (1) Grant preliminary approval of the Settlement;
- (2) Certify the Settlement Class for settlement purposes;
- (3) Establish procedures for giving notice to members of the Settlement Class;
- (4) Approve forms of notice to Settlement Class Members;
- (5) Mandate procedures and deadlines for exclusion requests class and objections;
- (6) Appoint Plaintiffs as Class Representatives;
- (7) Appoint Bursor & Fisher P.A. as Class Counsel; and
- (8) Set a date, time, and place for a final approval hearing.

II. PROCEDURAL BACKGROUND

A. Statement of Plaintiffs' Claims

Plaintiffs' Complaint alleges putative class claims for violations of the Florida Security of Communications Act ("FSCA"), Fla. Stat. § 934.03, *et seq.*; the Electronic Communications Privacy Act (the "ECPA"), 18 U.S.C. § 2511, *et seq.*; the California Invasion of Privacy Act ("CIPA"), Cal. Penal Code § 631; CIPA § 632; the Comprehensive Computer Data Access and Fraud Act (the "CDAFA"), Cal. Penal Code § 502; and the California Constitution, in connection with Defendant's alleged disclosure of website users' personally identifiable information entered

into Defendant’s website, barefootdreams.com. *See generally Grubor et al. v. Barefoot Dreams, Inc.*, CACE26003507, Dkt. No. 1 (Fla. Cir. Ct. Feb. 27, 2026) (Filing No. 242770697) (“Compl.”). Specifically, Plaintiffs allege that Defendant violated the above-referenced statutes by disclosing website users’ personally identifiable information to third parties, including Meta Platforms, Inc. (“Facebook” or “Meta”) and Attentive Mobile Inc. (“Attentive”).

Defendant denies the allegations in the Complaint, denies that it acted wrongfully in any manner, and denies that Plaintiffs have stated claims upon which relief can be granted. Nonetheless, given the risks, uncertainties, and burdens of protracted litigation, Plaintiffs and Defendant have agreed to settle this litigation according to the terms of the Settlement Agreement.

B. The Settlement

The parties engaged in a full day, arms-length mediation with Mr. Marc E. Isserles, Esq. Fraietta Decl. ¶ 9. As part of this confidential mediation process, Defendant provided Plaintiffs’ Counsel with information about the putative class, and pre-mediation briefing was provided to Mr. Isserles. *Id.* At the conclusion of the mediation session the parties executed a binding term sheet outlining the principal terms of the settlement. The parties continued informal settlement discussions for the next few weeks, including drafting a full Settlement Agreement, which was fully executed by all parties on April 10, 2026. *See* Settlement Agreement.

III. TERMS OF THE SETTLEMENT

A. The Settlement Class

The proposed Settlement Class is defined as:

All living United States residents who purchased a product from www.barefootdreams.com or any of Defendant’s associated URLs from October 14, 2023, to and through the date of Notice.

Settlement Agreement § 1.41. Under the Settlement, Defendant has agreed to provide \$8 to each Settlement Class Member (i.e., a person who falls into the above definition and submits a Valid

Claim before the Claims Deadline) from a reversionary Settlement Fund. *Id.* §§ 1.3, 1.39, 1.40, 1.45. Settlement Class Members must submit a Valid Claim Form which includes their individually assigned User ID and PIN number, signature, and other information as provided under the Settlement Agreement. *See id.* § 1.45. The Settlement Agreement provides for dismissal of the current action with prejudice and releases by Plaintiffs and Settlement Class Members of claims against Defendant and affiliated parties in exchange for the above-described consideration.

B. The Settlement Amount

Defendant will pay or cause to be paid the following: (i) up to an \$8.00 cash payment to each Settlement Class Member who submits a Valid Claim for cash benefits pursuant to Sections 1.45 and 2 of the Settlement Agreement not to exceed \$1,934,328.00;² (ii) the Notice and Other Settlement Administration Expenses incurred by the Settlement Administrator pursuant to Sections 1.38 and 5.1 of the Settlement; (iii) the Fee Award, as may be provided by the Court and as described in Section 8.1 of the Settlement Agreement; and (iv) a Service Award of \$5,000.00 to each of the Class Representative, or as may be ordered by the Court and as described in Section 8.3 of the Settlement Agreement.

C. Class Notice

Plaintiffs' counsel has selected Epiq Systems, Inc. ("Epiq") to provide Notice to the Class, handle distribution to Settlement Class Members, and perform other services required by the Settlement Agreement, including responding to Class Members' inquiries. Settlement Agreement §§ 5.1–5.4. Notice shall be sent by email to all Settlement Class Members for whom a valid email address is available in the form substantially similar to that attached to the Settlement Agreement

² In the event the Settlement Class exceeds 241,791, the Settlement Fund will be subject to an incremental increase of \$8.00 USD per additional class member; should the Settlement Class exceed 300,000, the Parties agree to negotiate a new Settlement Fund in good faith.

as **Exhibit B** (email notice). Settlement Agreement § 4. In the event transmission of email notice results in any “bounce-backs,” the Settlement Administrator shall, where reasonable correct any issues that may have caused the “bounce-back” to occur and make a second attempt to re-send the email notice. *Id.* § 4.1(b). Publication notice will be available on a Settlement Website in the form substantially similar to that attached to the Settlement Agreement as **Exhibit C** (long form notice). *Id.* § 4.1 (d). The Notice informs Settlement Class Members of their rights, including the right to be excluded from, comment upon and/or object to the Settlement Agreement or any of its terms. Both thirty (30) and ten (10) days prior to the Claims Deadline, the Settlement Administrator shall again send Notice via email, along with an electronic link to the Claim Form, to all Settlement Class Members for whom a valid email address is available. *Id.* § 4.1(c).

D. Exclusion and Objection

Class Members will have sixty (60) days after the issuance of the Settlement Notice (“Notice Date”) to exclude themselves from the Settlement-the Objection/Exclusion Deadline. *See* Settlement §§ 1.26, 4. To opt out, a Class Member must mail a written letter requesting exclusion from the Settlement to the Claims Administrator, postmarked on or before the Objection/Exclusion Deadline. *See id.* § 4.6. The letter requesting exclusion must contain (i) the individual's full legal name; (ii) address; (iii) signature; (iv) the name and number of the case; and (v) a statement that he or she wishes to be excluded from the Settlement Class for the purposes of the Settlement. *Id.*

To object to the Settlement, a Class Member must present the objection in writing, which must be personally signed by the objector, and must include: (1) the objector's name and address; (2) an explanation of the basis upon which the objector claims to be a Settlement Class Member; (3) all grounds for the objection, including all citations to legal authority and evidence supporting the objection; (4) the name and contact information of any and all attorneys representing, advising,

or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection; and (5) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Local Rules). *See id.* § 4.3.

E. Attorneys' Fees, Costs, and Expenses

Defendant has agreed that Proposed Class Counsel is entitled to seek an award of reasonable attorney's fees (inclusive of litigation costs and expenses) for prosecuting this action and will not object to Proposed Class Counsel's petition for fees and expenses not to exceed one-third of the total gross Settlement Fund inclusive of costs and expenses. Settlement Agreement §§ 1.15, 8.1.

F. Service Payment to Named Plaintiffs

The Settlement Agreement allows Class Counsel to request and for Defendant to pay a reasonable service award to proposed Settlement Class Representatives, as approved and ordered by the Court upon Final Approval of the Settlement. Settlement Agreement § 8.3. The Class Representatives' concordance to the Settlement Agreement is not conditioned in any manner on the Service Award or its amount. The Class Representatives have given their time and accepted their responsibilities admirably, participating actively in this litigation as required and, in a manner beneficial to the Class generally, including: (1) reviewing the pleadings; (2) assisting in the investigation; (3) remaining available for consultation throughout settlement negotiations, and (4) reviewing and signing the Settlement Agreement. Fraietta Decl. ¶ 14.

IV. LEGAL STANDARD

“Preliminary approval is the first stage of the settlement process, and the court's primary objective . . . is to establish whether to direct notice of the proposed settlement to the class, invite

the class’s reaction, and schedule a final fairness hearing.” Newberg and Rubenstein on Class Actions § 13:10 (6th ed. 2025) [hereinafter, “Newberg”]. When there is no existing class certification, a judge is tasked with answering two questions: “(1) whether to preliminarily approve certification for settlement purposes; and (2) whether to preliminarily approve the settlement that is on the table.” § 23:60 *Preliminary approval—Two distinct situations*, 1 Federal Rules of Civil Procedure, Rules, and Commentary § 23:60.

Because Florida Rule of Civil Procedure 1.220 does not provide standards for preliminary approval, state courts often look to Federal Rule of Civil Procedure Rule 23.³ *See e.g., Peters v. BuzzFeed Inc.*, CACE-24-004380 (Fla. Cir. Ct. June 3, 2024) (Instr. No. 119614333; Filing No. 199746982). Traditionally, courts review proposed class action settlements using a well-established two-step process:

In [the] first step, the court simply determines whether the proposed settlement falls within the range of possible approval and whether it is reasonable to issue notification to settlement class members of the settlement's terms. In the second step, after notice to the class and an opportunity for absent settlement class members to object or otherwise be heard, the court will determine whether to grant final approval of the settlement as fair and reasonable.

Figueroa v. Sharper Image Corp., 517 F. Supp. 2d 1292, 1298–99 (S.D. Fla. 2007).

The 2018 Amendments to Rule 23 of the Federal Rules of Civil Procedure 23(e)(1) codified this approach, by authorizing a court to grant preliminary approval of a proposed class action settlement so long as the moving parties demonstrate that the court will “likely be able to” grant final approval to the settlement. Rule 23(e)(2) in turn authorizes final approval only upon a

³ “Because Florida's class action rule is based upon Federal Rule of Civil Procedure 23, Florida courts may look to federal cases as persuasive authority in their interpretation of rule 1.220.” *Waste Pro USA v. Vision Constr. ENT, Inc.*, 282 So. 3d 911, 918 (Fla. Dist. Ct. App. 2019) (citing *Seven Hills, Inc. v. Bentley*, 848 So. 2d 345, 352-53 (Fla. 1st DCA 2003)).

showing that the settlement is “fair, reasonable, and adequate.” *Peters v. BuzzFeed Inc.*, CACE-24-004380 at 2 (Fla. Cir. Ct.) (citing *Burrows v. Purchasing Power, LLC*, 2013 WL 10167232, at *5; *Griffith v. Quality Distribution, Inc.*, 307 So.3d 791 (Fla. 2d DCA 2018)).

V. THE COURT SHOULD GRANT PRELIMINARY APPROVAL

A. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED

The Supreme Court has recognized that the benefits of a proposed settlement of a class action can be realized only through the certification of a settlement class. *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Prior to granting preliminary approval of a class action settlement, a court should determine that the proposed settlement class is a proper class for settlement purposes. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). A class may be certified under Fla. R. Civ. P. 1.220(a) when:

(1) the members of the class are so numerous that separate joinder of each member is impracticable [*numerosity*], (2) the claim or defense of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim or defense of each member of the class [*commonality*], (3) the claim or defense of the representative party is typical of the claim or defense of each member of the class [*typicality*], and (4) the representative party can fairly and adequately protect and represent the interests of each member of the class [*adequacy*].

Fla. R. Civ. P. 1.220(a); *Peters v. BuzzFeed Inc.*, CACE-24-004380 (Fla. Cir. Ct. June 3, 2024) (Instr. No. 119614333; Filing No. 199746982)

Additionally, where (as in this case), certification is also sought under Rule 1.220(b)(3), the Plaintiffs must demonstrate that common questions of law or fact predominate over individual issues and that a class action is superior to other methods of adjudicating the claim. Fla. R. Civ. P. 1.220(b)(3). *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591,620 (1997); *Sosa v. Safeway Premium Finance Co.*, 73 So.3d 91 (Fla. 2011).

i. Numerosity

Numerosity is met where the class is so numerous that joinder of all members is impracticable. Fla. R. Civ. P. 1.220(a). “No specific number and no precise count are needed to sustain the numerosity requirement.” *Sosa v. Safeway Premium Finance Co.*, 73 So.3d 91 (Fla. 2011). A prospective class size of several hundred aggrieved members was found to satisfy the numerosity requirement of Fla. R. Civ. P. 1.220(a). *See id*; *Union Am. Ins. Co. v. Rodriguez*, 696 So.2d 1248, 1249 (Fla. 3d DCA 1997) (finding that numerosity satisfied by a class of over 20,000); *Maner Props., Inc. v. Siksay*, 489 So.2d 842, 844 (Fla. 4th DCA 1986) (Numerosity requirement was satisfied by a prospective class of over 350). Here, the Parties believe hundreds of thousands of users fall within the class definition. Fraietta Decl. at ¶ 8.

ii. Commonality

This requirement is satisfied where the plaintiffs assert claims that “depend upon a common contention” that is “of such a nature that it is capable of class-wide resolution-which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011). The primary concern in the consideration of commonality is whether the representative’s claim arise from the same practice or course of conduct that gave rise to the remaining claims and whether the claims are based on the same legal theory. *See Morgan v. Coates*, 33 So.3d 59 (Fla. 2nd DCA 2010) (citing *Powell v. Ranch Prop. Owners Ass’n, Inc.*, 522 So.2d 69,70 (Fla. 2d DCA 1988)). Here the Plaintiffs’ and Class Members’ claims all arise out of Defendant’s practice or conduct of alleged disclosure of website users’ personally identifiable information without permission to third parties in violation of the FSCA, the ECPA, CIPA, the CDFAFA, and the California Constitution. *See Compl.* ¶ 121. Commonality is therefore satisfied.

iii. Typicality

The commonality and typicality analyses often overlap, as they are both focused on “whether a sufficient nexus exists between the legal claims of the named class representatives and those of individual class members to warrant class certification.” *Prado-Steiman ex rel. Prado v. Bush*, 221 F.3d 1266, 1278 (11th Cir. 2000); *Morgan v. Coates*, 33 So.3d at 65. “The test for typicality is not demanding and focuses generally on the similarities between the class representative and the putative class.” *See Sosa v. Safeway Premium Finance Co.*, 73 So.3d at 114. Here, there is a nexus between Plaintiffs’ and other Settlement Class members’ claims since they each concern disclosure of Defendant’s customers’ personally identifiable information and sensitive medical information to third parties without permission in violation of the FSCA, the ECPA, CIPA, the CDAFA, and the California Constitution. Thus, Plaintiffs’ claims are typical of other Settlement Class members claims because they are based on the same legal theories and underlying events. Further, Plaintiffs’ claims are typical of the claims of the Classes because the Plaintiffs, like all other class members, visited the Website and had their confidential electronic communications intercepted and disclosed to Third Parties. Compl. ¶ 122.

iv. Adequacy

“This inquiry serves to uncover conflicts of interest between the presumptive class representative and the class he or she seeks to represent.” *See Sosa v. Safeway Premium Finance Co.*, 73 So.3d at 115 (citing *Terry L. Braun, P.A., v. Campbell*, 827 So.2d 261, 268 (Fla. 5th DCA 2002)). The Court’s determination of adequacy requires satisfaction of a two-prong test: (i) The qualifications, experience, and ability of class counsel, and (ii) whether the class representatives’ interests are antagonistic to the interests of the class members. *See City of Tampa v. Addison*, 979 so.2d 246,255 (Fla. 2d DCA 2007).

1. Proposed Class Counsel is Qualified and Experienced

Proposed Class Counsel regularly litigates major class actions, have extensive experience in class action lawsuits, and leads data privacy class actions on behalf of aggrieved consumers across the country. *See* Fraietta Decl. ¶¶ 2, 6–7; *see also* Fraietta Decl. **Exhibit 3** (firm resume). Using that litigation experience and intimate knowledge of the facts of the case and the strengths and weaknesses of the claims and defenses facing Class Members, proposed Class Counsel can make, and did make, well-informed judgments and decisions about the time, costs, and risks of protracted litigation, discovery, and appeals, and the adequacy of the Settlement reached. Proposed Counsel believe that the Settlement is fair, reasonable, and adequate because Class Members will receive payment now, instead of having to wait for lengthy litigation and likely subsequent appeals or no relief whatsoever due to the considerable risk of proceeding to trial. *Id.* ¶¶ 10–13.

Class Counsel and Plaintiffs have vigorously and competently pursued the Settlement Class Members' claims and there is no reason to believe that Plaintiffs have interests that are antagonistic to the class members' interest. Plaintiffs' counsel are also highly experienced class-action attorneys, whose firm has particular expertise in the emerging field of data privacy class actions. A copy of Class Counsels' firm resume is attached as **Exhibit 3** to the Fraietta Declaration.

2. Plaintiffs' Interests Do Not Conflict With Those of The Class

Here, Plaintiffs' interests are coextensive with those of the Settlement Class Members. Like all Settlement Class members, Plaintiffs bring claims against Defendant for the alleged disclosure of its website users' personally identifiable information to third parties, without consent, in violation of the FSCA, the ECPA, CIPA, the CDAFA, and the California Constitution. *See generally* Compl. Plaintiffs and Class Members were therefore similarly allegedly injured by Defendant's wrongful acts. Proof of Plaintiffs' claims would necessarily involve adjudicating the

same issues of law and fact as the claims of the Settlement Class as a whole. Thus, Plaintiffs and the Settlement Class they seek to represent have the same interests in recovering damages. Further, Plaintiffs have also diligently and adequately prosecuted this action through Class Counsel by, among other things, assisting in Counsel's investigation, reviewing draft pleadings and filings, promptly providing documents and information to Class counsel, acting in the best interest of the Settlement Class, and accepting the class-wide Settlement. Fraietta Decl. ¶ 14.

v. Predominance and Superiority

1. Common Issues Predominate

In addition to meeting the prerequisites of Rule 1.220(a), the proposed Settlement Class must also meet one of the three requirements of Rule 1.220(b). Here, the Representative Plaintiffs also seek certification under Rule 1.220(b)(3), which requires that: “the questions of law or fact common to the claim or defense of the representative party and the claim or defense of each member of the class predominate over any question of law or fact affecting only individual members of the class, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy.” Fla. R. Civ. P. 1.220(b)(3). “Concerning predominance, the Florida Supreme Court holds that “a class representative establishes predominance if he or she demonstrates a reasonable methodology for generalized proof of class wide impact. A class representative accomplishes this if he or she, by proving his or her own individual case, necessarily proves the cases of the other class members.” *Disc. Sleep of Ocala, LLC v. City of Ocala*, 245 So. 3d 842, 850 (2018). The inquiry becomes whether a defendant's liability is common enough to be resolved on a class basis, *see Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551-2557 (2011), and whether the proposed class is “sufficiently cohesive to warrant adjudication by representation,” *Amchem*, 521 U.S. at 623. Predominance does not require

that all questions of law or fact be common, but rather, that a significant aspect of the case “can be resolved for all Settlement Class Members of the class in a single adjudication.” *Tornes v. Bank of America, NA (In re Checking Account Overdraft Litig.)*, 275 F.R.D. 654, 660 (S.D. Fla. 2011).

Common issues readily predominate here because the central liability question in this case is whether Defendant disclosed its website users’ personally identifiable information to third parties without permission in violation of the FSCA, the ECPA, CIPA, the CDAFA, and the California Constitution. Multiple case-dispositive questions could be resolved identically for all members of the Settlement Class, such as whether Defendant owed a legal duty to not disclose Plaintiffs’ and Class Members’ personal information; whether Defendant owed a legal duty to not disclose Plaintiffs’ and Class Members’ personal information with respect to Defendant’s privacy policy; whether Defendant owed a legal duty to not disclose Plaintiffs’ and Class Members’ personal information with respect to Defendant’s cookie banner representations; whether Defendant breached a legal duty to Plaintiffs and Class Members to exercise due care in collecting, storing, using, and safeguarding their personal information; whether Defendant adequately and accurately informed Plaintiffs and Class Members that their personal information would be disclosed to third parties; and whether Class Members are entitled to actual, statutory, and/or consequential damages, and/or injunctive relief as a result of Defendant’s alleged wrongful conduct. The many common questions of fact and law that arise from Defendant’s alleged conduct predominate over any individualized issues.

2. Class Treatment is Superior to Individual Litigation

Three factors for courts to consider when deciding whether a class action is the superior method of deciding a controversy are (1) whether a class action would provide the class members with the only economically viable remedy; (2) whether there is a likelihood that the individual

claims are large enough to justify the expense of separate litigation; and (3) whether a class action cause of action is manageable. These factors weigh in favor of class certification in this Action. *See Morgan*, 33 So.3d at 66.

Here, resolution of numerous claims in one action is far superior to individual lawsuits, because it promotes consistency and efficiency of adjudication. *See Fla. R. Civ. P. 1.220(b)(3)*. Indeed, absent class treatment in the instant case, each Settlement Class Member will be required to present the same or essentially the same legal and factual arguments, in separate and duplicative proceedings, the result of which would be a multiplicity of trials conducted at enormous expense to both the judiciary and the litigants. Moreover, there is no indication that Settlement Class Members have an interest in individual litigation or an incentive to pursue their claims individually, given the amount of damages likely to be recovered, relative to the resources required to prosecute such an action. *See Sosa v. Safeway Premium Finance Co.*, 73 So.3d at 11 (Finding that thousands of class members would not be economically justified in pursuing claims involving a \$20 overcharge fee).

Additionally, the proposed Settlement Agreement will give the parties the benefit of finality, and because this case has now been settled pending Court approval, there are no issues with manageability. *Amchem*, 521 U.S. at 620 (“Confronted with a request for settlement-only certification, a district court need not inquire whether the case, if tried, would present intractable management problems ... for the proposal is that there be no trial.”). Class certification and class resolution guarantee an increase in judicial efficiency and conservation of resources over the alternative of individually litigating tens of thousands of individual cases arising out of allegations based upon Defendant’s conduct.

As such, Plaintiffs respectfully submit the Court should certify the Settlement Class, as the superiority requirement is satisfied, along with all other Rule 1.220 requirements.

B. SETTLEMENT IS WITHIN RANGE OF POSSIBLE APPROVAL

i. The Settlement Is The Result of Arm's Length Negotiations

The Settlement is the product of a thorough pre-filing investigation, efficiently prosecuted litigation, and extensive arm's-length negotiations between the Parties, including a full-day mediation with Marc E. Isserles, Esq., a neutral affiliated with JAMS New York with decades of relevant experience. Settlement Agreement, Recitals ¶¶ B–D; Fraietta Decl. ¶¶ 9–12; *Petersen v. Am. Gen. Life Ins. Co.*, 2019 WL 11093816, at *6 (M.D. Fla. Oct. 22, 2019) (involvement of a mediator indicates that negotiations protect and further class interests) (quoting Rule 23(e)(2)(B), Committee Notes on Rules-2018 Amendment; citing *Poertner v. Gillette Co.*, 618 F. App'x 624, 630 (11th Cir. 2015)). Counsel for both sides vigorously advocated for their clients, the arguments on both sides were sometimes contentious, and there was no collusion whatsoever in reaching this Settlement. Settlement Agreement, Recitals ¶¶ B–D, F–G; Fraietta Decl. ¶¶ 9–12

ii. The Settlement Provides Substantial, Immediate Relief to the Class in Light of Uncertainty

Here, when preliminarily considering factors examined in depth at final approval, there is no question that the proposed Settlement is well “within the range of possible approval,” and should be approved. While the Court cannot yet consider class approval before notice has been provided, an initial examination of the merits of the case, risks of litigation, and the benefits obtained by the Settlement Agreement wholly support preliminary approval.

The Settlement negotiated by Plaintiffs and Proposed Class Counsel represents substantial relief for the proposed Settlement Class. Pursuant to the Settlement, Defendant has agreed each

Settlement Class Member will be entitled to file a claim for an \$8.00 Cash Payment. *See* Settlement Agreement §§ 1.3, 2.1–2.2.

Further, the Court need not evaluate the Settlement in a vacuum as this Settlement aligns with numerous other similar privacy-related settlements that came before it. *See, e.g. Bolanos v. VShred, LLC*, CACE25001211 (Fla. Cir. Ct. 2025) (providing cash payment of approximately \$10 per claimant alleging alleged FSCA, ECPA, and CIPA violations); *Jackson v. Fandango Media, LLC*, Case No. 2023LA000631 (Ill. Cir. Ct. DuPage Cnty.) (approving settlement providing \$5 or \$15 movie ticket voucher for alleged VPPA violations); *Ambrose v. Boston Globe Media Partners, LLC*, 1:22-cv-10195 (D. Mass.) (providing cash payment of approximately \$9.69 per claimant alleging VPPA violations); *In re Google LLC Street View Elec. Commc'ns Litig.*, 2020 WL 1288377, at *11–14 (N.D. Cal. Mar. 18, 2020) (approving, over objections of class members and state attorney general, a settlement providing only *cy pres* relief for violations of Electronic Communications Privacy Act).

The strength of the Settlement speaks for itself, and the Court should have no hesitation granting it preliminary approval. The value achieved through the Settlement Agreement is guaranteed while chances of prevailing on the merits are far from certain. While Plaintiffs believe they would likely prevail on their claims, they are also aware that Defendant firmly denies all charges of wrongdoing or liability and the material allegations of the Complaint and intends to pursue several legal and factual defenses. Fraietta Decl. ¶ 11. If Defendant was successful on any one of these defenses, Plaintiffs and the Class Members risk receiving no relief whatsoever. *Id.*

Due at least in part to their cutting-edge nature and the rapidly evolving law, privacy cases, including tracking pixel cases such as this one, generally face substantial hurdles, even just to make it past the pleading stage. *Id.* Class certification is another hurdle, which would be hotly

contested, for which success is certainly not guaranteed. *Id.* Moreover, it is likely that a win by either party would result in appeals, which would further increase costs and extend the time until Plaintiffs and Class Members could receive relief. *Id.* Taking these realities into account and recognizing the risks involved in any litigation, the tangible, immediate relief available to each Class Member represents a truly excellent result for the Class. *Id.* ¶¶ 8, 12.

C. The Proposed Notice Is The Best Practicable and Satisfies Rule 1.220

Rule 1.220(d)(2) requires that notice be given to “each member of the class who can be identified and located through reasonable effort and shall be given to the other members of the class in the manner determined by the court to be the most practicable under the circumstances.” Fla. R. Civ. P. Rule 1.220(d)(2). This Rule further requires that the notice: “[s]hall inform each member of the class that (A) any member of the class who files a statement with the court by the date specified in the notice asking to be excluded shall be excluded from the class, (B) the judgment, whether favorable or not, will include all members who do not request exclusion, and (C) any member who does not request exclusion may make a separate appearance within the time specified in the notice.” *Id.*

The Notice Program here is the best practicable under any circumstances. The Notice in the Settlement Agreement calls for Settlement Class Members to be provided with direct notice to the email addresses belonging to Defendant’s purchasers during the relevant class period. Individual, direct notice clearly comports with due process requirements. *See* Settlement Agreement § 4; *e.g.*, *Juris v. Inamed Corp.*, 685 F.3d 1294, 1320 (11th Cir. 2012). The Notice that will be emailed provides a brief summary of the case and Settlement Agreement and directs each Settlement Class Member to additional resources such as the Settlement Website. *DeSouza v. AeroCare Holdings LLC*, 2023 WL 5434712, at *9 (M.D. Fla. Aug. 7, 2023), *report and*

recommendation adopted, 2023 WL 5432302 (M.D. Fla. Aug. 23, 2023) (“mailing/emailing the notice in conjunction with establishing a website—has been deemed an appropriate method of notice by courts”). On the Settlement Website, Settlement Class Members can review the Long Form Notice, relevant filings, make a claim, and get answers to frequently answered questions such as the process for opting out or objecting under the Settlement Agreement. *See* Settlement Agreement § 4.1(d); Settlement Agreement **Exhibit C** (Long Form Notice). Further, the Settlement provides for two reminder notices, within thirty (30) days and ten (10) days of the Claims Deadline. Settlement Agreement § 4.1(c).

Additionally, the notices are clear and straightforward. *See generally* Settlement Agreement **Exhibits A–C**. They define the Class; clearly describe the options available to Settlement Class Members and the deadlines for taking action; describe the essential terms of the Settlement Agreement; disclose the requested service award for the class representatives as well as the amount that proposed Settlement Class Counsel intends to seek in fees and costs; explain procedures for making claims, objections, or requesting exclusion; describe the date, time, and place of the Final Fairness Hearing; and prominently display the address and phone number of class counsel. *Id.* Thus, the proposed Notice is reasonably calculated under the circumstances to apprise the Settlement Class of all information required by Fla. R. Civ. P. 1.220(d)(2). *See also Poertner v. Gillette Co.*, 618 F. App'x 624, 628 (11th Cir. 2015) (per curiam) (finding that a claim process that involved “completing a one-page form and submitting it either online or by mail” is not “particularly difficult or burdensome”).

Therefore, the Notice satisfies all applicable requirements of the law, including, but not limited to, Rule 1.220 of the Florida Rules of Civil Procedure and Due Process. The Court should

therefore approve the Notice and the form and content of the Notices attached as **Exhibits A–C** to the Settlement Agreement.

VI. THE COURT SHOULD APPOINT PLAINTIFFS AS CLASS REPRESENTATIVES AND BURSOR & FISHER AS CLASS COUNSEL

A. Plaintiffs Should Be Appointed As Class Representatives

Plaintiffs seek appointment as Class Representatives. Plaintiffs have cooperated with Class Counsel and assisted in: (1) reviewing the pleadings, (2) assisting in the investigation, (3) remaining available for consultation throughout negotiations, and (4) reviewing and signing the Settlement Agreement. Fraietta Decl. ¶ 14. Moreover, Plaintiffs are committed to continuing to assist Class Counsel through Final Approval. *Id.* Because Plaintiffs are adequate, the Court should appoint them as Class Representatives.

B. Plaintiffs' Counsel Should Be Appointed As Settlement Class Counsel

As discussed above and in the Fraietta Declaration, proposed Class Counsel has extensive experience prosecuting similar class actions and other complex litigation. *See* Fraietta Decl. ¶¶ 6–7; **Exhibit 3**. Further, proposed Class Counsel have diligently investigated and prosecuted the claims in this matter, have dedicated substantial resources to the investigation and litigation of those claims, and have successfully negotiated the Settlement of this matter to the benefit of Plaintiffs and the Settlement Class. Accordingly, the Court should appoint Philip L. Fraietta and Stephen A. Beck of Bursor & Fisher P.A. as Class Counsel.

VII. CONCLUSION

For the foregoing reasons Plaintiffs respectfully request that the Court grant Preliminary Approval of the Settlement.

Dated: April 23, 2026

Respectfully submitted,

BURSOR & FISHER, P.A.

By: /s/ Philip L. Fraietta
Philip L. Fraietta

Philip L. Fraietta (admitted *pro hac vice*)
50 Main Street, Suite 475
White Plains, NY 10606
Tel: (914) 874-0710
Fax: (914) 206-3656
E-Mail: pfraietta@bursor.com

BURSOR & FISHER, P.A.

Stephen A. Beck (State Bar No. 1010183)
701 Brickell Ave., Suite 2100
Miami, FL 33131-2800
Telephone: (305) 330-5512
Facsimile: (305) 676-9006
E-Mail: sbeck@bursor.com

Proposed Class Counsel

CERTIFICATION PURSUANT TO FLA. R. CIV. PROC. 1.202

The undersigned has conferred with Aaron Charfoos and David Coogan of Paul Hastings LLP, counsel for Defendant and is authorized to state that all Parties consent to the relief requested herein.

Dated: April 23, 2026

By: /s/ Philip L. Fraietta
Philip L. Fraietta

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of April, 2026 I electronically filed the foregoing with the Clerk of the Court which will send notice of electronic filing to all counsel of record.

Dated: April 23, 2026

By: /s/ Philip L. Fraietta
Philip L. Fraietta